

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

☞ MEDICAID COVERED SERVICES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted emergency amendments to "Medical Payment" (89 Ill Adm Code 140; 36 Ill Reg 11329), effective 7/1/12 for a maximum of 365 days, implementing Public Act 97-689, the Save Medicaid Access and Resources Together (SMART) Act. This emergency rule-making is effective until 6/30/13 in accordance with the SMART Act's provisions exempting its implementation rules from the Illinois Administrative Procedure Act's 150-day limit on emergency rules. The rulemaking imposes a general reduction of 2.7%, with listed exceptions, to reimbursement rates for non-hospital providers, and removes non-emergency dental care for adults, chiropractic treatment for adults, and podiatry for non-diabetics from the list of covered services. Physical, occupational, and speech therapy coverage for adults is limited to 20 visits per year for each type of therapy. Other services (e.g., bariatric surgery, hospice, vision services, non-emergency medical transportation) are subject to new limitations. Medical assistance recipients are limited to 4 covered prescriptions per month, which may include no more than 3

brand name prescriptions, unless prior approval is obtained from DHFS. References to medical services formerly covered under General Assistance or the State Transitional Program are removed. All newly enrolled vendors are subject to a provisional enrollment period of 1 year, during which the Department may disenroll the vendor for any reason. Beginning 1/1/13, all providers eligible to participate in the federal 340 B Drug Pricing Program must enroll in that program and cannot charge the Department more than their actual acquisition cost for covered drugs. Definitions of "abuse," "harm," "fraud" and "waste" applicable to this Part and to Part 104 are added, but diagnostic or therapeutic measures prescribed as a safeguard against possible liability are excluded from these definitions. Provisions for Department actions against vendors and alternate payees, outlined in Part 104, are also included in this Part, and vendors are subject to additional oversight including criminal background checks and fingerprinting. Provider claims must be submitted to DHFS within 180 days (formerly 12 months), with some exceptions. The current hospital assessment program is extended through 12/31/14. The

(cont'd next page)

☞ NURSES AIDE TRAINING

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "Long-Term Care Assistants and Aides Training Programs Code" (77 Ill Adm Code 395; 36 Ill Reg 10584) to reflect changes in the minimum requirements for the Basic Nursing Assistant Training Program, which has not been amended since 1993. Extensive amendments add course requirements for program participants and a curriculum for a "Train the Trainer" program. Other provisions update definitions, State and federal regulations referenced in the Part, and the approval and oversight process for nursing assistant training programs. Further amendments are too detailed to describe in entirety. For further information contact the agency individual noted below. Nursing assistants, their instructors and sponsors of training programs are affected by this rulemaking.

Questions/requests for copies/comments until 9/4/12: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov.

(cont'd page 5)

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.

New Regulations

rulemaking institutes patient copayments of \$2 for generic drugs and \$3.65 (current federal maximum) for office visits (excluding those for psychiatric services), brand name drugs, and encounters billed by specified types of clinics (excluding behavioral services). Copayments now apply to over the counter drugs, and drugs for HIV/AIDS and cancer treatment are no longer exempt from prior approval. The dispensing fee paid to pharmacies is reduced to \$5.35 (formerly \$6.35) for generic drugs and \$2.40 (formerly \$3.40) for brand name drugs. Effective 1/1/13, brand name prescription drugs in pill form must be dispensed in 14-day supplies to residents of long term care facilities, but only one dispensing fee will be paid for each 30-day supply. Provisions enacted on 2/1/12 linking continuation of the higher dispensing fee to increased use of generic drugs are removed. The benchmark price DHFS will pay pharmacies for prescription drugs is wholesale acquisition cost (WAC) for both brand name and generic drugs. For drugs prescribed by non-pharmacy providers, a State upper limit may be imposed. Those affected by this rulemaking include medical and dental providers, hospitals, long term care facilities, pharmacies, therapists, providers of medical transportation, and other medical vendors.

