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Editor

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, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, 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 6 Parts, all effective 12/2/14, implementing Public Act 98-651, which was effective 6/16/14. Companion emergency rules (where noted) implemented some of these provisions effective 7/7/14. 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 changes stemming from the federal Affordable Care Act and other statutes.

■ MEDICAID ELIGIBILITY

HFS adopted amendments to Medical Assistance Programs

(89 IAC 120; 38 Ill Reg 14654) concerning applications for medical assistance. Companion emergency amendments appeared in the *Illinois Register* at 38 Ill Reg 15646. The amendments provide that verification of current resources is not required (unless there is specific cause to question the reported value of these resources) for persons who are receiving Supplemental Security Income (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,

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Proposed Rulemakings

DRIVER'S LICENSES

The SECRETARY OF STATE proposed amendments to Issuance of Licenses (92 IAC 1030; 38 Ill Reg 23559) implementing Public Acts that create a telescopic lens nighttime driving permit. Applicants for the permit must have a valid driver's license and have operated a vehicle for the last 6 months during daylight hours with visual aid arrangements (other than standard glasses/contact lens), submit a current favorable telescopic lens report from a licensed vision specialist verifying that the applicant is safe to drive at night, and have a driving record that is free from accidents caused by the applicant for the last 6 months. If the driver is found to be at fault for an accident between dusk and 10 p.m., the Department will notify

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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) and General Assembly (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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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. Since 1st Notice, HFS has clarified the contents of its requests for further information regarding an applicant and clarified who may request extensions of time for providing such information. This rule affects medical assistance applicants and agencies or counselors who assist applicants for long-term care assistance.

ALL KIDS

HFS also adopted amendments to Covering All Kids Insurance Program (89 IAC 123; 38 Ill Reg 14656) establishing additional eligibility criteria for the All Kids health insurance program in accordance with the federal Affordable Care Act. A companion emergency rule appeared in the *Register* at 38 Ill Reg 15666. 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. A change since 1st Notice removed obsolete language concerning redeterminations of eligibility.

■ COVERED SERVICES

Amendments to Medical Payment (89 IAC 140; 38 Ill Reg 14658, 16096 and 18022), which combine three separately proposed rulemakings and replace two emergency rules, restore coverage for various services that had been reduced or eliminated under SMART; establish coverage for medical and surgical transsexual treatment (based on provisions of the ACA and Illinois Human Rights Act forbidding gender-based discrimination in health insurance coverage) beginning

4/1/15; change payment methodologies for encounter rate clinics; institute new admissions data reporting requirements for nursing homes; and clarify rules for filing medical claims that are the subject of litigation and for which HFS is the secondary payer. A companion emergency rule to 38 Ill Reg 14658 (dental services, prescription provisions) appeared in the *Register* at 38 Ill Reg 15673. A companion emergency rule to 38 Ill Reg 18022 (nursing home data reporting requirements) appeared in the *Register* at 38 Ill Reg 18167 and was effective 8/18/14. 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 former limit of 20 visits per year for speech, hearing and language therapy services is removed, but prior approval for therapy services will be required. Since 1st Notice, HFS has restored and updated lists of covered dental and podiatry services and a list of dental services requiring prior approval (these lists had been proposed for repeal). The rule also implements an assessment of \$6.07 per day per resident, plus a licensing fee of \$1.50 per day

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Proposed Rulemakings

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the permittee that the permit will be withdrawn in 10 days and allow the driver to apply for telescopic nighttime driving privileges. Permits will expire 6 months from the date of issuance. The rulemaking also removes a letter from the Social Security Administration stating ineligibility for a Social Security number from the list of required documents that an applicant for a non-visa status temporary visitor driver's license must present. SOS also proposed an amendment to School Bus Driver Permit (92 Ill Adm Code 1035; 38 Ill Reg 23577) updating a cross reference to the federal regulation governing post-accident testing requirements for school bus drivers.

Questions/requests for copies/comments on the 2 SOS rulemakings through 2/2/15: Jennifer Egizii, SOS, 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

SNAP ELIGIBILITY

The DEPARTMENT OF HUMAN SERVICES proposed an amendment to Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 38 Ill Reg 23544) implementing a one-year federal waiver (effective 3/1/15 through 2/29/16) allowing households that meet expedited service criteria and whose identity can be verified to receive SNAP benefits temporarily if DHS is unable to conduct an immediate interview. Normally,

applicants from households that qualify for expedited service (liquid assets of \$100 or less, less than \$150/month in gross income, or households with destitute migrant or seasonal farm workers) must be interviewed on the day of application or on the next working day. If DHS is unable to schedule an interview within this time frame, the household will receive benefits based upon information provided on the application and any other readily available information for one month if the application was submitted on the 1st through the 15th of the month, or two months if submitted after the 15th. Notice of the interview appointment will be mailed along with a request for any necessary verification. If the applicant does not respond to the request or provide verification, no further action will be taken on the case.

