

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

HFS EMERGENCY RULES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted six emergency rules, all effective 7/7/14 for a maximum of 150 days, implementing Public Act 98-651 which was effective 6/16/14. The PA and these rules restore medical assistance coverage for certain services for which coverage was reduced or eliminated under the SMART Act (PA 97-689), simplify the application process for certain medical assistance applicants, implement new rates for various long-term care services, and make other changes.

(SSI) payments, who were receiving SSI when they entered a nursing home or a supportive living program, or those who have verified income at or below 100% of the Federal Poverty Level (FPL) and reported no assets in excess of the disregard limits established elsewhere in rule. For those applying for Medicaid long-term care assistance on or after 6/16/14, DHFS will grant, upon request, up to two 30-day extensions of the time period for providing verification of current resources or of resources transferred during the 5-year look back period prior to application. This rule affects medical assistance applicants and agencies or counselors who assist applicants for long-term care assistance.

ALL KIDS

DHFS also adopted emergency amendments to "Covering All Kids Insurance Program" (89 Ill Adm Code 123; 38 Ill Reg 15666) establishing additional eligibility criteria for the All Kids health insurance program in accordance with the federal Affordable Care Act. An identical proposed rulemaking appears in this week's *Illinois*

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Proposed Regulations

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments to "Prohibited Conduct" (11 Ill Adm Code 423; 38 Ill Reg 14811) providing that a licensee who makes a payment to the Board with a check that is returned will have his or her license suspended until the amount is paid in full. The Board also proposed amendments to "Fines, Suspension, and Expulsion" (11 Ill Adm Code 1322; 38 Ill Reg 14815) repealing similar language for dishonored checks. Those licensed under the Horse Racing Act of 1975 may be interested in these rulemakings.

Questions/requests for copies/comments on these 2 Racing Board rulemakings through 9/2/14: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

RIVERBOATS

The ILLINOIS GAMING BOARD proposed amendments to "Riverboat Gambling" (86 Ill Adm Code 3000; 38 Ill Reg 14641) allowing vouchers to be issued at cashier cages in addition to being issued via electronic gaming

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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

nois Register at 38 Ill Reg 14656. For applications received on or after 7/1/14, a child will qualify for All Kids if the child or his or her family meet any of the following criteria, in addition to having family income at or below 300% FPL as determined by Modified Adjusted Gross Income (MAGI) methodology: the child was disenrolled from group coverage at least 90 days prior to the start of All Kids coverage; the child is less than one year of age and the responsible relative does not have affordable private or employer-sponsored insurance; the family's health insurance premiums exceed specified limits (5% of household income for adding the child to a group plan, or 9.5% of household income for family coverage that includes the child); or the child's parent qualifies for advance payment of a tax credit to purchase coverage through the federally facilitated exchange because the parent's employer-sponsored insurance was determined to be unaffordable. A child may also qualify for All Kids if the employer who formerly provided the child's coverage stopped offering dependent coverage or terminated all employee health coverage. Previous criteria that included determination of financial eligibility through MAGI methodology affect those who applied from 10/1/13 through 6/30/14.

COVERED SERVICES

Emergency amendments to "Medical Payment" (89 Ill Adm Code 140; 38 Ill Reg 15673) restore coverage for various services that had been reduced or eliminated under SMART. Identical proposed rules appear in this week's *Illinois Register* at 38 Ill Reg 14658. Effective 7/1/14, coverage of non-emergency and preventive dental services for adults is restored, and antipsychotic drugs, along with drugs for certain children with complex medical needs, are exempted from the SMART Act limit of 4 prescriptions per month without prior approval. Effective 10/1/14, coverage of podiatry for non-diabetic adults is restored, and a limit of 20 visits per year for speech, hearing

and language therapy services is removed, but prior approval for therapy services will be required. The rule also implements an assessment of \$6.07 per day per resident, plus a licensing fee of \$1.50 per day per licensed bed, upon providers of long term care for persons under age 22 who require clinically complex care ("clinically complex" is defined in amendments to Part 153). A similar assessment of \$2.30 per day per resident is also placed upon supportive living facilities (SLFs). Assessment payments from pediatric LTCs and from SLFs will each be deposited in a dedicated State fund. Other provisions extend the current hospital assessment program through 6/30/18 and make adjustments to the amount of the assessment. Hospitals, long term care facilities, supportive living facilities, and medical providers are affected by this emergency rule.

