

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTION TO
AND SUSPENSION OF PEREMPTORY RULE

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

Heading of the Part: Medical Assistance Programs

Code Citation: 89 Ill. Adm. Code 120

Section Number: 120.329

Date Peremptory Rule Published in the Illinois Register: 12/5/08

At its meeting on November 19, 2008, the Joint Committee on Administrative Rules voted to object to and suspend the Department of Healthcare and Family Services peremptory rule titled Medical Assistance Programs (89 Ill. Adm. Code 120) and to notify the Secretary of State of the Suspension of the peremptory rulemaking. The reasons for the Objection and Suspension are as follows:

JCAR objected to the Department of Healthcare and Family Services' use of peremptory rulemaking to adopt rules titled Medical Assistance Programs (89 Ill. Adm. Code 120) because that use violates Sections 5-50 and 5-125 of the Illinois Administrative Procedure Act (IAPA). Additionally, because JCAR finds the Department's use of peremptory rule violates statute and, thus, presents a threat to the public interest, JCAR suspends this peremptory rule. Section 5-50 of the IAPA allows peremptory rulemaking to be used only "when rulemaking is required as a result of federal law, federal rules and regulations, an order of a court or a collective bargaining agreement...that precludes compliance with the general rulemaking requirements...and that precludes the exercise of discretion by the agency as to the content of the rule". In adopting this peremptory rule, HFS relied on the Opinion of the Appellate Court Fifth Division affirming the judgment of the trial court in *Caro v Blagojevich*. First, while the Appellate Court discussed the deficiencies in the emergency rule adopted by HFS and suspended by JCAR, it did not issue any order requiring HFS to adopt additional rule text without discretion, nor did the Appellate Court set any deadline for action that precluded the use of general rulemaking procedures. For this reason, the use of peremptory rulemaking does not meet the tests of IAPA Section 5-50. Second, on 5/20/08, JCAR suspended an earlier peremptory rule adopted by HFS in response to circuit court action in *Caro*. On 11/16/08, the 180 day period during which the General Assembly or JCAR could withdraw that suspension expired, making the suspension permanent. Portions of this current peremptory rule are identical to that suspended peremptory rule. Section 5-125 of the IAPA states that "the agency may not enforce, or invoke for any reason, a rule or portion of a

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rule that has been suspended". Therefore, adoption of this peremptory rule also violates Section 5-125 of the IAPA.

The suspended peremptory rules may not be enforced by the Department of Healthcare and Family Services for any reason, nor may the Department file with the Secretary of State any rule having substantially the same purpose and effect as these suspended rule.