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Joint Committee on Administrative Rules  
Illinois General Assembly

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*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 Rules

### ■ MEDICAL ASSISTANCE

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Assistance Programs (89 IAC 120; 38 Ill Reg 7426), effective 8/19/14. This rulemaking replaces an emergency rule effective 3/24/14 at 38 Ill Reg 7650. The rulemaking clarifies which medical assistance eligibility groups can and cannot qualify for assistance via spenddown (deducting medical expenses from income), clarify that the Modified Adjusted Gross Income (MAGI) methodology applied to most medical assistance applications under the federal Affordable Care Act does not apply to Medicaid long-term care assistance, and state which Sections of the Part apply to long term care assistance eligibility determinations. The rulemakings

also amend eligibility provisions for the Healthy Start program for pregnant women to reference new rules in 89 Ill Adm Code 110 for electronic and telephone applications. Since 1<sup>st</sup> Notice, HFS removed a provision that would have exempted Medicaid-eligible adults ages 19-64 who do not qualify for Aid to the Aged, Blind or Disabled from the home equity limit (\$525,000, adjusted annually for inflation) required to qualify for long-term care assistance.

### ■ ALL KIDS INSURANCE

HFS also adopted amendments to the Part titled Children's Health Insurance Program (89 IAC 125; 38 Ill Reg 8698), effective 8/19/14. The rulemaking replaces a companion emergency rule effective 4/15/14 at 38 Ill Reg 9110. The amendments

## Proposed Rulemakings

### ■ RAW MILK SALES

DEPARTMENT OF PUBLIC HEALTH proposed amendments to Grade A Pasteurized Milk and Milk Products (77 IAC 775; 38 Ill Reg 18346) establishing procedures for permitting and inspecting dairy farms that sell and/or distribute raw (unpasteurized) milk directly to consumers. The rulemaking defines a "dairy farm" as any place where one or more lactating animals (currently, cows or goats) are kept for milking purposes and from which part or all of the milk or milk product is provided, sold or offered for sale to consumers. A Tier I permit allows a dairy farm to sell or distribute raw milk to consumers only on the premises of the farm where the animal herd is located. A Tier II permit allows sale or distribution of raw milk under a contractual herd share or

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**NEW RULES:** Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.  
**PROPOSED RULES:** Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.  
**PEREMPTORY RULES:** Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.  
■ Designates 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:** Submit mail, email or phone calls to the agency personnel listed below each summary.  
**RULE TEXT:** Available on the Secretary of State ([www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://www.ilga.gov)) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

# New Rules

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establish a 10/1/13 effective date for use of Modified Adjusted Gross Income (MAGI) methodology to determine financial eligibility for All Kids Share and All Kids Premium Level 1 in accordance with the federal Affordable Care Act. Applicable federal regulations are also cited.

## CONTRACT PHARMACIES

HFS adopted amendments to Medical Payment (89 IAC 140; 37 Ill Reg 19971) effective 8/19/14, affecting healthcare providers that are eligible for the federal 340B Drug Pricing Program and contract with outside pharmacies to manage and dispense their 340B drug inventory. Under the SMART Act, HFS requires most 340B-eligible providers to enroll in the program and to dispense only 340B-purchased drugs to Medicaid patients (Medicaid carve-in). The rulemaking clarifies that mandatory enrollment and carve-in do not apply if a contract pharmacy, rather than the provider, dispenses outpatient prescription drugs.

Questions/requests for copies of the 3 HFS rulemakings: Jeanette Badrov, HFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield IL 62763-0002, 217/782-1233, e-mail: [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov)

## HORSE RACING

The ILLINOIS RACING BOARD adopted an amendment to Medication (11 IAC 603; 38 Ill Reg 8783), effective 8/25/14, removing allowances of oxyphenylbutazone and treating any level of that medication as a Class 4 drug as defined in Association of Racing Commissioners International's (ARCI) Uniform Classification Guidelines for Foreign Substances. The rulemaking replaces an emergency amendment effective 4/10/14 at 38 Ill Reg 9121. The rule also adds O-desmethyl pyrilamine less than 50 ng/ml as an allowable level and updates the incorporation by reference to the most recent edition (January 2014, changed since 1<sup>st</sup> Notice from December 2013) of ARCI's Uniform Classification Guidelines for Foreign Substances.

