

*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

### ■ SPECIAL EDUCATION

The STATE BOARD OF EDUCATION adopted amendments to Special Education Facilities under Section 14-7.02 of the School Code (23 IAC 401; 41 Ill Reg 3831) effective 3/21/18, which apply to private or out of State special education facilities that receive reimbursement from school districts for enrolling special needs students who cannot be adequately served in a less restrictive setting. Facilities seeking approval as special education providers under this Part must apply between 9/1 and 2/1 of the school year prior to the year for which approval is sought. At least 5 hours of instruction per school day must be provided, and the regular school year must include at least 176 student attendance days (which may include up to 2 parent-teacher conference days), beginning

with the 2020-21 school year. The maximum allowable student to licensed teacher ratio is 5:1, or 10:1 if a full-time paraprofessional is also provided, and no changes in class size may be requested or approved during the first 30 days of the school year. The facility must immediately notify the student's home school district of any change in a student's residence or guardianship, or of any absence of 5 consecutive days or more (formerly, 5 or more consecutive days of unexcused absence). Staff rosters will be checked against the Illinois Murderer and Violent Offender Against Youth registry (in addition to the Illinois Sex Offender registry) or against a comparable out of State registry. Effective with the 2019-20 school year, providers using disciplinary or behavioral techniques prohibited

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## Proposed Rulemakings

### ■ EMERGENCY SERVICES

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Emergency Medical Services, Trauma Center, Comprehensive Stroke Center, Primary Stroke Center and Acute Stroke Ready Hospital Code (77 IAC 515; 42 Ill Reg 6024) implementing the following Public Acts: PA 96-1469, which authorizes DPH to adopt minimum standards in rule for critical care providers; PA 98-973, which adopts new national EMS education standards and creates the Advanced Emergency Medical Technician (A-EMT) category in addition to the existing categories (EMT, EMT-Intermediate and Paramedic); PA 99-319, which replaces the advance directive term DNR (Do Not Resuscitate) with POLST (Practitioner Orders for Life-Sustaining Treatment,

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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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in Illinois will not receive SBE approval. Effective 7/1/18, out of State providers not recognized or regulated by the state in which they are located will no longer be SBE approved, although current placements of Illinois students in these facilities may continue. An enrollment hold placed on an out of State residential facility by its licensing agent will also serve as an enrollment hold for Illinois school districts. The rulemaking revises numerous aspects of the application, review and approval process for these providers. Facilities located more than 50 miles outside of Illinois no longer require an on-site visit by an SBE representative. Facilities that intend to close, move, or discontinue any approved programs must give 40 school days (currently, 60 calendar days) notice to the State Superintendent and to any school districts with which they have contracted to provide services. If the State Superintendent determines a facility is not in compliance, the facility has 80 school days to address the areas of noncompliance; if it fails to meet this deadline, the facility will be placed on “pending further review” status and may not accept any new Illinois students. Facilities pending further review must submit progress reports every 10 days for the next 40 days. If all areas of noncompliance are not addressed within this period, the facility will be placed on “nonapproved” status. Illinois

facilities must keep on file their most recent State Fire Marshal inspection report, which must be no more than 36 months old, or if that report is not available, an inspection report from a local governmental agency that is no more than 12 months old. Finally, effective 7/1/19, facilities may not pre-bill Illinois public school districts for services that have not yet been provided. Since 1<sup>st</sup> Notice, SBE has allowed continuation of current student placements (prior to 6/30/18) in out of State facilities whose programs are not state regulated. While new placements in these facilities on or after 7/1/18 remain generally prohibited, siblings of currently placed students may be placed in the same facility after 7/1/18 if the sibling’s IEP team determines that facility to be the most appropriate placement. SBE has also added numerous clarifications regarding applicability of the Part, definitions, acceptable out of State credentials, use of locked facilities, and other issues. Other changes since 1<sup>st</sup> Notice include later compliance deadlines for certain requirements; retention of the current minimum of 5 instructional hours per school day (instead of 5½ hours); additional references to applicable State and federal laws; and removal of the one-year wait for nonapproved providers to reapply for SBE approval. School districts and special education facilities are affected by this rulemaking.

