

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

TELECOMMUNICATIONS

The ILLINOIS COMMERCE COMMISSION has adopted 2 rulemakings affecting telecommunications carriers: "Cost Allocation for Small Local Exchange Carriers" (83 Ill Adm. Code 712; 37 Ill Reg 17239) and "Uniform System of Accounts for Cellular Communications Telephone Utilities" (Repealer) (83 Ill Adm Code 715; 37 Ill Reg 17246), both effective 5/29/14, implementing provisions of Public Act 98-45 regarding accounting systems. Amendments to Part 712 implement statutory provisions requiring electing providers (telcos that choose market regulation for their competitive retail telecommunications services) or providers that offer solely competitive services to file annual reports only if ICC requires them to do so and, in these reports, to use generally accepted accounting practices or accounting systems uses for financial report purposes. The rulemakings apply these changes to the cost allocation manuals for apportioning intrastate costs between regulated and nonregulated activities and to an additional provision regarding financial reporting. Part 715 is being repealed

because the PA eliminates accounting system requirements for providers of cellular telephone service.

Questions/requests for copies of the 2 ICC rulemakings: Brian W. Allen, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/558-2387.

MEDICAL X-RAYS

The ILLINOIS EMERGENCY MANAGEMENT AGENCY adopted amendments to the Part titled "Use of X-Rays in the Healing Arts Including Medical, Dental, Podiatry, and Veterinary Medicine" (32 Ill Adm Code 360; 37 Ill Reg 16246) effective 5/29/14 that update quality assurance for digital imaging and IEMA oversight of computed tomography (CT). Investigation and reporting of errors in the administration of radiation therapy and implementation of electronic brachytherapy requirements are also addressed. The rulemaking also prohibits the use by limited diagnostic radiographers of portable X-ray service providers as Medicare rules require persons who perform such exams to have completed formal training in X-ray technology. Since 1st Notice, a 1/1/15

DPH LABORATORY FEES

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "Laboratory Service Fees" (77 Ill Adm Code 475; 38 Ill Reg 12007) that revise the fee schedule its laboratory charges for the established services. The rulemaking details circumstances in which the laboratory must seek authorization to complete a test. DPH also provides guidelines for retention of specimens based on positive or negative test result and reporting of those test results, including timelines and reporting within the framework of HIPAA privacy rules. DPH will issue a copy of the individual's test results if it receives a written notarized request for the information and a \$25 payment. The rulemaking also updates the definitions Section and adds federal documents incorporated by reference. Health facilities and local health departments that use DPH testing services will be affected.

Questions/requests for copies/ comments through 7/28/14: Susan Meister, DPH, 535 W. Jefferson St., 5th Flr., Springfield IL, 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

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deadline for documentation of training required of diagnostic imaging specialists who develop quality assurance procedures for CT systems has been added. A definition of "contact hour" of instruction time has also been added. Affected entities include those who provide X-rays and other medical radiology services.

RADIOACTIVE WASTE

IEMA also adopted amendments to "Access to Facilities for Treatment, Storage, or Disposal of Low-Level Radioactive Waste" (LLRW) (32 Ill Adm Code 609; 38 Ill Reg 4238) effective 5/29/14 that update the Part, last amended in 2000. The rulemaking revises the LLRW tracking system to reflect actual practice; includes a missing element in the electronic data transmission file structure; and adds shipping name identification numbers to the data element definition table. Affected entities include LLRW handlers.

Questions/requests for copies of the 2 IEMA rulemakings: Traci Burton, IEMA, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9860.

MEDICAID COVERAGE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 38 Ill Reg 2529) effective 5/30/14 adding preventive services, including routine examinations and vaccinations, to the list of services covered for both adult and child medical assistance recipients. A companion emergency rule effective 1/1/14 appeared in the *Illinois Register* at 38 Ill Reg 1174. The rulemaking also authorizes provision of covered services to 2 new Medicaid eligibility categories under the federal Affordable Care Act effective 1/1/14: adults ages 19-64 with incomes at or below 133% of the Federal Poverty Level who would not otherwise qualify (e.g., as parents of minor children), and former foster children ages 18-25. Medical providers and pharmacies

may be affected by this rulemaking.