Questions/requests for copies/comments through 2/2/15: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

KIDNEY TRANSPLANTS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to Special Eligibility Groups (89 IAC 118; 38 Ill Reg 23537) implementing a provision of Public Act 98-651. A companion emergency amendment effective 10/1/14 for a maximum of 150 days appeared in the *Illinois Register*

at 38 Ill Reg 19799. The proposed amendment authorizes medical assistance coverage of kidney transplants for non-U.S. citizens who are already receiving limited medical assistance coverage for dialysis; do not qualify for coverage under any other government-funded or private health insurance plan; meet Illinois residency requirements; and would otherwise qualify for medical assistance based on income, assets and other eligibility criteria. Transplants must be pre-certified and determined to be medically necessary. Payment to the provider shall be at a single bundled rate which covers the surgery and all associated services. Immunosuppressant drugs must be acquired through a provider approved by HFS specifically for this program and HFS will reimburse for these drugs separately. Hospitals that offer kidney transplant services may be affected.

Questions/requests for copies/comments through 2/2/15: Jeanette Badrov, HFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233, HFS.Rules@illinois.gov

■ STATE FAIR CONCESSIONS

The DEPARTMENT OF AGRICULTURE proposed amendments to the Part titled General Operations of the State Fairs and Fairgrounds (8 IAC 270; 38 Ill Reg 23525) amending

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New Rules

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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. The rulemaking also requires nursing homes to submit resident admission data to HFS within 15 business days after receiving the results of the screening determining that the resident is Medicaid eligible (formerly, within 30 calendar days of admission). Changes in resident status (e.g., death, discharge) must be submitted within 5 business days after the change occurs. Effective 9/1/14, all admission data must be submitted electronically to HFS. All admission documents, hard copy or electronic, must be maintained in the resident’s file. Other provisions extend the current hospital assessment program through 6/30/18; make adjustments to the amount of the assessment; allow providers under the Cook County health system one year to file claims; and set a benchmark payment rate of 85% of average costs, subject to adjustments for inflation and other factors (formerly, a flat rate of \$50 to \$90 per encounter), for encounter clinics serving women and infants. Hospitals, long term care

facilities, supportive living facilities, encounter rate clinics, and medical providers are affected by this rulemaking.

■ SUPPORTIVE LIVING

The HFS amendments to Specialized Health Care Delivery Systems (89 IAC 146; 38 Ill Reg 14779) 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. Companion emergency rules appeared in the *Register* at 38 Ill Reg 15713. The amendments de-link 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 amendments to Reimbursement for Nursing Costs for Geriatric Facilities (89 IAC 147; 38 Ill Reg 14781) implementing new payment rates and add-on payments for nursing homes using Resource Utilization Group IV (RUG-IV) methodology. Companion emergency amendments appeared in the *Register* at 38 Ill Reg 15723. 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 rulemaking.

■ LONG TERM CARE

Finally, HFS adopted amendments to Long Term Care Reimbursement Changes (89 IAC 153; 38 Ill Reg 14802) increasing

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Proposed Rulemakings

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procedures for applying, reapplying and paying for space rental at the Illinois State Fairs in Springfield and DuQuoin. Returning concessionaires must submit a letter of intent to participate in the following year's Fair by 12/15, while applications for new concessionaires will be considered beginning 2/1. Requests from a returning concessionaire for reassignment or relocation of space must be submitted by 2/1. For inside concessionaires, full payment of space fees, electrical service fees and the space rental contract is due by 7/1. Outside concessionaires must pay 1/3 of their space, electrical and contract fees by 7/1 and the remaining 2/3 by the Monday preceding the Fair. New outside concessionaires whose applications are approved after 7/1 must submit 1/3 of their fees at the time of application and the remainder by the Monday preceding the Fair. Fees may be paid via cash, personal or business checks, money orders, or certified/cashier's checks. Outdoor concessionaires at the Springfield Fair must open no later than 10 a.m. (currently, 8 a.m.) on the opening day of the Fair. The rulemaking also removes a prohibition on roving games of chance, raffle ticket sales, and gambling and removes conditions currently used to calculate percentage rate splits on gross receipts. Concessionaires and vendors at the State Fairs are affected by this rulemaking.