Questions/requests for copies: Lindsay Bentivigna, SBE, 100 N. First St. S-493, Springfield IL 62777-0001, 217/782-5270, [rules@isbe.net](mailto:rules@isbe.net)

## ■ CURRENCY EXCHANGES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to Schedules of Maximum Rates to be Charged for Check Cashing and Writing of Money Orders by Community and Ambulatory Currency Exchanges (38 IAC 130; 41 Ill Reg 10220) effective 3/23/18, raising the maximum rates currency exchanges may charge for cashing checks beginning 7/1/18. The new rates (revised since 1<sup>st</sup> Notice) include a flat 1.5% of the face amount for all public assistance checks (e.g., Social Security, unemployment compensation, veteran’s benefits, other forms of federal or State monetary assistance). For personal checks, printed payroll checks, and government checks other than public assistance, fees of 2.33% to 3.5% of the face amount may be charged based on the amount of the check (\$100 or less, \$100 to \$1,250, or more than \$1,250) and a \$1 service charge may be added for checks of \$100 or less. For all other checks, maximum rates are 2.4% plus a \$1 service charge if \$100 or less, 2.4% if between \$100 and \$1,250, and 3.5% if over \$1,250. Various technical, non-substantive changes are also

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# Proposed Rulemakings

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which reflect an individual's wishes regarding CPR and other medical interventions); and PA 99-661, which amends several definitions. Those affected by this rulemaking include ambulance and medical transport services and units of local government that provide emergency responder services.

Questions/requests for copies/comments through 5/21/18: Elizabeth Paton, DPH, 535 W. Jefferson St., 5<sup>th</sup> Fl. Springfield IL 62761, 217/782-2043, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)

## ■ INVESTMENT TAX CREDITS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed amendments to Angel Investment Credit Program (14 IAC 531; 42 Ill Reg 5932) implementing Public Act 100-328, which extends the tax credit program through 12/3/21. The rulemaking replaces the term "angel investment" (an investment in a qualified business venture in exchange for stock, or a partnership or ownership interest in the new venture, which is at risk of loss if the business fails) with "investment" and further defines a "contingent equity investment" as an investment that matures or converts to equity within 3 years. New criteria for qualifying business ventures include minimum Illinois employment thresholds of at least 51% of

current employee positions and at least 75% of employee positions created following receipt of the investment. These thresholds must be maintained for at least 3 years after the last tax credit certificate is issued to anyone claiming the credit for investment in that business. To qualify for the credit, an investor must invest at least \$10,000, but no more than \$2 million, in any single qualified new business venture. From the \$10 million in Statewide program tax credits that may be claimed annually, \$500,000 will be allocated to investments in ventures owned by minorities, women, or persons with disabilities and another \$500,000 allocated to investments in ventures whose principal place of business is in a county with a population of 250,000 or less. Other provisions address risk mitigation measures that make investments ineligible for the credit; liquidity events; allocation and rollover of credits by calendar quarter; tracking and reporting procedures; noncompliance by a credit claimant or a qualified business; and the definition of full-time employee. Those affected by this rulemaking include prospective investors in small businesses that qualify for the program.

Questions/requests for copies/comments through 5/21/18: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, 217/557-1820, fax 217/524-3701, [jolene.clarke@illinois.gov](mailto:jolene.clarke@illinois.gov).

## ■ NOISE POLLUTION

The POLLUTION CONTROL BOARD proposed amendments to General Provisions (35 IAC 900; 42 Ill Reg 5946), Sound Emission Standards and Limitations for Property Line-Noise Sources (35 IAC 901; 42 Ill Reg 5967), Sound Emission Standards and Limitations for Motor Vehicles (35 IAC 902; 42 Ill Reg 5988) and Measurement Procedures for the Enforcement of 35 Ill. Adm. Code 900 & 901 (35 IAC 910; 42 Ill Reg 6001). Amendments to Part 900 add or clarify definitions of terms and update incorporations by reference related to PCB's noise pollution rules. The Part 901 amendments remove obsolete compliance dates and site-specific provisions for closed sites. Amendments to Part 902 remove obsolete provisions and reference federal regulations concerning noise limitations on motor vehicles, and the Part 910 amendments update definitions, references and sound measurement procedures. Businesses subject to noise pollution standards may be affected.