NURSING HOMES

DHFS also adopted amendments to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 38 Ill Reg 1590) effective 5/30/14. Companion emergency amendments, effective 1/1/14 for a maximum of 150 days, appeared in the *Illinois Register* at 38 Ill Reg 1205. The amendments implement provisions of PA 96-1530, PA 97-689 (SMART Act) and PA 98-104 by implementing the most recent Resource Utilization Group methodology (RUG IV) published by the U.S. Department of Health and Human Services for determining nursing care rate components. (RUG methodology places nursing home residents into groups based upon their level of care; the greater the number of residents in higher-care RUGs, the greater the rate paid to the nursing home.) Transitional rates based in part upon rates in effect as of 7/1/12 will be in effect for certain nursing homes through 12/31/14. The rule also prescribes procedures for nursing homes to claim add-on payments for ventilator care and traumatic brain injury care and to complete and submit the resident care assessments upon which RUGs are based. Since 1st Notice, HFS has increased the add-on payment for ventilator care to \$208 per day, corrected the add-on payment for Tier I level traumatic brain injury to \$264.17 per day, and clarified that a new per diem rate for the lowest 4 RUGs will take effect on 1/1/15. Nursing homes will be affected by this rulemaking.

HFS RULE CORRECTION

HFS also published a Notice of Expedited Correction to the Part titled "Hospital Services" (89 Ill Adm. Code 148; 38 Ill Reg 12618). The correction restores two references to freestanding emergency centers (FEC) in Section 148.140. The FEC provisions were adopted on 12/27/10 but inadvertently omitted from subsequent rulemakings.

Questions/requests for copies of the 2 DHFS rulemakings: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Spfld IL 62763-0002, 217/782-1233, e-mail: HFS.Rules@illinois.gov.

MENTAL HEALTH REPORTING

The DEPARTMENT OF HUMAN SERVICES adopted a new Part titled "Mental Health Reporting for Firearm Owner's Identification Card" (59 Ill Adm Code 150; 38 Ill Reg 1791), effective 5/29/14. A companion emergency rulemaking effective 12/31/13 appeared in the *Illinois Register* at 38 Ill Reg 2413. The new Part implements provisions of PA 98-63 and PA 98-600 that require mental health providers to report to DHS events or information relevant to applications for a Firearm Owner's Identification Card (FOID). Mental health facilities must report all persons who have been admitted as inpatients in the past 5 years, along with persons who pose a clear and present danger to themselves or others, who are intellectually or developmentally disabled, have been adjudicated mentally disabled, or have been involuntarily admitted to mental health facilities. Persons newly admitted to or discharged from inpatient or residential mental health facilities must be reported to DHS within 7 days of admission and discharge. Examples of situations that require, or do not require, reporting are included (e.g., an admission to a hospital behavioral health unit solely for treatment of an alcohol or substance abuse issue is not reported). Clinicians must notify DHS within 24 hours of a determination that a person poses a clear and present danger. DHS will also establish a web-based reporting platform. Information reported to DHS under this Part is shared with the Illinois State Police and, pursuant to an agreement with the Federal Bureau of Investigation, will be entered into the National Instant Criminal Background Check System to identify persons prohibited by state or federal law from possessing firearms. However, this information cannot be disclosed to any other party or used for any other

Proposed Regulations

INSURANCE

The DEPARTMENT OF INSURANCE proposed a new Part titled "Declaratory Rulings" (50 Ill Adm Code 2411; 38 Ill Reg 12003) which outlines the circumstances in which the Director of the Department shall issue declaratory rulings interpreting a statute or rule enforced by the Department. A request for such a ruling shall include a concise statement of the facts, which

the Director at his or her discretion may address. Requests shall also include all statutes and rules known to the requesting party that are relevant to a determination of the request. Both the statement of facts and applicable legal authority shall be certified by the requesting party. A declaratory ruling shall state it is limited to those facts and legal authority identified by the requesting party. Such rulings are not appealable. Trade secrets and

other confidential information shall be redacted from the ruling. Such a ruling shall not be issued on any matter requiring an evidentiary proceeding. The Department will maintain a record of its ruling and on its website.

Questions/requests for copies/comments through 7/28/14: Susan Anders, DOI, 320 W. Washington St., Springfield IL 62767-0001, 217-785-8220, Fax: 217-524-9033.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's July 15, 2014 meeting.

