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Joint Committee on Administrative Rules
Illinois General Assembly

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VOL. 33

May 1, 2009

Issue 18

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

☞ MEDICAID FRAUD

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an amendment to "Practice in Administrative Hearings" (89 Ill Adm Code 104; 32 Ill Reg 13751), effective 4/15/09, that permits DHFS to temporarily withhold payments to a medical services provider or alternate payee upon receipt of credible evidence that payments may involve fraud or willful misrepresentation on the part of the provider or payee. The Department will also withhold payments during administrative proceedings to terminate the provider from the program or revoke approval of an alternate payee. Medicaid-funded providers may be affected by this rulemaking.

Questions/requests for copies: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl. Springfield IL 62763-0002, 217/557-7157.

☞ UNDERGROUND STORAGE TANKS

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments to "Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances" (41 Ill Adm Code 170; 32 Ill Reg 17019), effective 5/1/09, removing an exemption from un-

der-dispenser containment requirements for underground storage tank (UST) systems using European suction (piping installed at an angle that allows fuel to flow back into the tank after suction stops at the pump). The amendment implements changes required by the federal Energy Policy Act of 2005 for UST regulatory programs receiving federal funding. OSFM states that the new rule will apply only to new or upgraded European suction piping systems, not to those already in place that adhered to previous OSFM rules. Small businesses (e.g., gas stations), small municipalities, and non-profit entities that plan to replace or upgrade underground storage tanks with European suction piping systems may be affected by this rulemaking.

Questions/requests for copies: Shelly Bradley, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259, 217/785-3131, Fax 217/524-9284.

DEPT. OF HUMAN RIGHTS

The DEPARTMENT OF HUMAN RIGHTS adopted an amendment to "Rulemaking and Organization" (2 Ill Adm Code 925; 33 Ill Reg 6293), effective 4/17/09, updating its organizational chart. The rulemaking is (cont'd next page)

☞ SOS EMERGENCY DATABASE

The SECRETARY OF STATE proposed an amendment to "Issuance of Licenses" (92 II Adm Code 1030; 33 Ill Reg 6243) that implements Public Act 95-898, which became effective 7/1/09. P.A. 95-898 requires SOS to establish an emergency contact database of all persons for whom an instruction permit, driver's license, or identification card record exists and can be verified on the the SOS driver's license or identification card database. The database will be used by law enforcement personnel to notify a person's "emergency contacts" when necessary for emergency medical treatment or when notification needs to be made by law enforcement for other reasons. The rulemaking defines an emergency as a motor vehicle accident or accident involving another mode of transportation, natural disaster, criminal act, or other circumstance in which a victim is so seriously injured that he or she cannot independently communicate with emergency contacts. SOS will make sign-up for the database available through its website or through the mail at the Secretary's discretion, and participation will be voluntarily initiated by the person applying to become part of the database. The accuracy of an individual's emergency contact information is the responsibility of the participant and will be deleted only when the individual's driver's license or identification card record no longer

(cont'd next page)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of *The Flinn Report* or the *Illinois Register* will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

adopted in accordance with the required rulemaking procedures of Section 5-15 in the Illinois Administrative Procedure Act.

Questions/requests for copies: David T. Rothal, DHR, 100 W. Randolph, Ste. 10-100, Chicago IL 60601, 312/814-6257, TTY 217/785-5125.

MEAT & POULTRY INSPECTION

The DEPARTMENT OF AGRICULTURE adopted peremptory amendments for rules titled "Meat and Poultry Inspection Act" (8 Ill Adm Code 125; 33 Ill Reg 6338), effective 4/17/09, to incorporate by reference two federal regulations recently adopted by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS). A new federal rule, effective 4/17/09, requires cattle that become unable to stand or walk (a possible symptom of mad cow disease) after arriving at a slaughter facility, even if they have already passed a pre-slaughter inspection, to be condemned and disposed of instead of being used as meat. The facility must notify FSIS if any cattle become disabled after passing inspection. FSIS also adopted rules, effective 3/20/09, requiring a country of origin statement on the label of any meat or poultry product that is a "covered commodity" as defined by the Agricultural Marketing Service (AMS) and that is to be sold by a "retailer", also as defined by AMS. Covered commodities include beef, pork, lamb, chicken, and goat meat. FSIS considers country of origin statements on such products to be generically approved, meaning that meat packagers or retailers do not need permission from the federal Department of Agriculture or the Illi-

nois Department of Agriculture to add or change them. The federal regulations being implemented were published in the *Federal Register* at 74 FR 11463 and 74 FR 11837, respectively. Those affected by this rulemaking include meat and poultry processing facilities and wholesale or retail meat and poultry sellers.

