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Issue 31

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

COMMUNITY MENTAL HEALTH

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 32 Ill Reg 10782), effective 7/14/09, authorizing DHFS to pay community mental health providers for (1) long-term care case management for individuals transitioning from a nursing facility into the community, (2) prenatal or postpartum depression screenings for up to one year after delivery for mothers, and (3) developmental screenings for their infants up to one year after delivery. Prior approval is necessary for the payment of case-management services, and providers of mother or child screenings will be reimbursed at the rate paid physicians for the same services. Outdated payment provisions that expired in 2005 and 2006 are repealed. Those affected by this rulemaking include community mental health providers.

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

HUMAN RIGHTS CASES

The DEPARTMENT OF HUMAN

(cont'd next page)

RIGHTS adopted an amendment to "Procedures of the Department of Human Rights" (56 Ill Adm Code 2520; 33 Ill Reg 6236), effective 7/20/09, 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. 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 gov-

MEDICAL AID

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to "Medical Payment" (89 Ill. Adm. Code 140; 33 Ill Reg 11174) requiring certain individuals enrolled in two programs called the Persons with Disabilities Home and Community-Based Waiver and the Persons who are Elderly Home and Community-Based Waiver to participate in the Primary Care Case Management (PCCM) Program, which helps insure that preventative care is given, redundant services are not prescribed, the appropriate level of care is given, and the primary care physician is aware of the care received. The waiver programs pay for services that persons with disabilities and the elderly may need in order to continue to be self-sufficient. The amendments also expand the number of patients a primary care physician may oversee in the PCCM in areas where there is an insufficient number of primary care physicians serving the eligible population. Those affected by this rulemaking include medical care providers in clinics participating in the HFS programs listed above.

Questions/requests for copies/comments through 9/14/09: Tamara Tanzillo Hoffman, Department of Healthcare and Family Services, 201 South Grand Avenue East, 3rd Floor, Springfield IL 62763-0002, 217/557-7157.

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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

ernments that have a cooperative agreement with the Department of Human Rights.

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

HORSE RACING

The ILLINOIS RACING BOARD adopted an amendment to "Claiming Races" (11 Ill Adm Code 510; 33 Ill Reg 6031), effective 7/21/09, to change the way "jail time" is determined for horses claimed in claiming races (a race in which any horse starting may be purchased for a predetermined amount). Previously, horses claimed at Fairmount race track were treated differently than those claimed at Chicago area tracks. The adopted rule provides that claimed standardbred horses (harness racing) may not race outside Illinois for 60 days after being claimed, or until a date following which there is no standardbred race meet

scheduled in Illinois for 30 days. Thoroughbred horses may not race outside Illinois for 45 days after being claimed, or until a date following which the racing season has concluded.

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

FOOD STAMPS

The DEPARTMENT OF HUMAN SERVICES adopted preemptory amendments to "Collections and Recoveries" (89 Ill Adm Code 165; 33 Ill Reg 11336), effective 7/15/09, that remove all references to food stamp coupons from rule in compliance with the federal Food, Conservation and Energy Act of 2008 (Public Law 110-246), which rendered food stamp coupons obsolete after 6/18/08 and removed the coupons as a form of acceptable legal tender effective 6/17/09.

DHS also adopted emergency amendments to "Food Stamps" (89 Ill Adm

Code 121; 33 Ill Reg 11322), effective 7/20/09, for a maximum of 150 days. An identical proposed rulemaking appears in this week's issue of the *Illinois Register* at 33 Ill Reg 11198. The rulemaking expands the federal Food and Nutrition Services' express stamps application project to include Cook County. The project was previously only a 2-year demonstration program but has been extended for an indeterminate period of time by the federal government. Designated food pantries located in Cook, DuPage, Kane, Lake, and Will counties will encourage food pantry visitors to apply for food stamp benefits on-line while at the food pantry, and the application will be transmitted to DHS, which then determines eligibility and notifies the applicant by mail.

Questions/requests for copies/comments concerning the proposed DHS rulemaking through 9/14/09: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

Proposed Regulations

PROCUREMENT

The ENVIRONMENTAL PROTECTION AGENCY proposed repeal of "Procurement" (44 Ill Adm Code 550; 33 Ill Reg 11148). Individual agency procurement rules were supplanted when the Illinois Procurement Code became effective in 1998, thus making this earlier set of rules obsolete. Purchasing is now controlled by chief procurement officers (Department of Central Management Services, Department of Transportation, Capital Development Board and the university systems).

Questions/requests for copies/comments through 9/14/09: Stephanie Flow-ers, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544.

