

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

SENATE MEMBERS

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June 11, 2018

Chairman Uecker called the meeting to order at 1:35 p.m.

Deputy Director Fouche called the roll. Senators Uecker, Hackett, Kunze, Skindell and Representatives Manning, Gavarone, Boggs, and Craig were in attendance. Representative Duffey, Representative Ramos, Senator Balderson, and Senator Thomas were excused from the meeting. Deputy Director Fouche stated a quorum was present. Chairman Uecker asked the Committee members to review the May 14, 2018 minutes. The minutes were approved as presented. Chairman Uecker announced that the “Bucket of Invalidation” would be back on November 13, 2018.

Director Wolpert read the No Change Agenda. Chairman Uecker called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Items 23, 42, and 45 were moved to the review portion of the agenda. Chairman Uecker called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. Chairman Uecker temporarily recessed the Committee at 1:40 p.m.

Chairman Uecker called the Committee back to order at 1:42 p.m. to discuss the review portion of the agenda. Chairman Uecker called Lynn M. Dudek, Director of Clinical Therapies for Haugland Therapy Services, to provide opponent testimony on items 42 and 45. Ms. Dudek expressed gratitude to Senator Kunze for her help with communications to the Department of Medicaid (ODM). Ms. Dudek stated her concerns with regards to payments made after the vendor’s 30-day return time period expires, tablet issues, ODM not paying for repairs for a duplicate item, human rights’ violations, and disability discrimination.

Chairman Uecker asked Ms. Dudek if her opposition was the permissive authority or the process ODM had in creating the rules. Ms. Dudek stated her opposition was both. Ms. Dudek believes the JCARR prong violation is that ODM is exceeding their statutory authority. Chairman Uecker asked if Ms. Dudek was a childcare worker, provider, or practitioner. Ms. Dudek stated she was a Speech Pathologist and the Director of Clinical Therapies for Haugland Therapy Services. There were no further questions for the witness.

Chairman Uecker called Noah Trembley to provide opponent testimony. Mr. Trembley expressed his frustration with ODM’s response email. Mr. Trembley stated he had concerns with rule 5160-10-02 section B (5). Mr. Trembley stated under the proposed rule he would not be able to have his device repaired more than once within a year if the device has the same issues needing repair. Mr. Trembley had his device repaired three times within the past eight months with the same issue. Mr. Trembley stated this would significantly impact his ability to be an active member in his community. Mr. Trembley urged the Committee not to let the rule move forward. There were no questions for the witness.

Chairman Uecker called Kimberly Hale, Speech-Language Pathologist, to provide opponent testimony. Ms. Hale expressed her disappointment with ODM’s response email. Ms. Hale believes rule 5160-10-24 exceeds

ODM's statutory authority and that ODM did not prepare an accurate Rule Summary and Fiscal Analysis (RSFA) for the rule. Ms. Hale asked the Committee to invalidate the rules.

Senator Skindell stated ODM must answer a question in the RSFA pertaining to whether or not their revenue or expenditures will change based upon the rules. Senator Skindell asked Ms. Hale if his statement was correct. Ms. Hale stated "yes," with regard to the JCARR prong. Senator Skindell referred to Ms. Hale's fiscal chart she provided in her written testimony. Senator Skindell stated it was his understanding that the tablet is a device that would not be reimbursed by Medicare. Ms. Hale stated Senator Skindell was correct. Senator Skindell asked if there was a rule prohibiting Medicare to pay for the tablet. Ms. Hale stated "yes," because the tablet was not seen as durable medical equipment.

Senator Skindell asked Ms. Hale to explain the differences between the tables provided in her written testimony. Ms. Hale stated table one shows abuse of the system. Senator Skindell stated that tables two and three would be the normal cost that would be seen. Ms. Hale stated "yes." Senator Skindell asked where Ms. Hale came up with 25 devices in the charts she provided. Ms. Hale stated she chose 25 to provide an example.

Chairman Uecker stated the rates were not listed anywhere in the rule. Senator Skindell stated the issue is that ODM is to respond accurately in the RSFA. Chairman Uecker asked if the issue of cost is associated with the vendors and not the agency. Senator Skindell stated the issue of cost was with both the vendor and ODM. Senator Skindell referred the Committee to rule 5160-10-24 RSFA question 13. Ms. Hale stated the rates were referred to in the rule. Senator Skindell asked if Ms. Hale had any idea about how many of the speech devices ODM covers now. Ms. Hale believes ODM covers about 150 people. There were no further questions for the witness.

Chairman Uecker called Bryan Stout, ODM, and Mark Rogers, ODM, to provide comments and answer questions from the Committee. Mr. Stout stated it was not the intent of the Department to spring anything on anyone or offend anyone. Mr. Stout apologized and explained the email sent out before the JCARR meeting was an effort made by the Department to respond to the public comments made to the Department.