Questions/requests for copies: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

## ■ WAGES

DEPARTMENT OF LABOR adopted amendments to the Part titled Payment and Collection of Wages or Final Compensation (56 IAC 300; 38 Ill Reg 7052), effective 8/22/14, implementing PA 98-527 and making other changes. The rulemaking establishes that DOL can assert jurisdiction in wage/

compensation cases when the work was performed in Illinois or was performed out of State for an employer located in Illinois. Other provisions update the circumstances under which employees can receive earned bonuses and commissions; clarify that employers cannot make employees forfeit earned vacation days in a written employment policy or practice; add a Section stating that employees are entitled to severance pay pursuant to an employment agreement; and clarify that expenses related to services provided for the employer must be included in calculating final compensation. Payment of wages may be made by check or direct deposit, or by payroll cards issued by financial institutions if the employee agrees to receive wages in this manner. Corporate officers, agents or other employees may be liable for wages or final compensation. Employees must be informed in writing of their rate of pay and no modifications can be made unless the employee is informed, in writing, before the effective date. Wage deductions that will continue for a period of time and documented in writing for that period are considered to be freely entered into. Employers must pay undisputed wages within 20 (currently 15) days after receipt of a claim notice. Other topics addressed in the rulemaking include acceptable methods of service of documents (which may include e-mail),

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## Proposed Rulemakings

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distribution agreement. Any sale or distribution of raw milk (except for private consumption by the family living on the dairy farm) without a permit is unlawful. Permitted dairy farms selling or distributing raw milk will be listed on the DPH website. Raw milk must be sold within 5 days after production. Dairy farm owners must have written procedures for recalling products and notifying consumers. The rulemaking prohibits dairy farms from making cheese, yogurt, or other dairy products from raw milk for sale to consumers and requires dairy farms to report, upon the Department's request, the number of gallons of raw milk sold in the previous 12 months. Tier I dairy farms must post

noticeable and legible signage noting that the milk is not pasteurized; that the farm is not routinely inspected by DPH; and that the product may contain pathogens that could cause serious illness, especially to children, the elderly, pregnant women and others with weakened immune systems. Container labels or product receipts must note that the product is not pasteurized, include the production date and last possible sale date, include a consumer warning, and provide instructions for notifying the local health department or DPH of any consumer complaint or foodborne illness. Tier II dairy farms are subject to the same requirements as Tier I farms plus others related to transport and

distribution of raw milk. Sampling and testing shall be conducted prior to issuance of a raw milk permit and at least 4 times during every 6-month period. The rulemaking also includes requirements for dairy animal health and cleanliness, equipment construction and storage, milking practices, the milking environment, and quality control. Producers, sellers and purchasers of raw milk are affected by this rulemaking.

Questions/requests for copies/comments through 10/20/14:  
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)

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## New Rules

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administrative hearing procedures, and procedures for filing complaints of retaliation against an employee. If an employer does not file an answer to a complaint, the allegations will be deemed to have been admitted as true. The \$3000 limit on claims that can be admitted to an expedited hearing process is removed. A new Section is also added to address consolidation, severance, and class action claims in formal hearings. Changes since 1<sup>st</sup> Notice include a definition of "location readily available" for an employee to deposit or access wages; language stating that employees

must be offered the option of being paid by cash or check as well as via direct deposit or payroll card; removal of language setting requirements for payroll cards; and added criteria for determining who is individually liable for wages or final compensation. Employees and businesses who perform work in Illinois or are located in Illinois are affected.

### ■ EMPLOYEE CLASSIFICATION

DOL also adopted amendments to Employee Classification (56 IAC 240; 38 Ill Reg 3298) effective 8/21/14 expanding the definition of "individual performing services" to include corporations

and limited liability companies that carry out daily activities consistent with a corporation or LLC, employs employees to carry out its purposes and principals, and carries the appropriate workers' compensation insurance and has registered with IDES for unemployment insurance. The rulemaking allows any person to file a complaint. The time to file a complaint has been expanded from 180 days to 365 days after the date of the alleged violation. DOL will toll the complaint if another state or federal agency is investigating a similar misclassification complaint. DOL will notify the contractor within

