

*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.*

## Emergency Rule

### ■ UNMARKED BURIALS

The DEPARTMENT OF NATURAL RESOURCES adopted emergency amendments to the Part titled Rules for the Protection, Treatment and Inventory of Unmarked Human Burial Sites and Unregistered Graves (17 IAC 4170; 47 Ill Reg 13340) effective 8/31/23 for a maximum of 150 days. Identical proposed amendments appear in this week's *Illinois Register* at 47 Ill Reg 13149. The emergency and proposed rulemakings implement Public Act 103-446, which expands DNR's authority regarding protection of human remains, grave artifacts, grave markers and unregistered graves that are more than 100 years old and are discovered, or believed to be located, outside of established cemeteries. The rulemakings change the name of the Part to Rules for the Protection of Human Remains, Grave Artifacts, Grave

Markers and Unregistered Graves and establishes a process through which the contents of an unmarked or unregistered grave may be repatriated to an individual or group with documentable kinship (biological, legal or affinal relationship) to the deceased person or persons, or to a tribal nation or other related group with

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an historically documented claim to the contents. It also requires excavations or other work that may disturb unregistered graves, or which unexpectedly encounters an unregistered grave, to receive a permit from DNR before commencing or continuing.

### Unregistered Graves

If DNR has credible information indicating that one or more

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## Adopted Rules

### ■ ASSISTED LIVING

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Assisted Living and Shared Housing Establishment Code (77 IAC 295; 47 Ill Reg 356) effective 8/30/23, updating life safety requirements, and clarifying complaint investigation procedures. The rulemaking updates the definition of an assisted living establishment to reflect current statutes and updates National Fire Protection Association (NFPA) life safety requirements for assisted living units. The new requirements will apply to new establishments constructed on or after 9/1/23; existing establishments that have been licensed or approved for construction as of 8/31/23 will remain subject to current standards. The rulemaking clarifies that DPH must conduct an

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**ADOPTED 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.

## Adopted Rules

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on-site investigation of any complaint that does not involve abuse or neglect within 30 days of the complaint (formerly, on-site investigation of abuse/neglect reports was required within 24 hours if a resident's life or safety was in imminent danger and within 7 days otherwise). Other provisions specify the information to be included in an establishment's statement of correction (outlining actions that will be taken to remedy violations); define a reportable serious incident or accident as any occurrence that causes a resident physical or emotional harm or injury; and implement Public Act 102-1007 by requiring establishments to inform employees of available employee assistance programs. Since 1<sup>st</sup> Notice, in response to comment from affected facilities, DPH removed proposed increases in licensing fees and fines for violations (these will be addressed in a future rulemaking); modified

the definition of a violation; changed the effective date for new vs. existing construction standards; kept existing bathtub and shower requirements; and restored a dispute resolution procedure that had been stricken. Assisted living and shared housing establishments are affected by this rulemaking.

### ■ STUDENT ASSISTANCE

DPH also adopted amendments to the Part now called State Loan Repayment Program Code (77 IAC 582; 47 Ill Reg 7270) effective 8/29/23, implementing PA 101-118 by making eligible health care providers (formerly, primary care physicians) eligible for educational loan repayment assistance in accordance with the Underserved Health Care Provider Workforce Act. The rulemaking also changes the name of the Part from Student Loan Repayment Program Code, updates and adds various definitions (e.g., advanced practice registered nurse, board-certified physician, board-eligible

physician, medical facility) and changes "suspension" of a loan repayment obligation to "deferment". Health care providers that have received loan repayment assistance from DPH, and their employers, may be affected.

*Questions/requests for copies of the 2 DPH rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6<sup>th</sup> Floor, Springfield IL 62701, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)*

### DoIT PUBLIC INFORMATION

The DEPARTMENT OF INNOVATION & TECHNOLOGY (DoIT) adopted amendments to the Part titled Rulemaking and Organization (2 IAC 1530; 47 Ill Reg 13258) effective 8/30/23, updating its organizational structure and its Chicago office address.

*Questions/requests for copies: Adam Bourdette, DoIT, 555 W. Monroe St., Suite 200-N, Chicago IL 60661, 773/909-8887, [Adam.Bourdette@Illinois.gov](mailto:Adam.Bourdette@Illinois.gov)*

## Emergency Rule

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unmarked/unregistered graves are located on private land, it may notify the owner in writing and require the owner to obtain a permit from DNR before undertaking any work that may disturb these graves. DNR may also, with the property owner's permission, recommend that a professional archeologist investigate the grave site. If Native American grave sites are

encountered, approval of the tribal nation is required prior to any invasive archeological field investigation. An application for a permit to undertake work at or near an unregistered grave site must specify whether it is feasible to remove the grave contents, or whether the site will be preserved and avoided. If an emergency situation exists DNR may authorize excavation and analysis of the grave contents by a professional archeologist at no cost to the

property owner. A field summary of the work performed, analysis of the contents of a grave site, and the final disposition of the contents must be submitted to DNR within 60 days after this work is completed. DNR may suspend a permit (and the permit holder may appeal the suspension) if public health or safety is endangered or the permittee is in violation of the