SUPPORTIVE LIVING FACILITIES

The DHFS emergency amendments to "Specialized Health Care Delivery Systems" (89 Ill Adm Code 146; 38 Ill Reg 15713) set new payment rates for supportive living facilities and specialized mental health rehabilitation facilities and change all references to SLFs to "supportive living programs" or SLPs. Identical proposed rules appear in this week's *Illinois Register* at 38 Ill Reg 14779. The amendments delink SLP payment rates from those paid to nursing homes and also provide for increases of 8.85% and 9.09%, subject to federal approval, in rates paid to SLPs on or after 7/1/14. The latter increase is contingent upon federal approval of the SLP assessment program implemented in Part 140. (Formerly, SLP rates had been set at 60% of the average for nursing homes in the same geographic area, or 72% of the nursing home average for SLP residents residing in dementia special care units, and had been frozen since 4/30/11.) The rulemakings also set rates for specialized mental health rehabilitation facilities that apply to dates of service on or after 7/22/13, the effective date of the Specialized

Mental Health Rehabilitation Act of 2013 (PA 98-104). Facilities currently licensed under PA 98-104 will receive a lower rate if they were previously licensed under the Nursing Home Care Act. SLPs and specialized mental health rehabilitation centers will be affected by this rule.

NURSING HOMES

DHFS adopted emergency amendments to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 38 Ill Reg 15723) implementing new payment rates and add-on payments for nursing homes using Resource Utilization Group IV (RUG-IV) methodology. Identical proposed amendments appear in this week's *Illinois Register* at 38 Ill Reg 14781. The rule provides that the current base per diem rate of \$83.49 per resident will be increased by \$1.76 effective 7/1/14. Additional per diem add-ons are provided for residents with Alzheimer's or other dementia and for residents in the four lowest-care RUGs. (The RUG-IV system groups residents according to their condition and level of care.) Effective 1/1/15, nursing homes will also receive a \$5.00 per resident per day add-on for traumatic brain injury (TBI) patients whose condition or level of care falls short of the existing criteria for TBI add-on payments. Nursing homes are affected by this emergency rule.

LONG TERM CARE

Finally, DHFS adopted emergency amendments to "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 38 Ill Reg 15732) increasing by 8.17% the support component of rates paid to skilled and intermediate care facilities on and after 7/1/14. Identical proposed amendments appear in the *Illinois Register* at 38 Ill Reg 14802. The amendments also establish criteria for determining whether a pediatric (under age 22) long term care facility serves clinically complex residents (e.g., those requiring venti-

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Proposed Regulations

devices. Riverboat casino licensees and employees may be affected by this rulemaking.

Questions/requests for copies/comments through 9/2/14 to: Emily Mattison, IGB, 160 N. LaSalle St, Chicago, IL 60601, 312/814-7253, emily.mattison@igb.illinois.gov.

are in the process of completing several named training programs are eligible to take the examination. The certificate fee is \$50 and applicants must score 80% or better to pass. Other topics addressed include re-takes of failed categories, examination times, the structure of the examination, training, disciplinary action by the Board and limited grandfathering/exemption for current electricians employed and holding a MSHA electrical qualification card on 1/1/14. These rulemakings may affect small businesses involved in the extraction, storage or movement of coal or other above/ below ground mining operations.

Questions/requests for copies/comments through 9/2/14: Nick San Diego, DNR, One Natural Resources Way, Spfld IL 62702-1271, 217/782-1809.

MENTAL HEALTH FACILITIES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to the Part titled "Mental Health Services in Nursing Facilities" (89 Ill Adm Code 145; 38 Ill Reg 14772) repealing Section 145.10, which contains obsolete rules for a demonstration program established in 2004 for nursing facilities serving persons with severe mental illness. The demonstration program governed by the repealed Section expired in 2007.

Questions/requests for copies/comments through 9/2/14: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233, HFS.Rules@illinois.gov.

MINING

The DEPARTMENT OF NATURAL RESOURCES proposed a new Section of the Part titled "Procedure for Conducting Examinations of Persons seeking Certificates of Competency" (62 Ill Adm Code 230; 38 Ill Reg 14804), creating a certificate, examination and corresponding fee related to the training and certification of mine electricians. Apprentice mine electricians who have successfully completed or

Meeting Action

At its 7/15/14 meeting, the Joint Committee on Administrative Rules voted to issue Recommendations concerning one emergency rulemaking and 4 proposed rulemakings. Consideration of a proposed Department of Human Services rulemaking titled "Rules of Conduct, Discipline, Suspension and Discharge Procedures" (89 Ill Adm Code 827; 38 Ill Reg 4292), currently on extended Second Notice, was postponed until the August 12 meeting.