Questions/requests for copies: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217/785-4505.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted a peremptory amendment to "Pay Plan" (80 Ill. Adm. Code 310; 33 Ill. Reg. 6354), effective 4/15/09, implementing a Memorandum of Understanding between the departments of Corrections, Human Services, State Police, Veterans' Affairs, and Transportation and the Teamsters Union Local 330 (General Chauffeurs, Sales Drivers and Helpers (Fox Valley)). Pay rates are increased 0.5% effective 7/1/08, 2% effective 1/1/09, 3.0% effective 7/1/09, and 2% effective 1/1/10. Affected positions include maintenance equipment operators, laborers (maintenance), bridge mechanics, bridge tenders, highway maintainers, highway maintenance lead workers, and silk screen operators. Several other titles are affected, but there are no employees in those positions.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570, e-mail: CMS.PayPlan@Illinois.gov

PUBLIC SCHOOLS

The STATE BOARD OF EDUCATION adopted emergency amendments for "Requirements for Accounting, Budgeting, Financial Reporting, and Auditing" (23 Ill Adm Code 100; 33 Ill Reg 6313), effective 4/17/09, for a maximum of 150 days. Companion, but not identical, proposed amendments are also in this week's *Illinois Register* at 33 Ill Reg 6257. The emergency amendments update the Part to assure uniformity in accounting for the federal economic stimulus funds that school districts will receive under the American Recovery and Reinvestment Act of 2009 (ARRA). New account numbers are established to track expenditures from ARRA federal funds, as distinguished from expenditures from other federal funds under the normal budget process. A separate procedure for school district treatment of these ARRA funds includes accounting, budgeting, reporting, and auditing measures. The SBE proposed amendments to this same Part include these ARRA emergency amendments and also replace an obsolete reference to the fall enrollment and housing report with the currently required September 30th enrollment count and update career and technical education and child nutrition revenue accounts.

Questions/requests for copies of the emergency amendments: Debbie Vespa, SBE, 100 N. First St., S-493, Springfield IL 62777-0001, 217/785-8779. Questions/requests for copies/comments concerning the proposed rulemaking through 6/15/09: Sally Vogl at the same address, 217/782-5270, e-mail: rules@isbe.net

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exists in the SOS driver's license or identification card database. Emergency contacts are limited to no more than 2 individuals per participant. The rulemaking details the information to be included for each emergency con-

tact, including the contact's name, address, telephone number, and relationship to the participant. It also affirms the statutory requirement that emergency contact database information must remain confidential and

be released only to law enforcement entities in the course of official duties or pursuant to a court order. Those affected by this rulemaking include local police departments.

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Questions/requests for copies/comments through 6/15/09: Arlene J. Pulley, SOS, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

Questions/requests for copies/comments concerning the 2 rulemakings above through 6/15/09: Claire Burman, HFPB, 122 S. Michigan Ave., 7th Fl., Chicago IL 60603, 312/814-2565, e-mail: Claire.Burman@illinois.gov. A public hearing is scheduled for 5/11/09 from 9:00 a.m. to noon in Room N505 of the Michael Bilandic Bldg., 160 N. LaSalle St., Chicago IL.

Human Rights" (56 Ill Adm Code 2520; 33 Ill Reg 6236) clarifying DHR procedures. In situations in which DHR refers charges it has received to a local agency because violations also occurred in that jurisdiction and the local agency accepts the charges, DHR must defer processing such charges until the local agency completes its investigation and issues findings concerning the validity of the charges. Then DHR must consider its charges and findings independently of the local agency's decisions. When the local agency's findings are received, DHR will notify the complainant of his or her right to pursue the charges with DHR, and the complainant then has 35 days in which to respond to DHR. Should he or she not respond within that time, DHR may close the case. If the person's response is to pursue the case, DHR, at its discretion, may elect to adopt the findings of the local agency. Current reference to limiting the agency's response time to 180 days per the local agency's agreement with DHR is stricken. Those affected by this rulemaking include entities subject to the Human Rights Act and local governments that have a cooperative agreement with the Department of Human Rights.

Questions/requests for copies/ comments through 6/15/09: David T. Rothal, at the DHR address and telephone number above.

