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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 20

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

☞ PRESCRIPTION TAMPERING

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 33 Ill Reg 19), effective 4/29/09, in order to repeal peremptory amendments that DHFS adopted on 4/1/08 at 32 Ill Reg 6743. (JCAR suspended the Department's peremptory rulemaking, citing improper use of peremptory rulemaking, then withdrew the suspension on 11/12/08 so that DHFS could adopt a subsequent emergency repealer, which was effective for 150 days.) This week's adopted amendments restore these regulations to the text in effect before DHFS adopted the peremptory amendments in April 2008, thus clearing the way for new policy to be adopted through proposed rulemaking rather than peremptory rulemaking. As the last step in the process of amending regulations concerning tamper-resistant medical prescription forms, DHFS proposed a rulemaking in the *Illinois Register* on 12/1/08 at 32 Ill Reg 18121, which will be considered at JCAR's May 19, 2009 meeting. The rulemaking implements changes in federal law requiring all non-electronic prescriptions to be written on tamper-resistant prescription pads in

order for the prescriptions to be eligible for reimbursement under Medicaid. Medical providers may be affected by this rulemaking.

Questions/requests for copies: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62703-0002, 217/557-7157.

HORSE RACING

The ILLINOIS RACING BOARD adopted amendments to "Licensing" (11 Ill Adm Code 1302; 33 Ill Reg 1443) and "Licensing of Participants" (11 Ill Adm Code 1408; 33 Ill Reg 1447), both effective 5/1/09, that require licensees to carry on their person, rather than wear, Board-issued photo identification badges when they are within the racetrack stable area. However, IRB may require visible display of a badge in a restricted area.

IRB also adopted amendments to "Licensing" (11 Ill Adm Code 502; 33 Ill Reg 1435), effective 5/1/09, that include IRB's web site (www.state.il.us/agency/irb) as a source for occupational license applications; add \$25 license fees for intertrack employees and business agents; and reflect the

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☞ BLIND VENDOR PROGRAM

The DEPARTMENT OF HUMAN SERVICES proposed amendments to "Vending Facility Program for the Blind" (89 Ill Adm Code 650; 33 Ill Reg 6621). The rulemaking revises and adds definitions to reflect terms used in current practice and makes non-substantive changes throughout the rule. Additional amendments strike the Division of Rehabilitative Services' responsibility to determine if a facility should be operated by more than one vendor based on specified criteria and add a duty to make recommendations for facility closures, as well as provide any requested or required materials and notifications to vendors. Also, vendors are required to provide specified amounts of insurance for public liability, property damage, and food products liability. DHS also establishes election terms for members of the Illinois Committee of Blind Vendors and specifies the Committee's responsibilities. The rulemaking clarifies the vendor certification and licensing process, procedures for awarding vendors with an active facility license, appropriate business practices, vendor disciplinary procedures (licensed vendors and those participating in initial training), vendor grievance procedures, and leave-of-absence provisions. Also, program participants must be Illinois residents. Blind individuals currently licensed and certified by DHS to participate in

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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

statutory minimum age of 16 as the minimum age for licensure as an apprentice jockey. The rulemaking also requires tack shop operator or vendor license applicants to file with the State Veterinarian, for his or her approval, a list of the types of "services" the applicant intends to provide, in addition to the currently required list of items the applicant intends to sell or deliver. Changes since 1st Notice reflect IRB's decision not to adopt the \$15 fee that was originally proposed for animal health technicians. An additional change specifies that the required list of items and services submitted by tack shop operators and other vendors for approval as part of the licensure application process will be approved "annually".

