

THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

Proposed Rulemakings

▪ HEALTHCARE PROFESSIONALS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Administrative Procedures for General Professional Regulation Under the Administrative Code (68 IAC 1130; 47 Ill Reg 18250) implementing Public Acts 102-399 and 103-531. The Public Acts and these amendments require continuing education (CE) regarding Alzheimer's Disease/dementia and cultural competency for health care professional licensees, including physicians and physician assistants; chiropractors; dentists; registered nurses, advanced practice registered nurses, and licensed practical nurses; clinical psychologists; pharmacists and pharmacy technicians; physical, occupational, and speech-language therapists; professional and clinical professional counselors; and behavior analysts and assistant behavior analysts. At least one hour of CE in

cultural competency will be required each license renewal cycle beginning 1/1/25. This training must be provided by a DFPR-approved entity (which may include a hospital or other health care provider; an accredited community college, four-year college or

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Due to the Christmas holidays, the next Flinn Report and *Illinois Register* will be published Tuesday, Dec. 26

university; or a State, county or municipal agency) and must instruct licensees in how to care effectively for patients from diverse cultures, groups and communities. Additionally, beginning 1/1/23, one hour of CE concerning Alzheimer's Disease/dementia is required each renewal cycle for health care professionals who have direct patient encounters with patients age 26 or

older. This requirement does not apply to licensees whose practice is limited to patients age 25 or younger. This rulemaking also removes a requirement to schedule automatic post-suspension hearings in cases where a health care professional licensee has been suspended for failure to comply with a DFPR chaperone order (requiring the licensee to have a designated chaperone present during any patient encounter). A post-suspension hearing will now be held only if requested by the suspended licensee. Physicians, nurses, and other health care professional licensees are affected by this rulemaking.

▪ MEDICAL PRACTICE

DFPR also proposed amendments to the Part titled Medical Practice Act of 1987 (68 IAC 1285; 47 Ill Reg 18265) reflecting updates to the Act and

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days.

PROPOSED RULEMAKINGS: Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days.

PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.

▪ - Designates rules of special interest to small businesses, small municipalities and/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.

QUESTIONS/COMMENTS: Submit mail, e-mail or phone calls to the agency personnel listed below each summary.

RULE TEXT: First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under "Illinois Register". Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

Proposed Rulemakings

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changes in licensing procedure for medical and osteopathic physicians. The rulemaking clarifies the sequence of courses and subjects that must be covered during the required 6 years of undergraduate and post-graduate medical education; clarifies requirements for graduates of foreign medical schools; updates the list of approved accrediting organizations for postgraduate clinical training programs; and outlines information to be submitted by other clinical training programs seeking approval from DFPR. A Section that requires medical practice licensure applicants to apply directly to DFPR for licensing examinations is being repealed and replaced with a list of acceptable standardized licensing examinations used in the U.S. and Canada. Physicians licensed outside of Illinois and seeking Illinois licensure by endorsement may request that the Federation of State Medical Boards (FSMB) forward their profiles to DFPR to verify certain credentials that previously had to be submitted by the physician. Other provisions allow physicians whose licenses have been expired, not renewed, or inactive for 2 (currently 3) years or less to complete a streamlined reinstatement process; establish requirements for restoring a license from disciplinary status (suspended, revoked, or refused renewal); clarify requirements for temporary Illinois licensing of out-of-state physicians or residents completing medical training; require fingerprinting and background checks (already required for physicians) for medical residents, visiting professors and visiting physicians; update requirements for use of anesthesia and use of lasers or related technology; and clarify when

additional testing or training may be required of a physician who has been inactive. Continuing medical education (CME) material may now be delivered by webinar or from online databases in addition to live classes and other currently recognized means. CME sponsors may now include any organization that provides clinical services to patients, educates healthcare professionals, or serves as a fiduciary to patients, the public, or population health; examples include, but are not limited to, ambulatory procedure centers, health law firms, group medical practices, government or military agencies, insurance or managed care companies, nursing homes, rehabilitation centers, and health professional membership organizations. Finally, the Medical Disciplinary Board is renamed the Illinois State Medical Board and its procedures for disciplinary cases are updated. Physicians, medical students, medical residents, and medical school instructors are affected by this rulemaking.