HEALTH FACILITIES

The HEALTH FACILITIES PLANNING BOARD proposed amendments for "Processing, Classification Policies and Review Criteria" (77 Ill Adm Code 1110; 33 Ill Reg 6171) concerning the Board's duty to grant permits to construct, modify, or establish a health care facility or acquire major medical equipment. The amendments update review criteria for project scope and size, utilization, and unfinished/shell space. The amendments also replace norms for gross square footage by department and/or utilization of medical equipment with standards for square footage and utilization for hospital-based services and, for other facilities, new construction, development of freestanding facilities, modernization, and development of facilities in existing structures. Those affected by this rulemaking include hospitals, ambulatory surgical treatment centers, long-term care centers, freestanding emergency care centers, and freestanding birth centers.

HFPB also proposed amendments to "Health Facilities Planning Financial and Economic Feasibility Review" (77 Ill Adm Code 1120; 33 Ill Reg 6192) to update and clarify financial and economic feasibility review criteria used in considering applications for health facility projects. Covered topics include project and related cost data, funds availability, financial viability, and economic feasibility. Further amendments concern the roles of applicants and co-applicants, charity care reports, reporting capital improvements on leased property, development schedules, mortgage information, financial viability waivers, inflation factors, and the cost complexity index. These amendments will affect hospitals, ambulatory surgical treatment centers, long-term care centers, kidney dialysis centers, freestanding emergency care centers, and freestanding birth centers.

NEW TEACHER MENTORS

The STATE BOARD OF EDUCATION proposed amendments to "New Teacher Induction and Mentoring" (23 Ill Adm Code 65; 33 Ill Reg 6250) changing the program from a pilot program to a continuing grant program that can be expanded as funding permits. The amendments eliminate the minimum program enrollment of 10 new teachers and delete references to the 3-year funding cycle. New provisions require a minimum of 75 hours of face-to-face contact between the new teacher and mentor and pay mentors \$1,200 per year. New teachers entering the program must have less than 2 years' teaching experience and hold an initial or provisional early childhood, elementary, secondary, special K-12, or special preschool-age 21 certificate. (Current rules state that new teachers must be in their 1st year of teaching.) SBE plans to provide "continuation grants" for those already funded under the pilot program before funding new applicants. If funds are available after issuance of continuation grants, SBE will issue a request for proposals. Charter schools that are not-for-profit corporations and choose to apply for grants will be affected by this rulemaking.

Questions/requests for copies/comments through 6/15/09: Sally Vogl at the SBE address and telephone number above.

HUMAN RIGHTS CASES

The DEPARTMENT OF HUMAN RIGHTS proposed an amendment to "Procedures of the Department of

FIRE TRUCKS & AMBULANCES

The ILLINOIS FINANCE AUTHORITY proposed amendments to "Illinois Finance Authority" (74 Ill Adm Code 1100; 33 Ill Reg 6130) creating 2 new interest-free loan programs administered jointly by the Authority and the Office of the State Fire Marshal. One program provides funds to fire departments, fire protection districts, and township fire departments for purchasing fire trucks. The other program provides funds to fire departments, fire protection districts, township fire departments, or non-profit ambulance services for ambulance purchases. The

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rulemaking details loan application review, funding criteria, the credit review process, loan documents and loan servicing, repayment procedures, and terms and conditions of the loan agreements. Those affected by this rulemaking include small municipalities, fire protection districts, township fire departments, and non-profit ambulance services.

Questions/requests for copies/comments through 6/15/09: Chris Meister, Illinois Finance Authority, 180 North Stetson, Suite 2555, Chicago IL 60601, 312/651-1310.

HEALTH CARE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to "Managed Care Reform & Patient Rights" (50 Ill Adm Code 5420; 33 Ill Reg 6149) to add a new model National Association of Insurance Commissioners (NAIC) form to list biographical information of utilization review officers and directors that DFPR keeps on file and confidential. Utilization review organizations (URO's) currently use the Department's own existing Exhibit E for this purpose, but allowance for the new form will permit multi-State

URO's to more easily file required information with various jurisdictions. Utilization review is the evaluation of medical need and appropriateness and efficiency in the use of health care facilities and procedures. Corrections are also made to the rulemaking reflecting the consolidation of the former Department of Insurance into DFPR. This rulemaking may affect small business entities.

Questions/requests for copies/comments through 6/15/09: Eve Blackwell-Lewis, (217/782-2867) or Craig Cellini (217/785-0813), DFPR, 320 W. Washington, Spfld. IL 62767.