Questions/requests for copies/comments through 2/2/15: Susan Baatz, DOA, State Fairgrounds, P.O. Box 19281, Springfield IL 62794-9281, 217/524-6905.

TEACHERS' RETIREMENT

The TEACHERS' RETIREMENT SYSTEM (TRS) proposed amendments to The Administration and Operation of the Teachers' Retirement System (80 IAC 1650; 38 Ill Reg 23581) revising its requirements concerning reporting of Social Security numbers (SSNs) as part of its administration of Qualified Illinois Domestic Relations Orders (QILDROs). If a full SSN is not on the face of a court order, the order must be accompanied by a Notice of Confidential Information Within Court Filing in the form adopted by the System containing the full SSN. This shall be done for such submissions regarding QILDROs to the System as consent to issuance forms and calculation orders. TRS will now also report nontaxable portions of member benefits to recipients and annuitants.

Questions/requests for copies/comments through 2/1/15: Cynthia Fain, TRS, 2815 W. Washington, PO Box 19253, Springfield IL 62794-9253, 217/753-0375.

DFPR RULE WITHDRAWAL

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

has withdrawn proposed amendments to the Part titled Community Association Manager Licensing and Disciplinary Act (68 IAC 1445; 38 Ill Reg 16062) that appeared in the 8/1/14 *Illinois Register*. The rulemaking established licensing and continuing education requirements for Supervising Community Association Managers and Community Association Management Firms. DFPR states that it is withdrawing this rulemaking because numerous issues were raised through the public comment process and the Department also discovered unanticipated costs that require reevaluation of the licensing structure. A new rulemaking will be proposed in 2015 to address these issues.

CORRECTION

The JOINT COMMITTEE ON ADMINISTRATIVE RULES has issued a Notice of Publication Error for an adopted Pollution Control Board rulemaking titled Collection of Out-of-Service Mercury Thermostats (38 IAC 190), which appeared in the 12/5/14 *Illinois Register* at 38 Ill Reg 22635. The published deadline for filing a petition for review of the validity or application of a thermostat collection goal should have been 1/9/15. JCAR regrets this error.

New Rules

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by 8.17% the support component of rates paid to skilled and intermediate care facilities on and after 7/1/14. Companion emergency amendments appeared in the *Register* at 38 Ill Reg 15732. 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 ventilators 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. Since 1st Notice, further statutory criteria for determining whether a facility provides clinically complex care have been added. Nursing homes and pediatric long term care facilities are affected by this rulemaking.

■ MENTAL HEALTH FACILITIES

HFS adopted amendments to the Part titled Mental Health Services in Nursing Facilities (89 IAC 145; 38 Ill Reg 14076 and 14772), effective 12/2/14, that combine two separately proposed rulemakings. One amendment provides that use of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) system

of classifying mental illnesses will continue until the new ICD-10-CM system is implemented. Since 1st Notice, HFS has removed a proposed 10/1/14 effective date for ICD-10-CM. The other amendment repeals 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. Long-term care facilities may be affected by this rulemaking.

Questions/requests for copies of the 7 HFS rulemakings: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233, HFS.Rules@illinois.gov

ELECTRIC UTILITIES

The ILLINOIS COMMERCE COMMISSION adopted an amendment to Uniform System of Accounts for Electric Utilities (83 IAC 415; 38 Ill Reg 7691) effective 12/2/14 that updates (from 6/15/06 to 11/27/13) the incorporation of 18 CFR 101 (FERC's Uniform System of Accounts) and reflects the addition of new plan accounts and operating and maintenance expense accounts for electric utilities.

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

■ CHARITABLE TRUSTS

The TREASURER adopted a new Part titled Rules for Charitable Trust Stabilization Committee (74 IAC 650; 38 Ill Reg 15890) effective 12/4/14. The rule defines key terms and includes statutory criteria for a recipient to be awarded grants from the Charitable Trust Stabilization Fund (the recipient must be a not-for-profit corporation exempt from federal taxation, organized under the General Not for Profit Corporation Act of 1986, and must comply with Charitable Trust Act). Additional grant award criteria are that the charity must be domiciled in Illinois, have one full-time equivalent employee and have adopted a non-discrimination policy. The Charitable Trust Stabilization Committee (created by statute, comprised of the Treasurer, Attorney General, Lieutenant Governor, Director of Department of Commerce and Economic Opportunity, Director of the Division of Financial Institutions of the Department of Financial and Professional Regulation (of those named parties' designees) and 6 citizens appointed by the Treasurer shall give special attention to grant applicants with an operating budget of less than \$1 million and that are located in a depressed area as defined in the Illinois Enterprise Zone Act. Grant applications must include federal IRS documentation and Illinois Attorney General documentation under the

