

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

☞ MEDICAID LONG-TERM CARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Assistance Programs" (89 Ill Adm Code 120; 34 Ill Reg 11664), effective 1/1/12, to implement provisions of the federal Deficit Reduction Act of 2005 (DRA) concerning Medicaid assistance for long-term care. These amendments, which have undergone numerous changes since 1st Notice, change the criteria for reviewing transfers of money, property, or other assets made on or after 1/1/07 by persons who apply for long-term care assistance on or after 1/1/12. (Asset transfers for which an applicant receives less than the fair market value in cash, property, or other goods may be disallowed if the applicant fails to prove that the transfer was made for a reason other than to accelerate eligibility for Medicaid. If asset transfers are disallowed, the applicant may be denied assistance for a penalty period equal to the length of time the applicant could have paid for his or her own care with the transferred assets.) The "look-back period" for scrutiny of transfers is now 60 months prior to application (formerly 36 months), and the penalty period for disallowed transfers will begin when

the applicant would otherwise have become eligible for Medicaid (instead of when the asset transfer took place). Multiple disallowed asset transfers during the look-back period must be added to determine the total penalty period. If an applicant holds a qualifying long-term care insurance policy, DHFS will disregard the person's assets, and impose no penalty for asset transfers, up to the amount of coverage the policy provides. The rulemaking also lists criteria for evaluating asset transfers at less than fair market value; sets new criteria for evaluating trusts, annuities, life estates, loans, home equity, farmland, and other types of assets or asset transfers; and establishes a process for obtaining hardship waivers of penalty periods. Changes since 1st Notice include allowing persons who made transfers prior to 11/1/11 to obtain hardship waivers of any resulting penalties if they attest that they relied upon DHFS rules in effect at the time of the transfers. Also, for disallowed transfers made prior to 1/1/12, returning any portion of the transfer will reduce the penalty period. (For transfers on or after that date, only full returns affect the penalty period once the penalty has started.) The limit on

(cont'd next page)

☞ CHILD CARE

The DEPARTMENT OF HUMAN SERVICES proposed amendments to "Child Care" (89 Ill Adm Code 50; 35 Ill Reg 18475) limiting the number of times a family may receive child care assistance while seeking employment or between school semesters. Families eligible for child care services (CCS) are limited to utilizing these provisions no more than 3 times in any 12 month period and payments will not be approved if the child does not attend day care. The rulemaking requires a CCS recipient to report loss of employment or break in an approved activity (e.g., school) within 10 days after the date of loss or break in activity. The rulemaking also repeals provisions offering an extension of CCS for job search activities paid for with ARRA funding and limits the job search grace period for child care assistance provided by an approved Child Care Collaboration Program to one 90-day job search in a 12-month period. The rulemaking also updates DHS' Child Care Bureau's mailing address. Child care providers will be affected by this rulemaking.

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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.

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homestead equity has been raised from \$500,000 to \$750,000, with annual adjustments for inflation. "Incidental" gifts to family members and church or charity donations made consistently over a period of time will not be penalized as asset transfers. Other changes since 1st Notice address the following topics: exemptions for prepaid funeral and burial contracts, farmland, non-homestead property for sale, and former homestead property that is generating income; allowable expenditures during the 3 months prior to application for which eligibility may be granted retroactively; criteria for allowable annuities, promissory notes, loans, and mortgages; spousal refusal to disclose assets; special needs trusts; transfer of homestead property to a caretaker child; and the definition of "undue hardship". Those affected by these rulemakings include long-term care facilities that accept Medicaid recipients and small businesses and non-profit organizations that counsel seniors concerning asset transfers and Medicaid eligibility.

Questions/requests for copies: Jeanette Badrov, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

PUBLIC ASSISTANCE

The DEPARTMENT OF HUMAN SERVICES adopted amendments to "Temporary Assistance for Needy Families" (TANF) (89 Ill Adm Code 112; 35 Ill Reg 6736, "Aid to the Aged, Blind or Disabled" (AABD) (89 Ill Adm Code 113; 35 Ill Reg 6738, and "General Assistance" (GA) (89 Ill Adm Code 114; 35 Ill Reg 6740), all effective 10/28/11. These rulemakings implement federal Public Law 111-312, which allows DHS to exempt federal income tax refunds received after December 31, 2009 and before January 1, 2013 from consideration as income, when determining an applicant's TANF, AABD, or GA eligibility. (Therefore, the refunds will be an exempt asset.) Identical emergency amendments effective for 150 days expired on 9/2/11.