Questions/requests for copies: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

TANF APPLICATIONS

The DEPARTMENT OF HUMAN SERVICES adopted an emergency amendment to "General Administrative Provisions" (89 Ill Adm Code 10; 36 Ill Reg 11486), effective 7/1/12, for a maximum of 150 days, implementing provisions of Public Act 97-689, otherwise known as the SMART Act. An identical proposed rulemaking appears in this issue of the *Illinois Register* at 36 Ill Reg 10582. The rulemaking increases the time period in which

DHS must provide notification of an eligibility determination for Temporary Assistance for Needy Families (TANF) from 30 calendar days to 45 calendar days and makes TANF assistance effective 30 days after the date of application (formerly, as of the application date) if the applicant is eligible on that date. DHS also removed all references to General Assistance which was abolished by the SMART Act as of 7/1/12.

Questions/requests for copies/comments on the proposed DHS rulemaking through 9/4/12: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted emergency amendments to "Pay Plan" (80 Ill Adm Code 310; 36 Ill Reg 11222), effective 7/1/12, for a maximum of 150 days. Companion proposed amendments appear in this issue of the *Illinois Register* at 36 Ill Reg 10552. The amendments keep salary schedules affected by a fiscal year 2012 pay freeze in effect past the scheduled 6/30/12 expiration date of collective bargaining agreements with several State employee unions, since the current contract has been extended while negotiations toward a new contract continue. The emergency and proposed rulemakings also update new hire rates for highway maintainers and update references to several positions that were moved to bargaining units or had titles changed by previous rulemakings.

Questions/requests for copies/comments on the proposed rulemaking through 9/4/12: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, fax 217/524-4570, e-mail: CMS.PayPlan@illinois.gov.

VIDEO GAMING

The ILLINOIS GAMING BOARD adopted emergency amendments to "Video Gaming (General)" (11 Ill Adm

Code 1800; 36 Ill Reg 10492), effective 7/6/12 for a maximum of 150 days, that require each licensed location to have a payout device and require prior approvals for devices and all programming changes and upgrades. Other provisions govern methods of payment; require players to receive a "facility-pay" in the event a payout device malfunctions; allow payout devices to permit ATM cash withdrawals by patrons if the ATM's material components are segregated from the video gaming terminal's ticket payment system; and set requirements for payout device features. An identical proposed rulemaking appears in this issue of the *Illinois Register* at 36 Ill Reg 10578. Video gaming location, licensees, and operators are affected.

Questions/requests for copies/comments through 9/4/12: Lynn Carter, IGB, 160 N. LaSalle, Chicago IL 60601, 312/814-4143, fax 312/814-4143, email, lynn.carter@igb.illinois.gov.

MINORITY CONTRACTING

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments to "Business Enterprise Program: Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities" (44 Ill Adm Code 10; 36 Ill. Reg. 2594), effective 7/6/12. The rulemaking raises the goal for the total percentage of State agency contracts awarded to minority, female, or disabled business owners from 12% to 20%. The rulemaking also raises the annual sales limitation for eligible businesses to participate in this program from \$31.4 million to \$75 million. Since 1st Notice, specific percentage goals for minority businesses, female owned businesses, and businesses owned by persons with disabilities have been removed. This rulemaking may affect small businesses seeking State contracts.

Questions/requests for copies: Mary Matheny, DCMS, 720 Stratton Bldg., Springfield IL 62706, 217/557-5404.