JCAR Meeting Action

At its 4/21/09 meeting, the Joint Committee on Administrative Rules withdrew one suspension of a peremptory rulemaking, voted 5 objections to proposed or emergency rulemakings, and issued one recommendation for a proposed rulemaking. The Committee also extended the Second Notice period for the Department of Public Health's rulemaking titled "Child Health Examination Code" (77 Ill Adm Code 665; 32 Ill Reg 14465) for an additional 45 days.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

JCAR withdrew its Suspension of the DHFS peremptory rulemaking "Medical Assistance Programs" (89 Ill Adm Code 120; 32 Ill Reg 18889) contingent upon DHFS filing an emergency repeal of the peremptory rule. DHFS originally filed the rulemaking on 11/18/08, and the Committee suspended the rulemaking on 11/19/08. DHFS claimed the rulemaking implemented provisions of the First District Appellate Court's opinion in *Caro vs. Blagojevich*. However, the court did not direct the agency to file any rulemaking without discretion as to its content or without allowing time for public notice and review, both of which are conditions for peremptory rulemaking under the Illinois Administrative Procedure Act (IAPA).

DEPT. OF PUBLIC HEALTH

JCAR objects to DPH's lack of timeliness in proposing the rulemaking titled "Loan Repayment Assistance for Dentists" (77 Ill Adm Code 580; 32 Ill Reg 14455). The underlying statute took effect in 2007 and the program was funded at that time, but DPH is only now implementing rules to reflect the statutory changes.

ENVIRONMENTAL PROTECTION AGENCY

Concerning the rulemaking titled "Permit Fees for Installing or Extending Water Main" (35 Ill Adm Code 690; 32 Ill Reg 19849), JCAR recommends that EPA be more timely in updating its rules to reflect statutory changes. The rulemaking implements a public act that became law in 2003.

DEPT. OF HUMAN SERVICES

With regard to the DHS emergency rulemakings titled "Refugee/Repatriate Program" (89 Ill Adm Code 115; 33 Ill Reg 5018), "General Assistance" (89 Ill Adm Code 114; 33 Ill Reg 5004), "Aid to the Aged, Blind or Disabled" (89 Ill Adm Code 113; 33 Ill Reg 4993), and "Temporary Assistance for Needy Families" (89 Ill Adm Code 112; 33 Ill Reg 4977), JCAR objects to the Department's use of emergency rulemaking because the Department waited 8 ½ months to implement budgetary provisions that were effective 7/1/08. The adoption of these rulemakings reflects agency-created emergencies in contravention of Section 5-45 of the IAPA.

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 JCAR's May 19, 2009 meeting in Springfield.

PROPERTY TAX APPEAL BOARD

"Practice and Procedure for Appeals Before the Property Tax Appeal Board" (86 Ill Adm Code 1910) proposed 2/27/09 (33 Ill Reg 3664)

DEPARTMENT OF STATE POLICE

"Testing of Breath, Blood and Urine for Alcohol, Other Drugs, and Intoxicating Compounds" (20 Ill Adm Code 1286) proposed 2/20/09 (33 Ill Reg 3240)

ENVIRONMENTAL PROTECTION AGENCY

"Permit Fees for Installing or Extending Sewers" (35 Ill Adm Code 320) proposed 2/27/09 (33 Ill Reg 3576)

SECRETARY OF STATE

"Issuance of Licenses" (92 Ill Adm Code 1030) proposed 3/6/09 (33 Ill Reg 3965)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Organ Donor Leave" (80 Ill Adm Code 332) proposed 1/23/09 (33 Ill Reg 1410)

STATE BOARD OF EDUCATION

"Providers of Supplemental Educational Services" (23 Ill Adm Code 675) proposed 2/13/09 (33 Ill Reg 3138)

"Temporary Relocation Expenses" (23 Ill Adm Code 145) proposed 2/13/09 (33 Ill Reg 3127)

"School Construction Program" (23 Ill Adm Code 151) proposed 2/13/09 (33 Ill Reg 3130)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Minimum Standards for Individual and Group Medicare Supplement Insurance" (50 Ill Adm Code 2008) proposed 2/13/09 (33 Ill Reg 2876)

"Credit for Reinsurance Ceded" (50 Ill Adm Code 1104) proposed 9/12/08 (32 Ill Reg 14621)

ATTORNEY GENERAL

"Married Families Domestic Violence Grants" (89 Ill Adm Code 1110) proposed 3/6/09 (33 Ill Reg 3697)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Medical Payment" (89 Ill Adm Code 140) proposed 12/1/08 (32 Ill Reg 18121)

DEPARTMENT OF PUBLIC HEALTH

"Freestanding Emergency Center Demonstration Program Code" (77 Ill Adm Code 518) proposed 12/1/08 (32 Ill Reg 18149)

ILLINOIS EMERGENCY MANAGEMENT AGENCY

"All Hazards Campus Emergency Plan and Campus Violence Prevention Plan" (29 Ill Adm Code 305) proposed 2/6/09 (33 Ill Reg 1905)

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