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Illinois General Assembly

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Issue 27

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

NURSING HOMES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an amendment to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 32 Ill Reg 18921), effective 7/1/09, increasing funds available to reimburse nursing homes under the Minimum Data Set (MDS) methodology for Fiscal Year 2009 from \$50 million to \$84 million. (The MDS methodology sets reimbursement rates for nursing home care based on the severity of the conditions or symptoms being treated and the intensity of care provided.) Also, the rulemaking removes references to an outdated reimbursement rate that was adopted in 2005 for certain nursing homes classified as institutions for mental disease (IMDs) because applicable newer rates were adopted in a separate rulemaking in 2007. Those affected by this rulemaking include Medicaid-certified nursing facilities.

DHFS also adopted an amendment to "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 33 Ill Reg 1413), effective 7/1/09, making a payment equal to 6.6% of the nursing component multiplied by 3.53 to nursing homes classified as institutions for

mental disease for costs associated with social development of the patient. The amendment also updates the base amount on which support rates will be paid to skilled and intermediate care nursing homes to reflect inflation and other costs. (Support rates are among the factors that determine reimbursement rates for nursing homes, and support costs include items not directly related to nursing care or capital/facility costs (e.g., malpractice insurance premiums).) Nursing homes will be among those affected by this rulemaking.

Questions/requests for copies of the 2 DHFS rulemakings above: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/557-7157.

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to "Skilled Nursing and Intermediate Care Facilities Code" (77 Ill Adm Code 300; 32 Ill Reg 14644), "Sheltered Care Facilities Code" (77 Ill Adm Code 330; 32 Ill Reg 14658), "Illinois Veterans' Homes Code" (77 Ill Adm Code 340; 32 Ill Reg 14670), "Intermediate Care for the Developmentally Disabled Facilities Code" (77 Ill Adm Code 350; 32 Ill Reg 14678), and "Long-Term Care

(cont'd next page)

SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to "Pupil Transportation Reimbursement" (23 Ill Adm Code 120; 33 Ill Reg 9265) that clarify a school district's legal responsibilities. Statute allows school districts to consider child care locations for purposes of pupil transportation when the location is more than 1½ miles from the school attended. Currently, school districts choosing to provide this transportation are inconsistently enforcing this policy by transporting children from some, but not all, eligible child care locations, according to SBE. The proposed amendments clarify language that requires each district to adopt a written policy implementing this practice that allows the district to limit its transportation to those child care locations on its regular routes or extend such transportation to new routes, but the services must be nondiscriminatory. SBE also proposed other amendments that update the Part to reflect current cross-references to SBE rules and rearrange pupil transportation categories by eligibility for reimbursement. Those affected by this rulemaking include businesses providing child care to school-aged children.

SBE proposed amendments to "Health/Life Safety Code for Public Schools" (23 Ill Adm Code 180; 33 Ill Reg 9279) that incorporate by refer-

(cont'd page 3)

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

for Under Age 22 Facilities Code" (77 Ill Adm Code 390; 32 Ill Reg 14691), all effective 6/17/09. The amendments to all 5 Parts concern reporting serious incidents or accidents to DPH. As proposed, the rulemakings stated the incidents that must be reported included any that affect the health, safety, or welfare of some or all facility residents and that require a response by a local fire or police department or emergency services agency. Such incidents would include, but not be limited to, fires, power outages, loss of water supplies, or building damage from severe weather. Rule text was stricken that required reporting an incident or accident affecting an individual resident that necessitates the emergency services of a physician, hospital, coroner, or other service provider. Changes since 1st Notice delete the proposed new text concerning group incidents and instead require a facility to notify DPH of "any serious incident or accident" that causes physical harm or injury to a resident. Those affected by these rulemakings include owners or operators of long-term care facilities.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson, 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: dph.rules@illinois.gov

SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to "Calculation of Excess Cost Under Section 18-3 of the School Code" (23 Ill Adm Code 140; 33 Ill Reg. 3973), effective 6/22/09, to implement Public Act 95-793, which revises the School Code's provisions concerning State reimbursement of school districts that serve children living in orphanages, children's homes, detention centers, or penal institutions. The rulemaking amends the procedures by which districts may claim additional reimbursement for "excess cost" associated with the more intensive services such students may require. The deadline for districts to submit claims is changed from July 31st to July 15th, and information that

districts must submit to document excess cost is clarified. The rulemaking states that different calculation methods must be used to compute reimbursement for "on-site" students who attend district schools versus "off-site" students who attend class at their residential facility. Also, references to summer school programs are removed from the Part because the statute no longer allows excess cost reimbursement for summer school.

