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Illinois General Assembly

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Issue 35

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

☞ MEDICAL PAYMENTS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 32 Ill. Reg. 13761), effective 10/1/09, removing prior approval for surgeries to resolve morbid obesity, adding qualifying criteria for such procedures, and setting limitations on group psychotherapy sessions (e.g., maximum of 2 sessions/wk., minimum 45-min. session length, maximum group size of 12 patients). Further amendments require that a physician must perform such sessions and must have completed an approved psychiatry residency program or be a resident or attending physician at an approved or accredited residency program, remove limitations on advanced practice nurses (APNs) providing certain psychiatric services, and retain the prohibition against an advanced practice nurse conducting group psychotherapy sessions. Changes since 1st Notice specify that if a patient is a long-term care facility resident, the group psychotherapy provider must maintain documentation in the patient's medical record showing coordination of services and sharing of information related to the patient's needs and care plan with the facility. Additional

changes state that in order to be reimbursed for certain psychiatric services, an APN must be currently certified in psychiatric and mental health nursing according to rules at 68 Ill Adm Code 1305. Telepsychiatry is added to the list of APN nonreimbursed services. As noted above, proposed amendments specifying a maximum psychotherapy group size of 10 and minimum session duration of one hour were changed in the adopted text to a maximum group size of 12 and minimum session of 45 minutes. Medical personnel who provide the above services 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.

☞ MEDICAL SCHOOL LOANS

The DEPARTMENT OF PUBLIC HEALTH adopted a new Part titled "Loan Repayment Assistance for Physicians" (77 Ill Adm Code 581; 32 Ill Reg 19440), effective 8/17/09, that implements Public Act 94-368, creating an educational loan repayment assistance program for physicians who practice in Illinois. Covered topics (cont'd next page)

☞ HEART DEFIBRILLATORS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "Heartsaver AED Grant Code" (77 Ill Adm Code 530; 33 Ill Reg 12076) implementing Public Act 95-721, which expands the Department's matching grants from the Heartsaver AED Fund to nonpublic schools, colleges, and universities; public park districts; municipal recreation departments; forest preserve districts; and conservation districts to assist in the purchase of an automated external defibrillator (AED). The rulemaking also strikes the requirement that eligible applicants must be mandated to have an AED by the Physical Fitness Facility Medical Emergency Preparedness Act and provides that no applicant will receive more than one grant from the Fund each fiscal year (instead of one AED per facility). Those affected by this rulemaking include both private and public educational entities, forest preserve and conservation districts, and municipal recreation departments.

Questions/requests for copies/comments through 10/13/09: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Spfld. IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov

☞ RADIOACTIVE MATERIAL

The ILLINOIS EMERGENCY MANAGEMENT AGENCY proposed amendments to "Licensing of Radio-

(cont'd page 2)

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

include application requirements, grant awards, grant terms and obligations, and penalties for failure to fulfill obligations. Changes since 1st Notice define "full-time practice" based upon American Medical Assoc. standards, delete proposed definitions for "health professional shortage area" and "rational service area", and clarify that a person's total amount of grants will not exceed \$25,000. Specific factors that affect how grant awards will be prioritized when there are insufficient appropriations are replaced with a statement that grants will be prorated under such circumstances. Also, text changes clarify that the grant program will allow for initial 3-year grants and subsequent one-year grants. Physicians in private or group practices are among those affected by this rulemaking.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov

Questions/requests for copies: Conrad Rubinkowski ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/785-3922.

WATER QUALITY STANDARDS

The POLLUTION CONTROL BOARD adopted amendments to "Water Use Designations and Site-Specific Water Quality Standards" (35 Ill Adm Code 303; 33 Ill Reg 3898), effective 8/11/09, that authorize alternative water quality standards for boron in certain portions of an unnamed tributary of the South Branch Edwards River, the South Branch Edwards River itself, and Mud Run Creek below the discharge points of the City of Galva's northeast sewage treatment plant and southeast sewage treatment plant. Allowable boron levels in these waters will increase from 1 milligram per liter to 3 milligrams per liter under these amendments. Small businesses, small municipalities, and not-for-profit corporations using the waters specified above may be affected by this rulemaking.

