

## JOINT COMMITTEE ON ADMINISTRATIVE RULES CONSIDERATION OF 13 CSR 70-15.160

### *“Medicaid Prospective Outpatient Hospital Services Reimbursement Methodology”*

Among other failings, the regulation conflicts with state law. In its 2018 session, the General Assembly enacted House Bill 2011. The law directs the expenditure of MO HealthNet funds. The initial version of House Bill 2011 proposed \$138 million in cuts to Medicaid fee-for-service hospital appropriations. In the enacted version, the General Assembly cut those appropriations by \$28.7 million in total funds.

This final rule reduces hospital expenditures by \$37.8 million more than the General Assembly cut. The total reduction in hospital payments is \$66.5 million in the department’s fiscal note submitted to JCAR on August 28. The department’s action ignores House Bill 2011, and therefore, conflicts with state law as prohibited by section 536.028, RSMo.

**Does a state agency have unilateral and unfettered authority to reduce or eliminate spending on some or all of its programs, essentially rewriting the General Assembly’s plan for allocating resources through its budget enactments?** We would say, “No.”

JCAR’s answer defines the boundaries of the separation of powers between the executive and legislative branches. There is a process for addressing agency overspending through supplemental budget requests. There is a process for reducing spending through withholdings when revenues are insufficient to support the General Assembly’s appropriations. The final rule invokes neither of them. It cuts spending without direction or limit simply because the agency has decided it can. Legislative decisions about the allocation of state resources become irrelevant.

**Disapproving the rule will reassert the General Assembly’s constitutional authority to allocate state resources through a legislative budget.**

Also, the department conceded violating various procedural standards in its rulemaking related to the fiscal estimate and use of nonstate standards. It proposed several “corrections” to fix these violations of state rulemaking statutes. They may retrospectively clean up some of the mess, but these technical and procedural deficiencies are ample evidence that the department did not engage in a thoughtful, thorough or attentive process in promulgating this regulation.