Mr. Rogers provided some background information on the rules to the Committee. Mr. Rogers stated ODM currently covers tablets but the correct terminology is that ODM covers software and anything necessary to run the software. Mr. Rogers stated ODM has, at the most, covered three tablets in one year. Mr. Rogers stated the intent of the rule changes were to make the rules easier to understand and easier to implement. Mr. Stout stated the rules reflected current policy. Mr. Stout spoke to the RSFA concerns Senator Skindell had. Mr. Stout stated the issue was the presumption that ODM did not currently cover the software and pay for the device to run the software. Mr. Stout stated ODM currently pays for the software and the device so ODM's response in the RSFA is accurate.

Senator Skindell asked what happens to durable medical equipment that was purchased and only used for a month but the individual was dis-enrolled from Medicaid. Mr. Stout stated the billable service is the date of service not necessarily when the payment is made. Mr. Stout stated if the individual kept the device and did not return it they would have to pay for the entire device. Senator Skindell asked if the change in language gives enough to the HMO to say the individual has no choice in the device they are given. Mr. Rogers stated the prescriber is the only individual that can change the device.

Senator Skindell stated the decision should not lie directly with the HMO because they sometimes do not make the best decisions. Senator Skindell asked if ODM was willing to sit down with stakeholders to continue to address any underlying issues. Mr. Stout stated "absolutely." Senator Hackett asked if he was correct by stating the coverage was the software of the device. Mr. Stout stated Senator Hackett was correct. Mr. Stout stated the coverage would be for the software for any device. There were no further questions for the witnesses.

Chairman Uecker stated he did not see a violation of statutory authority by ODM. Chairman Uecker asked the Committee if they had any actions on the proposed rules. There were no actions by the Committee.

Chairman Uecker called Kimberly Hinkle, Director of Washington County Child Support Enforcement Agency, to provide opponent testimony on item 23. Ms. Hinkle asked the Committee to invalidate or rescind rule 5101:9-6-80 on the basis ODJFS has failed to prepare an accurate RSFA. There were no questions for the witness.

Chairman Uecker called Frank McLaughlin, Director of Wood County Child Support Enforcement Agency, to offer testimony to the Committee. Mr. McLaughlin provided proponent testimony on item 23 to the Committee. There were no questions for the witness.

Chairman Uecker called Jennifer Tultz, Director of Summit County Child Support Enforcement Agency, to provide testimony to the Committee. Ms. Tultz provided proponent testimony on item 23 to the Committee. There were no questions for the witness.

Chairman Uecker called Alaina Bidlack, Program Manager an Assistant Prosecuting Attorney at the Warren County Child Support Enforcement Agency, to provide testimony to the Committee. Ms. Bidlack provided proponent testimony on item 23 to the Committee. There were no questions for the witness.

Chairman Uecker called Beth Anne Schorr, Director of Warren County Child Support Enforcement Agency, to offer testimony to the Committee. Ms. Schorr provided proponent testimony on item 23 to the Committee. There were no questions for the witness.

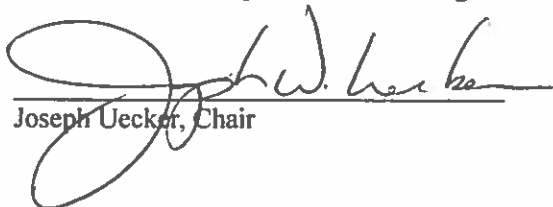
Chairman Uecker called Randall L. Galbraith, Esq., to provide opponent testimony to the Committee. Mr. Galbraith believes ODJFS failed to provide an accurate RSFA. Mr. Galbraith asked the Committee invalidate proposed rule 5101:9-6-80. There were no questions for the witness.

Chairman Uecker called David Frash, ODJFS, to provide comments and answer questions from the Committee. Mr. Frash stated at the behest of Vice-Chairman Duffey ODJFS put together a work group for this proposed rule. Mr. Frash stated all 12 counties signed off on the proposed rule before the Committee. Chairman Uecker asked if there was any consideration to help counties that are going to be greatly affected by the proposed rule. Mr. Frash stated the hold harmless provision in the rule was an attempt to help counties not take a huge hit right away. Senator Hackett stated the Department had to know ahead of time the Appalachian counties would be affected by the proposed rule. Mr. Frash stated ODJFS did know due to the opposition they had a year ago. There were no further questions for the witness.

Chairman Uecker called Rich Blankenship, Assistant Director of the Lawrence County ODJFS, to provide testimony to the Committee. Mr. Blankenship expressed his frustrations with being left out of the proposed rule conversation and not having any Appalachian counties involved in the process. There were no questions for the witness. Chairman Uecker asked the Committee if they had any actions on the proposed rule. There were no actions by the Committee.

Chairman Uecker reminded the public of the next JCARR meeting on Monday, July 16, 2018 at 1:30 p.m. in the Senate Finance Hearing Room.

Chairman Uecker adjourned the meeting at 3:51 p.m.



Joseph Uecker, Chair



Larry Wolpert, Director