

*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

### HEALTH CARE LICENSES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Non-Binding, Advisory Opinions on Criminal Convictions" (68 Ill Adm Code 1130; 36 Ill Reg 15175), effective 2/1/13, implementing Public Acts 97-156 and 97-873 that provide for denial of an initial license, or revocation of a current license, of a licensed health care worker if he or she is convicted of a crime that requires registration as a sex offender or is convicted of a forcible felony. The rulemaking also changes the title of the Part to "Administrative Procedures for General Professional Regulation under the Administrative Code". A licensee has 20 days to respond after the day a Notice of Intent to Issue Permanent Revocation Order is mailed. If the licensee fails to respond within this period, the Director will issue a permanent order to revoke the license. The rulemaking specifies the professionals who are subject to the rules as well as what is considered a forcible felony. Finally, the rulemaking sets out the criteria for a chaperone order (requiring a licensee to have someone else present

when seeing patients) that the licensee must abide by while criminal charges are pending. Health care providers who employ affected licensed healthcare workers will be affected by this rulemaking.

Questions/requests for copies: Craig Cellini, 320 W. Washington, 3<sup>rd</sup> Floor, Springfield IL 62786, 217/785-0813.

### SPECIAL WASTE HAULING

The POLLUTION CONTROL BOARD adopted an amendment to "Solid Waste and Special Waste Hauling" (35 Ill Adm Code 809; 36 Ill Reg 14600), effective 1/15/13, that implements Public Act 97-1081 extending the 1 year special waste hauling permit to 3 years. The \$250 annual fee and the \$20/vehicle fee, initially imposed in 1988, will not be increased but will be collected, beginning 1/1/13, on a triennial rather than an annual basis.

Requests for copies: Tim Fox, PCB, 100 W. Randolph, Suite 11-500, Chicago IL 60601, 312/814-6085, e-mail: [foxt@ipcb.state.il.us](mailto:foxt@ipcb.state.il.us). Please reference docket R13-8 or download copies at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

## Proposed Regulations

### SMART ACT RULEMAKINGS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES has proposed 7 rulemakings implementing Public Act 97-689, the Save Medicaid Access and Resources Together (SMART) Act. These rulemakings, when adopted, will replace SMART Act emergency rules (effective through 6/30/13) published in the 7/13/12 and 7/20/12 issues of the *Illinois Register*, as well as subsequent emergency amendments modifying those rules.

### GENERAL ASSISTANCE

DHFS proposed amendments to "General Provisions" (89 Ill Adm Code 101; 37 Ill Reg 903) that remove references to the State-funded General Assistance program abolished by the SMART Act. The rulemaking also removes obsolete references to the Department of Public Aid, clarifies which former Public Aid programs are administered by DHFS or the Department of Human Services, updates various definitions (e.g., changing "Food Stamps" to "SNAP"), and states that DHFS handles reports of fraud or abuse related to the Children's Health Insur-

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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.*

# New Regulations

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## PHYSICAL FITNESS FACILITIES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to "Physical Fitness Facility Medical Emergency Preparedness Code" (77 Ill Adm Code 527; 36 Ill Reg 14608), effective 1/18/13, that implements a provision of Public Act 96-748 which requires each physical fitness facility to have a trained Automated External Defibrillator (AED) user present during staffed business hours rather than during all physical fitness activities. The rulemaking also makes technical corrections to the rulemaking such as updating cross-references to DPH hearing rules and DPH's Division of Emergency Medical Services and Highway Safety mailing address. This rulemaking may impact owners and/or operators of physical fitness facilities.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson St., 5<sup>th</sup> Fl., Springfield IL, 62761, 217/782-2043, e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov).

## VOTER REGISTRATION

The SECRETARY OF STATE adopted amendments to "General Rules, Definitions" (92 Ill Adm Code 1000; 36 Ill Reg 14084), effective 1/17/13, making permanent the temporary provisions for accepting voter registration at driver services facilities. All driver services facilities may accept a voter registration application or transfer from a person who is applying for a driver's license, permit or identification card during normal business hours and must notify license, permit or card applicants orally or in writing that voter registration services are available. Also, obsolete provisions for voter registration drives conducted by outside entities are repealed.

