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Illinois General Assembly

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Issue 36

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

HIGHER EDUCATION

BOARD OF HIGHER EDUCATION adopted amendments to "Program Review (Private Colleges and Universities)" (23 Ill Adm Code 1030; 33 Ill Reg 5986), effective 8/21/09. A companion emergency rulemaking became effective 4/9/09. The rulemaking implements Public Act 95-1046, which allows BHE to charge fees to cover the cost of reviewing applications by Illinois proprietary (for-profit) institutions and out-of-state institutions seeking permission to offer classes or institute or change degree programs in Illinois. Application fees are \$5,000 for a certificate of approval or authorization to operate, \$250 for a letter or notice of intent to operate, and \$250 for each change request (e.g., proposal to modify an approved degree program by changing the degree title, credit hours, admission requirements). Fees for authorization to grant degrees are based on the institution's size and level of degrees to be offered (associate, bachelor's, master's, doctoral/professional). These fees range from \$750 to \$4,000 for Illinois proprietary institutions and \$1,750 to \$5,000 for out-of-state institutions. Applications, notices, and change requests will be considered incomplete unless

accompanied by the proper fee payment. The Board will notify applicants if insufficient fees were submitted, and no further action will be taken until the full amount is paid. Changes since 1st Notice delete program content and program elimination from the list of actions requiring a "change request" and add program retention requirements and graduation requirements to the list. Also, proposed text concerning future fee changes anticipated in 2011 and thereafter was not included in the adopted rulemaking. This rulemaking may affect entities engaged in, or planning to offer, higher education classes or degrees.

Questions/requests for copies: Karen Helland, BHE, 431 E. Adams St., 2nd Fl., Springfield IL 62701, 217/557-7358 Fax 217/782-8548, e-mail: helland@ibhe.org

CDB ENERGY CODE

The CAPITAL DEVELOPMENT BOARD adopted emergency amendments to "Illinois Energy Conservation Code" (71 Ill Adm Code 600; 33 Ill Reg 12407), effective 8/18/09, for a maximum of 150 days. An identical proposed rulemaking appears in this week's issue of the *Illinois Register* at

(cont'd next page)

CHILDREN'S HEALTH CARE

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "Children's Community-Based Health Care Center Program Code" (77 Ill Adm Code 260; 33 Ill Reg 12362). (Such centers provide nursing, clinical support, and therapy for children in transition between hospital and home. Most of the children served are on Medicaid, according to DPH.) The amendments specify that health care center staff must be trained in the use of restraints (mechanical devices or drugs) and how to assess a child in restraints. Medication administration is added to the list of categories of care that require ongoing monitoring and evaluation, and a maximum time frame of 5:00 p.m. the next business day is established for reporting serious incidents and accidents to DPH. Examples of incidents or accidents are given, and definitions of "restraint" and "serious injury" are added. Entities affected by this rulemaking include children's community-based health care centers.

HOSPITAL STAFFING

DPH proposed amendments to "Hospital Licensing Requirements" (77 Ill Adm Code 250; 33 Ill Reg 12347) that implement Public Act 95-401. Hospitals must implement written, hospital-wide staffing plans that specify the minimum registered-nurse-to-patient staffing needs for each inpatient care

(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

33 Ill Reg 12311. The rulemaking updates the incorporation by reference of the International Energy Conservation Code to reflect the 2009 edition. CDB also expands the composition of the Illinois Energy Conservation Advisory Council to include one Department of Commerce and Economic Opportunity representative and one residential construction contracting industry representative, bringing the total membership to 10 and setting the quorum at 6. Additional amendments update the ANSI/ASHRAE/

IESNA Standard 90.1 (Energy Standard for Buildings Except Low-Rise Residential Buildings) incorporation by reference to reflect the 2007 edition and correct the name of the U.S. Department of Energy's COMcheck code compliance tool (method). CDB has chosen to adopt the most recent energy code standards available in order to qualify for State energy grants (federal economic stimulus funds) available under the federal American Recovery and Reinvestment Act of 2009 (ARRA). Those who are con-

structing, renovating, or adding to commercial building structures or issuing building permit applications may be affected by these rulemakings.

Questions/requests for copies/comments concerning the proposed rulemaking through 10/19/09: Jim Underwood, CDB, 401 S. Spring St., 3rd Fl., Springfield IL 62706, 217/782-8527, e-mail: jim.underwood@illinois.gov, Fax 217/524-0565.

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unit. Elements to be considered are prescribed (e.g., patient acuity and volume, available equipment and technology, the skill mix of personnel). The written staffing plan must be posted in a conspicuous and accessible location for both patients and direct-care staff. Hospitals must have nursing care committees, at least 50% of whose members are to be registered professional nurses providing direct patient care. A committee's recommendations must be given "significant regard" and weight in the hospital's adoption and implementation of a staffing plan. Definitions of "acuity model", "direct patient care", "nursing-sensitive care performance measure", "nursing care committee", "registered professional nurse", and "written staffing plan for nursing care services" are added. Entities affected by this rulemaking include hospitals.

health department, or a local law enforcement agency) and the violator. A person may request a hearing within 10 days after service of a citation. Entities affected by this rulemaking include local law enforcement agencies, certified local health departments, and owners or operators of establishments where smoking is banned.