SBE also adopted amendments to "Alternative Learning Opportunities Program" (23 Ill Adm Code 240; 33 Ill Reg 3982), effective 6/22/09, that reflect abolition of the former program accounting manual and its replacement by new program accounting rules for public school districts at 23 Ill Adm Code 100.

Questions/requests for copies on the 2 SBE rulemakings above: Tim Imler (217/782-5256) for Part 140 and Patrick Murphy for Part 240 (217/782-2948), SBE 100 N. First St., Springfield IL 62777-0001, e-mail: rules@isbe.net

INSURANCE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Credit for Reinsurance Ceded" (50 Ill Adm Code 1104; 32 Ill Reg 14621), effective 6/18/09. Terms used within the Part are defined, statutory citations are revised, an obsolete transition provision concerning governing trust agreements or underlying reinsurance agreements in existence prior to 1/1/96 is stricken, and an International Chamber of Commerce publication incorporated by reference within the rules is updated.

Questions/requests for copies: Mindy Lucht, DFPR, 320 W. Washington, Springfield IL 62767-0001, 217/785-4079.

HOME ENERGY ASSISTANCE

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

published a Notice of Recodification for "Low Income Home Energy Assistance Program" (LIHEAP) (89 Ill Adm Code 109; 33 Ill Reg 9466). The title designation and Part number of this program have been changed from 89 Ill Adm Code 109 to 47 Ill Adm Code 100 to reflect the LIHEAP program's recent transfer from the former Department of Public Aid to DCEO. The LIHEAP program assists low income households in paying utility bills and also allocates funds by county for home weatherization.

Questions/requests for copies: Jolene Clarke, DCEO, 620 E. Adams St., Springfield IL 62701, 217/557-1820.

STATE EMPLOYEES

STATE EMPLOYEES RETIREMENT SYSTEM (SERS) adopted emergency amendments to "The Administration and Operation of the State Employees' Retirement System of Illinois" (80 Ill Adm Code 1540; 33 Ill Reg 9449), effective 6/19/09, for a maximum of 150 days. The rulemaking implements Public Acts 95-1043 and 96-6, which authorize removal of a Social Security widow's or survivor's offset for specified categories of persons receiving System benefits and change the number of trustees elected to the SERS board. The rulemaking states that retirees who have been receiving benefits after the statutory cutoff date of 1/1/98 may elect before 7/1/09 to receive their retirement annuity without the Social Security offset if they elect to reduce their retirement annuity by 3.825%. Present employees are given the same option at the time they retire. The rule also provides this new statutory option for retirees receiving the "level income" of benefits (increased retirement annuity until Social Security begins) or Qualified Illinois Domestic Relations Order recipients. The new statutory option for the Social Security offset is also made available to persons confirmed by the Senate who elect to be treated as employees under the Illinois Pension Code. Additional amendments increase the number of the SERS board of trustees

New Regulations

who are contributing SERS members with at least 8 years of creditable service from one to 4 trustees beginning in 2009.

Questions/requests for copies: Tim Blair, SERS, 2101 S. Veterans Pkwy., Springfield IL 62794-9255, 217/785-7260.

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted emergency amendments to "Pay Plan" (80 Ill Adm 310; 33 Ill Reg 9432), effective 7/1/09, for a maximum of 150 days. The amendments eliminate the Fiscal Year 2010 annual bonuses and pay increases for merit compensation State employees. Annual merit per-

formance reviews continue to be required for the employees.

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

Proposed Regulations

ence the 2009 edition of the *International Building Code* (currently, 2006 edition) and its sub-codes as the Illinois school construction requirements. This incorporation will affect projects designed on or after January 1, 2010. An additional amendment replaces an obsolete reference to the fall enrollment and housing reports with the September 30th count for the immediately preceding school year. This requirement may impact charter schools.