Questions/requests for copies: Nathan Maddox, SOS, 298 Howlett Building, Springfield IL 62756, 217/785-3094.

## TEACHER PREPARATION

The STATE BOARD OF EDUCATION

adopted amendments to "Standards for All Illinois Teachers" (23 Ill. Adm. Code 24; 36 Ill. Reg. 14612), effective 1/17/13. This rulemaking concerns deadlines for teacher preparation (TP) programs to meet new Illinois Professional Teaching Standards effective 12/1/13. The rulemaking requires applications for new TP programs (or new courses of study within TP programs) to comply with new standards by 2/1/13 (was 11/1/10) and extends the deadline for Assessment of Professional Teaching to match new standards by one year to 9/1/14 (was 9/1/13) in order to provide more time for teacher licensure candidates to adjust to and prepare for new standards. The rulemaking also makes minor technical changes (replacing "an initial Teaching Certificate" with "a professional educator license endorsed in a teaching field"). Since 1<sup>st</sup> Notice, the compliance date for TP programs to show conformity to the new standards has been moved to 12/1/13 (was 7/1/13). Also, some references to "certification" have been left in place because they refer to a Part that is still titled "Certification".

Questions/requests for copies: Vicki Phillips, ISBE, 100 North First Street, E-310, Springfield, IL 62777-0001, 217/782-2948.

## UNIVERSITIES RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM (SURS) adopted amendments to "Universities Retirement" (80 Ill. Adm Code 1600; 36 Ill. Reg. 13568), effective 1/15/13, to implement qualification requirements under Sections 401(a) and 414(d) of the Internal Revenue Code, which outline minimum elements required to establish a qualified trust for a qualified governmental pension plan. The rulemaking has a statement of the Exclusive Benefit Rule, whereby no part of the corpus or income of the SURS shall be used for or diverted to purposes other than for the exclusive benefit of the System's participants or their beneficiaries. The rights of each participant to benefits accrued to the

date of termination of the System or discontinuance of contributions to the System are nonforfeitable. Various effective dates (required by federal law) for aspects of the program are outlined in the rule: veterans' rights (12/12/94); required minimum distribution provisions (1/1/87); federal required contribution and benefit limitations (1/1/76); mortality tables and interest rates adopted by the SURS Board in accordance with Sections 15-124 and 15-125 of the Illinois Pension Code (7/1/63); and various provisions concerning direct transfer of eligible rollover distributions (1/1/93). If a person becomes entitled to a rollover distribution, the person may elect to have the distribution or a portion thereof paid directly to an eligible retirement plan (e.g., Roth IRA, regular IRA, deferred compensation plan, an annuity, etc., all described in applicable Internal Revenue Code provisions in the rulemaking). If benefits are payable to a Qualified Illinois Domestic Relations Order (QILDRO), then SURS shall follow applicable provisions of federal law.

Questions/requests for copies: Michael Weinstein, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8825.

## PROCUREMENT

The CHIEF PROCUREMENT OFFICER for GENERAL SERVICES (CPO-GS) adopted emergency amendments to "Chief Procurement Officer for General Services Procurement" (44 Ill Adm Code 1; 37 Ill Reg 1319) to raise the small purchase exception from competitive bidding requirements. Identical proposed amendments appear in this week's *Illinois Register* at 37 Ill Reg 901. For supplies and services, the limit is being raised from \$35,000 to \$50,000, and for construction services, from \$40,700 to \$70,000. The CPO-GS states that raising the small purchase monetary exception from the competitive notice and bidding requirements of the Procurement Code will allow more rapid response to emergency construction and repair

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needs at State facilities. Those affected by this rulemaking include small businesses that provide affected supplies and services.

Questions/requests for copies/comments concerning the proposed rulemaking through 3/18/13: Margaret van Dijk, Chief Procurement Office for General Services, 712 Stratton Building, Springfield IL 62706, 217/558-2228, email: [Margaret.vanDijk@illinois.gov](mailto:Margaret.vanDijk@illinois.gov).

amendment reinstates an exemption from prior approval for transfers of patients from one hospital to another. It also removes provisions requiring a discharge order and medical certification signed by a physician, or another licensed healthcare provider authorized to prescribe on behalf of the physician, to be completed prior to patient discharge. Ambulance providers, hospitals and long term care facilities are affected by this emergency rule.