TAXES

The DEPARTMENT OF REVENUE proposed an amendment to "Income Tax" (86 Ill Adm Code 100; 33 Ill Reg 11201) apportioning business income of a financial institution for taxable years ending on or after 12/31/08 to Illinois based on gross receipts instead of gross profits. Further changes add new definitions and expand application sourcing rules because more variables are involved in the apportionment of receipts over profits. Those affected by this rulemaking include small financial organizations operating in interstate commerce.

DOR also proposed an amendment to "Retailers' Occupation Tax" (86 Ill Adm Code 130; 33 Ill Reg 11230)

revamping the tests used in determining whether food items are taxed at the high or low rate. Foods prepared for immediate consumption and food that is hot (e.g., hot vending machine coffee, restaurant food, movie popcorn) will be taxed at the high rate. This is a rebuttable presumption. Foods taxed at the lower rate are consumed off the premises where sold and include bakery items prepared by the retailer, sandwiches set out in a cold case for purchase throughout the day, take-and-bake items, cold salads and the like, and food trays even if prepared at the direction of the customer. Retailers must have a separate system of accounting and recording for both rates; otherwise, any questionable transaction will be taxed at the higher rate. The rulemaking

Proposed Regulations

gives comprehensive examples of the applications. Retail establishments selling food may be affected by this rulemaking.

Questions/requests for copies/comments through 9/14/09 concerning the 2 DOR rulemakings above: Paul Caselton (217/524-3951) for Part 100 and Jerilynn T. Gorden (217/782-2844) for Part 130, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794.

citations are updated. The rulemaking explains what constitutes a positive drug test result in compliance with the IVC's school bus driver permit or endorsement program. The Medical Examiner's Certificate, which serves as proof that the medical examiner deemed the individual he or she examined qualified to drive a school bus, is included. In addition to completing an application, passing a physical examination, obtaining a medical examiner's certification, and completing the fingerprinting process, school bus driver permit applicants must complete initial training. Applicants must successfully complete the written exam prior to road testing, including compliance with time frames for completion (within 90 days) and maximum number of attempts (no more than 3). Additional changes remove obsolete permit application provisions pertaining to current permit holders. Also, permit applicants are required to have a 3-year continuous driving history

that can be met by a combination of in-state and out-of-state driving records. Criteria for exceptions to the 3-year continuous driving history requirement are specified. School bus driver permit holders who also hold a commercial driver's license are subject to random alcohol and controlled substance testing in compliance the federal regulations, and SOS may deny or cancel a permit if the holder is convicted of 2 serious violations during the permit's one-year duration. Prospective or current employers are required to notify SOS if an applicant or holder of a school bus driver permit receives a positive drug test or refuses to take a test. School bus companies that contract to provide bus drivers may be affected by this rulemaking.

Questions/requests for copies/comments through 9/14/09: Arlene J. Pully, DOT, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

SCHOOL BUS DRIVERS

The SECRETARY OF STATE proposed amendments to "School Bus Driver Permit" (92 Ill Adm Code 1035; 33 Ill Reg 11257) making extensive revisions to Part 1035. Numerous definitions are added for consistency with federal alcohol and drug testing regulations (49 CFR 40) and the Illinois Vehicle Code (IVC) [625 ILCS 5], and several *Code of Federal Regulations*

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 August 18, 2009 meeting.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Medical Assistance Programs" (89 Ill Adm Code 120) proposed 5/15/09 (33 Ill Reg 6608)

OFFICE OF THE ATTORNEY GENERAL

"Illinois Estate and Generation-Skipping Transfer Tax Return" (86 Ill Adm Code 2000) proposed 4/10/09 (33 Ill Reg 5263)

BOARD OF HIGHER EDUCATION

"Program Review (Private Colleges and Universities)" (23 Ill Adm Code 1030) proposed 4/24/09 (33 Ill Reg 5986)

DEPARTMENT OF PUBLIC HEALTH

"Adverse Health Care Event Reporting Code" (77 Ill Adm Code 235) proposed 12/19/08 (32 Ill Reg 19425)

"Community Health Center Expansion" (77 Ill Adm Code 975) proposed 3/6/09 (33 Ill Reg 3940)

DEPARTMENT OF INSURANCE

"Preferred Provider Programs" (50 Ill Adm Code 2051) proposed 2/6/09 (33 Ill Reg 1927)

Repeal of "Preferred Provider Program Administrators" (50 Ill Adm Code 2051) proposed 2/6/09 (33 Ill Reg 2020)

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