ENGROSSED SENATE
JOINT
RESOLUTION NO. 31

By: Morgan, Brown, Capps, Douglass, Easley, Haney, Harrison, Helton, Henry, Herbert, Hobson, Horner, Leftwich, Long, Mickle, Milacek, Muegge, Price, Rabon, Shurden, Smith, Snyder, Stipe, Weedn, Wilkerson and Williamson of the Senate

and

Gray of the House

A Joint Resolution relating to emergency rules of the State Board of Health; disapproving emergency rule revocations of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1, regarding initial license review, license renewal review, appeals and public hearings on initial license application procedures; directing distribution; and declaring an emergency.

WHEREAS, pursuant to Sections 250.2 and 308 of Title 75 of the Oklahoma Statutes, the Legislature reserves the right to designate the method for rule promulgation, establish policy, determine that a rule is inconsistent with legislative intent, and disapprove any rule or any portion thereof; and

WHEREAS, on June 19, 1997, the State Board of Health adopted emergency rule revocations of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1, regarding initial license review, license renewal review, appeals and public hearings on initial license application procedures, and on July 18, 1997, the Governor approved emergency rule revocations of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1; and

WHEREAS, the Legislature recognizes the substantive value in resolving disputes through administrative proceedings rather than through the overburdened court system; and

WHEREAS, the Legislature hereby determines that the emergency rule revocations of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1 are inconsistent with legislative intent.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 46TH OKLAHOMA LEGISLATURE:

SECTION 1. The Legislature hereby disapproves emergency rule revocations of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1, which read as follows:

"Rule 310:655-11-3. Initial license review

~~(a) When the application is determined complete, the Department shall mail a notice to the applicant that the application is ready for review. The Department shall mail a notice to all other licensed HMOs. The Department also shall provide notice in the form of a newsletter, dated the first working day of the month, to all persons on the Department's mailing list. The Department shall cause a paid public notice to be published in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the area where the hearing will be held. These notices shall include the name and location of the HMO, a brief description of the application, information on where the full application can be viewed, and an explanation of how parties may participate in the review.~~

~~(b) Any person or agency may file an entry of appearance (a written notice of intent to participate), thereby becoming a party to the review. The written entry of appearance must be received by the Department not later than thirty (30) days after publication of the public notice. The State Insurance Commissioner shall be a party to the review of any application and is not required to file a written notice.~~

~~(c) If a party timely files a notice of intent to participate, the Department may convene a preliminary conference up to fifteen (15) days after the deadline for filing notices of intent. The purpose of the conference is to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and to dispose of pending motions. The results of the preliminary conference shall be reduced to a written order.~~

~~(1) The Commissioner may appoint a hearing officer to conduct the conference. Absent exceptional circumstances, the same hearing officer who conducts the preliminary conference shall conduct the hearing.~~

~~(2) The conference may be conducted by telephone at the convenience of the applicant, other participants, or the Department. Telephone conferences must be recorded on audio tape.~~

~~(3) During or before the preliminary conference, participants shall file any requests for subpoenas or motions for discovery. The requirements for issuance of subpoenas are containted in Chapter 4 of this Title. The hearing officer shall act upon the motions or requests at the time of the conference.~~

~~(4) Any additional information requested by the hearing officer, and any information or evidence to be gathered through discovery or subpoena, shall be filed with the Department no less than two (2) days prior to the hearing scheduled on the application.~~

~~(5) The hearing officer may accept stipulations of the parties. Any agreements by the parties shall be included in the written order.~~

~~(d) For review of an initial license, the Department shall convene a public hearing within twenty (20) days after the conclusion of the preliminary conference. The process for conduct of public hearings is set out in 310:655-13. The public hearing process shall conform~~

~~to the laws governing individual proceedings as set forth in Sections 309 et seq. of the Administrative Procedures Act.~~

~~(c) Within forty-five (45) days after conclusion of the hearing, the Commissioner shall issue or deny a license for the proposed HMO. The order and the license, if issued, will be sent to the applicant, and copies will be sent to all parties.~~

