

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

☞ PATIENT RIGHT TO KNOW ACT

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted an amendment to rules titled "Medical Practice Act of 1987" (68 Ill Adm Code 1285; 35 Ill Reg 14233), effective 11/17/11, implementing Public Act 97-280. A companion emergency rulemaking became effective 8/12/11. Public Act 97-280 created the Patients' Right to Know Act, which required DFPR to make a profile of each physician licensed in Illinois available to the public. The rulemaking updates a statutory cross-reference to the Act and changes obsolete compliance dates. DFPR was required to provide all licensed physicians with a copy of their profile for review by 8/15/11, and physicians were to review, verify, and complete the profile by 10/15/11. Rule text required DFPR to provide physician information to the public on a DFPR website, regardless of whether the physician had verified the information, approximately on or after 10/19/11. (By way of background, DFPR originally adopted physician profile rules in 2008. However, the authorizing statute was declared unconstitutional by the court because a

different provision in the law created medical malpractice caps. Thus, DFPR delayed implementation of this physician profile program until a separate new public act was passed to authorize it.) Physicians will be affected by this rulemaking.

☞ REAL ESTATE APPRAISERS

DFPR also adopted an amendment to "Real Estate Appraiser Licensing" (68 Ill Adm Code 1455; 35 Ill Reg 14235), effective 11/17/11, that increases the initial application fee and annual licensure renewal fee for appraisers to reflect a \$15 increase in the federal Appraisal Subcommittee's (ASC) annual National Registry fee, which becomes effective 1/1/12. ASC requires states to collect the National Registry fee and, in turn, lists a licensure applicant's credentials in the National Registry. A change since 1st Notice clarifies that associate real estate trainee appraisers are not subject to the national registry fee. Those affected by this rulemaking include real estate appraisal schools and businesses that use the services of real estate appraisers.

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Proposed Regulations

EDUCATOR EVALUATION

The STATE BOARD OF EDUCATION proposed a new Part titled "Evaluation of Certified Employees under Articles 24A and 34 of the School Code" (23 Ill Adm Code 50; 35 Ill Reg 19467) to implement provisions in 3 public acts. Beginning 9/1/12, Public Act 96-861, the Performance Evaluation Reform Act of 2010 (PERA), requires consideration of student growth as a significant factor when rating a teacher's or principal's performance. In addition, PA 97-8 expands the use of these performance evaluations to non-tenured teachers, while PA 97-217 requires inclusion of assistant principals in this performance evaluation system. The rulemaking lists the minimum requirements for both teacher and principal/assistant principal performance evaluations, which must include procedures for developing the evaluation plan, student growth and professional practice components, and reporting requirements. Additional regulations establish a State model for teacher evaluation, but use of the model is optional except when teachers and the local committee cannot

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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

Questions/requests for copies of the 2 DFPR rulemakings above: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62767-0001, 217/785-0813, Fax 217/557-4451.

ponent rate. Medicaid-certified nursing homes and certain mental health institutions will be affected by these rulemakings.

prescribed in the rulemaking. (For example, specific dates are added for the exclusive benefit rule, required minimum distributions, and mortality tables.)

Questions/requests for copies of the 2 DHFS rulemakings above: Jeanette Badrov, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

Questions/requests for copies: Thomas S. Gray, TRS, 2815 W. Washington, Springfield IL 62794-9253, 217/753-0375.

☞ MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 35 Ill Reg 7444) and "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 35 Ill Reg 7454), both effective 12/1/11, implementing Public Act 96-1530, which provides additional medical assistance funds to long-term care facilities under the Minimum Data Set (MDS) methodology. (MDS bases payments to Medicare and Medicaid-certified nursing facilities on 15 factors that assess each resident's medical condition, functioning, and level of care.) The Part 147 amendments authorize \$222.5 million in additional funding for MDS reimbursement of nursing facilities. The Part 153 amendments provide that, subject to federal approval, Medicaid-certified institutions for mental disease (IMDs) will have the nursing component of their payment rate fully funded using the MDS methodology, and they will also receive an increase (equal to 2/3 of the difference between the affected facility's nursing rate and the highest nursing rate among Medicaid-certified IMDs in Illinois) for the "socio-development" component of their rate. In addition, facilities that participate in the Department of Public Health's demonstration program for intermediate-care facilities serving persons with serious mental illness (known as "Subpart T facilities" because the program is outlined in rules at 77 Ill Adm Code 300, Subpart T) will receive an increase of 50 cents per day, per resident in their socio-development com-

VOCATIONAL REHABILITATION

The DEPARTMENT OF HUMAN SERVICES adopted amendments to "Individualized Plan for Employment (IEP)" (89 Ill Adm Code 572; 35 Ill Reg 711), effective 11/18/11, that remove the definition of "substantial services" from this Part. DHS states the definition will be added later to Part 521, which houses all vocational rehabilitation (VR) program definitions. The rulemaking also makes terminology changes for consistency with other Parts to reflect language more commonly used in the VR program.