DEPARTMENT OF PUBLIC HEALTH

With regard to the emergency rule titled "Specialized Mental Health Rehabilitation Facilities Code" (77 Ill Adm Code 380; 38 Ill Reg 11819), JCAR recommends that DPH be more timely in implementing statute in rules. DPH missed its statutory deadline for implementing PA 98-104 by almost 6 months.

DEPARTMENT OF LABOR

Concerning the rulemaking titled "Payment and Collection of Wages or Final Compensation" (56 Ill Adm Code 300; 38 Ill Reg 7052), JCAR recommends that DOL not adopt this rulemaking

until the Governor signs HB 5622 into law. Several provisions of this rulemaking rely on enactment of this legislation for their statutory authority.

DEPARTMENT OF INSURANCE

With regard to the DOI rulemaking titled "License, Documents Necessary to Engage in Activities and Examinations" (50 Ill Adm Code 752; 38 Ill Reg 7715), JCAR recommends that the Department of Insurance be more timely in updating its rules for consistency with statute. The statutory fee change being reflected in this rulemaking occurred more than 10 years ago.

POLLUTION CONTROL BOARD

JCAR recommends that when PCB opens its subdocket, pursuant to a 7/10/14 Order, on the Concentrated Animal Feeding Operations (CAFO) rulemakings titled "General Provisions" (35 Ill Adm Code 501; 37 Ill Reg 18974) and "Permits" (35 Ill Adm Code 502; 37 Ill Reg 19005), it also address concerns raised by the USDA's Natural Resources Conservation Service (in comments to JCAR on 5/16/14) that these rulemakings are relying on elements of NRCS standards that are now obsolete and have been replaced by new standards.

New Regulations

lators or intravenous feeding); facilities that meet these criteria will receive Medicaid reimbursement on a 30-day expedited schedule for dates of service on or after 7/1/13. For clinically complex pediatric LTC residents, facilities shall receive (subject to federal approval and other conditions) a per diem rate of \$304 per day, or \$669 per day for those receiving ventilator care, effective 7/1/14. Nursing homes and pediatric long term care facilities are affected by this rule.

Questions/requests for copies/comments concerning the 6 proposed DHFS rulemakings through 9/2/14: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217.782-1233, HFS.Rules@illinois.gov.

state where it is located. Obsolete references to maternal and child health clinics are removed and new provisions for county-operated outpatient facilities are added. An appendix defines the five rate regions (northwest, central, southern, Cook County, collar counties) that DHFS uses in various rate methodologies. Since 1st Notice, DHFS has clarified provisions affecting critical access hospitals as well as its methodology for determining rates for therapy services. The Part 146 amendments (which combine two separately proposed rulemakings) replace the current Ambulatory Procedure Listing groupings for outpatient procedures with the Enhanced Ambulatory Patient Group (EAPG) listings, and impose a cap on payment for observation services at freestanding birth centers, both effective 7/1/14. A payment rate of \$683 per day is established for children's community-based health care centers for transitional nursing care (up to 120 days) provided to children moved from a hospital to their home or another placement. The amendments also apply the SMART Act's general 2.7% non-institutional rate cut to other services provided by children's community-based health care centers on or after 7/1/12. Changes since 1st Notice increase the originally proposed \$610/day transitional nursing care rate to \$683/day in accordance with PA 98-651 and clarify that the SMART Act rate cut does not apply to this service. The Part 148 amendments, which also combine two separately proposed rulemakings, implement the All Patient Refined-Diagnosis Related Grouping (APR-DRG) system for hospital billing for dates of discharge on or after 7/1/14. In cases where a hospital acquired condition (HAC) occurs during an inpatient stay, APR-DRG codes will be used to identify costs attributable to the HAC, which DHFS, in accordance with federal Medicaid regulations, will not pay. The rulemaking also revises various types of supplemental payments to hospitals that treat higher than normal volumes of Medicaid or uninsured patients and authorizes transitional pay-

ments to replace payments that will be phased out. Also, outlier adjustments (additional payments covering exceptionally costly hospital stays) are eliminated for certain pediatric hospital discharges that occur on or after 7/1/14. Numerous changes since 1st Notice were made in response to PA 98-651; these include removing a 1/1/15 sunset date for supplemental payments that were tied to the hospital assessment program (extended through 6/30/18 by the PA) and extending transitional payments for an additional 2 years. Amendments to Part 149 define which services will be paid via the DRG-PPS system and which services will be excluded, and establish methods for calculating payment effective 7/1/14. Finally, the Part 152 amendments require DHFS to track changes in each hospital's case mix during the first 2 years of APR-DRG and EAPG system use. If all or part of the case mix change is attributable to documentation and coding improvement rather than to an actual shift in the number or type of patients being treated, DHFS must adjust payments accordingly. Obsolete provisions for non-DRG based rates and for cost outlier adjustments are repealed. Changes since 1st Notice clarify the effects of PA 98-651 upon the Part 152 rules, and provide that DHFS may revise the documentation and coding improvement rules in consultation with hospitals during the 12 months following the effective date of the PA, but is not required to do so. Hospitals, hospital-based clinics, and ambulatory surgical treatment centers are affected by these rulemakings.

