

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, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

DRIVER'S LICENSES

The SECRETARY OF STATE adopted amendments to Issuance of Licenses (92 IAC 1030; 42 Ill Reg 20247), effective 3/4/19, providing Illinois driver's license/ID card applicants and holders the option of obtaining a license or card compliant with the federal REAL ID Act. (REAL ID compliant licenses and ID cards bear marks approved by the U.S. Department of Homeland Security and may be used for boarding domestic commercial airline flights, entering secure federal facilities, and other purposes.) To obtain a REAL ID compliant license or card, the applicant must meet all criteria for a standard license plus the following: a photograph must be taken (religious exceptions permitted for standard licenses do not apply); the applicant's Social Security number must be verified and re-verified upon

every renewal; and passports and birth certificates presented as identification documents will be electronically verified. Documents submitted for purposes of obtaining a REAL ID compliant license will be photocopied or scanned and the copies maintained by SOS. Limited term REAL ID compliant licenses or cards may be issued to persons who are not U.S. citizens or permanent residents. Standard licenses/ID cards that do not meet REAL ID criteria remain available, but will be marked "Federal Limits Apply" and may not be accepted for air travel, etc. The rulemaking also allows standard and REAL ID compliant licenses that have been expired for less than one year to be renewed upon presentation of the expired license, without requiring other documentation, if the holder is a U.S. citizen.

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Proposed Rulemakings

HOME HEALTH SERVICES

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Home Health, Home Services, and Home Nursing Agency Code (77 IAC 245; 43 Ill Reg 3321) implementing Public Act 100-536, various provisions of the Alzheimer's Disease and Related Dementias Act, and federal regulations. The rulemaking requires home health agency administrators who are physicians, registered professional nurses, or qualified to serve as public health administrators to also have at least one year of supervisory or administrative experience in home health care or in related health provider programs. Individuals who meet this experience requirement but are not physicians, registered professional nurses or public

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NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.

PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.

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 not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

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

RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

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Noncitizens must present current proof of lawful resident status in order to renew a REAL ID compliant license or a visa-status Temporary Visitor's Driver's License (TVDL). Documents required to obtain a REAL ID compliant license are listed and the list of documents required to obtain a standard license or TVDL is also updated.

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

■ HEALTH CARE WORKERS

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Health Care Worker Background Check Code (77 IAC 955; 42 Ill Reg 18721) effective 3/1/19, implementing changes to the DPH Health Care Worker Registry required by Public Acts 99-872 and 100-432. The rulemaking expands the criminal history checks required under the Part to include volunteer workers as well as paid workers and establishes a registry for unlicensed health care workers and trainees (e.g., nurse aides, personal care assistants, day training personnel). Information accessible to the public on the Health Care Worker Registry will indicate whether or not an individual or employee is eligible to work, but will not report information regarding the granting or denial of waivers for disqualifying offenses. Educational entities, as well as

health care employers, may initiate fingerprint-based criminal history checks. The rulemaking expands the definition of a health care employer to include nurse agencies, respite care providers, supportive living programs, day training programs and Community Integrated Living Arrangements (CILAs), and requires employees and volunteers of the Department on Aging's Long Term Care Ombudsman Program to undergo background checks required under this Part. Livescan fingerprinting vendors that contract with DPH must have at least 2 years experience transmitting electronic fingerprints to the Department of State Police. Livescan vendor contracts with DPH may be terminated if the vendor's rejection rate (percentage of fingerprints that were not of sufficient quality to be processed) from DSP is greater than 2%, or if their rejection rate from DPH is greater than 5%, in any 12-month period. A job counselor who knowingly advises a person convicted of a disqualifying offense to apply for a position involving direct contact with a client, patient or resident of a health care employer is guilty of a Class A misdemeanor, unless granted a waiver under the Act or this Part. Offenses added to the list of disqualifying offenses include: abuse or neglect of an elderly person, person with a disability, or long term care facility resident; permitting sexual abuse of a child; custodial sexual misconduct; presence of a sex offender in a school zone or near