Questions/requests for copies/comments through 5/21/18: Clerk's Office, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-3620. Please reference Docket R18-19. Comments may also be filed electronically via the Clerk's Office On-Line at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

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## New Rules

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being made, including updated references to DFPR's Division of Financial Institutions (formerly a separate department). Currency exchanges and their customers are affected by this rulemaking.

### ■ REAL ESTATE

DFPR adopted amendments to Real Estate Appraiser Licensing (68 IAC 1455; 41 Ill Reg 12643) effective 3/23/18 updating references to the Uniform Standards of Professional Appraisal Practice (USPAP), clarifying the requirement of a criminal background check for licensure or reinstatement, aligning the Part with federal regulations, establishing new deadlines for continuing education completion (6/30 generally, 9/30 for late completions), and making other technical changes. Since 1<sup>st</sup> Notice, DFPR has updated the referenced USPAP standards to the 2018-19 version and clarified CE renewal requirements for persons whose initial license was issued for less than 2 years. Real estate appraisers are affected.

### ■ DFPR REPEALER

DFPR also repealed the Part titled Illinois Athlete Agents Act (68 IAC 1155; 41 Ill Reg 14989) effective 4/6/18 because the underlying statute was repealed by Public Act 100-534 and this profession is no longer regulated by DFPR. Athlete agents (who recruit and contract student athletes seeking to become professional athletes) are affected.

Questions/requests for copies of the 3 DFPR rulemakings: Craig Cellini, DFPR, 320 W. Washington St., 3<sup>rd</sup> Fl., Springfield IL 62786, 217.785-0813, fax 217/557-4451.

### ■ INCOME TAX

The DEPARTMENT OF REVENUE adopted an amendment to Income Tax (86 IAC 100; 41 Ill Reg 15041) effective 3/21/18, replacing an emergency rule effective 11/30/17 at 41 Ill Reg 15097. The rulemaking implements Public Act 100-303 by requiring all employers, and payroll providers who withhold Illinois income tax for employers, to file their W-2

forms and returns for employee withholding taxes either electronically or using the same magnetic media used for their federal income tax filings. This requirement may be waived for employers or payroll providers who demonstrate that they do not have internet access. These rulemakings may affect small businesses and payroll providers.

Questions/requests for copies: Brian Stocker, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

### ■ HIV/AIDS TESTING

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to HIV/AIDS Confidentiality and Testing Code (77 IAC 697; 41 Ill Reg 3795) effective 3/12/18, implementing Public Act 99-54. The rulemaking allows physicians to notify the spouse or civil union partner of a patient with a confirmed positive test for HIV if the patient refuses to notify the spouse/partner, or has failed to do so. If the patient is under 18,

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## Proposed Rulemakings

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### TAXES

The DEPARTMENT OF REVENUE proposed amendments to Service Occupation Tax (86 IAC 140; 42 Ill Reg 6245), Use Tax (86 IAC 150; 42 Ill Reg 6280), Vehicle

Use Tax (86 IAC 151; 42 Ill Reg 6297) and Service Use Tax (86 IAC 160; 42 Ill Reg 6303), that remove obsolete provisions and language and update statutory and other references.

Questions/requests for copies/comments on the 4 DOR

rulemakings through 5/21/18: Parts 140 and 160, Jerilynn T. Gorden; Part 150, Samuel J. Moore; Part 151, Debra M. Boggess; all DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