FOOD ASSISTANCE PROGRAM

DHS also adopted amendments to "Supplemental Nutrition Assistance Program (SNAP)" (89 Ill Adm Code 121; 35 Ill Reg 9228), effective 10/28/11, repealing the federal Express Stamps Demonstration Project and removing all program references from rule text. The project currently operates in Cook, DuPage, Kane, Lake, and Will counties where food pantry volunteers encourage visitors who are not currently receiving SNAP benefits to apply for express stamps on a computer terminal via the electronic application process. DHS then notifies applicants of their eligibility determination by mail. Local food pantries in the above counties may be affected by this rulemaking.

VOCATIONAL REHABILITATION

DHS adopted amendments to "Customer Financial Participation" (89 Ill Adm Code 562; 34 Ill Reg 19362), effective 10/27/11, that revise how DHS determines the level of a vocational rehabilitation (VR) recipient's required financial participation. Concerning the recipient's financial analysis, his or her income will be based upon the submission of proof of income provided and retained for each family member 19 years of age and older. VR recipients receiving post-secondary training must provide family income information for all individuals listed on the Free Application for Federal Student Aid (FAFSA) form. The rulemaking also revises the list of VR services exempt from the recipient financial participation requirement. Any recipient financial contribution calculated for services must be paid prior to or at the same time that DHS contributions are paid for services. However, exceptions may be made for this requirement by a VR bureau chief. Those affected by this rulemaking include small businesses and nonprofits that provide vocational rehabilitation services for DHS clients.

Questions/requests for copies of the 5 DHS rulemakings above: Tracie Drew,

DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

TOURISM GRANTS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted amendments to "Illinois Promotion Act Programs" (14 Ill Adm Code 510; 35 Ill Reg 7023), effective 10/28/11. The amendments change the Bureau of Tourism to Office of Tourism, increase the minimum cost threshold for consideration of a project from \$3,000 to \$20,000, increase the maximum grant amount to any grantee from \$50,000 to \$100,000, and limit grantees to one application per fiscal year unless money for grants is still available on February 1st of the fiscal year. An additional change increases the minimum score required from the DCEO internal review committee from 50 to 60 points for a project to be eligible for funding. Finally, any options for less than equal funding through the match and the grant are eliminated from the rules. Those affected by this rulemaking include grant applicants that are a unit of local government, local promotion group, or nonprofit or for-profit business that desires a tourism grant.

ECONOMIC DEVELOPMENT

DCEO also adopted amendments to "Employer Training Investment Program" (56 Ill Adm Code 2650; 35 Ill Reg 4745) effective 10/28/11, that prohibit the employment of aliens who have not been legally accepted for permanent residency or who have not been authorized by the U.S. Attorney General. Further changes make site-monitoring by DCEO to verify trainee employment dates and wages permissive rather than mandatory, require employers in the training program to submit quarterly rather than monthly reports outlining training-related expenses and other documentation, and allow the employer to provide other notarized information in lieu of each employee's social security number subject to DCEO audit. Employers must also make every ef-

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fort to reemploy employees who previously lost their jobs at the facility due to closures or layoffs if the new product is substantially the same as what was produced before the most recent closure. A more comprehensive definition of full-time employee is also included. Small businesses that compete for grants will be affected by this rulemaking.

Questions/requests for copies of the 2 DCEO rulemakings above: Jolene Clarke, DCEO, 500 E. Monroe, Springfield IL 62701, 217/ 557-1820 or 782-0038, e-mail: jolene.clarke@illinois.gov.

AIR POLLUTION

The POLLUTION CONTROL BOARD adopted amendments to "Air Quality Standards" (35 Ill Adm Code 243; 34 Ill Reg 17537), effective 10/25/11, to mirror current, stricter national ambient air quality standards (NAAQS). The amendments reflect the new daily maximum 8-hour ozone measurement standard and revocation of the 1-hour standard, add the most recent emission standards for both coarse and fine particulate matter, codify the new NAAQS for lead, and add or update incorporations by reference of federal air quality regulations. Small businesses, small municipalities, and non-profit corporations may be affected by this rulemaking to the extent they are a regulated source of the air pollution referenced above.