New Regulations

PROCUREMENT

The CHIEF PROCUREMENT OFFICER (CPO) FOR GENERAL SERVICES adopted amendments to "Chief Procurement Officer for General Services Standard Procurement" (44 Ill Adm Code 1; 36 Ill. Reg. 1820), effective 8/6/12, to comply with Illinois Procurement Code changes mandated by Public Act 96-795. Numerous policy changes contained in this rulemaking include replacing the former CPO for such services (from the Department of Central Management Services) with a new CPO appointed by the Executive Ethics Commission. State Purchasing Officers (SPOs) appointed by the CPO are required to maintain procurement files that include bid and solicitation documents; Procurement Bulletin postings; the underlying contract and any change orders, amendments, or extensions; any bid protests and resolutions; vendor communications; and bidder or offeror evaluation materials. Other statutory and policy changes include an updated list of exemptions from the Procurement Code (e.g., most purchases of real estate, purchases of the Illinois Health Education Information Authority when specifically named funds are used, etc.) and revised definitions for "contract", "grant", "procurement compliance monitor", "subcontract" "subcontractor", and other terms. Prospective vendors must complete electronic registration screens in order to access procurement information and documents. The rulemaking also repeals references to the "official state newspaper", requires a vendor's bid or proposal to be kept firm for at least 30 days after bid/proposal opening, and adds subcontractor disclosure provisions. Parties who assist in formulating procurement need or documents, etc., are barred from being part of the ultimate procurement. Specific items of information that must be disclosed in a notice of award for either bid or proposal contracts are stated (e.g., date of solicitation, due date for submission of bid/offer, description of goods/services sought, contract price). Policies governing reverse auctions are

prescribed. A numerical scoring system for evaluating proposals shall be used unless another scoring tool is authorized by an SPO. Organizational memberships and use of a broker for certain types of insurance coverage (if authorized by the CPO) are included as permissible methods of source selection. State agencies, rather than the CPO, may maintain a list of vendors who have expressed an interest in contracting with the State, and a vendor's source of supply may also be required to furnish contract security. New procurement preferences and policies are also added to this Part (e.g., environmentally preferable procurements, Illinois agricultural products, bio-based products, etc.) along with extensive provisions for procurement of office space. Finally, ethics requirements are added involving such topics as "ex parte" procurement communications, bars on contracting with Environmental Protection and Lead Poisoning Prevention Act violators, lobbying restrictions, Lobbyist Registration Act requirements, and disclosures by vendors concerning business in Iran. This rulemaking contains other provisions too numerous to list in detail. Since 1st Notice the effective date has been delayed until 8/6/12. Small businesses and non-profit entities seeking State contracts will be affected by this rulemaking.

Questions/requests for copies: Margaret van Dijk, Chief Procurement Office for General Services, 712 Stratton Building, Springfield IL 62706 217/558-2228, Margaret.vanDijk@illinois.gov.

UNIVERSITY PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION adopted amendments to "Chief Procurement Officer for Public Institutions of Higher Education—Standard Procurement" (44 Ill Adm Code 4; 36 Ill. Reg. 3373), effective 8/6/12, to implement statutory changes made by Public Act 96-795 in 2010. Numerous policy changes include replacing the former Chief Procurement Officer for Higher Education

(CPO-HE), a representative appointed by the Governor, with a new CPO-HE appointed by the Executive Ethics Commission. Many definitions are added, including for terms such as concession, consulting services, grant, natural resource services, site technician services, subcontract and subcontractor. The respective roles and duties of university staff in relation to the CPO-HE are detailed, as well as the role of Procurement Compliance Monitors (PCMs). Universities, rather than the CPO, may keep a list of vendors that have expressed interest in contracting with the university, while the CPO-HE maintains files on actual procurements. Contract performance records must be kept by the vendors and universities for 3 years after final payment, and information from the Procurement Bulletin must be kept for 13 years. Vendor prequalification and responsibility requirements are largely left to the discretion of the university's State Purchasing Officer (SPO). Parties who assist in formulating documents of need or other procurement documents are barred from participating in the ultimate procurement. The Procurement Policy Board must review all leases of \$100,000 or more, or of more than 10,000 square feet of space. Lease renewals are not to exceed 10 years, and holdover or month-to-month tenancies are limited to 6 months. Other topics addressed include information required in the Procurement Bulletin and at the time of contract or bid, procurement preferences (e.g. for bio-based or environmentally friendly products), ethics requirements (including revolving door and political contribution restrictions), lobbying restrictions, vendor registration, disclosure of business in Iran, reverse auction procedures, evaluation of competitive sealed bids or proposals, scoring systems for evaluating proposals, and hearings on emergency and sole source procurements. Since 1st Notice, proposed changes to the definition of "Purchase of Care" have been deleted, so the existing definition is unchanged. Also, language requiring prior notice and access to all procurement meetings

New Regulations

by the procurement compliance monitor has been removed. This rulemaking will affect small businesses seeking contracts with Illinois public universities.