## New Rules

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the physician may notify the patient's parent or legal guardian of the test result. The rulemaking establishes pre-test information and consent procedures for both opt-in testing (the patient must either accept or decline testing) and opt-out testing (the patient is notified that testing may take place unless he or she declines). The definition of "health care professional" for purposes of HIV/AIDS testing and other services is expanded to include advanced practice nurses and physician assistants who have clinical privileges at a hospital or ambulatory surgical treatment center or have been delegated by a physician to perform HIV/AIDS related health services, licensed podiatric physicians, and any individual certified to provide HIV testing and counseling by a State or local public health departments. Other changes expand the definition of a health care facility and adopt the definition of health care provider contained in the federal Health Insurance Portability and Accountability Act (HIPAA). Changes since 1<sup>st</sup> Notice clarify that provisions regarding disclosure of medical information apply only to HIV/AIDS related medical information and also clarify delegation of responsibility to provide pre-test information. Health care providers and facilities that provide HIV testing, counseling and treatment are affected by this rulemaking.

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

### ■ MEDICATION DISPOSAL

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY adopted a new Part titled Medication Takeback Program (35 IAC 889; 41 Ill Reg 5012) effective 5/1/18, implementing Public Act 99-480. The PA requires IEPA to establish a Statewide program providing disposal options for unused or expired prescription drugs, including controlled substances, and other pharmaceutical products. Subject to funding, IEPA may provide for the disposal of pharmaceuticals collected at approved takeback locations (which must be located at sites where pharmaceutical products may legally be sold/distributed/dispensed). The new Part establishes the process by which a takeback site may apply for IEPA approval, sets forth operating and security requirements for takeback sites, and requires operators of approved takeback sites to keep (and retain for 3 years) records of the "volume" of pharmaceuticals collected under this program. Changes since 1<sup>st</sup> Notice clarify criteria for takeback site approval (e.g., whether there are other collection sites within a 25-mile radius), require takeback locations to provide printed records of collected pharmaceuticals to IEPA on request within 48 hours, and

specify that IEPA will provide on its website a copy of the prescribed signage at the takeback location. Those affected by this rulemaking include pharmacies and other facilities that may wish to establish takeback sites.

Questions/requests for copies: Gabriel H. Neibergall, IEPA, 1021 N. Grand Ave. East, PO Box 19276, Springfield IL 62794-9276; 217/782-5544.

### ■ ENERGY ASSISTANCE

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted amendments to Low Income Home Energy Assistance Program (47 IAC 100; 41 Ill Reg 13921), effective 3/20/18, replacing emergency amendments that were effective 11/6/17 at 41 Ill Reg 14119. The rulemaking provides that a local administering agency (LAA) can be suspended or terminated from the program, and an alternate LAA assigned to serve the affected area, if the agency fails to timely submit an application for Low Income Home Energy Assistance Program (LIHEAP) or Illinois Home Weatherization Assistance Program (IHWAP) grant funding for a program year. An LAA is also subject to suspension or termination if any of its principal personnel make false representations in their applications for LIHEAP or

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## New Rules

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IHWAP grants, or are convicted of or plead guilty to a crime; if the LAA is insolvent, loses its non-profit status, or is suspended or debarred from receiving government contracts; or if the LAA denies DCEO access to its financial or other records. Agencies that administer LIHEAP or IHWAP grants and services are affected.

### ■ EDGE TAX CREDITS

DCEO also adopted amendments to Economic Development for a Growing Economy Program (EDGE) (14 IAC 527; 41 Ill Reg 12953), effective 3/20/18, replacing emergency rules that were effective 10/3/17 (41 Ill Reg 13104) and expired on 3/1/18. The rulemaking implements changes to the EDGE tax credit program stemming from Public Act 100-511 (HB 162), which reduces the capital improvement requirement for applicant projects (none for businesses employing 100 or fewer persons, \$2.5 million (formerly \$5 million) for businesses with more than 100 employees). The Act and the rulemaking also limit the amount of credit available to participating businesses to the lesser of 100% of the incremental income tax attributable to new employees, or the sum of 50% of the incremental income tax (75% if the project is in an underserved area) plus 10% of new employee training costs. Businesses that close or substantially reduce operations

at one Illinois location and merely relocate the same size operation to another Illinois location are not eligible to apply for EDGE credits (a relocating business that is expanding is eligible to apply). Agreements between an applicant business and DCEO must provide that if the applicant permanently ceases operations in Illinois during the term of the agreement, the entire credit amount must be refunded to DCEO and reallocated to the local workforce investment area in which that project was located. A business also cannot enter into more than one agreement for a single location or address at the same time. Other provisions define underserved area, local workforce investment area, training costs, and other key terms; add new reporting and transparency rules; and add reporting provisions for supplier diversity goals. Small businesses and municipalities will be affected.