Questions/requests for copies of the 5 DHFS adopted rulemakings: Jeanette Badrov at the DHFS address, phone number and email above.

MEDICAID RATE REFORM

DHFS adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 38 Ill Reg 4559), "Specialized Health Care Delivery Systems" (89 Ill Adm Code 146; 38 Ill Reg 4628 and 6499), "Hospital Services" (89 Ill Adm Code 148; 38 Ill Reg 4640 and 6505), "Diagnosis Related Grouping (DRG) Prospective Payment System (PPS)" (89 Ill Adm Code 149; 38 Ill Reg 4932), and "Hospital Reimbursement Changes" (89 Ill Adm Code 152; 38 Ill Reg 4977), all effective 7/2/14. These rulemakings implement provisions of Public Act 97-689 (SMART Act) and PA 98-651 (effective 6/16/14) concerning Medicaid rate reform for hospitals, clinics and outpatient services. The Part 140 amendments extend eligibility for expedited payments to certain long term acute care hospitals. Maximum reimbursement rates for outpatient physical therapy are set at \$130 per visit for children's hospitals and hospitals enrolled with the Department and \$115 per visit for non-enrolled hospitals. Rates for other therapy services will be paid per quarter hour and published at the Department's website. Hospital-based clinics associated with out-of-State hospitals may participate in the Illinois medical assistance program if the parent hospital meets comparable licensing requirements in the

MENTAL HEALTH

The DEPARTMENT OF HUMAN SERVICES (DHS) adopted amendments to "Medicaid Community Mental Health Services Program" (59 Ill Adm Code 132; 37 Ill Reg 13045) effective

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New Regulations (cont.)

7/1/14 that update certification, compliance review, and corrective actions applicable to Medicaid community mental health providers. Providers are prohibited from subcontracting a client's services. Providers who cannot provide service must refer the client to another certified provider that can provide the service. The provider directly providing service must bill and may only bill the public payer funding that service. The rulemaking clarifies provider application submission, certifying agency certificate issuance, notice of deficiency and re-application requirements. DHS outlines the certification review cycle. Within 14 months after a provider's certification application is approved, the certifying State agency must complete an initial on-site certification review. Utilizing information collected during on-site certification reviews, certifying State agencies evaluate the provider's compliance with Program requirements and classify them in the following categories: Level 1 Compliant (90-100% compliance); Level 2 Substantially Compliant (75-89% compliant); Level 3 Minimally Compliant (50-74% compliant); and Level 4 Unsatisfactorily Compliant (Under 50% compliant). The rulemaking provides applicable actions to be undertaken by providers classified as Levels 2 through 4 through a plan of correction. Within 12 months after a provider's plan of correction is approved, the certifying State agency must conduct an initial certification focus review to evaluate a provider's progress implementing its plan of correction. The rulemaking continues to detail the procedure for conducting the review and provider requirements. Certifying state agencies will conduct full provider reviews every 3 years. DHS lists provider certification requirements for new sites of services. The rulemaking revises post-payment review, post-payment review finding appeal, certification suspension, suspended certification reinstatement, certification revocation, and certification decision appeal provisions. The rulemaking also makes technical changes throughout for consistency.

Community mental health service providers may be impacted by this rulemaking.

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

INSURANCE

The DEPARTMENT OF INSURANCE adopted amendments to "Assigned Risk Procedures" (50 Ill Adm Code 2904; 38 Ill Reg 184) effective 7/2/14. The rulemaking provides that an insurance producer for an employer may submit an application online for assignment to the Assigned Risk Pool, but coverage is not bound until eligibility is determined by the DOI Administrator and the signed application is received with the appropriate premium. For electronic applications, the total appropriate premium payment must be paid by credit card or electronic funds transfer. Minimum premium policy payments must also be paid in full. Instead of every assigned carrier seeking written approval from the Department to terminate a policy, assigned carriers may terminate a policy as permitted by law. Notification and appeal procedures for employers that have a policy terminated are clarified. DOI also adopted an amendment to the Part titled "Improper Claims Practice" (50 Ill Adm Code 919; 38 Ill Reg 4999) updating the Department's Consumer Division contact information (phone number and Chicago office address).