SBE proposed amendments to "Driver Education" (23 Ill Adm Code 252; 33 Ill Reg 9287) implementing 3 changes. Currently, school districts cannot contract for driver education services with a commercial driving school. SBE proposes to allow school districts to contract with commercial driving facilities for behind-the-wheel instruction for students with physical limitations that require specially equipped cars or specialized instruction (e.g., instruction for the visually or hearing impaired). These facilities must be approved by the Secretary of State and must conduct an evaluation of each student's physical and cognitive abilities to determine an individualized course of instruction. Each instructor must be certified as a driver rehabilitation specialist by the Association for Driver Rehabilitation Specialists. SBE notes that school districts may contract with facilities that do not meet these requirements if a waiver is obtained. The second change concerns reimbursement for driver education provided under contract or a waiver. In order to receive reimbursement, a school district must sub-

mit a claim setting out the names of the students successfully completing the course and the date for each student's completion. Finally, SBE updates its driver education personnel requirements to reflect the new driver education qualifications that become effective January 31, 2012. After that date, public school and certain nonpublic school driver education teachers must hold a certificate valid for secondary grades and an endorsement in safety and driver education. Commercial driving schools may be affected by this rulemaking.

SBE also proposed an amendment to "Providers of Supplemental Educational Services" (SES) (23 Ill Adm Code 675; 33 Ill Reg 9305) that eliminates a provision requiring, as an indication of effectiveness, that an SES provider have 3 years of prior experience serving youth in the same community where its services will be offered in the future. Additional amendments correct an inadvertent omission from amendments adopted on June 1, 2009. Specifically, Appendix B, titled Evaluation Rubric, changed SBE's parental satisfaction evaluation procedure from focusing on positive responses to focusing on negative parental responses so that providers are not penalized for a low response rate. The change was made in the column "Below Standards", but was not made in the other relevant columns titled "Meets Standards" and "Above Standards". This rulemaking makes the necessary corrections. SES providers that are small businesses will be affected by this rulemaking.

SBE proposed amendments to "Special Education Facilities Under Section 14-7.02 of the School Code" (23 Ill Adm Code 401; 33 Ill Reg 9299) updating its cross-references that specify SBE's current special education rules for case study evaluations.

Questions/requests for copies/comments concerning the 5 SBE rulemakings above through 8/19/09: Shelley Helton, SBE, 100 N. First St., S-493, Springfield IL 62777, 217/782-5270, e-mail: rules@isbe.net

PODIATRIST LICENSING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed an amendment to rules titled "Podiatric Medical Practice Act of 1987" (68 Ill Adm Code 1360; 33 Ill Reg 9225) implementing a provision of Public Act 95-235, which increases the annual continuing education (CE) hours required for podiatry licensure renewal from 25 to 50. Each licensure period is 24 months, in which a licensure renewal applicant is required to accrue 100 CE hours. Podiatrists with their own practice or small businesses employing podiatrists may be impacted by this rulemaking.

Questions/requests for copies/comments through 8/19/09: Craig Cellini, DFPR, 320W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax 217/557-4451.

FOSTER PARENTS

The DEPARTMENT OF CHILDREN

Proposed Regulations

AND FAMILY SERVICES proposed an amendment to "Foster Parent Code" (89 Ill Adm Code 340; 33 Ill Reg 9221). The rulemaking reduces the number of Statewide Foster Care Advisory Council members or their designees who rate Foster Parent Law annual implementation plans from 3 to 2. (DCFS regional offices and contracted purchase-of-service agencies are required to prepare an annual plan for implementing the law that indicates how foster parent rights and responsibilities will be addressed and responds to deficiencies noted by the Council in the prior annual plan and certain other deficiencies.) Those affected by this rulemaking include agencies that contract with DCFS to provide foster care services.

Questions/requests for copies/comments through 8/19/09: Jeff Osowski, DCFS, 406 E. Monroe, Station #65-D, Springfield IL 62701-1498, 217/524-1983, TTY 217/524-3715, Fax 217/557-0692, e-mail: cfpolicy@idcfs.state.il.us

TAXES

The DEPARTMENT OF REVENUE proposed an amendment to "Income Tax" (86 Ill Adm Code 100; 33 Ill Reg 9235) requiring payroll service providers who are required to file W-2 information electronically for federal purposes (i.e., anyone who files for more than 250 individuals) to also file W-2s with DOR electronically. A similar

rulemaking concerning the filing of returns was published in the 6/12/09 *Illinois Register*. Payroll service providers who file more than 250 federal withholding returns annually and provide withholding tax services for Illinois employers may be affected by this rulemaking.

