

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

SENATE MEMBERS

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March 6, 2017

Chairman Duffey called the meeting to order at 1:32 p.m.

Deputy Director Fouche called the roll. Representatives Duffey, Manning, Gavarone, Johnson, Ramos and Senators Uecker, Balderson, Kunze, Yuko and Thomas were in attendance. Deputy Director Fouche stated a quorum was present. Chairman Duffey asked the Committee members to review the January 31, 2017 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Duffey 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. The Department of Medicaid rule 5160-9-05 was moved to the review portion of the agenda. Chairman Duffey called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. Chairman Duffey temporarily recessed the Committee at 1:37 p.m.

Chairman Duffey called the Committee back to order at 1:39 p.m. to discuss the review portion of the agenda. Chairman Duffey called Lora Miller, Ohio Council of Retail Merchants, for opponent testimony on proposed rule 5160-9-05 from the Department of Medicaid. Ms. Miller believes the fee structure in the proposed rule has a faulty tiered model. Ms. Miller believes current statute only authorizes a single dispensing fee. Ms. Miller proposed setting the dispensing fee in statute at \$10.49 to be reviewed biennially during the budget process.

Representative Ramos asked if the intent of the legislature was to have the Department change the reimbursement rates after the survey was completed. Ms. Miller stated the statute does not require the Department to use survey results. Chairman Duffey asked Ms. Miller if there was a JCARR prong concern or if she was just interested in sharing her grievances. Ms. Miller believes the proposed rule was in violation of current statute because the statute states "fee" instead of "fees." Ms. Miller stated the fiscal impact of affected businesses was another prong violation of the proposed rule. There were no further questions from the Committee.

Chairman Duffey asked Director Wolpert to speak to the staff attorney's analysis on the proposed rule. Director Wolpert stated the word "fee" basically is described as fee. The Department is not doing two fees. Director Wolpert stated in JCARR's analysis JCARR did not find a prong violation relative to that language. Ms. Miller asked why the Department is proposing to change that language in the budget if that was the legal analysis. Chairman Duffey stated the Department would respond to Ms. Miller's question.

Chairman Duffey called Bryan Stout, Department of Medicaid, to provide comments and answer questions from the Committee. Mr. Stout asked for the Chairman's permission to invite Margaret Scott, Department of Medicaid, up for comments and questions. Ms. Scott stated the Department is required by the Ohio Revised Code (O.R.C.) to conduct a cost of dispensing survey biennially. Ms. Scott stated the Department hired Mercer Government Human Services Consulting so the Department would be completely out of the process. Ms. Scott stated the survey was completed last fall and that the statistical analysis found the cost of dispensing is highly correlated to the volume of prescriptions that a pharmacy dispenses. Ms. Scott stated in order for the

Department to more fairly reimburse the cost of dispensing, Mercer Government Human Services Consulting suggested a tiered dispensing fee to ensure that low volume pharmacies would receive adequate reimbursement as well as high volume pharmacies. Ms. Scott stated the Department believes they have the statutory authority to set more than one fee. Ms. Scott stated the Department is asking for additional clarity through the budget process.

Chairman Duffey asked Ms. Scott to directly answer the witness' question regarding fee versus fees. Ms. Scott stated she believes the Department has statutory authority. Ms. Scott stated that in the past, the Department has set variable fees for compound prescriptions versus non-compound prescriptions to make sure the Department was adequately paying for costs. Ms. Scott stated the rule is new, but the rescinded rule also contains a set of fees. Ms. Scott stated the Department was asking for additional clarification through the budget process. Chairman Duffey asked if the Department has looked at how other agencies write rules with regard to fee versus fees. Mr. Stout stated he is not aware of a study in the O.R.C. of the term fee and whether or not that term is restrictive to mean one set amount across an entire spectrum. Mr. Stout stated the Department has previously used the Department's statutory authority to establish various fees depending on the service. Mr. Stout stated the Department agrees with the JCARR analysis. Chairman Duffey believes the Department can agree that if there are different rates to be set that the rates should be in statute. Mr. Stout stated the Department is willing to continue conversations in regards to what rates are in statute versus what rates are not in statute. There were no further questions from the Committee.

Chairman Duffey reminded the public of the next JCARR meeting on Monday, March 27, 2017 at 1:30 p.m. in the William McKinley Hearing Room.

Chairman Duffey adjourned the meeting at 1:54 p.m.



Mike Duffey, Chair



Larry Wolpert, Director