

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: 129.328

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32 Ill. Reg. 7212

At its meeting on May 20, 2008, the Joint Committee on Administrative Rules objected to the Department of Healthcare and Family Services' use of preemptory rulemaking to adopt rules titled Medical Assistance Programs (89 Ill. Adm. Code 120; 32 Ill. Reg. 7212) and suspended the rule because that use of preemptory rulemaking violates Section 5-50 of the Illinois Administrative Procedure Act (IAPA). Section 5-50 of the IAPA allows preemptory 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 the exercise of agency discretion as to the content of the rule and that precludes adoption of rules through regular rulemaking. The analysis portion of the court's Memorandum Opinion and Order entered in *Caro vs Blagojevich* on 4/15/08, which HFS cites as the reason for this preemptory rulemaking, notes that not all TANF requirements are met by the expanded FamilyCare Program emergency rules, specifically the requirement that adults in the household be employed or engaged in a job search. However, the judge's specific order on 4/15/08 preliminarily enjoins HFS from "enforcing the Emergency Rules or expending any public funds related to the FamilyCare Program created by the Emergency Rule". The court order does not direct HFS to amend its rules in any way, including insertion of employment and job search requirements, nor does the court set any deadline for action that precludes the use of regular rulemaking procedures. Therefore, the standards under Section 5-50 of the IAPA for use of preemptory rulemaking are not met, and JCAR finds this violation of the IAPA presents a threat to the public interest.

The suspended preemptory 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 rules for at least 180 days following receipt of this certification and statement by the Secretary of State.