Questions/requests for copies/comments concerning the 3 DPH rulemakings above through 10/19/09: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov

HIGHER EDUCATION

The BOARD OF HIGHER EDUCATION proposed amendments to two Parts titled "Tuition and Fee Waiver Guidelines" (23 Ill Adm Code 1075; 33 Ill Reg 12306) and "Approval of Non-instructional Capital Projects" (23 Ill Adm Code 1040; 33 Ill Reg 12299). In Part 1075, BHE expands the waiver amount allowed for undergraduate tuition revenue for public universities. The category of financial aid waivers for Illinois resident students demonstrating financial need will no longer be counted toward the maximum allowable total percentage of waivers set at 3% of tuition revenue, thus allowing institutions to grant more tuition waivers. In Part 1040, BHE

changes the timing of submission of a notice of intent for non-instructional capital projects to give the Board advance notice of non-instructional capital projects that will eventually require Board approval. The institution must file a notice of intent whenever a governing board authorizes the planning or financing of a non-instructional capital project, and the notice will include a description of the project, its purpose, its cost, the anticipated source of funds, and funding for operation and maintenance costs.

Questions/requests for copies/comments through 10/19/09: Karen Helland at the BHE address and telephone number above.

SEXUAL HARASSMENT

The DEPARTMENT OF HUMAN RIGHTS proposed amendments to "Procedures of the Department of Human Rights" (56 Ill Adm Code 2520, 33 Ill Reg 12314) requiring institutions of higher learning to post and distribute sexual harassment laws and policies. Institutions have three options for compliance: (1) keeping written copies of sexual harassment policies posted prominently in an accessible "common area" on campus; (2) posting copies of the policy and sending electronic copies to each student when registration materials are sent; or (3) sending electronic copies to all students and requiring each student to

DPH HEARINGS

DPH also proposed amendments to "Rules of Practice and Procedure in Administrative Hearings" (77 Ill Adm Code 100; 33 Ill Reg 12321). Hearing procedures and statutory language are updated, and text listing referenced federal laws, State laws and rules, and Illinois Supreme Court rules is added. Provisions for hearings conducted in regard to violations of the Smoke Free Illinois Act are added. Parties to hearings under the Act will be the enforcing agency (DPH, a local

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acknowledge receiving and reviewing the policy before completing online registration for each term. Persons may file complaints with DHR for non-compliance and must agree to testify. Upon complaint, DHR will specify provisions with which the institution allegedly did not comply and what the institution must do to comply. The institution must respond within 30 days indicating the steps it took to comply or disputing DHR's allegation that it did not comply. DHR may file civil rights violation charges if the institution continues not to comply. Institutions of higher education will be affected by this rulemaking.

Questions/requests for copies/comments through 10/19/08: David T. Rothal, DHR, 100 W. Randolph, Ste. 10-100, Chicago IL 60601, 312/814-6262, TTY 312/263-1579.

UNIVERSITY RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM proposed amendments to "Universities Retirement" (80 Ill Adm Code 1600; 33 Ill Reg 12381) revising its administrative hearing procedures. The rulemaking changes the current four-member claims committee

to a three-member claims panel consisting of (1) the executive director of SURS, (2) an attorney approved by the SURS Board of Directors, and (3) one other person chosen by the Board chairman, who must be either a Board member, a SURS participant, or an attorney. Claimants must provide a list of witnesses when filing a statement of claim, and all testimony before the claims panel must be under oath. Decisions of the claims panel are final unless a "statement of exceptions" to the decision is filed or two members of the panel cannot agree on a decision. In those cases, the claim will be presented to SURS' executive committee for a final decision. The rulemaking also includes protocols for filing briefs and time frames for submitting material to the executive committee.

Questions/requests for copies, comments through 10/19/09: Kelly Jenkins, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8825.

BUSINESS CORPORATIONS

The SECRETARY OF STATE (Business Services Department) proposed amendments to rules titled "Business

Corporation Act" (14 Ill Adm Code 150; 33 Ill Reg 12375). The rulemaking prescribes a fee of \$25 for a search by name of a corporation's registered agent, president, and secretary in the SOS database of registered corporations. The rulemaking codifies longstanding SOS policy that when a corporation with its principal office in Illinois invests part of its earned surplus in corporate stocks and other securities through that principal office, the stocks and securities are considered property located in Illinois, and income from them will be counted as part of the corporation's business transacted in Illinois. The rulemaking also implements a 1999 Illinois court ruling stating that all amounts transferred from a corporation's retained earnings or from any other entry in its stockholders' equity to its paid-in capital are subject to all franchise taxes imposed by the Business Corporation Act. Small businesses that are corporations will be affected by this rulemaking.

Questions/requests for copies/comments through 10/19/09: Robert Durchholz, 501 S. 2nd St., Rm. 330, Springfield IL 62756, 217/782-4909.

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 15th meeting, except the SOS rulemaking and DNR's Part 1565 rulemaking are assigned to the October 14, 2009 meeting.

DEPARTMENT OF REVENUE

"Income Tax" (86 Ill Adm Code 100) proposed 6/12/09 (33 Ill Reg 7570)

"Income Tax" (86 Ill Adm Code 100) proposed 7/6/09 (33 Ill Reg 9235)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Podiatric Medical Practice Act of 1987" (68 Ill Adm Code 1360) proposed 7/6/09 (33 Ill Reg 9225)

DEPT. OF NATURAL RESOURCES

"Illinois List of Endangered and Threatened Fauna" (17 Ill Adm Code 1010) proposed 6/12/09 (33 Ill Reg 7498)

"Illinois List of Endangered and Threatened Flora" (17 Ill Adm Code 1050) proposed 6/12/09 (33 Ill Reg 7516)

"Illinois Prescribed Burning Act" (17 Ill Adm Code 1565) proposed 6/19/09 (33 Ill Reg 8054)

SECRETARY OF STATE

"Commercial Driver Training Schools" (92 Ill Adm Code 1060) proposed 7/10/09 (33 Ill Reg 9560)

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