PCB adopted amendments to "Nitrogen Oxides Emissions" (35 Ill Adm Code 217; 34 Ill Reg 17513) and "Standards and Limitations for Organic Material Emissions for Area Sources" (35 Ill Adm Code 223; 34 Ill Reg 17525) effective 10/25/11. The first rulemaking corrects a cross-reference to a subsection of rule text that does not exist, and the second rulemaking corrects an error in the name of a category of consumer product coatings.

PCB also adopted amendments to "Organic Material Emission Standards

and Limitations for the Chicago Area" (35 Ill Adm Code 218; 35 Ill Reg 10189) and "Organic Material Emission Standards and Limitations for the Metro East Area" (35 Ill Adm Code 219; 35 Ill Reg 10207), effective 10/25/11, concerning limitations on volatile organic material (VOM) emissions that apply to facilities in the Chicago and St. Louis metropolitan areas. The rulemakings extend to facilities that paint and finish marine engines, boats, and other pleasure craft an exemption from VOM emission standards for "touch up and repair" coatings that do not use more than 1 quart of coating per 8-hour period, or more than 55 gallons per year. Those affected by these 2 rulemakings include small businesses that qualify for the emissions exemption summarized above.

NON-HAZARDOUS SOLID WASTE

PCB adopted amendments to "Solid Waste" (35 Ill Adm Code 807; 35 Ill Reg 10490), and "Standards for New Solid Waste Landfills" (35 Ill Adm Code 811; 35 Ill Reg 10505) effective 10/24/11. An amendment to each Part disallows combining a performance bond for financial assurance for closure or post-closure care at solid waste sites with other types of financial assurance. Further amendments are nonsubstantive and either correct typographical errors or make the Parts' language consistent with the Board's other financial assurance rules. Those affected by these rulemakings include pollution sources and facilities required to obtain financial assurance for the closure and post-closure care of waste disposal sites and entities that provide financial assurance services for waste disposal sites.

Questions/requests for copies of the 7 PCB rulemakings above: Tim Fox (312/814-6085) for Parts 217, 218, 219, 223, and 243 and Daniel Robertson (312/814-6931) for Parts 807 and 811, PCB, 100W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620 or download copies at www.ipcb.state.il.us. Please reference docket R09-19 for Parts 217, 223 and 243; docket R11-23(A) for Part

218 and 219; and docket R10-09A for Parts 807 and 811.

IMPAIRED DRIVERS

The DEPARTMENT OF STATE POLICE adopted amendments to "Testing of Breath, Blood and Urine for Alcohol, other Drugs, and Intoxicating Compounds" (20 Ill Adm Code 1286; 35 Ill Reg 12741) effective 10/31/11. The amendments add connection requirements to the State Police computer network for stationary, breath-testing instruments; change the name "intoxilyzer" to "intoximeter" for the EC-IR II breath-testing analyzer; and strike a statement that the accuracy of evidentiary instruments beyond 1/100th of a point is not required. Law enforcement agencies that conduct tests for alcohol and other named substances will be affected by this rulemaking.

Questions/requests for copies: Suzanne L. Y. Bond, DSP, 801 S. 7th St., Ste. 1000-S, Springfield IL 62794-9461, 217/782-7658.

TOURISM & BUSINESS HIGHWAY SIGNAGE PROGRAMS

The DEPARTMENT OF TRANSPORTATION adopted amendments to "Business Logo Signing Program" (92 Ill Adm Code 542; 35 Ill Reg 12273) and "Tourism Attraction Signing Program" (92 Ill Adm Code 543; 35 Ill Reg 12301) effective 10/26/11. Part 542 concerns authorized freeway signage advertising services such as gasoline, food, lodging, camping, and 24-hour pharmacies, and Part 543 concerns authorized freeway signage advertising amusements or historical, cultural, or leisure activities to the public. Amendments for both Parts specify there may be a maximum of 2 specific service panels and 12 logo signs at a location, and the RV symbol requirements are adjusted. Allowable combinations of logos are explained. In addition, a section of Interstate 90 is designated eligible for business logo signage in Part 542. Part 543 amendments add agri-tourism sites, brewer-