Questions/requests for copies: Shirley Webb, Chief Procurement Office for Higher Education, 522 Stratton Building, Springfield IL 62706, 217/558-2247, e-mail: shirley.j.webb@illinois.gov.

BOW HUNTING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to "Crossbow and Standing Vehicle Hunting Authorizations" (17 Ill Adm Code 760; 36 Ill Reg 4335), effective 7/3/12. An identical emergency rulemaking, effective 3/7/12, appeared in the *Illinois Register* at 36 Ill Reg 4428. Part 760 creates a two tiered system of crossbow permits using the existing category of a permanent disability (Class A) and creating a new category for temporary disabilities (Class B). Class B permits are valid for one year and recipients must reapply after expiration. The criteria for applying for a Class B permit include temporary and substantial loss of function in one or both hands, arms or shoulders and failing to meet the minimum standard tests administered by a physician. The minimum standard tests consist of the upper extremity pinch, grip and nine-hole peg. Class B standing vehicle authorizations will also be valid for 1 year after issuance.

COMMERCIAL FISHING

DNR also adopted amendments to "Commercial Fishing and Musseling in Certain Waters of the State" (17 Ill Adm Code 830; 35 Ill Reg 19033), effective 7/3/12, concerning commercial fishing permits. The rulemaking allows the use of trammel and gill nets (in waters where they would otherwise be forbidden) under a special use permit and sets conditions for issuing such permits for commercial fishing or fish removal on either public or private bodies of water. The rulemaking also clarifies that after the second annual

drawing for commercial fishing permits, any remaining permits will be allocated on a first-come, first-served basis. Changes since 1st Notice clarify that special use permits will be granted for "targeted" removal of particular species; permit targeted removal when the population of most species that may be taken by commercial fishermen exceeds the total population of sport fishes; and list species considered "sport fishes". The date of the first annual drawing for both commercial roe harvest permits and special use permits is 7/1, and the same eligibility criteria apply to drawings for both types of permits. Finally, an additional special use permit has been allotted in those portions of Quincy Bay currently under U.S. Fish and Wildlife Service jurisdiction as a National Wildlife Refuge. Commercial fishermen will be affected by this rulemaking.

TRAIL LAND GRANTS

DNR adopted amendments to "Off-Highway Vehicle Recreation Trails Grant Program" (17 Ill Adm Code 3045; 36 Ill Reg 4337), effective 7/3/12, concerning sale or exchange of land set aside for trails under this program. The rulemaking states that property acquired under this program cannot be converted to a use that prevents public, off-highway vehicle use except with prior approval of DNR. Approval to convert trail land to private use will be given only if the replacement property is of equal market value and comparable in off-highway usefulness, quality and location. This rulemaking may affect small businesses, small municipalities, and non-profit organizations that wish to purchase or sell off-highway vehicle trail land.

YOUTH RECREATION GRANTS

DNR also adopted a new Part titled "Illinois Youth Recreation Corps Grant Program" (17 Ill Adm Code 3075; 36 Ill Reg 3618), effective 7/3/12. The rulemaking disperses grant funds to provide wages to youth operating

and instructing local recreational programs. To be eligible for a grant, the local sponsors must have the ability to provide suitable facilities, materials and staff for summer recreational activities and must be a unit of local government or a not-for-profit entity. Each grant is limited to payment for 480 hours, 8 hours per day for 60 days during June, July and August, for every eligible youth hired by the local sponsors. Youth hired for this program will be paid the current minimum wage of the State of Illinois. Those affected by this rulemaking include units of local government and not-for-profits.