Questions/requests for copies of the 2 DCEO rulemakings: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, 217/557-1820.

### ■ OUTFITTERS

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to Outfitter Regulations (17 IAC 640; 41 Ill Reg 15011), effective 3/21/18, removing from the definition of outfitting services subject to the Part individuals or businesses that merely solicit hunting clients

for a landowner, tenant or another outfitter. The rulemaking also simplifies reporting requirements for outfitters and makes requirements for Class A (deer and turkey) and Class B (waterfowl) outfitter permits consistent. Changes since 1<sup>st</sup> Notice clarify that failure to comply with the requirements of the Part may result in revocation of a current permit, denial of future permits, or suspension of permit privileges for up to 5 years. Outfitters, their employees and clients are affected by this rulemaking.

Questions/requests for copies: Javonna Ackerman, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/557-0126.

### HORSE RACING

The ILLINOIS RACING BOARD adopted an amendment to Claiming Races (11 IAC 510; 42 Ill Reg 704), effective 3/26/18, exempting starter handicap or starter allowance races from the 30-day limit on race participation by recently claimed thoroughbreds. (Generally, a claimed horse cannot start a race in which the eligibility price is less than 125% of its claiming price for 20 days after being claimed. For another 10 days thereafter the horse cannot start a race if the eligibility price is less than 100% of its claiming price.)

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## New Rules

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Questions/requests for copies: Mickey Ezzo, IRB, 100 W. Randolph, Suite 5-700, Chicago IL 60601, 312/814-5017, [mickey.ezzo@illinois.gov](mailto:mickey.ezzo@illinois.gov).

### DonA REPEALERS

The DEPARTMENT ON AGING repealed two obsolete Parts titled

Long-Term Care Insurance Partnership Program (89 IAC 260; 41 Ill Reg 8187) and Board and Care Homes Registration (89 IAC 290; 41 Ill Reg 8192) effective 3/23/18. Part 260 was repealed because the program is now administered by the Department of Healthcare and Family Services and the Department of Financial and Professional Regulation. Part 290 was

repealed because authority to oversee board and care homes was statutorily transferred to the Department of Public Health by PA 94-21.

Questions/requests for copies of the 2 DonA rulemakings: Tracey Trigillo, DonA, One Natural Resources Way, #100, Springfield IL 62702-1271, 217/785-3346.

## 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 April 17, 2018 meeting. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

### BOARD OF HIGHER EDUCATION

Data Repository, Shared Data Agreement and Fees (23 IAC 910; 42 Ill Reg 1) proposed 1/5/18

### DEPT OF CHILDREN AND FAMILY SERVICES

Licensing Enforcement (89 IAC 383; 41 Ill Reg 4544) proposed 5/5/17

### DEPT OF LABOR

Rules and Regulations Relating to the Operation of Private Employment Agencies (68 IAC 680; 42 Ill Reg 1987) proposed 1/26/18

### DEPT OF PUBLIC HEALTH

Intermediate Care for the Developmentally Disabled Facilities Code (77 IAC 350; 42 Ill Reg 1992) proposed 1/26/18

### DEPT OF STATE POLICE

Disclosure of Toxicological and Related Testing Results (20 IAC 1287; 41 Ill Reg 7916) proposed 7/7/17

### IL ENVIRONMENTAL PROTECTION AGENCY

Procedures for Informational and Quasi-Legislative Hearings (35 IAC 164; 41 Ill Reg 14851) proposed 12/8/17

Procedures for Permit and Closure Plan Hearings (35 IAC 166; 41 Ill Reg 14856) proposed 12/8/17

Public Participation in the Air Pollution Control Permit Program (35 IAC 252; 41 Ill Reg 14862) proposed 12/8/17