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New Rules

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Charitable Trust Act, as well as contracts with professional fundraisers, Articles of Incorporation, etc., a listing of all officers, directors or trustees and addresses and contact information, and an inventory of all grants the applicant has received in the last 2 years, as well as other documentation deemed necessary by the Treasurer or the Committee. An initial review of an application shall be performed by the Treasurer and then reviewed by the Committee. The final recommendations of the Committee for making grant awards shall not be binding on the Treasurer, who shall approve or deny the grant application in

whole or in part. Applicants shall be notified by the Treasurer of the approval, denial or other action taken concerning a grant application. Grant awards may be used for stabilization purposes, with the amount determined by the State Treasurer up to \$25,000, and normally shall be for one year unless stated otherwise in the grant agreement. Statutory requirements for grant agreements are included in the rule (e.g., agreements must describe the purpose of the grant, specify how payments shall be made, and require that outstanding funds be returned to the State after the grant period.) Grantees must submit a financial status report to the Treasurer detailing the use of grant funds

within 6 months after the date of the grant award, as well as 60 days after termination of the grant award, unless otherwise specified in the grant agreement. The Treasurer shall publish information on the program on its website. Since 1st Notice, language has been added clarifying that all grants awarded under this Part are subject to the Grant Funds Recovery Act. Non-profit entities benefitting from charitable trusts are affected by this rulemaking.

Questions/requests for copies: Neil Olson, Office of the Treasurer, 400 W. Monroe St., Ste. 401, Springfield IL 62704, 217/557-8235, Fax: 217/785-8554.

JCAR Meeting Action

At its 12/16/14 meeting, the Joint Committee on Administrative Rules objected to one proposed rulemaking, issued a recommendation concerning another proposed rule and extended the Second Notice period for a third proposed rulemaking.

OBJECTION

JCAR objected to the Department of Healthcare and Family Services rulemaking titled Hospital Services (89 IAC 148; 38 Ill Reg 18052) because the Department is expanding medical assistance payments to certain hospitals in this rulemaking that are not specifically authorized by statute. (The rulemaking institutes or increases Medicaid Facilitation and Utilization Payments for 6 hospitals.)

RECOMMENDATION

With regard to the Pollution Control Board rulemaking titled General Rules (35 IAC 101; 38 Ill

Reg 12685) JCAR recommended that PCB be more timely in codifying its procedural rules to reflect changes in Board practice. PCB has been operating the Clerk's Office On-Line (COOL) file management system since 2005 without codifying those procedures in its rules.

EXTENSION

JCAR and the Department of Insurance agreed to extend the Second Notice period an additional 45 days for the rulemaking titled Health Carrier External Review (50 IAC 5430; 38 Ill Reg 16596) so that DOI can address outstanding issues raised by commentors. The rulemaking will be considered again at JCAR's 1/13/15 meeting. (The rulemaking, among other measures, lists information that must be included on notices to insured persons appealing an adverse determination such as rejection of a claim.)

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 the Committee's January 13, 2015, meeting, scheduled for 11 a.m. at the Stratton Office Building, Springfield.

SECRETARY OF STATE

Public Building Construction (71 IAC 2000) proposed 10/24/14 (38 III Reg 20189)

Public Use of the Capitol Complex and Springfield Facilities (71 IAC 2005) proposed 10/24/14
(38 III Reg 20196)

State Records Commission (44 IAC 4400) proposed 7/7/14 (38 III Reg 13747)

Local Records Commission (44 IAC 4000) proposed 6/6/14 (38 III Reg 11734)

LOCAL RECORDS COMMISSION

Local Records Commission of Cook County (44 IAC 4500) proposed 8/1/14 (38 III Reg 16181)

DEPT OF REVENUE

Charitable Games (86 IAC 435) proposed 10/24/14 (38 III Reg 20143)

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Don Harmon

Representative Lou Lang

Senator Tony Muñoz

Representative David Leitch

Senator Sue Rezin

Representative Don Moffitt

Senator Dale A. Righter

Representative Tim Schmitz

Senator Ira Silverstein

Representative André Thapedi

**Vicki Thomas
Executive Director**