Questions/requests for copies: Marie Tipsord, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-4925, e-mail: tipsordm@ipcb.state.il.us

VETERANS' BONUS

The DEPARTMENT OF VETERANS' AFFAIRS adopted a new Part titled "Rules Governing Payment of War on Terrorism Compensation Act" (95 Ill Adm Code 123; 33 Ill Reg 12273) by emergency rulemaking, effective 8/17/09, for a maximum of 150 days. An identical proposed rulemaking appears in this week's *Illinois Register* at 33 Ill Reg 12222. The rulemakings award a \$100 bonus payment to those who

receive the global war on terrorism expeditionary medal or global war on terrorism service medal. Eligible individuals include those serving in an established branch of the armed forces, reserves, or national guard. Service in the merchant marine or civilian services does not qualify. Recipients must still be in active service or retired, furloughed to a reserve, honorably separated, or honorably discharged. Applicants are automatically disqualified if their service was not within the defined service period (9/11/01–present), they were not awarded either medal, they did not serve outside the U.S. at least 30 consecutive or 60 non-consecutive days, they were not a resident of Illinois for 12 months prior to entering the service, they received a similar bonus payment from any other State, or they are deceased. Applications must include proof of service, award of the medal, and Illinois residency. Persons legally vested with the care of a legally disabled qualifying individual may receive the payment to be held and used solely for the benefit of that disabled individual, but under no circumstances is the award transferrable to anyone other than the named recipient. Applicants who are denied may appeal the decision if they provide a copy of the application, the letter of denial, and a clear statement of why the applicant believes the denial was improper.

Questions/requests for copies/comments concerning the proposed rulemaking through 10/13/09: Jack Price, Department of Veterans' Affairs, 833 S. Spring St., Springfield IL 62794, 217/557-5682.

GAS PIPELINES

The ILLINOIS COMMERCE COMMISSION adopted an amendment for "Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities" (83 Ill Adm Code 590; 33 Ill Reg 4280), effective 8/15/09, that updates the incorporation by reference of federal Department of Transportation regulations governing reporting requirements, safety standards for pipeline transport of gas and liquefied natural gas facilities, and employee drug and alcohol testing to 1/1/09 federal safety standards for natural gas pipelines. Small businesses that own, operate, or repair gas pipelines may be affected by this rulemaking.

Proposed Regulations

active Material" (32 Ill Adm Code 330; 33 Ill Reg 12061) establishing conditions under which producers or possessors of water and sewage treatment residuals or sludges containing naturally occurring radium below a

specific level will be exempt from specified registration, licensure, fee, and reporting requirements. Additional amendments establish requirements for the disposal and analysis of these residuals and sludges. Those affected

by this rulemaking include small municipalities that produce or possess water and sewage treatment residuals or sludges.

Questions/requests for copies/com-

Proposed Regulations

ments through 10/13/09: Louise Michels, IEMA, 1035 Outer Park Dr., Springfield IL 62704, 217/524-0770.

AIRPORTS

The DEPARTMENT OF TRANSPORTATION proposed the repeal of the following 6 Parts: "Greater Rockford Airport Hazard Zoning Regulations" (92 Ill Adm Code 47; 33 Ill Reg 12108), "Greenville Airport Zoning Regulations" (92 Ill Adm Code 48; 33 Ill Reg 12131), "Metropolis Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 66; 33 Ill Reg 12145), "Pittsfield-Penstone Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 74; 33 Ill Reg 12164), "Sparta Community Airport Hazard Zoning Regulations" (92 Ill Adm Code 82; 33 Ill Reg 12183), and "Vermilion County Airport Hazard Zoning Regulations" (92 Ill Adm Code 90; 33 Ill Reg 12202). DOT also proposed amendments for "Airport Hazard Zoning" (92 Ill Adm Code 16; 33 Ill Reg 12100) to consolidate regulations for these 6 airports and one additional airport that did not previously have rules into Part 16 rules that apply to all publicly-owned airports. The rulemaking addresses the administration and enforcement of structure, equipment, and vegetation height restrictions and regulates the use of property at, or in the vicinity of, publicly-owned airports. Appendix A specifies each airport's three-letter or number designation, city and county location, latitudinal and longitudinal coordinates, whether federal or State standards apply to that airport, and the 1/1/10 date these rules will become effective for the airports listed. The rulemaking also

adds Bolingbrook Clow International Airport to Part 16 because it does not currently have hazard zoning regulations codified in rule. Those affected by these rulemakings include small businesses, not-for-profit corporations, and municipalities located in the vicinity of the listed airports (e.g., land and real estate developments, farms, grain elevators, power companies, or towers) that desire to alter or build facilities or alter landscapes in specified areas near these airports.