a public park; child abandonment; credit and debit card fraud; possession of a stolen firearm; and animal cruelty or torture. The rulemaking also adds provisions for including findings of abuse or neglect in the Registry; adds provisions for appeals and requests for removal from the Registry; repeals obsolete provisions for non-fingerprint based criminal background checks; and shields DPH and health care employers from liability in various situations. Since 1st Notice, DPH has clarified that educational entities and health care employers may use other means besides those provided in the Act or this Part to conduct criminal history records checks on students, applicants, and employees who are not covered by the Act (i.e., those whose positions do not involve contact with patients, clients or residents or provide access to their private living space or possessions). DPH also removed a provision prohibiting employers licensed under the Home Health, Home Services, and Home Nursing Agency Licensing Act from conditionally employing applicants for up to 3 months while awaiting the results of a background check. Health care employers, employees, and applicants are affected by this rulemaking.

■ LONG TERM CARE

DPH adopted amendments to Medically Complex for the

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Proposed Rulemakings

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health administrators must hold at least an undergraduate degree and have experience in health service administration. The rulemaking requires home health agencies to use Quality Assessment and Performance Improvement (QAPI) programs that track measurable quality indicators (e.g. the incidence of adverse patient events). Home health aides must maintain active Certified Nursing Assistant (CNA) certification by working at least one 8-hour shift every 24 months, performing nursing or nursing-related services for pay under the supervision of a licensed nurse. Home health agencies must maintain and document an infection control program that follows accepted standards of practice and standard precautions. In addition to the on-site supervisory visits already required in rule every 2 weeks for home health aide clients and every 90 days for home service worker clients, a supervisor must make on-site visits to observe and assess each home health aide or home service worker while he or she is performing care at least once a year, or whenever an area of concern is noted. The rulemaking clarifies that home service workers (who assist with

tasks such as bathing, feeding, dressing, etc., but do not administer medication or therapy) may remind clients to monitor their heart rate, blood pressure, oxygen saturation, temperature, or weight and may assist clients in the application of monitoring devices, but cannot interpret the data or take clinical action based on monitoring results. Competency evaluations of home health aides must include infection prevention; communication skills relating to persons who are hard of hearing or have dementia or other special needs; understanding of dementia and problem solving with dementia patients who exhibit challenging behavior; and recognizing and reporting changes in skin condition. Other provisions of this rulemaking align the definition of a home services agency with current statutes; update incorporations and cross references; clarify requirements for patient transfer and discharge documentation; update information required on an agency's application for licensure; and include sanctions related to unemployment insurance or worker's compensation as grounds for adverse licensure action. Home health care, home nursing and home services agencies and

their employees are affected by this rulemaking.

Questions/requests for copies/comments through 4/29/19: Erin Conley, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/785-9212, dph.rules@illinois.gov

SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 43 Ill Reg 3385) implementing Public Act 100-599, which amended the Postsecondary and Workforce Readiness Act and the Competency-Based High School Graduation Requirements Pilot Program created by the act. The rulemaking removes provisions limiting the program to schools serving grades 9 through 12; allows two or more school districts to collaborate on a single application for the program and maintain either joint or separate planning and implementation committees; and clarifies evaluation criteria.

Questions/requests for copies/comments through 4/29/19: Cara Wiley, SBE, 100 N. First St., E-222, Springfield IL 62777-0001, 217/782-5270, rules@isbe.net

