

Small Business Regulatory Review Board
August 27, 2008
Richard T. Anderson Conference Center
Waukesha Technical College
Meeting Minutes

CALL TO ORDER

The meeting was called to order by Chairman Rick Petershack at 1:00 PM

ROLL CALL

Board Members Present: Chuck Wilhelm, Hal Bergan, Guy Wood, Andrew Moyer, Bonnie Schwid, Aaron Olver, Amy Bomkamp, Rick Petershack, Karen Vernal and Representative Terry Moulton

Board Members Absent: Randy Meffert, Larry Martin, Al Shea, Minoo Seifoddini and Cheryl Daniels

Staff Present: Carol Dunn, Tom Coogan

Others Present: Bill Smith, National Federation of Independent Business; Ray Marchiori, Regional Advocate-Small Business Administration Office of Advocacy; Rosie Greer and Katie Plona, DHS; Jim Brown of Wheels; Jeff Doherty of VP Transit Express; Jeffery Stevens – member of Specialized Medical Vehicle Association (SMVA); Kenneth Harenda, S.A. Herbst; Bonnie Good, Armstrong Training and Consultation; Shelly Bruce, DHS; Ruth Berkholtz, (NASW); Hal Rosenberg; Dan Zimmerman, DHS; James Kaplanek, DHS; Peter Flaherty and William Horn, DNR.

APPROVAL OF MINUTES

A motion was made by Karen Vernal, seconded by Bonnie Schwid to approve the January 8, 2008 meeting minutes. Motion carried unanimously.

RULE REVIEW OF EXISTING RULES

HFS 101-108 Medicaid Reimbursement

Testimony was received from Jim Brown of Wheels, Jeff Doherty of VP Transit Express and Jeffery Stevens of the Specialized Medical Vehicle Association (SMVA) with respect to the regulatory burdens experienced by members of the transportation service industry. The testimony focused on five problematic issues: unloadable mileage reimbursement, loaded mileage reimbursement, multi-carry reimbursement, trip verification and certification of need for SMV transportation. An information packet was provided by the small businesses referencing their concerns. Considerable discussion followed regarding the industry's attempts to have their concerns addressed by DHS.

Three recommendation emerged from the testimony that include: 1) applying reasonable standards that are commonly used in law, accounting and auditing that define the term "complete: with respect to mileage reimbursement; 2) reduce the detail required by DHS for trip verification and 3) allow providers 365 days to repair documentation for re-bill claims that have been partially or totally denied as a result of an audit. Chuck Wilhelm indicated that the concerns heard could be addressed through the budget process.

A motion was made by Representative Moulton, second by Karen Vernal that the industry issues that are within the scope of the Board's authority will be revisited at the next SBRRB meeting. A DHS representative shall attend the meeting and be available to answer questions. Motion carried unanimously.

RULE REVIEW OF PROPOSED RULES

HFS 159 – Certification and Training Course Requirements for Asbestos Activities

Testimony was received from Bonnie Good of Good Armstrong Training and Certification, Inc. Ms. Good expressed her concerns about a number of compliance costs that were not considered in the proposed rulemaking. Ms. Good provided the direct and indirect costs of the rule on her business. She stated the proposed rule would provide an annual revenue loss of over \$104,000 to her business. Ms. Good offered recommendations to offset the burdens of the administrative responsibilities.

Testimony was received from Kenneth Harenda of S.A. Herbst and Associates. Mr. Harenda expressed the need for a reduction or elimination of proposed new fees that are associated with the rulemaking. Mr. Harenda also testified about the need to eliminate overly-burdensome and unnecessary paperwork requirements and the number of challenges the industry is currently experiencing.

Shelly Bruce of the DHS testified on the outcome of the public hearings. Rick Petershack expressed the need for regulatory flexibility in lieu of the increased burden placed upon the trainers. Shelly Bruce indicated that these considerations would be taken into account now that the public hearings were completed. The consensus of the SBRRB was to have DHS attend the next SBRRB meeting and report to the SBRRB how DHS will incorporate small business considerations to lessen the economic impact on trainers into the final rule.

HFS 35 – Mental Health Outpatient Clinics

Ruth Ann Berkholz, and Hal Rosenberg, clinical social workers testified on the HFS 35 rulemaking. Ms. Berkholz provided the historical background efforts of National Social Workers Association (NSWA) and Mr. Rosenberg explained the financial impact that this rule has on small clinics. Mr. Rosenberg emphasized the restrictive nature of this rule on providers who choose to operate outside an outpatient clinic. Both testifiers commented on the overly burdensome paperwork requirements. Dan Zimmerman of DHS provided the SBRRB with the agency's objectives in developing the rule.

Considerable discussion followed regarding the agencies efforts to accurately consider the impact of the rule on sole practioners.

A motion was made by Bonnie Schwid, seconded by Karen Vernal that the SBRRB issue a comment letter to DHS stating that the HFS-35 rulemaking did not accurately account for the economic impact on sole practioners. The SBRRB comment letter would request that the agency comply with statutory rulemaking requirements and reexamine the economic impact that this rule imposes on sole practioners. Motion carried by six, three opposed, one abstained.

HFS 35 – Tax 8.03 – Small Winery Cooperative Wholesalers

Agenda item tabled.

HFS 173, 175, 178, 195, 196, 197 and 198 – Fee Increases

Bill Smith, Director of National Federation of Independent Business, provided testimony about the fee increases incorporated into a number rules impacted health regulated small business.

Mr. Smith indicated he appreciated the efforts and sensitivity to small business provided by DHS in their rulemaking. James Kaplanek of DHS testified about the outcomes of the five public hearings held by DHS on the 173 Omnibus Rules. Chairman Petershack stated that the economic impact analysis prepared by DHS was a good example of tiered compliance requirements and fees.

A motion was made by Andrew Moyer, second by Amy Bomkamp to provide DHS with a comment letter commending them on the preparation of the HFS 173 omnibus rule economic impact analysis on small business. Motion carried unanimously.

DWD – 272 Minimum Wage Rule

Bill Smith, Director of National Federation of Independent Business, provided testimony regarding DWD's lack of documentation in their economic impact analysis to support the agency's position that the rule would not have a significant economic impact on small business. Bonnie Schwid indicated the need for more data in DWD analysis in order to determine whether the impact was significant on small businesses.

A motion was made by Andrew Moyer, second by Aaron Olver, to submit a comment letter to DWD requesting that additional clarification be provided to the SBRRB about the impact of the rule on the 2,400 small businesses who currently pay less than the \$7.25 rate per hour. Motion carried unanimously.

DNR -40 Invasive Species Rule

Carol Dunn of the Department of Commerce provided comment on DNR-40 on behalf of the Wisconsin Aquaculture Association. Of specific concern to the aquaculture industry was the lack of an economic impact analysis that the DNR prepared on the rule's affect on commercial fishers. Another concern of the industry was economic impact of the definition change for invasive species.

Peter Flaherty of DNR stated that the lack of analysis of the commercial fish farmers was a departmental oversight. William Horn of the DNR responded to SBRRB questions regarding the outreach and involvement of the industry in the rulemaking. Chairman Petershack requested that the DNR provide the SBRRB with an economic impact analysis and appear at the next SBRRB meeting to describe how the DNR analysis justifies the DNR's determination that the rule will not have a significant economic impact on small business.

OTHER BUSINESS

None.

FUTURE MEETINGS

A future meeting to follow-up on the issues presented at today's meeting would be scheduled by Carol Dunn.

ADJOURNMENT

A motion was made by Aaron Olver, second by Hal Bergan to adjourn the meeting at 5:07 p.m. Motion carried unanimously.