Questions/requests for copies: George Sisk for Parts 760, 830, and 3045 and Robert Mool for Part 3075, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

EMERGENCY MEDICAL SERVICES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to "Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515; 36 Ill Reg 4347), effective 7/3/12, implementing two public acts. PA 96-1469 authorizes DPH to use licensing, testing and certification fees within the Emergency Medical Services (EMS) Assistance Fund for administration, oversight, and enforcement of activities authorized by the EMS Systems Act. PA 97-209 requires that money collected in a particular EMS region for the DPH Trauma Center Fund must be distributed back to that region. The rulemaking outlines various factors, including the number and outcome of trauma cases, used to determine the amount of money to be collected from and distributed to each region. If the designated trauma center for an EMS region is located outside of Illinois, DPH will distribute that region's Trauma Center Fund money to Illinois hospitals in the region to support emergency services related to care of injured patients. Hospitals must document their use of Trauma Center Fund money and must report head and spinal injuries to a DPH

New Regulations

registry in order to qualify for funding. The rulemaking also clarifies that disbursements to EMS systems from the EMS Assistance Fund are grants subject to auditing and to the Illinois Grant Funds Recovery Act. Grants must be spent during the fiscal year in which they are awarded and unspent grant funds must be returned to the State. This rulemaking will affect EMS providers and hospitals.

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.

DISABLED PARKING

The SECRETARY OF STATE adopted an amendment to "Cancellation, Revocation or Suspension of Licenses or Permits" (92 Ill Adm Code 1040; 36 Ill Reg 4696), effective 7/5/12, that increases penalties for misuse of a disabled parking placard or decal. Effective 7/1/12, unauthorized use of a disabled parking permit by a person

who is not the permit holder, or who is not transporting the permit holder, will incur a 6-month driver's license suspension (currently 1 month) upon conviction for the first offense and a 12-month suspension (currently 6 months) for the second offense. (The penalty for a 3rd or subsequent offense is license revocation.)

Questions/requests for copies: Jennifer Egizii, SOS, Driver Services Department, 2701 S. Dirsken Pkwy., Springfield IL 62723, 217/557-4462.

Proposed Regulations

☞ DRINKING WATER ANALYSIS

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments to "Testing Fees for Analytical Services" (35 Ill Adm Code 691; 36 Ill Reg 10565) that implement provisions of Public Act 97-220 eliminating requirements that EPA determine drinking water program analysis fees in consultation with the Community Water Supply Testing Council. Instead, EPA must base its annual fee determination on actual and anticipated testing costs. The rulemaking further updates the Part regarding the program's notification and participation process. Small businesses or small municipalities that test or operate public drinking water supplies are affected by this rulemaking.

Questions/requests for copies/comments through 9/4/12: Sara Terranova, EPA, 1021 N. Grand Ave. E., Springfield

IL 62794-9276, 217/782-5544; email: sara.terraova@illinois.gov.

☞ RIGHT-OF-WAY ACQUISITIONS

The ILLINOIS COMMERCE COMMISSION proposed amendments to "Guidelines for Land and Right-of-Way Acquisitions" (83 Ill Adm Code 300; 36 Ill Reg 10558) that implement Public Act 96-1348, establishing an expedited procedure for the review of certain specified applications for certificates of public convenience and necessity. (These certificates are required for certain public utility or pipeline projects involving acquisition of land or easements.) The rulemaking also updates contact information for inquiries concerning this Part. Those affected by this rulemaking include utilities, pipeline companies and landowners' along utility or pipeline rights-of-way.

Questions/requests for copies/comments through 9/4/12: Elizabeth Rolando, Chief Clerk, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/782-7434.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to "Conditions of Employment" (80 Ill Adm Code 303; 36 Ill Reg 10539) to bring Department personnel rules for leave in the case of a stillborn child and family responsibility leave in conformity with the Illinois Religious Freedom Protection and Civil Union Act, which grants spousal rights to partners of a civil union.

Questions/requests for copies/comments through 9/4/12: Mary Matheny, 720 Stratton Bldg., Springfield IL 62706, 217/557-5404.

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 August 14, 2012 meeting.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Currency Exchange Act" (38 Ill Adm Code 120) proposed 3/9/12 (36 Ill Reg 3591)

SECRETARY OF STATE

"Department of Personnel" (80 Ill Adm Code 420) proposed 5/11/12 (36 Ill Reg 6998)