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

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments to "Pay Plan" (80 Ill Adm Code 310; 33 Ill Reg 6724), effective 5/1/09, implementing 4 memoranda of understanding (MOUs) between DCMS and the American Federation of State, County and Municipal Employees (AFSCME). The

first 2 MOUs assign employees with the public service administrator title, option 8L (administrative law judge) in the Department of Human Services and the Department of Healthcare and Family Services to an AFSCME bargaining unit. The third MOU assigns employment security field office supervisors in the Department of Employment Security to another AFSCME bargaining unit. The final MOU assigns employees who are mental health recovery support specialists I or II to 2 other bargaining units, although no employees currently hold these titles. The Illinois Labor Relations Board did not exclude any of the positions affected by this rulemaking from union representation.

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

MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to "Medical Assistance Programs" (89 Ill Adm Code 120; 33 Ill Reg 6712), effective 4/28/09, for a maximum of 150 days. An identical proposed amendment is published in this week's *Illinois Register* at

33 Ill Reg 6608. The amendment repeals a section of text that was the subject of a peremptory amendment adopted 11/18/08 and suspended by JCAR on 11/19/08. According to DHFS, the amendment attempted to implement a 9/26/08 Illinois Appellate Court decision concerning the FamilyCare health insurance program. However, JCAR found that the peremptory rulemaking was a misuse of peremptory authority because the court did not direct DHFS to adopt regulations outside the proposed rulemaking process of the Illinois Administrative Procedure Act. The intent of the amendment was to state that any individuals in FamilyCare must comply with child support obligations, must be searching for work or in a training program, and must not have been convicted a second time for public aid fraud. At JCAR's 4/21/09 meeting, DHFS agreed to adopt this emergency repeal of the section and propose the companion rulemaking to replace this temporary emergency repeal.

Questions/requests for copies/comment concerning the proposed rulemaking through 6/29/09: Tamara Tanzillo Hoffman at the DHFS address and telephone number above.

Proposed Regulations

the program and prospective program applicants may be impacted by this rulemaking.

Questions/requests for copies/comments through 6/29/09: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

IEMA HEARINGS

The ILLINOIS EMERGENCY MANAGEMENT AGENCY proposed amendments to "Administrative Hear-

ings" (32 Ill Adm Code 200; 33 Ill Reg 6592) to reflect Executive Order 12's transfer of the Department of Nuclear Safety to IEMA in 2003 by changing agency name references from DNS to IEMA. The amendments further stipulate that, upon notice from IEMA that a respondent in a hearing concerning matters raised in a preliminary order or licensure denial is required to have an attorney, the attorney has 30 days to enter an appearance. If no appearance is filed, the hearing request will be considered withdrawn and the pre-

liminary order or licensure denial will be a final and binding administrative determination. Finally, the amendments reflect the statutory provision that the IEMA director's final decision will be considered to be a final and binding administrative order subject to the Administrative Review Law.

Questions/requests for copies/comments through 6/29/09: Kevin T. McLain, IEMA, 1035 Outer Park Dr., Springfield IL 62704, 217/524-0770, TDD 217/782-6133.

Proposed Regulations

NOTE TO READER: It has come to the newsletter editor's attention that last week's summary of the Department of Healthcare and Family Ser-

vices proposed rulemaking concerning collection of past-due child support inadvertently used the acronym "DCFS" rather than "DHFS" for the

Department. JCAR apologizes for any confusion this error may have caused.

Second Notices

The following rulemaking was moved to second notice this week by the agency listed below, commencing the JCAR review period. This rulemaking will be considered at JCAR's June 16, 2009 meeting in Chicago.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Standard Procurement" (44 Ill Adm Code 1) proposed 2/13/09 (33 Ill Reg 2874)

JCAR 2008 ANNUAL REPORT

The Joint Committee on Administrative Rules' 2008 annual report is now available. The report summarizes agency rulemaking, JCAR actions, and public act reviews in addition to legislative and judicial actions that affected rulemaking.

Copies of the 2007 Annual Report of the Joint Committee on Administrative Rules are available to the public. The volume may be ordered for \$3.41 (\$5.64 with postage included) by sending a check to JCAR at the address listed on the front of this newsletter. It is also available online at our website at www.ilga.gov/commission/jcar.

The Flinn Report

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