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

### PUBLIC RECORDS

The ILLINOIS POWER AGENCY adopted a new Part titled "Public Information, Rulemaking and Organization" (2 Ill Adm Code 3700; 37 Ill Reg 1213), effective 1/17/13, that outlines the agency's organization and rulemaking procedures and implements Freedom of Information Act

(FOIA) requirements for access to agency documents. The rule allows members of the public to request that the Agency adopt, amend or repeal rules via a written request to the Agency's chief legal counsel, and gives the chief legal counsel primary responsibility for drafting proposed rules. Final adopted rules must be approved by the Agency director. Requests for information or documents under FOIA may be made via U.S. mail, fax, hand delivery or through the Agency's website at <http://www2.illinois.gov/ipa>. The rule also lists types of documents that are exempt from FOIA disclosure, the timeline for agency responses to FOIA requests, the procedure for appealing a denial of a FOIA request, and fees charged for paper or electronic copies of documents.

Questions/requests for copies: Michael Strong, IPA, 160 N. LaSalle St., Suite C-504, Chicago IL 60601, 312/814-4635, e-mail: [Michael.Strong@illinois.gov](mailto:Michael.Strong@illinois.gov).

### AMBULANCE SERVICES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to "Medical Payment" (89 Ill Adm Code 140; 37 Ill Reg 1330), effective 1/15/13 through 6/30/13 in accordance with the SMART Act (PA 97-689). The amendment repeals a section of a previous SMART Act emergency rule (36 Ill Reg 11329, effective 7/1/12 through 6/30/13) that had instituted new procedures for prior approval of non-emergency ambulance transportation. This emergency

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ance Program and the All Kids program. A companion emergency rule at 36 Ill Reg 10176 is effective 7/1/12 through 6/30/13.

### VENDOR APPEALS

Proposed amendments to "Practice in Administrative Hearings" (89 Ill Adm Code 104; 37 Ill Reg 922) establish an appeal process for vendors and alternate payees whom DHFS has terminated, suspended, or excluded from participation in the medical assistance program. Criteria for termination, suspension or exclusion include a risk of fraud, waste, abuse or harm or an "immediate danger to the public"; prior unpaid debts to the Department; lack of proper licensure, certification, or compliance with state or federal regulations; or an ownership connection or other relationship to a vendor with

unpaid debts or other causes for adverse action. DHFS may also withhold payments while an audit, administrative appeal, or review is pending and deny payment or credit for services rendered after a vendor or alternate payee has been notified of their suspension or exclusion from the medical assistance program. Medical providers, vendors and alternate payees are affected by this rulemaking. A companion emergency rule at 36 Ill Reg 10195 is effective 7/1/12 through 6/30/13.

### MEDICAID ELIGIBILITY

DHFS proposed amendments to "Medical Assistance Programs" (89 Ill Adm Code 120; 37 Ill Reg 947) that impose stricter limits on certain assets and asset transfers for persons seeking Medicaid assistance for long-

term care. Transfers to special needs trusts for disabled adults made after the adult reaches age 65 will be treated as asset transfers for less than fair market value (which can delay Medicaid long term care eligibility) unless the disabled person is a ward of the State or of a county. (Formerly, these transfers were allowed regardless of the disabled person's age.) For community spouses living at home while the other spouse is in a nursing home, the rulemaking limits the maximum amount of assets he or she may retain to \$109,560 and limits his/her maximum monthly income allowance to \$2,739. Eligibility for long term care assistance will be denied if a community spouse or institutionalized spouse refuses to disclose assets or income during the application process, and former limits on DHFS' ability to seek support from the community spouse

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have been removed. Other changes affect retroactive eligibility, income producing farmland, homestead property, exemptions for prepaid funeral contracts, and the homestead equity exemption (reduced from \$750,000 to \$525,000, adjusted annually for inflation). The rulemaking also lists the types of primary care providers that may participate in the Recipient Restriction Program (RRP), which limits medical assistance clients deemed to have used medically unnecessary goods or services to a single provider. Those affected by this rulemaking include nursing homes, nursing home residents and their spouses, persons who counsel seniors regarding eligibility for long-term care, and care providers enrolled in RRP. Companion emergency rules were adopted at 36 Ill Reg 10253, effective 7/1/12 through 6/30/13, and at 36 Ill Reg 17549, effective 12/3/12 through 6/30/13.