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# Proposed Rulemakings

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## SCHOOLS

STATE BOARD OF EDUCATION proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 38 Ill Reg 18371) establishing criteria for the State Seal of Biliteracy authorized by Public Act 98-560. (The seal appears on transcripts and diplomas of students with high levels of proficiency in English and another language, including American Sign Language.) To earn the seal, students must (with some exceptions) score at or above the “intermediate high” level, as determined by the American Council on the Teaching of Foreign Languages, on a standardized assessment of speaking, writing, listening and

reading, and score at or above “meets standards” on the State assessment in English language arts or a proficiency score on an approved standardized assessment. Students who score at any level at or above “intermediate low” are eligible for a State Commendation toward Biliteracy. School districts that participate in the program must designate a Seal of Biliteracy coordinator. SBE also proposed amendments to Student Records (23 IAC 375; 38 Ill Reg 18424) requiring districts to include the State Seal of Biliteracy or State Commendation toward Biliteracy on eligible student transcripts and permanent student records. The rulemaking also requires districts to retain a copy of a student’s certified birth certificate

in his or her permanent record. Public school students and teachers of foreign languages or of English as a Second Language are affected by these rulemakings.

SBE also proposed amendments to Standards for Endorsements in Early Childhood Education and in Elementary Education (23 IAC 26; 38 Ill Reg 18388) updating teacher preparation standards for an endorsement in Early Childhood Education. The new standards align with Illinois Learning Standards adopted in 2010 and to the Illinois Professional Teaching Standards. They will apply to candidates for the Early

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## New Rules

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120 days after the complaint is filed. The notification must include the locations of the project, affected contractors and the nature of the allegations. The rulemaking establishes reporting requirements for contractors. The contractor’s report must be submitted by January 31 after every taxable year and include the contractor’s name, address, and identification number; person or entity being paid; and the total amount paid. DOL will access a civil penalty if, after an investigation, it finds no report was made. The reporting requirement does not apply to businesses primarily engaged in the sale of tangible personal

property. DOL may seek a settlement after the investigation and may seek informal settlement conferences. If a contractor doesn’t voluntarily comply to resolve the matter, DOL must set the matter for a formal hearing. The assigned administrative law judge may order the contractor to end the unlawful practice in addition to the current remedies. If an ALJ finds an employee has been misclassified, he or she is entitled to all rights and benefits he or she would have gotten if correctly classified. The ALJ may order reimbursement for improper deductions. An officer or agent who knowingly permits the employer to violate the Act may

also be liable. Criteria are established to define “knowingly permits” and includes the extent and nature of the misclassification. The rulemaking lowers the civil penalty from \$1500 to \$1000 and establishes hearing procedures. Once DOL issues a complaint, the contractor has 28 days from the date of the complaint to answer. The answer and one copy must be filed with the ALJ and copies must be served on DOL and all other parties. The ALJ may extend the time to answer. If there is no answer and the ALJ grants summary judgment and enters a final order and decision, the

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## Proposed Rules

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Childhood endorsements starting 9/1/19, and institutions of higher education may not, after 2/1/17, place candidates in preparation programs that do not meet the new standards. Effective 1/1/15, all Early Childhood programs seeking first-time approval from SBE must demonstrate alignment to the 2010 National Association for the Education of Young Children Standards for profession preparation. Existing programs have until 9/1/19 to demonstrate alignment to the NAEYC standards. Early childhood programs, teachers and prospective teachers are affected by this rulemaking.

Questions/requests for copies/comments on the 3 SBE rulemakings through 10/20/14: Shelley Helton, SBE, 100 N. First St., S-493, Springfield IL 62777-0001, 217/782-5270, [rules@isbe.net](mailto:rules@isbe.net)

### ■ FORECLOSURES

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY proposed a new Part titled Foreclosure Prevention Program Graduated Fund (47 IAC 386; 38 Ill Reg 18332) establishing procedures for administering the Foreclosure Prevention Program, which is funded in part by the State's fee on foreclosure filings. The rules address applicant eligibility, appropriate uses for grant funds, application requirements, review criteria, and requirements for grant

administration and reporting. Agencies that receive IHDA grants for foreclosure prevention programs will be affected.

Questions/requests for copies/comments through 10/20/14: Kristi S. Poskus, Esq., IHDA, 401 N. Michigan Ave., Suite 700, Chicago IL 60611; 312/836-7416.

## New Rules

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contractor may move to vacate the order within 30 days after the final decision. DOL's formal hearing rules also apply. Those who may be impacted by these rules include contractors and employees who may make a complaint.