Questions/requests for copies/comments concerning the 7 DOT rulemakings above through 10/13/09: Robert Hahn, DOT, 1 Langhorne Bond Dr., Abraham Lincoln Capital Airport, Springfield IL 62707, 217/524-1580.

DHS FUNDS RECOVERY

The DEPARTMENT OF HUMAN SERVICES proposed amendments to "Recovery of Misspent Funds" (89 Ill Adm Code 527; 33 Ill Reg 12056). The rulemaking makes a number of non-substantive, technical changes that include changing DHS' Office of Rehabilitation Services title to Division of Rehabilitation Services (DRS). Further amendments reflect current collections policy requiring the Department to forward requests for recovery of misspent funds to the Comptroller and a collection agency in the event that the individual owing the funds defaults on an agreement for repayment of funds executed with DHS.

Questions/requests for copies/comments through 10/13/09: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

STATE EMPLOYEE PENSIONS

STATE EMPLOYEES RETIREMENT SYSTEM (SERS) proposed amendments to "The Administration and Operation of the State Employees' Retirement System of Illinois" (80 Ill Adm Code 1540; 33 Ill Reg 12084). A companion emergency rulemaking was adopted 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. 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 rulemaking also provides this option for retirees receiving the "level income" of benefits (increased retirement annuity until Social Security begins) or Qualified Illinois Domestic Relations Order recipients. The 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 elected SERS trustees who must be contributing SERS members with at least 8 years of creditable service from one to 4 trustees beginning in 2009.

Questions/requests for copies/comments through 10/13/09: Tim Blair, SERS, 2101 S. Veterans Pkwy., Springfield IL 62794-9255, 217/785-7016.

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 September 15, 2009 meeting.

IL EMERGENCY MANAGEMENT AGENCY

"Licensing of Radon Detection and Mitigation Services" (32 Ill Adm Code 422; 33 Ill Reg 6786)

DEPT. OF HUMAN SERVICES

"Autism Research Fund Scientific Review Committee" (59 Ill Adm Code 270) proposed 5/29/09 (33 Ill Reg 7054)

DEPT. OF PUBLIC HEALTH

"Sexual Assault Survivors Emergency Treatment Code" (77 Ill Adm Code 545) proposed 3/6/09 (33 Ill Reg 3904)

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JCAR Meeting Action

At its 8/18/09 meeting, the Joint Committee on Administrative Rules voted an Objection to one proposed rulemaking and a Recommendation regarding an emergency rulemaking, extended the Second Notice periods on five rulemakings, and postponed consideration of one peremptory rulemaking. Second Notice periods were extended an additional 45 days for the Department of Human Services rulemakings "Temporary Assistance for Needy Families" (89 Ill Adm Code 112; 33 Ill Reg 5201) and "General Assistance" (89 Ill Adm Code 114; 33 Ill Reg 5228); the Department of Insurance's repeal of a Part titled "Preferred Provider Program Administrators" (50 Ill Adm Code 2051; 33 Ill Reg 2020) and its proposed replacement Part titled "Preferred Provider Programs" (50 Ill Adm Code 2051; 33 Ill Reg 1927); and the Department of Public Health rulemaking titled "Adverse Health Care Event Reporting Code" (77 Ill Adm Code 235; 32 Ill Reg 19425). These rulemakings, along with the DHS peremptory rulemaking titled "Collections and Recoveries" (89 Ill Adm Code 165; 33 Ill Reg 11336), will be considered at JCAR's 9/15/09 meeting.

DEPARTMENT OF PUBLIC HEALTH

JCAR objects to the DPH rulemaking titled "Community Health Care Expansion" (77 Ill Adm Code 975; 33 Ill Reg. 3940) because of the agency's prior implementation of the policies being adopted in this rulemaking. Prior implementation is contrary to Sections 1-70 and 5-10 of the Illinois Administrative Procedure Act. The Department has been administering this program since 2001.

DEPARTMENT OF TRANSPORTATION

With regard to the DOT emergency rulemaking titled "Selection of Architect-Engineer Consultant Firms" (44 Ill Adm Code 625; 33 Ill Reg 11127), JCAR recommends that in the future, DOT be more timely in updating its rules. Statute created the \$25,000 small contract threshold for professional service contracts in 1992, but DOT is only now reflecting that statute through amendments to this Part.