ILLINOIS EMERGENCY MANAGEMENT AGENCY

"Accrediting Persons in the Practice of Medical Radiation Technology" (32 Ill Adm. Code 401) proposed 4/4/14 (38 Ill Reg. 7422)

SECRETARY OF STATE

"Issuance of Licenses" (92 Ill. Adm. Code 1030) proposed 4/18/14 (38 Ill. Reg. 8331)

DEPARTMENT OF PUBLIC HEALTH

"AIDS Drug Assistance Program" (77 Ill. Adm. Code 692) proposed 4/11/14 (38 Ill. Reg. 7783)

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purpose. Mental health facilities and providers are affected by this rule.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

HAZARDOUS WASTE

The POLLUTION CONTROL BOARD adopted amendments to "Hazardous Waste Management System: General" (35 Ill Adm Code 720; 38 Ill Reg 5016) and "Identification and Listing of Hazardous Waste" (35 Ill Adm Code 721; 38 Ill Reg 5077) both effective 5/27/14 that reflect USEPA actions adding conditional exclusion for the definitions of solid and hazardous waste for used solvent wipes and from regulations as hazardous waste for carbon dioxide streams injected into a Class VI carbon sequestration well.

Requests for copies: Michael J. McCambridge, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6924. Questions: e-mail: Michael.McCambridge@Illinois.Gov. Please reference docket R14-13.

NEWBORN SCREENING

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to "Newborn Metabolic Screening and Treatment Code" (77 Ill Adm Code 661; 38 Ill Reg 5142) effective 6/2/14 concerning retention of testing specimens from tests that screen newborns for various diseases and conditions. DPH will retain all specimens for a minimum of 2 months. Samples that test within normal ranges may be retained up to 4 months, while those that test outside of normal ranges may be retained for up to 6 years. Abnormal specimens may be submitted to other laboratories for further testing and retained specimens may be used within DPH for quality control purposes. All specimens must be destroyed after the maximum retention period has expired.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson St., 5th

Fl., Springfield IL 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

ADULT DRIVER EDUCATION

The SECRETARY OF STATE adopted amendments to "Issuance of Licenses" (92 Ill Adm Code 1030; 38 Ill Reg 5163) and "Commercial Driver Training Schools" (92 Ill Adm Code 1060; 38 Ill Reg 5214) and adopted a new Part titled "Online Only Adult Driver Education Course Provider Certification" (92 Ill Adm Code 1066; 38 Ill Reg 5228) all effective 7/1/14. These rulemakings implement PA 98-167, requiring adults 18 to 20 years old who have not previously had a driver's license and who have not completed an approved driver education course to take a 6 hour course. SOS is updating driver permit requirements to allow 18 to 20 year olds to obtain a permit without being enrolled in an adult driver education course; those who want to obtain a driver's license can take the 6 hour course either in a classroom setting or online. All certified providers will be listed on SOS's website. Student who take a course from a non-certified provider will not be eligible to get a driver's license until they complete an approved course or turn 21. Once SOS is notified that the student has passed, it will send a notification that must be brought to a driver's services facility to complete the application process. Licensed commercial driver training schools can become certified to teach the 6 hour course in a classroom setting. All existing commercial driver training schools that are accredited to teach teen driving will be certified to offer adult driver education. Applicants who wish to be certified will be subject to an on-site inspection by SOS to verify they meet the standards. Only licensed instructors can teach the classroom course. The rulemaking establishes criteria for an online only course. All online providers must be certified. Requirements for online applicants include submitting to a fingerprint based background check, having a continuous surety bond of \$50,000, not be employed by

SOS, maintain a customer service telephone line from 8 a.m. - 5 p.m. Monday through Friday and a 24/7 email or answering service. If an applicant to teach the online course is not certified, he or she may use SOS's administrative hearing procedures to appeal. Technical and security requirements for online courses are included. Applicants for both the classroom and online must submit a copy of their course content for SOS approval. Topics covered must include instruction on traffic laws, highway signs, blind spots, sharing the road, and mental conditions. If the content significantly changes after approval, a new proposal will have to be approved. Provider must update their course content within 60 days after the effective date of any new relevant driving laws. All providers must keep records for a minimum of 3 years. Each student must complete the 6 hour course within 30 days after the start. All student must pass a final exam with a minimum score of 75 percent. The final will consist of 20 questions chosen from a bank of 40. If the student does not pass the first time, he or she may re-test. If the student does not pass the second time, he or she has failed the course. If the student passes, the provider must provide the student's name, address, date of birth, gender, e-mail address and \$5 fee to SOS. Changes since 1st Notice to Parts 1060 and 1066 clarify that inspections of school facilities are required only for new applications not currently licensed as commercial driver training schools; provide that schools are not required to issue refunds for courses that a student has passed and for which the student has received a certificate of completion; and remove the requirement of a background check for online instructors as it is not yet required by statute. Licensed commercial driver training schools, those wishing to be certified as online education providers, and adults wishing to take the course may be interested in these rulemakings.