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

TEACHERS' RETIREMENT

The TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS adopted amendments to "The Administration and Operation of the Teachers' Retirement System" (80 Ill Adm Code 1650; 35 Ill Reg 14259), effective 11/18/11, to implement federal retirement plan policy statements required by the federal Internal Revenue Service (IRS) for its continued approval of the TRS retirement plan under federal tax law. The rulemaking affirms past compliance by TRS and validity of various statutory provisions of the Illinois Pension Code, as well as named provisions of the federal Internal Revenue Code as of a date certain

☞ MEAT & POULTRY LABELING

The DEPARTMENT OF AGRICULTURE adopted preemptory amendments to rules titled "Meat and Poultry Inspection Act" (8 Ill Adm Code 125; 35 Ill Reg 19553), effective 1/1/12, implementing new federal nutrition labeling standards. The amendments incorporate by reference a federal Department of Agriculture (USDA) Food Safety and Inspection Service rulemaking, effective 1/1/12, that requires nutrition labeling on major cuts of single-ingredient raw meat and poultry products at the point of purchase; requires nutrition labeling on all ground or chopped meat and poultry products; and allows the lean percentage contained in ground or chopped meat products that do not meet USDA standards for labeling as "low fat" to be included on the label provided the corresponding fat percentage is also included. (For example, a ground turkey package labeled "80% lean" must also state that the product contains 20% fat.) According to the Department, there are also some federal exemptions from these new requirements. Those affected by this rulemaking include meat and poultry processors and retailers.

Questions/requests for copies: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217-785-4505.

Proposed Regulations

agree on some or all aspects of student growth, and implementation requirements for this State performance evaluation model do not apply to Chicago public schools. School districts may use an SBE-developed retraining program or their own. The rulemaking also establishes minimum requirements for prequalification and retraining programs developed by school districts themselves to train their own evaluators. An Appendix prescribes the standards for principal evaluation.

Questions/requests for copies/comments through 1/17/12: Shelley Helton, SBE, 100 N. First St., S-493, Springfield IL 62777-0001, 217/782-5270, e-mail: rules@isbe.net.

☞ MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to "Practice in Administrative Hearings" (89 Ill Adm Code 104; 35 Ill Reg 19322) and "Medical Payment" (89 Ill Adm Code 140; 35 Ill Reg 19368) concerning recovery of medical assistance benefits obtained in a fraudulent manner (e.g., by altering a medical card or using a card issued to another person). The Part 140 amendments authorize DHFS to recover improperly paid medical assistance through direct payments to the Department, recoupment from other public aid payments or Supplemental Nutrition Assistance Program (SNAP) benefits, wage garnishment, referral to a private collection agency, deduction from federal income tax refunds or other U.S. Treasury payments, action by the Comptroller, or civil court action. The Department may also assess civil penalties of up to \$2,000 for each improperly received benefit or payment and must notify affected persons of the amount of the penalty being sought and the reasons for the penalty. After a final decision has been made regarding a case and all appeals exhausted or waived, the Department may place a judgment lien upon property and assets of the

affected person until all outstanding debts and penalties have been paid. Amendments to Part 104 allow a medical assistance recipient, after notification of DHFS' intent to recover benefits, an opportunity to request a hearing before an administrative law judge. The hearing must be scheduled within 30 days after DHFS receives the request, and may be postponed or continued once for up to 30 days at the request of any party to the hearing (further continuances are allowed only for serious reasons such as illness that are beyond the control of the requesting party). The recommendation of the administrative law judge must be issued within 60 days after the hearing and submitted to the DHFS director for a final decision. Medical providers may be affected by these rulemakings.