Questions/requests for copies of the 2 DOL rulemakings: Jim Preckwinkle, DOL, 900 S. Spring St., Springfield, IL 62704, 217/558-1270.

### ■ CHILD CARE

DEPARTMENT OF HUMAN SERVICES adopted an amendment to the Part titled Child Care (89 IAC 50; 38 Ill Reg 7018) effective 8/22/14, implementing PA 98-61, which makes juvenile records involving offenders under age 18 (formerly, under age 17) confidential. The rulemaking requires fingerprint-based criminal history record checks for persons 18 or older (currently, 17 or older) who reside in a child care home exempt from licensing even if they are not usually present in the home while children are being cared for.

## MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to "Medical Assistance Programs" (89 IAC 120; 38 Ill Reg 18290) implementing Public Act 98-674. The rulemaking increases the

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(Persons age 13 and older who have been tried and convicted as adults for certain crimes remain subject to the background check.) Child care providers are affected by this rulemaking.

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

## INCOME TAX

The DEPARTMENT OF REVENUE adopted amendments to Income Tax (86 IAC 100; 38 Ill Reg 11716) effective 8/20/14. The amendments synchronize Illinois income tax return due dates and payment due dates with U.S. return and payment due dates. If a due date falls on a Saturday, Sunday or holiday, the return is timely if filed by the next day that is not a Saturday, Sunday or holiday. The amendments also impose no penalty for returns deemed to have a reasonable cause for late filing (due to a holiday, weekend day or natural disaster as defined by Treasury regulation).

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## 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. These rulemakings will be considered at the Committee's September 16, 2014 meeting.

### DEPT OF NATURAL RESOURCES

Hydraulic Fracturing Regulatory Act (62 IAC 245) proposed 11/15/13 (37 Ill Reg 18097)

The Illinois Oil and Gas Act (62 IAC 240) proposed 11/15/13 (37 Ill Reg 18081)

### DEPT OF TRANSPORTATION

Aviation Safety (92 IAC 14) proposed 6/20/14 (38 Ill Reg 12836)

### DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Illinois Credit Union Act (38 IAC 190) proposed 6/27/14 (38 Ill Reg 13122)

### DEPT OF PUBLIC HEALTH

Specialized Mental Health Rehabilitation Facilities Code (77 IAC 380) proposed 6/6/14 (38 Ill Reg 11713)

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## Proposed Rulemakings

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personal needs allowance from \$50 to \$60 per month for residents of Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) and for persons residing in Community Integrated Living Arrangements (CILAs). HFS also proposed an amendment to "Medical Payment" (89 IAC 140; 38 Ill Reg 18308) that eliminates the requirement of prior approval for medical assistance coverage of binaural (both ears) hearing aids.

Questions/requests for copies/comments on the 2 HFS rulemakings through 10/20/14: Jeanette Badrov, HFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield IL 62763-0002, 217/782-1233, [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov)

### DEPT OF CENTRAL MANAGEMENT SERVICES

Pay Plan (80 IAC 310) proposed 7/7/14 (38 Ill Reg 13489)

### ILLINOIS STATE TOLL HIGHWAY AUTHORITY

State Toll Highway Rules (92 IAC 2520) proposed 7/7/14 (38 Ill Reg 13843)

### DEPT OF LABOR

Health and Safety (56 IAC 350) proposed 7/7/14 (38 Ill Reg 13728)

### DEPT OF INSURANCE

Notice of Eligibility (Repealer) (50 IAC 5301) proposed 6/20/14 (38 Ill Reg 12669)

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## New Rules

### ■ MOTOR FUEL TAX

DOR also adopted amendments to the Part titled Motor Fuel Tax (86 IAC 500; 38 Ill Reg 10885) effective 8/21/14 implementing a formula for calculating motor fuel tax on compressed natural gas (CNG). The rulemaking establishes that for purposes of determining the per-gallon motor fuel tax, 5.66 pounds of CNG (126.67 cubic feet at 60 degrees F. and one atmosphere pressure) equals one gallon. Businesses that sell CNG to consumers are affected by this rulemaking.

Questions/requests for copies of the 2 DOR rulemakings: Paul Caselton (217/782-7055) for Part 100 and Jerilynn T. Gorden (217/782-2844) for Part 500, DOR, 101 W. Jefferson St., Springfield IL 62794.