Rule 310:655-11-4. License renewal review

~~(a) When the application is determined to be complete, the Department shall notify, by mail, the applicant and HMOs in the service area. The Department also shall provide notice in the form of a newsletter, dated the first working day of the month, to all persons on the Department's mailing list. The Department shall cause a paid public notice to be published in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the proposed service area, and in a newspaper of general circulation in the area where the hearing will be held. These notices shall include the name and location of the HMO, a brief description of the application, information on where the full application can be viewed. Any person or agency desiring to participate in the review process shall file an entry of appearance (a written notice of their intent to participate), thereby becoming a party to the review. This entry of appearance must be filed within fifteen (15) days after the date of publication of the paid public notice. Parties also may file written evidence or argument within fifteen (15) days after the date of publication of the paid public notice. The State Insurance Commissioner shall be a party to the review and has 30 days from the date of publication to submit its findings and recommendations. If requested, a public hearing may be conducted in accordance with 310:655-11-3(c) and 310:630-13.~~

~~(b) Within forty-five (45) days after publication of the public notice, except in the case of a request for a public hearing, the Department shall issue or deny a license renewal for the HMO. In~~

~~making its determination, the Department shall review the completed application, the results of the Department's investigation, and any additional information timely filed by parties. If the determination is to deny the license renewal, the determination must be made by the Commissioner subsequent to giving the applicant an opportunity to refute the Department's investigatory report, the findings and recommendations of the State Insurance Commissioner and any additional information timely filed by other parties. The order and the license, if issued, will be sent to the applicant, and copies will be sent to all parties.~~

Rule 310:655-11-5. Appeals

~~Any party who disagrees with the Department's decision may request a reconsideration hearing, or may appeal directly to district court. The process for reconsideration hearings is explained in Section 317 of the Administrative Procedures Act. Appeals to court are discussed in Section 318 of the Administrative Procedures Act.~~

Rule 310:655-13-1. Procedures

~~(a) The Commissioner may appoint a hearing officer to conduct the public hearing. The hearing officer may be an employee of the Department.~~

~~(b) The hearing officer shall call the cause for the hearing, and may state the purpose and scope of the hearing, or the issues upon which evidence will be heard. Every party appearing shall enter their appearance by stating name and address. The hearing officer shall take up preliminary matters appropriate for disposition prior to offers of evidence.~~

~~(c) Each party shall have the opportunity to present their case, make opening statements, call and examine witnesses, offer documentary evidence into the record, and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination, and, at~~

~~the discretion of the hearing officer, upon matters relevant to the issues even though not covered in direct examination. Parties may represent themselves, or be represented by legal counsel licensed to practice in the State of Oklahoma.~~

~~(1) The presentation will normally be confined to the issues identified at the preliminary conference. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing officer may question any party or witness.~~

~~(2) The hearing officer is not bound by the rules of evidence applied in the District Courts of Oklahoma, and may allow hearsay evidence when it is relevant to the issues.~~

~~(3) The applicant shall be allowed to open and close the presentation of evidence and arguments. The hearing officer may designate the order of presentations, but the applicant is entitled to make the first and last presentations.~~

~~(4) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If a hearing will be expedited and the interest of the parties will not be prejudiced substantially, and the party receives prior permission from the hearing officer, any part or all of the evidence may be received in written form. Written testimony of a witness in forms of questions and answers, or a narrative statement, may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.~~

~~(5) A written or oral statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross-examination, but will be considered only as argument, and not as proof of any recitation of facts.~~

~~(6) The hearing officer may accept documentary evidence in the form of copies or excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.~~

~~(7) A document may not be incorporated in the record by reference, except by permission of the hearing officer. Any referenced document must be precisely identified.~~

~~(8) The hearing officer may take notice of judicially cognizable facts. Also, the hearing officer may take notice of generally known technical or scientific facts within the specialized area of health planning; however, parties shall be notified either before or during the hearing of the facts to be noticed, and shall be afforded an opportunity to contest the noticed facts.~~*~~(9) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs on issues as part of the record within a designated time, not to exceed ten days after conclusion of the hearing. During this additional period, the hearing record shall remain open, and the conclusion of the hearing will occur when the additional material is filed.~~

~~(d) Within ten (10) days after conclusion of the hearing, the hearing officer shall forward to the Commissioner the proposed findings of fact and conclusions of law.~~"

SECTION 2. The Legislature hereby specifically declares that the provisions of OAC 310:655-11-3, OAC 310:655-11-4, OAC 310:655-11-5 and OAC 310:655-13-1 are consistent with legislative intent.

SECTION 3. The Secretary of State is hereby directed to distribute copies of this resolution to the Governor, the State Commissioner of Health and the editor of "The Oklahoma Register".

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 1998.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1998.

Speaker of the House of Representatives