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# Proposed Rulemakings

## ■ EDGE TAX CREDITS

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 47 Ill Reg 13167) implementing two Public Acts and clarifying various aspects of the Economic Development for a Growing Economy (EDGE) tax credit. The amendments clarify documentation and procedure for claiming an EDGE credit on an income tax return and provide additional guidance to owners of a partnership or subchapter S corporation for pass through of the credit. Other provisions implement changes to the EDGE Credit withholding election made by Public Acts 102-700 and 103-9. An election may be made by a startup taxpayer, as defined in the Economic Development for a Growing Economy Tax Credit Act, for any credit awarded under an agreement executed on or after 4/19/22 and shall be effective until the startup taxpayer has incurred Illinois income tax liability. Additionally, an EDGE Credit withholding election shall allow the credit to be taken against payments due during the first withholding reporting period that begins after the end of the withholding reporting period in which the credit is awarded, rather than in the first calendar year after the credit is awarded. Additional updates and corrections are also included. Businesses that qualify for or are receiving EDGE tax credits are affected by this rulemaking.

*Questions/requests for copies/ comments through 10/30/23:*

## ■ AUTISM SERVICES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES will hold a public hearing on proposed amendments to Medical Payment (89 IAC 140; 47 Ill Reg 315) on **Monday, Oct. 2, at 11 a.m.** via WebEx.

Participants may register at the following link: <https://illinois.webex.com/webex/register/rf515f102d17944e2c72da7f999476753>

Meeting Number: 2633 069 1014

Password: 10223

or by phone at 1-312-535-8110, access code 2633 069 1014.

Persons wishing to provide testimony at this hearing must e-mail [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov) by 5 p.m. on Friday, Sept. 29. Disability access requests may be directed to [Omar.Shaker@illinois.gov](mailto:Omar.Shaker@illinois.gov) no later than 9 a.m. on Oct. 2. Please include "Request to Provide Public Comment (or Request for Disability Support) for Adaptive Behavior Support (ABS) Public Hearing" in the subject line.

*Jennifer Uhles, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844, [REV.GCO@illinois.gov](mailto:REV.GCO@illinois.gov)*

## HOSPICE PROGRAMS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Hospice Programs (77 IAC 280; 47 Ill Reg 13152)

## HFS Public Hearing

This hearing concerns proposed rules published in the 1/13/23 *Illinois Register* implementing Public Act 101-10, which mandates Medical Assistance coverage of treatment for autism spectrum disorders on and after 2/1/22. The rulemaking authorizes payment for Adaptive Behavior Support (ABS) services provided by Behavioral Health Clinics or independent ABS clinicians; includes Behavior Assessment and Treatment Planning, Applied Behavior Analysis (ABA) and ABA coaching or training for parents/caregivers among covered services; and specifies services that are not covered (e.g., diagnostic evaluation, interventions that involve restraint or seclusion, services provided under an Individualized Family Service Plan or Individualized Education Plan). Providers of ABS or ABA services may be affected.

*Questions regarding the rulemaking or the public hearing: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Floor, Springfield IL 62763-0002, [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov)*

implementing Public Act 103-224, which increases the number of allowable licensed hospice residences from 5 to 16 in each of 3 geographic areas (counties with a population of 700,000 or more; counties with populations of 200,000 up to 700,000; counties of less than 200,000 population)

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## Proposed Rulemakings

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defined in the Act. Other amendments allow license applicants up to 90 days to submit additional documentation after DPH completes its initial review of an application and update incorporated federal regulations.

*Questions/requests for copies/ comments through 10/30/23: Tracey Trigillo, DPH, 524 S. Second St., 6<sup>th</sup> Floor, Springfield IL 62701, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)*

### TREASURER PROCUREMENT

The OFFICE OF THE STATE TREASURER proposed amendments to the Part titled Procurement (44 IAC 1400; 47 Ill Reg 13193) updating and clarifying statutory references, definitions, and procedures for procurements made by the Office. The Treasurer may procure goods and services through cooperatives or consortia approved by its Chief Procurement Officer or the Chief Procurement Officer for General Services. Solicitations must encourage prospective vendors to hire qualified veterans, minorities, women, persons with disabilities,

and residents discharged from Illinois adult correctional centers. Awards to bidders other than the lowest responsive and responsible bidder must be accompanied by explanations of why that bidder was selected. Emergency procurements are limited to 90 days. Businesses seeking contracts with the Treasurer are affected.