• PHARMACIES

DFPR proposed amendments to the Part titled Pharmacy Practice Act (68 IAC 1330; 47 Ill Reg 18373) that require pharmacy technicians registered on or after 1/1/24 to complete a pharmacy technician certification program with at least 500 hours of instruction before their 2nd registration renewal, and establish criteria for approved pharmacy technician programs. A new pharmacy that applies for licensure from DFPR must be open to the public within 180 (currently 30) days after the license is issued. Other provisions update pharmacy compounding standards by incorporating the current version of the United States Pharmacopeia and National Formulary; clarify procedures for automatic prescription refills; establish notification procedures for pharmacies that temporarily close for

a period of more than 72 hours and less than 6 months; and require pharmacists-in-charge of nonresident pharmacies (which dispense, ship or mail medications to Illinois residents) to be licensed in Illinois beginning 1/1/24. Pharmacies, pharmacists and pharmacy technicians are affected.

Questions/requests for copies/comments on the 3 DFPR rulemakings through 1/29/24: Craig Cellini, DFPR, 320 W. Washington, 2nd Floor, Springfield IL 62786, 217-785-0810, fax 217-557-4451, Craig.Cellini@illinois.gov

INCOME TAX

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 47 Ill Reg 18412) that implement PA 103-9. The Act and this rulemaking establish a new definition of an investment partnership and establish Illinois tax withholding requirements, effective for tax years ending on or after 12/31/23, for investment partnerships in which one or more partners are not Illinois residents. Examples of how these requirements are applied in different situations are included.

Questions/requests for copies/comments through 1/29/24: Jennifer Uhles, DOR, 101 W. Jefferson St., Springfield IL 62794, 217-782-2844, REV.GCO@illinois.gov

SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 47 Ill Reg 18199) that require school districts seeking waivers from School Code requirements or SBE rules to submit their applications to SBE with a postmark date no later than July 15

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Proposed Rulemakings

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(currently Aug. 15) for the fall application period and no later than Dec. 15 (currently Jan. 15) for the spring application period. The proposed rules also clarify that a waiver applicant's State legislators must be notified at least 7 days prior to a public hearing on a waiver request, and add statutory language stating that SBE will not grant waivers from School Code requirements that pertain to special education, educator licensure, teacher seniority or teacher tenure.

Questions/requests for copies/comments through 1/29/24: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312-783-2757, rules@isbe.net

UNEMPLOYMENT BENEFITS

The DEPARTMENT OF EMPLOYMENT SECURITY proposed amendments to the Parts titled Claims, Adjudication, Appeals and Hearings (56 IAC 2720; 47 Ill Reg 18235) and Alien Status (56 IAC 2905; 47 Ill Reg 18243). The Part 2720 amendments clarify the timelines for DES adjudicators to reconsider their past determinations regarding unemployment insurance claims. If the determination involved back pay or withheld wages, the adjudicator has 3 years after the last day of the week for which the determination was made to reconsider the decision. If the original determination involved misstated earnings for any week beginning on or after 3/15/20, the adjudicator has 5 years after the last day of the week for which the determination was made to reconsider the decision. Amendments to Part 2905 change the name of the Part to "Noncitizen Status", replace

the term "alien" with "noncitizen" and update references to the federal agencies that address immigration-related matters.

DES PUBLIC INFORMATION

DES also proposed amendments to Access to Records of the Department of Employment Security (2 IAC 1301; 47 Ill Reg 18212) that replace statutory text from the Freedom of Information Act (FOIA) with cross references to FOIA.

Questions/requests for copies/comments on the 3 DES rulemakings through 1/29/24: Kevin Lovellette, DES, 33 S. State St., 9th Floor, Chicago, IL 60603, 312-793-1224, fax: 312-793-5645, Kevin.Lovellette@illinois.gov

JCAR Meeting Action

At its 12/12/23 meeting, the Joint Committee on Administrative Rules approved the following actions. Proposed rulemakings from this agenda that are not listed below received No Objection and may now be adopted by their agencies. Emergency rules not acted upon at this meeting may be reconsidered at later meetings.

