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# Missouri Legislative Academy

## Administrative Rules Procedure

David C. Valentine

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### Rulemaking Process

State agencies are required to promulgate as rules any “statement of general applicability that implements, interprets, or prescribes law or policy that describes the organization, procedure or practice requirements of any agency.”<sup>2</sup> Proposed orders of rulemaking are published by the Secretary of State in the Missouri Register.<sup>3</sup> There is a comment period of at least 30 days for each proposed rule or revision and the proposing department may order a hearing on the rule. The final order of rulemaking must be filed within 90 days of the later of the 30 day comment period or the hearing on the rule and becomes effective 30 days after it is distributed in the Code of State Regulations (CSR). Consequently, *most rules become effective approximately 6 months after their initial publication.*

### Joint Committee on Administrative Rules

Proposed and existing rules may be reviewed by the Joint Committee on Administrative Rules, created in 1975 and composed of five members of the House and five members of the Senate. The Committee may review rules of all departments except the Department of Labor and Industrial Relations and the Public Service Commission in the Department of Economic Development (536.031, RSMo). In addition, the Department of Social Services may promulgate rules but is not required to do so (536.043, RSMo). The committee cannot overturn or nullify rules as determined by the

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<sup>2</sup> Definition of “rule”, Section 536.010(4), RSMo. Rulemaking requirements can be found in Sections 536.010-536.053, RSMo.

<sup>3</sup> The Missouri Register is published bi-weekly. It is available on-line at [www.SOS.mo.gov](http://www.SOS.mo.gov), and in the Legislative Library and legislative staff offices.

Missouri Supreme Court, but it can recommend that rules be overturned by action of the General Assembly.<sup>4</sup> Such action can be taken by bill or by concurrent resolution but bills are almost never introduced for this purpose and even resolutions are infrequent. Very few resolutions that disapprove rules are approved by the General Assembly. These resolutions must meet all bill passage requirements specified in the Constitution (see Article III, Sections 21-32), including signature by the Governor.

A rare resolution overturning a rule was SCR 58, 2002, disapproving a rule promulgated by the Department of Insurance. This resolution was approved by the Governor (see copy below). Note that although the resolution uses the same form as other concurrent resolutions, with the “whereas” and “be it resolved” statements, it also has a title as a bill would have (“An act by concurrent resolution...”). This resolution was signed by Governor Holden. Had it been vetoed, the rule would have become effective and could have been overturned only by a two-thirds over-ride vote of both houses of the General Assembly.

More recently, a rule was proposed to allow the state to deduct union dues from the checks of state employees.<sup>5</sup> The Joint Committee on Administrative Rules disapproved the proposed rule, and HCR 5 was subsequently introduced and passed to effectuate that disapproval but Governor Holden vetoed HCR 5 and the veto was not overridden by the General Assembly.<sup>6</sup> Subsequently, Secretary of State Matt Blunt refused to publish the rule in the Code of State Regulations (rules cannot become effective until published) but was ordered to do so by the Cole County Circuit Court in November 2004.<sup>7</sup> This controversy is expected to end in January, 2005, because Governor-elect Blunt has indicated that he will withdraw executive order 01-09 and will direct that the Office of Administration withdraw the rule.

## SENATE CONCURRENT RESOLUTION NO. 58

An act by concurrent resolution and pursuant to Article IV, Section 8, Missouri Constitution, to disapprove Rule 20 CSR 500-6.700 and direct the Department of Insurance to promulgate an emergency rule and a proposed rule as required by Section 287.135, RSMo.

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<sup>4</sup> See Missouri Coalition for the Environment v. Joint Committee on Administrative Rules 948 S. W. 2d 125 (Mo.banc 1997).

<sup>5</sup> See Missouri Register, Vol. 29, No. 18, September 15, 2003, p 1557 for the proposed order of rulemaking, (1 CSR 10-4.010). The rule implicitly builds upon Governor Holden’s Executive Order 01-09, issued June 29, 2001 which set out how the state would negotiate with employee unions. The executive order also authorized agreements that would require the state to withhold “service fees” from employees’ pay. A legal challenge to the executive order failed because the order is a directive to the Governor’s employees that does not have the force and effect of law. See Kinder v. Holden, 92 s.w. 3<sup>rd</sup> 793 (MO APPWD 2002)

<sup>6</sup> The hearing and vote to disapprove occurred on December 8, 2003, and HCR 5 was Truly Agreed To on February 5, 2004, and was vetoed by the Governor on February 25, 2004. For more information, contact Cindy Kadlec, Executive Director, Joint Committee on Administrative Rules.