## FAMILY CARE

Proposed amendments to "Children's Health Insurance Program" (89 Ill Adm Code 125; 37 Ill Reg 992) limit Family Care eligibility to parents or caretaker relatives whose income is at or below 133% of FPL, clarify the definitions of "All Kids" and "Family Care", and remove obsolete references to the former Kid Care program. Persons enrolled in Family Care are affected by this rulemaking. A companion emergency rule at 36 Ill Reg 10298 is effective 7/1/12 through 6/30/13.

## HOSPITALS

DHFS proposed amendments to "Hospital Services" (89 Ill Adm Code 148; 37 Ill Reg 1018) that impose a \$900 reduction on inpatient hospital claims for dates of service on or after 7/1/12 if the patient experiences a provider preventable condition (PPC) during the stay. PPCs include hospital acquired conditions (HACs) such as infections, and other provider preventable conditions (OPPCs) such as surgical mistakes, defined by Medicare and deemed preventable through com-

pliance with evidence-based guidelines. The \$900 payment reduction will remain in effect until DHFS implements the All Patient Refined Diagnosis Related Groups (APR-DRG) system in rule. (The APR-DRG system will enable DHFS to isolate costs attributable to HACs and OPPCs and refuse payment only for those specific costs.) Hospitals must code primary and secondary diagnoses with "present on admission" (POA) codes indicating whether the condition was present at the time of admission. Payment will be denied for patients age 21 or older admitted for alcohol or drug detoxification within 60 days of a previous admission. Payment for caesarian sections is limited to the rate for normal vaginal deliveries unless the caesarian was medically necessary. Payment for outpatient rehabilitation services is made through the non-institutional provider system and is subject to the 3.5% hospital rate cut outlined in emergency and proposed amendments to 89 Ill Adm Code 152. Various supplemental payments to hospitals with high volumes of Medicaid patients are extended through 12/31/14. The rulemaking applies a federally prescribed copayment (currently \$3.65 per day, formerly, \$2 or no copayment) to inpatient services and to non-emergency services rendered in an emergency room. Claims for services provided to sexual assault victims will be paid at the DHFS rate (formerly, the provider's customary charge to the public for the same service) and must be submitted within 180 days. Finally, the rulemaking abolishes rules for the Excellence in Academic Medicine program, which provided additional payments to designated teaching hospitals. Companion emergency rules were adopted at 36 Ill Reg 10326, effective 7/1/12 through 6/30/13; at 36 Ill Reg 14849, effective 9/21/12 through 6/30/13; and at 36 Ill Reg 18976, effective 12/12/12 through 6/30/13.

DHFS also proposed amendments to "Hospital Reimbursement Changes" (89 Ill Adm Code 152; 37 Ill Reg 1102) that impose a general 3.5% rate cut

upon most hospitals. Hospitals exempted from the rate cut include Safety Net Hospitals, Critical Access Hospitals, and certain hospitals operated by a unit of local government or a state university. The reduction also does not apply to certain payments specified in SMART. The rulemaking freezes the supplemental per diem rate for long term acute care hospitals at the 10/1/10 level and bars new long term acute care hospitals from enrolling in the program after 6/14/12 (the effective date of SMART). Hospitals located in counties where DHFS requires medical assistance recipients to enroll in a care coordination program (CCP) cannot receive supplemental payments unless they begin participating in the CCP by 8/14/12, or within 60 days after mandatory CCP enrollment begins in those counties. Hospitals are affected by these rulemakings. A companion emergency rule at 36 Ill Reg 10410 is effective 7/1/12 through 6/30/13.

## LONG TERM CARE

Proposed DHFS amendments to "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 37 Ill Reg 1112) impose a 2.7% rate cut upon supportive living facilities, mental health facilities, and nursing homes designated as Institutions for Mental Disease (IMDs). It also abolishes bed reserve payments for adult residents of nursing homes, mental health facilities, and institutions for the developmentally disabled during temporary absences and removes a \$10 per day/resident payment to nursing homes for residents with developmental disabilities. For nursing facilities not designated as IMDs, the support and capital components of payment rates are reduced 1.7% and other rate components will be based upon the number of residents in various Resource Utilization Groups (RUGs) that classify residents according to their level of care. Payment rates for residents in lower-level RUGs will be reduced 10%, while rates for those in higher-level RUGs will be reduced 1%. Long-term care facilities are affected by this

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rulemaking. A companion emergency rule at 36 Ill Reg 10416 is effective 7/1/12 through 6/30/13.