OBJECTION

JCAR objects to the Department on Aging’s emergency rulemaking titled Community Care Program (89 IAC 240; 47 Ill Reg 15675) because it does not meet the criteria for emergency rulemaking in 1 IAC 230.400(a)(1)(C) and (D). The emergency situation did not arise through no fault of the agency and the emergency rule is not limited to those matters that are required to meet the emergency situation. Beginning March 1, 2020, the federal Centers for Medicare and Medicaid Services, in response to the COVID-19 public health emergency, waived a federal requirement that prohibited legally responsible individuals from serving as home care aides for program participants. After this flexibility was granted, the Department permitted legally responsible individuals to serve as home care aides despite this practice being strictly prohibited in its own administrative rules. The Department could easily have made this change through a proposed rulemaking and allowed for public notice and comment at some point over the last three years. Further, this rulemaking contains general clean-up and style changes that are not necessary to address the emergency situation.

RECOMMENDATION

With respect to the Department of Healthcare and Family Services rulemaking titled Medical Payment (89 IAC 140; 47 Ill Reg 315) JCAR recommends that the Department be more timely in implementing statute in rule. Public Act 101-10 required treatment of autism spectrum disorder through Applied Behavior Analysis to be covered under the Medical Assistance Program for children with a diagnosis of autism spectrum disorder and stated that the Department shall submit rules regarding provision of services and providers by September 1, 2019. The Department did not propose these rules until January 13, 2023.

JCAR Membership Change

The Joint Committee on Administrative Rules welcomes new member **Senator Napoleon Harris, III**, D-Dolton. Senator Harris succeeds Senator Kimberly Lightford, D-Maywood, who was appointed to JCAR in 2019 and recently resigned from the Committee.

EXTENSIONS

JCAR, with the concurrence of the following agencies, extended the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the Jan. 16 JCAR meeting:

Illinois Environmental Protection Agency, Procedures for Issuing Loans from the Public Water Supply Loan Program to Provide Funding for Lead Service Line Replacement (35 IAC 663; 47 Ill Reg 11879)

Department of Public Health, Hospital Licensing Requirements (77 IAC 250; 47 Ill Reg 9134)

POSTPONEMENT

JCAR postponed action on the proposed Illinois State Police rulemaking titled Firearm Owner’s Identification Card Act (20 IAC 1230; 47 Ill Reg 13846). This rulemaking remains on Second Notice through the Jan. 16 meeting and will be reconsidered at that time.

NO ACTION

JCAR took no action on the Department of Financial and Professional Regulation rulemakings titled Credit Union Community Reinvestment (38 IAC 185; 46 Ill Reg 19726), Bank Community Reinvestment (38 IAC 345; 46 Ill Reg 19794), Rules Governing the Request for Reconsideration of Examination Findings (38 IAC 385; 46 Ill Reg 19856), and Mortgage Community Reinvestment (38 IAC 1055; 46 Ill Reg 19861). Because these rulemakings reach their 1-year expiration date on 12/16/23, DFPR cannot adopt them.

Adopted Rules

SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; proposed at 47 Ill Reg 8055) and Children's Mental Health Initiative Grants (23 IAC 555; proposed at 47 Ill Reg 8285), both effective 11/28/23 at 47 Ill Reg 18457 and 18688, that implement various Public Acts.