*Questions/requests for copies/ comments through 10/30/23: Chris Flynn, OST, 1 E. Old State Capitol Plaza, Springfield IL 62701, 217/208-2001, fax 217/ 524-3822, e-mail: [CFlynn@illinoistreasurer.gov](mailto:CFlynn@illinoistreasurer.gov)*

## Emergency Rule

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conditions of the permit, the Act or this Part. Existing rules establishing criminal and civil penalties and damages for violations of the Act are repealed.

### Kinship Determination

DNR will also attempt to determine the kinship of any human remains recovered from an unregistered grave via adequate historical documentation, which may include deeds, church records, treaties, atlases, maps, tribal knowledge and traditions, and other written or oral sources. If kinship is established, DNR will notify the relevant persons or entities by registered mail. If the recipient individual or group accepts kinship, repatriation or care of the remains will require written permission from the individual or group. If kinship cannot be

established, DNR will attempt to determine whether a related group has an historical connection to the grave site. If the group or groups connected to the site are Native American, DNR will notify all related tribal nations and invite them to consult with DNR regarding removal of the remains or care of the site. If the origin of the grave cannot be determined or no person or entity responds to DNR's notifications, DNR may post public notice in a newspaper of general circulation in the county where the grave is located prior to any excavation of the grave contents. DNR will maintain a list of tribal nations that have connections to unregistered grave sites and shall notify them of any encounter with human remains or grave artifacts. DNR must consult with the relevant tribal nation or nations before deciding whether to remove and repatriate remains/

artifacts or leave them in place and protect the burial site.

### Unregistered Cemeteries

The emergency and proposed rules also require persons or groups probing an unregistered cemetery for the purpose of recovering and restoring grave markers to obtain a permit from DNR. The permit application shall include the location of the cemetery; the proposed preservation plan; and proof of ownership of the property or written permission from the property owner.

*Questions/requests for copies/ comments on the proposed rulemaking through 10/30/23: John Fischer, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809, [dnr.rules@illinois.gov](mailto:dnr.rules@illinois.gov)*



## JCAR Meeting Action

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At its 9/12/23 meeting, the Joint Committee on Administrative Rules took the following actions:

### OBJECTION

JCAR objects to the Department of Labor's emergency rule titled Day and Temporary Labor Services Act (56 IAC 260; 47 Ill Reg 12457) because the rulemaking is too vague to provide meaningful guidance to employers looking to comply with its requirements, especially small businesses. 1 Ill. Adm. Code 230.400(a)(3)(E) requires agencies to use simple and clear language that can be understood by the persons and groups the rulemaking will affect and 1 Ill. Adm. Code 230.400(a)(3)(B) requires agencies to consider the economic effect of the rules upon those regulated, including small businesses. By not using clear standards that are applicable to all sizes of employers for purposes of determining comparators and calculations for hourly cash equivalents of benefits, the Department has created immediate confusion, rather than workable standards regulated entities can use to demonstrate compliance with PA 103-437. Additionally, the Committee wishes to remind the agency that an immediate effective date of a Public Act is not necessarily grounds for an emergency rulemaking.

### EXTENSIONS

JCAR, with the concurrence of the respective agencies, agreed to extend the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the October 17 JCAR meeting.

Capital Development Board, Illinois Energy Conservation Code (71 IAC 600; 47 Ill Reg 7177)

Elevator Safety Review Board, Illinois Elevator Safety Rules (41 IAC 1000; 47 Ill Reg 6388)

Illinois Gaming Board, Video Gaming (General) (11 IAC 1800; 47 Ill Reg 7816)

Secretary of State, Public Use of the Capitol Complex and Springfield Facilities  
(71 IAC 2005; 47 Ill Reg 6415)

Office of the State Fire Marshal, Fire Sprinkler Contractor Licensing Act (41 IAC 109; 47 Ill Reg 6614)

### POSTPONEMENT

JCAR postponed action on the Department of Healthcare and Family Services rulemaking titled Medical Payment (89 IAC 140; 47 Ill Reg 5872), which is on extended Second Notice, until the October 17 meeting.

## 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 October 17, 2023, meeting in Chicago. 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.

### DEPT ON AGING

Community Care Program (89 IAC 240; 47 Ill Reg 7036) proposed 5/26/23

### DEPT OF PUBLIC HEALTH

Community Living Facilities Code (77 IAC 370; 47 Ill Reg 9148) proposed 7/7/23

## Joint Committee on Administrative Rules

**Senator Cristina Castro**

**Representative Eva-Dina Delgado**

**Senator Bill Cunningham, *co-chair***

**Representative Jackie Haas**

**Senator Donald DeWitte**

**Representative Steven Reick**

**Senator Dale Fowler**

**Representative Ryan Spain, *co-chair***

**Senator Kimberly Lightford**

**Representative Curtis Tarver, II**

**Senator Sue Rezin**

**Representative Dave Vella**

**Kim Schultz  
Executive Director**