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ies, marinas, and "unique attractions" (e.g., ATV parks, comedy clubs, rock climbing and sky diving facilities, sport shooting clubs, landmarks) to the list of attractions eligible to advertise in the program. A list of ineligible attractions (e.g., clothing stores, movie theaters) is added, also. A list of DOT's 9 district offices is added in an appendix. Other covered topics include ramp panel requirements, required on-site business telephones, assigning businesses to a first or second panel, loss of signing priority, automatic sign removal under specified conditions, fees charged for sign replacement due to deterioration, and arrangement of multiple service types on the same service panel. A change since

1st Notice to both rulemakings adds an incorporation by reference to Federal Highway Administration standards for tourism attraction panels and signs. Small businesses and non-profits that desire to participate in the DOT freeway advertising programs will be affected by these 2 rulemakings.

Questions/requests for copies: Justan Mann, DOT, 2300 S. Dirksen Pkwy., Rm. 009, Springfield IL 62764, 217/782-2076.

HORSE RACING

The ILLINOIS RACING BOARD adopted emergency amendments to "Medication" (11 Ill Adm Code 603; 35 Ill Reg 18959), effective 10/25/11,

for a maximum of 150 days. The companion permanent rulemaking was proposed in the 9/16/11 issue of the *Illinois Register* at 35 Ill Reg 15210. The rulemaking provides an updated incorporation by reference of the Association of Racing Commissioners International (ARCI) Uniform Classification of Foreign Substances, which is used to determine permissible and banned medications for race horses. An earlier emergency rulemaking on this Part was repealed because it cited an outdated version of the ARCI document.

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

Proposed Regulations

VOCATIONAL REHABILITATION

DHS also proposed amendments to "Closure of a Rehabilitation Case" (89 Ill Adm Code 595; 35 Ill Reg 18485) adding provisions that notify customers of their right to contact a hearings coordinator to request a mediation or impartial hearing regarding the closure of a vocational rehabilitation (VR) case. The rulemaking also updates this Part to reflect changes made in other VR rules and makes technical changes for consistency.

Questions/requests for copies/comments on the 2 DHS rulemakings above through 12/28/11: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

EMS LICENSURE

The DEPARTMENT OF PUBLIC HEALTH proposed an amendment to "Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515; 35 Ill Reg 18565) that makes an emergency medical technician's failure to disclose all felony convictions on an applica-

tion grounds for license denial or revocation. For applicants with Class X, 1 or 2 felonies or an out-of-state equivalent offense, DPH is authorized to require a law enforcement agency criminal history report at the applicant's cost. The rulemaking prescribes factors to consider in determining the degree to which the applicant's criminal history suggests that the applicant may present a risk to patients. Applications must be denied when the applicant fails or refuses to provide additional relevant information requested. This rulemaking may affect emergency medical services providers.

Questions/requests for copies/comments through 12/28/11: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov.

TELEPHONE SERVICES

The ILLINOIS COMMERCE COMMISSION proposed amendments to "Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Local

Exchange Telecommunications Carriers in the State of Illinois" (83 Ill Adm Code 735; 35 Ill Reg 18469) that make the Part applicable to electing providers (telecommunication services providers that choose to be market-regulated) only with respect to the offering or provision of the optional packages required by the Public Utilities Act and stand-alone residential network access lines. Telephone service providers may be affected by this rulemaking.

Questions/requests for copies/comments through 12/28/11: Elizabeth Rolando, Chief Clerk, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/782-7434.

LANDSCAPE WASTE

The POLLUTION CONTROL BOARD proposed amendments to "Proceedings Pursuant to Specific Rules or Statutory Provisions" (35 Ill Adm Code 106; 35 Ill Reg 18492) implementing Public Act 97-220. The PA and this rulemaking give PCB, instead of the Illinois Environmental Protection Agency, authority to determine when farm

owners and operators will be granted exemptions from statutory limits on landscape waste composting without an EPA permit. (Composting landscape waste on farms is allowed without a permit if no more than 2% of the farm's acreage is devoted to landscape waste composting and no more than 20 tons of landscape waste per acre per year are applied to the land. To go beyond these limits without a permit, a landowner must request an exemption.) The rule-making establishes a process for initiating and filing petitions for exemptions, sets content requirements for petitions, and sets time frames for PCB and EPA to respond to petitions. The burden of proof is upon the petitioner to demonstrate that a site's soil or crop characteristics demand a larger composting facility or a higher rate of landscape waste application. Farms owned or operated by small businesses or non-profits may be affected by this rulemaking.