Driver Education

Amendments to Part 1 implement PA 102-951, which required SBE, in consultation with the Secretary of State, educators and students, to adopt revised standards for driver education that include the Novice Teen Driver Education and Training Administrative Standards developed in affiliation with the National Highway Transportation Safety Administration (NHTSA). The revised driver education standards, beginning in the 2024-25 school year, address both classroom instruction and behind-the-wheel instruction. Each standard should be mastered by students in the classroom before the corresponding behind-the-wheel standard is introduced. These standards include: graduated driver's licensing requirements and responsibilities at each stage of licensing; understanding the effects of driving while impaired (including by use of controlled substances) or with permanent disabilities; understanding signs, signals, road markings, and pedestrian and bicyclist rights; understanding vehicle space and limitations (e.g., blind spots); proper use of seat belts and other safety equipment; braking, steering, parking, and other behind the wheel actions; using a vehicle owner's manual and performing regular maintenance; responding to adverse conditions, other drivers, emergencies and

vehicle malfunctions; and making informed choices regarding the purchase of a vehicle and vehicle insurance.

Curriculum Updates

Other curriculum updates include requiring "intensive instruction in computer literacy" for all students entering 9th grade in the 2022-23 and 2023-24 school years as part of a full-year class in English, social studies or another subject that counts toward graduation requirements, and allowing all or part of one semester of required high school civics classes, beginning with the freshman class of 2021-22, to consist of a financial literacy course. Successful completion of a registered apprenticeship program pursuant to 23 IAC 255 may be substituted for completion of a high school graduation requirement on the same basis as completion of vocational and technical courses if school district policy permits. SBE's Social and Emotional Learning Standards are being moved from 23 IAC 555 to Appendix D of this Part so that they are located with the agency's other learning standards, and obsolete references to social science standards that were in effect prior to the 2022-23 school year are being removed.

Other

The minimum age for licensure to teach or supervise classrooms is being lowered from 20 to 19 and the maximum number of consecutive days that a short-term substitute may be employed without a contract is being increased from 5 to 15. Other changes include allowing school fines (charges for the loss, damage or destruction of school property) to be waived on the same basis as school fees (charges for participation in school programs or activities) and expanding the fee/fine waiver to include homeless students

(formerly, students who qualify for free breakfasts or lunches); and prohibiting withholding of student records, transcripts, or diplomas from students whose parents/guardians are unable to purchase required textbooks or materials or pay required fees. Amendments to Part 555 remove the Social, Emotional and Learning Standards formerly housed in this Part, which have been moved to 23 IAC 1. Appendix D.

Questions/requests for copies of the 2 SBE rulemakings: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312/783-2757, rules@isbe.net

▪ CHILD CARE

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Child Care (89 IAC 50; proposed at 47 Ill Reg 8806) effective 11/30/23 at 47 Ill Reg 18694 that clarify which types of income will or will not be counted in determining eligibility for the Child Care Assistance Program. Tips and commissions earned on a regular basis will be counted as part of gross wages or salary, which is non-exempt income. Income that is now exempt from consideration includes alimony; child support received by the family (unless paid in a lump sum, which is not exempt); public assistance and welfare payments; ongoing monthly adoption assistance payments from the Department of Children and Family Services; Social Security payments, including SSI and pensions, to all family members; survivor's benefits, permanent disability payments, and federal railroad retirement benefits; retroactive or back pay from employment; travel reimbursements; living allowances from AmeriCorps or VISTA; and pay-

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Adopted Rules

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ments provided to individuals enrolled in research projects that are not funded via State General Revenue and that are intended to measure the impacts of anti-poverty programs.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Avenue East, 3rd Floor, Springfield IL 62762, 217/785-9772.

SEXUAL ASSAULT

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Sexual Assault Survivors Emergency Treatment Code (77 IAC 545; proposed at 47 Ill Reg 7830) effective 1/1/24 at 47 Ill Reg 18705, reflecting the statutory sunset date (12/31/23) of provisions in the Sexual Assault Survivors Emergency Treatment Act that allowed federally qualified health centers (FQHCs) to provide medical forensic services to sexual assault survivors and file approved treatment plans with DPH for this purpose. (These provisions were intended as a temporary measure during the COVID-19 public health emergency, so that survivors could seek treatment and forensic services outside of hospitals.) The rulemaking repeals all references to FQHCs in this Part effective 1/1/24. Federally qualified health centers that provide medical forensic services to sexual assault survivors are affected.