Questions/requests for copies of the 2 DOI rulemakings: Susan Anders (217/558-0957) for Part 2904 and Robert Rapp (217/785-1680) for Part 919, DOI, 320 W. Washington St., 4th Fl., Springfield IL 62767-0001

BUSINESS RECORDS

The SECRETARY OF STATE adopted amendments to the Part titled "Uniform Commercial Code" (14 Ill Adm Code 180; 38 Ill Reg 7088) effective 7/1/14 to update its policies. Names and addresses of debtors and se-

cured parties may be in all capital letters on forms submitted to the SOS. The full address of a debtor must be disclosed, including street address, route number or P.O. Box, city, state, and zip code. Information requirements pertaining to organization debtors is being stricken. The SOS shall refuse a UCC record if it lists more than one debtor. This rulemaking may affect small businesses.

Questions/requests for copies: Michelle Nijm, SOS, 100 W. Randolph St., #5-400 Chicago IL 60601, 312/814-7246.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments to "Pay Plan" (80 Ill Adm Code 310; 38 Ill Reg 6751) effective 7/1/14 updating various provisions for State fiscal year 2015. The rulemaking removes obsolete pay rate tables from previous fiscal years, adds new titles to the list of divided classes represented by multiple bargaining units with different pay grades, updates the list of current Public Service Administrator (PSA) and Senior Public Service Administrator (SPSA) options, and adds two new trainee titles (Corrections Nurse Trainee and Firearms Eligibility Analyst Trainee). Also, references to the SPSA Option 7 (captain) title for Conservation Police at the Department of Natural Resources are amended to reflect the removal of this title from bargaining unit representation effective 10/7/13.

DCMS also adopted a peremptory amendment to "Pay Plan" (80 Ill Adm Code 310; 38 Ill Reg 15739) effective 7/2/14 implementing a memorandum of understanding with the Illinois State Employees Association (ISEA) that assigns the shift supervisor position at Department of Corrections work camps (located at Southwestern Correctional Center, Green County, Hardin County, Dixon Springs, Pittsfield, Clayton, DuQuoin, Vandalia and Murphysboro) to an ISEA bargaining unit and associated pay grade.

New Regulations (cont.)

Questions/requests for copies of the 2 DCMS rulemakings: Jason Doggett, DCMS, 504 Stratton Bldg., Spfld IL 62706, 217/782-7964, fax 217/524-4570, e-mail: CMS.PayPlan@illinois.gov.

JUVENILE JUSTICE

The DEPARTMENT OF JUVENILE JUSTICE adopted a new Part titled "Public Information, Rulemaking and Organization" (2 Ill Adm Code 1000; 38 Ill

Reg 15627) effective 7/3/14, establishing its basic organization, contact information, and procedures for responding to requests for information, enacting rules and conducting public hearings. The Part includes addresses for the Springfield and Chicago offices and lists the correctional facilities and programs over which DJJ has jurisdiction (the Chicago, Harrisburg, Kewanee, Pere Marquette, St. Charles and Warrenville Youth Centers, plus

School District 428, which serves DJJ and Department of Corrections inmates under age 21 who have not yet earned a high school diploma or GED certificate).

Questions/requests for copies: Beth Compton, DJJ, 1351 Concordia Ct. P.O. Box 1927, Springfield, IL 62794-9277, 217/557-1030.

Second Notices

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 the August 12, 2014 meeting.

DEPARTMENT OF PUBLIC HEALTH

"Ambulatory Surgical Treatment Center Licensing Requirements" (77 Ill Adm Code 205) proposed 9/13/13 (37 Ill Reg 14565)

"Collection, Disclosure, and Confidentiality of Health Statistics" (77 Ill Adm Code 1005) proposed 1/13/14 (38 Ill Reg 3315)

"Immunization Code" (77 Ill Adm Code 695) proposed 4/25/14 (38 Ill Reg 8740)

"Child Health Examination Code" (77 Ill Adm Code 665) proposed 4/25/14 (38 Ill Reg 8726)

DEPARTMENT OF HUMAN SERVICES

"Office of Inspector General Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies" (59 Ill Adm Code 50) proposed 3/28/14 (38 Ill Reg 6999)

"Child Care" (89 Ill Adm Code 50) proposed 11/1/13 (37 Ill Reg 17140)