<sup>7</sup> The rule has been controversial because of partisan considerations, reflecting the pro and anti-union positions of the parties, but it has also been controversial because it appears to conflict with section 33.103, RSMo, which sets out authorized employee deductions.

WHEREAS, in 1993, the General Assembly enacted Senate Bill No. 251 containing the provision now codified at Section 287.135, RSMo, which requires the Department of Insurance to promulgate rules to determine the criteria by which a workers' compensation insurer may reimburse fees charged by a managed care organization ("MCO"); and

WHEREAS, the Department of Insurance promulgated Rule 20 CSR 500-6.700 which would become effective thirty days after publication in the Code of State Regulations; and

WHEREAS, the Department of Insurance has filed proposed rulemakings on at least 7 occasions but have failed to finalize such proposed rulemakings with the filing of an order of rulemaking with the Joint Committee on Administrative Rules and the Secretary of State; and

WHEREAS, the Joint Committee on Administrative Rules has held at least two hearings on previous rules proposed by the Department; and

WHEREAS, nearly ten years have passed since the Department of Insurance was directed to promulgate rules to determine the criteria by which workers' compensation insurers may reimburse fees charged by managed care organizations; and

WHEREAS, numerous managed care organizations were organized for the purpose of providing services in workers' compensation matters; and

WHEREAS, workers' compensation insurers have denied claims for payment from managed care organizations due to the absence of the rule required pursuant to Section 287.135, RSMo; and

WHEREAS, numerous managed care organizations have suffered financial losses due to their denied claims for services; and

WHEREAS, the Joint Committee on Administrative Rules held a hearing on March 7, 2002, and by a unanimous vote disapproved Rule 20 CSR 500-6.700 and recommends that the General Assembly act to disapprove and suspend Rule 20 CSR 500-6.700; and

WHEREAS, the Joint Committee on Administrative Rules directed the Department of Insurance to promulgate an emergency rule and a proposed rule with a sunset of December 31, 2002, which would provide a mechanism to pay managed care organizations, including those whose claims have been denied since the passage of Senate Bill No. 251 in 1993, based on the absence of a rule as required pursuant to Section 287.135, RSMo; and

WHEREAS, the Department of Insurance agreed to abide by the directions of the Joint Committee on Administrative Rules relating to the promulgation of an emergency and proposed rule; and

WHEREAS, the Department of Insurance to date has failed and refused to abide by the directions of the Joint Committee on Administrative Rules relating to the promulgation of an emergency and proposed rule:

NOW, THEREFORE, BE IT RESOLVED, that the members of the Missouri Senate, Ninety-first General Assembly, Second Regular Session, the House of Representatives concurring therein, upon concurrence of a majority of the members of the Senate and a majority of the members of the House of Representatives, hereby disapprove proposed Rule 20 CSR 500-6.700; and

BE IT FURTHER RESOLVED, that the General Assembly hereby directs the Department of Insurance to promulgate an emergency rule and a proposed rule with a sunset of December 31, 2002, which would provide a mechanism to pay managed care organizations, including those whose claims have been denied since the passage of Senate Bill No. 251 in 1993, based on the absence of a rule as required pursuant to Section 287.135, RSMo; and

BE IT FURTHER RESOLVED that a copy of the foregoing be submitted to the Secretary of State so that the Secretary of State may publish in the Missouri Register, as soon as practicable, notice of the revocation upon this resolution having been signed by the Governor or having been approved by two-thirds of each house of the Ninety-first General Assembly, Second Regular Session, after veto by the Governor as provided in Article III, Sections 31 and 32, and Article IV, Section 8 of the Missouri Constitution; and

BE IT FURTHER RESOLVED that a properly inscribed copy be presented to the Governor in accordance with Article IV, Section 8 of the Missouri Constitution.

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