VISION SCREENING

DPH also adopted an amendment to Vision Screening (77 IAC 685;

proposed at 47 Ill Reg 9158) effective 11/28/23 at 47 Ill Reg 18743, updating references to devices used for vision testing of preschool and kindergarten-age children. The rulemaking states that automated screening devices (formerly, photoscreening using an MTI camera) may be used for children under 3 years of age or older children who cannot be screened with stereoscopic or distance tests.

Questions/requests for copies/comments on the 2 DPH rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

UTILITIES

The DEPARTMENT OF REVENUE adopted amendments to the Part titled The Public Utilities Revenue Act (86 IAC 510; proposed at 47 Ill Reg 10451) effective 11/28/23 at 47 Ill Reg 18748, reflecting statutory changes to the Act made in the last 25 to 50 years. The rulemaking adds statutory definitions and clarifies that a seller of electricity is subject to taxation under the Act only if that entity owns, leases or controls the facilities used to distribute that electricity. Other provisions clarify that monies received by DOR will be deposited in the Personal Property Tax Replacement Fund in the State Treasury (changed from the General Revenue Fund in 1980); add statutory provisions for imposition of taxes on electric distribution and invested capital that were effective on 1/1/98; clarify when returns are due, what information must be contained in returns, and that failure to file a return or filing a

fraudulent return is a business offense subject to a fine of no more than \$7,500; clarify requirements for a certificate of registration, recordkeeping and for claims to recover erroneously paid taxes; and clarify how the Retailers' Occupation Tax Act applies to entities subject to this Act.

Questions/requests for copies: Alexis K. Overstreet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844, REV.GCO@illinois.gov

STATE CONTRACTS

The OFFICE OF THE AUDITOR GENERAL adopted an amendment to Purchases and Contracts (44 IAC 500; proposed at 47 Ill Reg 11496) effective 1/1/24 at 47 Ill Reg 18442, implementing Public Act 102-271, which requires that bidders, contractors and subcontractors on State contracts valued at more than \$100,000 (previously, \$50,000) per year disclose their financial interests when submitting a bid or proposal. (The disclosure must include any ownership or income share of more than 5% or that is greater than 60% of the Governor's annual salary.) Businesses seeking contracts with the Auditor General are affected.

Questions/requests for copies: Margaret Livingston, OAG, 400 W. Monroe St., Suite 306, Springfield IL 62703, 217/782-6046, mlivingston@auditor.illinois.gov

Second Notices

The following proposed rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The Department of Revenue rulemaking was considered at the December 12, 2023 meeting. All other proposed rulemakings will be heard at the January 16, 2024 meeting in Springfield. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR at jcar@ilga.gov.

DEPT OF REVENUE

Income Tax (86 IAC 100; 47 Ill Reg 13825) proposed 9/29/23

OFFICE OF THE AUDITOR GENERAL

Public Information, Rulemaking, Organization and Personnel (2 IAC 600; 47 Ill Reg 12959) proposed 9/8/23

IL GAMING BOARD

Video Gaming (General) (11 IAC 1800; 47 Ill Reg 2540) proposed 2/24/23

SECRETARY OF STATE

Issuance of Licenses (92 IAC 1030; 47 Ill Reg 14308) proposed 10/13/23

STATE BOARD OF EDUCATION

Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 47 Ill Reg 12978) proposed 9/8/23

OFFICE OF THE STATE TREASURER

Procurement (44 IAC 1400; 47 Ill Reg 13193) proposed 9/15/23

Next JCAR Meeting: Tuesday, Jan. 16, 10:30 a.m.

Room D-1, Stratton Bldg., 401 S. Spring St., Springfield

Meeting will be live streamed on the JCAR website

Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair

Senator Cristina Castro

Senator Donald DeWitte

Senator Dale Fowler

Senator Napoleon Harris, III

Senator Sue Rezin

Representative Ryan Spain, Co-Chair

Representative Eva-Dina Delgado

Representative Jackie Haas

Representative Steven Reick

Representative Curtis Tarver, II

Representative Dave Vella

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