DOR also proposed amendments to "Retailers' Occupation Tax" (86 Ill Adm Code 130; 33 Ill Reg 9252) removing language requiring retailers to file monthly sales tax returns for a year before being authorized to switch to a less frequent filing status (quarterly or annually). The decision to file on a less frequent basis will be based on information obtained by DOR, including, but not limited to, registration and audit information regarding the retailer's average monthly tax liability. Periodic review of taxpayer information, including returns, will govern whether more frequent filings are required. Small businesses may be affected by this rulemaking.

Questions/requests for copies/comments concerning the 2 DOR rulemakings above through 8/19/09: Paul Caselton (217/524-3951) for Part 100 and Jerilynn Troxell Gorden (217/782-2844) for Part 130, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to "Merit and

Fitness" (80 Ill Adm Code 302; 33 Ill Reg 9208) concerning lay-off procedures for merit compensation and bargaining unit State employees. The amendments increase the advance notice for a temporary layoff from 10 working days to 30 unless extraordinary operating conditions or events preclude such notice; add "option" title to variables used in indeterminate layoff decisions; require certified employees to be laid off in reverse order of continuous service based on variables; and require lists of vacant merit compensation positions to be shared with employees and allow the positions to be offered to nonbargaining unit employees after all contractual obligations are met. Employees will also be made aware of identical positions in up to 2 additional counties (or 3 additional counties if the employee's facility is closing) for possible filling of vacancies via transfer. Further amendments allow intended layoff employees to laterally transfer to a current vacant position having the same maximum permissible salary or rate over certain other employees (e.g., probationary, provisional) and require laid-off employees to be placed on lists for reemployment for 36 months (currently 24).

Questions/requests for copies/comments through 8/19/09: Gina Wilson, DCMS, 720 Stratton Bldg., Springfield IL 62706, 217/785-1793.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's July 14, 2009 meeting in Springfield.

POLLUTION CONTROL BOARD

"Nitrogen Oxides Emission" (35 III Adm Code 217) proposed 10/31/08 (32 III Reg 17075)

"Definitions and General Provisions" (35 III Adm Code 211) proposed 10/31/08 (32 III Reg 17055)

"Permits and General Provisions" (35 III Adm Code 201) proposed 10/31/08 (32 III Reg 17035)

"Water Use Designations and Site-Specific Water Quality Standards" (35 III Adm Code 303) proposed 3/6/09 (33 III Reg 3898)

DEPARTMENT OF HUMAN SERVICES

"Temporary Assistance for Needy Families" (89 III Adm Code 112) proposed 4/3/09 (33 III Reg 4803)

"Temporary Assistance for Needy Families" (89 III Adm Code 112) proposed 3/27/09 (33 III Reg 4505)

"Aid to the Aged, Blind or Disabled" (89 III Adm Code 113) proposed 3/27/09 (33 III Reg 4517)

"Aid to the Aged, Blind or Disabled" (89 III Adm Code 113) proposed 4/3/09 (33 III Reg 4805)

"General Assistance" (89 III Adm Code 114) proposed 3/27/09 (33 III Reg 4527)

"General Assistance" (89 III Adm Code 114) proposed 4/3/09 (33 III. Reg. 4807)

"Refugee/Repatriate Program" (89 III Adm Code

115) proposed 4/3/09 (33 III Reg 4809)

"Food Stamps" (89 III Adm Code 121) proposed 3/13/09 (33 III Reg 4062)

DEPARTMENT OF NATURAL RESOURCES

"White-Tailed Deer Hunting by Use of Firearms" (17 III Adm Code 650) proposed 5/8/09 (33 III Reg 6409)

"White-Tailed Deer Hunting by Use of Muzzleloading Rifles" (17 III Adm Code 660) proposed 5/8/09 (33 III Reg 6430)

"White-Tailed Deer Hunting by Use of Bow and Arrow" (17 III Adm Code 670) proposed 5/8/09 (33 III Reg 6446)

"Special White-Tailed Deer Season for Disease Control" (17 III Adm Code 675) proposed 5/8/09 (33 III Reg 6468)

"Late-Winter Deer Hunting Season" (17 III Adm Code 680) proposed 5/8/09 (33 III Reg 6476)

"Youth Hunting Seasons" (17 III Adm Code 685) proposed 5/8/09 (33 III Reg 6484)

STATE BOARD OF EDUCATION

"Payments to Certain Facilities Under Section 14-7.05 of the School Code" (23 III Adm Code 405) proposed 3/6/09 (33 III Reg 2987)

"School Technology Program" (23 III Adm Code 575) proposed 4/3/09 (33 III Reg 4825)

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