Questions/requests for copies/comments on the 7 proposed DHFS rulemakings through 3/18/13: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield IL 62763-0002, 217/782-1233.

## STUDENT ASSISTANCE

The ILLINOIS STUDENT ASSISTANCE COMMISSION proposed amendments to "General Provisions" (23 Ill Adm Code 2700; 37 Ill Reg 1117); "Illinois National Guard (ING) Grant Program" (23 Ill Adm Code 2730; 37 Ill Reg 1124), "Grant Program for Dependents of Correctional Officers" (23 Ill Adm Code 2731; 37 Ill Reg 1130), "Grant Program for Dependents of Police or Fire Officers" (23 Ill Adm Code 2732; 37 Ill Reg 1136), "Illinois Veteran Grant (IVG) Program" (23 Ill Adm Code 2733; 37 Ill Reg 1142), "Monetary Award Program (MAP)" (23 Ill Adm Code 2735; 37 Ill Reg 1148), "Optometric Education Scholarship Program" (23 Ill Adm Code 2741; 37 Ill Reg 1160),

"Minority Teachers of Illinois (MTI) Scholarship Program" (23 Ill Adm Code 2763; 37 Ill Reg 1164), "Illinois Special Education Teacher Tuition Waiver (SETTW) Program" (23 Ill Adm Code 2765; 37 Ill Reg 1170), and "Illinois Prepaid Tuition Program" (23 Ill Adm Code 2775; 37 Ill Reg 1174). The Part 2700 amendment removes a reference to the federal government website for the Code of Federal Regulations. The rulemaking also clarifies that acceptable U.S. Department of Education documentation for student aid applications includes a valid State of Illinois tax return or a federal tax transcript. In Parts 2730, 2731, 2732, 2733, 2735, 2741 and 2763, ISAC is deleting references to institutional certification since these provisions are included in Part 2700). Part 2735 amendments state that applicants may not use MAP grants more than one time to pay for enrollment in courses for which the applicant has previously earned academic credit. In Parts 2763 and 2765, ISAC updates references to the Golden Apple Scholars of Illinois Program. In Part 2775, references to the prepaid tuition program agreement are updated.

Questions/requests for copies/comments concerning the 10 ISAC rulemakings above through 3/18/13: Lynn Hynes, ISAC, 1755 Lake Cook Rd, Deerfield IL 60015, 847/948-8500, ext. 2305, e-mail: [lhynes@isac.org](mailto:lhynes@isac.org).

## VETERANS

The DEPARTMENT OF VETERANS' AFFAIRS proposed an amendment to "Veteran's Scratch-off Lottery Grant Program" (95 Ill Adm Code 125; 36 Ill Reg 1184). The rulemaking adds a 6th category for grants, veteran employment and employment training and clarifies that grants can be used to improve the accessibility of the home of a disabled veteran. The rulemaking adds statutory language to describe the use of grant funds and the grant agreement. This rulemaking may affect small businesses, municipalities and not-for-profit corporations that provide services to veterans.

Questions/requests for copies/comments through 3/18/13: Jaime Martinez, DVA, 100 W. Randolph St., Ste. 5-570 Chicago IL 60601-3219, 312/814-5391.

# Second Notices

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The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's February 6, 2013 meeting.

## SECRETARY OF STATE

"Department of Personnel" (80 Ill Adm Code 420) proposed 11/30/12 (36 Ill Reg 16743)

## DEPARTMENT OF HUMAN SERVICES

"Maternal and Child Health Advisory Board" (77 Ill Adm Code 2260) proposed 10/26/12 (36 Ill Reg 15319)

## CENTRAL MANAGEMENT SERVICES

"Organ Donor Leave" (80 Ill Adm Code 332) proposed 12/7/12 (36 Ill Reg 16800)