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Questions/requests for copies/of the 3 SOS rulemakings: Jennifer Egizii, SOS 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

ELECTIONS

The STATE BOARD OF ELECTIONS adopted a new Part titled "Counting of Provisional Ballots" (26 Ill Adm Code 218; 37 Ill Reg 4328), effective 5/30/14. A companion emergency rule effective 1/23/14 appeared in the *Illinois Register* at 38 Ill Reg 4506. The rules expand the permissible counting of provisional ballots to implement Section 18A-15 of the Election Code, as amended by Public Act 98-115. The rules define key terms, such as correct precinct (the precinct in which the provisional voter is registered to vote), incorrect precinct (the precinct in which the voter cast a provisional ballot, located within either the county or municipality in which the voter is registered, but not the precinct in which he/she is registered to vote), the statutory elements entitling one to be classified as a provisional voter, and various categories of local or State office. Provisional voting procedures are detailed in the rulemaking. If a voter is attempting to vote in an incorrect precinct, the election judges are to inform the person of that fact, and direct them to the correct precinct. Once it has been determined by election judges that the person is entitled to receive a provisional ballot, (because the voter's name is not on the list of registered voters for that precinct) and has completed a provisional vote affidavit, the voter shall be given a provisional ballot which will subsequently be transmitted to the election authority in

accordance with the Election Code. Counting procedures for provisional ballots cast in an incorrect precinct are contained in the rulemaking. If a provisional ballot was cast in an incorrect precinct, but within the same election authority's jurisdiction, the election authority shall transmit the provisional voter's identifying information to the State Board of Elections within 2 calendar days and the election authority having jurisdiction over the provisional voter shall determine whether the voter was entitled to cast a provisional ballot (the voter must meet certain statutory criteria to do so). If it has been determined that the voter satisfied such criteria but the provisional ballot has been cast in an incorrect precinct, the election authority shall select a team of two election judges from both the Democratic and Republican parties to count the votes that are eligible to be cast on the provisional ballot, such as Statewide offices, the office of President, US Senate, and possibly representative in Congress, delegates to a national convention, State Senator or Representative, citywide or township office if it is determined by the election judges the voter would have been entitled to vote for one more of those offices. Other counting protocols are stated (e.g., no votes shall be counted for an office when the voter voted for more candidates than was allowed; if a provisional ballot does not contain any valid votes, the ballot shall be marked invalid and not be counted; an election authority must inform the provisional voter that his or her provisional vote was partially counted). Two distinct counting procedures are listed for provisional ballots cast in an incorrect precinct within a different election authority's jurisdic-

tion: when the incorrect precinct is located in the same county as where the voter is properly registered (for instance, a voter is registered in Chicago but casts a ballot in suburban Cook County), and when the incorrect precinct is in a different county from where the voter is registered, but is located in the same municipality as the one in which the voter is registered. In the first instance, the election authority where the ballot was cast shall transmit the provisional ballot and the provisional voter's affidavit to the election authority having jurisdiction over the voter's correct precinct, with the provisional ballot being re-made and votes counted in accordance with this rulemaking. Similar procedures are prescribed for cases where the voting was in a different county but in the same municipality, with strict timelines for delivery and transmittal of materials between the election authorities. Storage procedures for provisional ballots are also prescribed. Since 1st Notice, SBEL has removed provisions allowing voters to vote provisionally in an incorrect precinct because they insist upon doing so and after being advised by the election judges that some or all of their votes may not be counted. SBEL also added requirements that provisional ballots cast on electronic voting machines receive a permanent paper record and, in the case of paper ballots, be transmitted in a secure envelope.

Questions/requests for copies: Steve Sandvoss, SBEL, 2329 S. MacArthur, Springfield IL 62708, 217/782-0608.