DHFS also proposed an amendment to "Medical Assistance Programs" (89 Ill Adm Code 120; 35 Ill Reg 19337) implementing the federal Improving Access to Clinical Trials Act. The rulemaking allows medical assistance applicants and recipients to exclude from their income, for purposes of determining eligibility for assistance, up to \$2,000 per calendar year received as compensation for participating in clinical trials of experimental medical treatments. Medical providers who conduct clinical trials may be affected by this rulemaking.

☞ VETERANS' HEALTHCARE

DHFS proposed amendments to "Veterans' Health Insurance Program" (89 Ill Adm Code 128; 35 Ill Reg 19352) implementing Public Act 95-755. The rulemaking extends Veterans Care Program coverage to spouses of veterans and institutes a flat rate premium of \$20 per month for veterans and an additional \$20 per month for their spouses. The current premiums of \$40 or \$70 per month for a veteran, depending on the veteran's income, will apply to backdated months of eligibility prior to 4/1/12. Rules concerning backdated coverage for

spouses are included, also. The rulemaking also allows veterans who have been uninsured for at least 3 months (currently 6 months) to qualify for coverage and clarifies that funeral and burial expenses are not covered. Medical providers who care for veterans or their spouses may be affected by this rulemaking.

☞ HEALTH RECORDS

DHFS proposed a new Part titled "Electronic Health Information Technology" (89 Ill Adm Code 150; 35 Ill Reg 19392) implementing the Electronic Health Record Provider Incentive Payment (EHR/PIP) program. The program, which is supported by federal stimulus funds, provides incentive payments to qualifying medical providers who participate in the Department's Medical Electronic Data Interchange and have adopted or upgraded to a certified electronic health record system. Incentive payments will be disbursed over a period of 3 to 5 years. Covered topics include definitions, eligibility, registration, payments, appeals, and audits. Hospitals and other medical providers will be affected by this rulemaking.

CHILD SUPPORT

DHFS also proposed amendments to "Child Support Services" (89 Ill Adm Code 160; 35 Ill Reg 19403) concerning procedures for appealing or requesting changes in child support orders. The amendments bring DHFS administrative procedures in line with existing judicial procedures and with federal regulatory changes affecting personal property liens imposed for non-payment of child support. Deadlines for filing various appeals of DHFS determinations are modified throughout the rulemaking.

Questions/requests for copies/comments concerning the 6 DHFS rulemakings above through 1/17/12: Jeanette Badrov at the DHFS address and telephone number above.

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Illinois General Assembly

Joint Committee on Administrative Rules
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RETURN SERVICE REQUESTED

Proposed Regulations (cont.)

ELECTRONIC TAX FILING

The DEPARTMENT OF REVENUE proposed an amendment to "Electronic Filing of Returns or Other Documents" (86 Ill Adm Code 760; 35 Ill Reg 19452) and amendments repealing "TeleFile Program" (86 Ill Adm Code 770; 35 Ill Reg 19459). The Part 760 amendment requires the filing of liquor tax returns through electronic means by persons who sell retail liquor through a liquor store, tavern, or restaurant beginning on 2/1/12. The amendment allows the taxpayer to petition DOR for a waiver of the electronic filing requirement if the taxpayer does not have access to the Internet. The Part 770 rulemaking repeals the current Telefile Program for filing returns electronically because the Part 760 amendment above will cover the regulations applicable to liquor retailers, and various DOR Parts cover others who file electronically. Therefore, DOR finds Part 770 obsolete. Liquor retailers will be affected by this rulemaking.

Questions/requests for copies/comments concerning the 2 DOR rulemakings above through 1/17/12: Jerilynn Troxell Gorden, DOR Legal Services Office, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

Second Notices

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

DEPT. OF CENTRAL MANAGEMENT SERVICES

"State Vehicles and Garage" (44 Ill Adm Code 5040) proposed 7/29/11 (35 Ill Reg 12592)

"Pay Plan" (80 Ill Adm Code 310) proposed 9/30/11 (35 Ill Reg 15496)

ILLINOIS GAMING BOARD

"Video Gaming (General)" (11 Ill Adm Code 1800) proposed 8/12/11 (35 Ill Reg 13021)

OFFICE OF THE STATE FIRE MARSHAL

"Administrative Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and other Regulated Substances" (41 Ill Adm Code 176) proposed 9/9/11 (35 Ill Reg 14895)

CHIEF PROCUREMENT OFFICER FOR DEPARTMENT OF TRANSPORTATION

"Contract Procurement" (44 Ill Adm Code 6) proposed 10/7/11 (35 Ill Reg 16052)