GROUNDWATER QUALITY

PCB also proposed amendments to "Groundwater Quality" (35 Ill Adm Code 620; 35 Ill Reg 18502) that update groundwater quality rules based on new scientific data, federal amendments and technical references. Preventive response levels for contaminants not classified as carcinogens are added. Caps for concentrations of chemical, organic and explosive constituents for Class I (drinking water sources) and II (general water sources) groundwaters are revised

and added. For Class IV ("other groundwater") sources within previously mined areas, standards for various explosive chemicals are added. Incorporations by reference are added and new terms are defined.

Requests for copies/comments on the 2 PCB rulemakings above through 12/28/11: John Therriault, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. For more information: Kathleen Crowley (312/814-6929, crowleyk@ipcb.state.il.us) for Part 106 and Richard McGill (312/814-6983, mcgillr@ipcb.state.il.us) for Part 620, both at the same address. Please reference docket R12-11 for Part 106 and docket R08-18 for Part 620.

DRIVER'S LICENSES

The SECRETARY OF STATE proposed an amendment to "Issuance of Licenses" (92 Ill Reg 1030; 35 Ill Reg 18575) implementing Public Act 97-263 which removes the Secretary's authority to issue a driver's license without the applicant providing a social security number. The rulemaking repeals the process allowing the issuance of a driver's license without presentation of a social security number by an applicant whose religious beliefs do not permit them to obtain a social security number.

Questions/requests for copies/comments through 12/28/11: Jennifer Egizii, SOS, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

DOCUMENT SEARCHES

SOS also proposed an amendment to rules titled "Uniform Commercial Code" (14 Ill Adm Code 180; 35 Ill Reg 18582). The amendment provides that the word "and" will be converted to an ampersand (&) in all search requests (e.g., for business names) so that searches on either the word or the symbol will yield the same results.

Questions/requests for copies/comments through 12/28/11: Dennis L. Hawkins, SOS Business Services, Howlett Bldg #350 West, 501 S. Second St., Springfield IL 62756, 217/785-2238.

UNIVERSITY RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM proposed amendments to "Universities Retirement" (80 Ill. Adm Code 1600; 35 Ill. Reg. 18589) to conform to a 2008 federal tax law change allowing university employees who die while on leave for military service the same death benefits for which their survivors would have qualified if they had died while serving as a university employee. The rulemaking also changes from 5 to 6 the number of trustees required to constitute a quorum of the SURS Board of Trustees to reflect a statutory change in the number of Board members.

Questions/requests for copies/comments through 12/28/11: Michael Weinstein, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8825.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies below, commencing the JCAR review period. These rulemakings will be considered at JCAR's 12/13/11 meeting.

DEPARTMENT OF PUBLIC HEALTH

"Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515) proposed 8/19/11 (35 Ill Reg 10471)

DEPARTMENT OF INSURANCE

"Americans With Disabilities Act Grievance Procedure" (4 Ill Adm Code 250) proposed 7/8/11 (35 Ill Reg 10457)

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JCAR Meeting Action

At its 11/8/11 meeting, the Joint Committee on Administrative Rules extended the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered at JCAR's 12/13/11 meeting.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

"Reports of Child Abuse and Neglect" (89 III Adm Code 300; 35 III Reg 8005)

"Placement and Visitation Services" (89 III Adm Code 301; 35 III Reg 8018)

"Services Delivered by the Department of Children and Family Services" (89 III Adm Code 302; 35 III Reg 8027)

"Access to and Eligibility for Child Welfare Services" (89 III Adm Code 304; 35 III Reg 8037)

"Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible" (89 III Adm Code 309; 35 III Reg 8047)

"Permanency Planning" (89 III Adm Code 315; 35 III Reg 8051)

"Administrative Case Reviews and Court Hearings" (89 III Adm Code 316; 35 III Reg 8060)

"Licensing Standards for Foster Family Homes" (89 III Adm Code 402; 35 III Reg 8064)

"Licensing Standards for Day Care Homes" (89 III Adm Code 406; 35 III Reg 8082)

"Licensing Standards for Group Day Care Homes" (89 III Adm Code 408; 35 III Reg 8093)