New Rules

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Developmentally Disabled Facilities Code, formerly titled Long-Term Care for Under Age 22 Facilities Code (77 IAC 390; 42 Ill Reg 18581), effective 2/26/19, updating the Part to reflect the MC/DD Act created by Public Act 99-180. The Act replaces the Long-Term Care for Under Age 22 category of facility licensure with Medically Complex for the Developmentally Disabled (MC/DD). (Facilities regulated under this Part care for developmentally disabled persons who also have physical disabilities or medical conditions requiring skilled care.) The rulemaking creates both 1-year and 2-year licenses for which DPH will establish staggered expiration dates based on the license expiration dates of other facilities in the same geographic area. A license cannot be issued, nor can ownership of another facility be transferred, to the owner of a facility that has been designated as a “distressed facility”. (The MC/DD Act states that distressed facilities will be defined in rule by DPH and stipulates that this designation can only be applied to facilities whose violations or deficiencies have actually harmed residents. DPH has not yet defined distressed facility in this Part.) The rulemaking establishes a new Type AA violation category for conditions or actions that directly caused a resident’s death (in addition to the existing Type A, B and C violation categories). A facility’s license will be revoked if it commits two or more Type AA

violations within a 2-year period. Fines for violations are based on the size of the facility (16 or fewer residents, 17-99 residents, or 100+ residents) and on the severity of the violation. Fines for Type AA violations range from \$12,500 to \$25,000 per violation; for Type A violations, \$6,250 to \$12,500 (formerly, not less than \$10,000); for Type B violations, \$550 to \$1,100 (formerly, not less than \$500); and for 8 or more Type C violations, \$175 to \$250 per violation (formerly, no fine was prescribed in rule). Fines may be doubled or tripled under specified circumstances (e.g., failure to comply with a plan of correction). Additionally, facilities must personally reimburse residents the greater of \$100 or the cost of the violation for actions that cause the resident harm or involve theft of their money. Facilities may contest imposition of penalties, or may waive their right to a hearing and pay 65% of any fines assessed. In addition to notifying a facility of violations, DPH must also notify residents and their guardians or other representatives. DPH also may petition a circuit court to appoint a receiver (in addition to its existing authority to appoint a monitor) for a facility that is operating without a license; closing without making adequate arrangements for residents to move; losing its Medicare or Medicaid certification; jeopardizing residents’ health, safety or welfare; or when DPH determines a threat to the residents’ health, safety or welfare could exist

based on its review of the facility’s compliance history, incident reports, or reports of financial problems. This rulemaking also clarifies or updates numerous existing provisions in this Part.

DPH also adopted amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 42 Ill Reg 18553) and Sheltered Care Facilities Code (77 IAC 330; 42 Ill Reg 18568) effective 2/26/19, updating statutory language regarding notices of violation and administrative warnings for consistency with the Nursing Home Care Act.

Questions/requests for copies of the 4 DPH rulemakings: Erin Conley, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 42 Ill Reg 9177) effective 2/28/19, that adopt the World-Readiness Standards created by the American Council on the Teaching of Foreign Languages as SBE’s official standards for teaching foreign languages. Foreign language programs and teachers will be affected.

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New Rules

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■ SPECIAL EDUCATION

SBE also adopted amendments to Determining Special Education Per Capita Tuition Charge (23 IAC 130; 42 Ill Reg 8183), effective 2/28/19, implementing provisions of Public Act 100-465 (Evidence-Based Funding/Invest in Kids Act) that changed the State's system of funding special education personnel. Allowable expenditures that a school district or special ed cooperative can use to determine per capita cost include equipment expenditures of less than \$5,000 (formerly \$2,500) in one year, or more than \$5,000 (formerly \$2,500) over 5 years. Expenditures that cannot be included in the per capita cost include employee salaries and benefits that have been charged to State or federal grants or were included in the base funding minimum for State fiscal year

2017. Compensation for an aide assigned to serve one or more students may be included in individual costs for the affected students, but not in the per capita cost for the district or cooperative. School districts and special education cooperatives will be affected by this rulemaking.

Questions/requests for copies of the 2 SBE rulemakings: Cara Wiley, SBE, 100 N. First St., S-493, Springfield IL 62777-0001, 217/782-5270, rules@isbe.net

■ FISHING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to Commercial Fishing and Musseling in Certain Waters of the State (17 IAC 830; 42 Ill Reg 19498), effective 2/27/19, opening the South Fork of the Sangamon River, from the Ill. Route 48 bridge downstream to the Sangamon River, to commercial fishing and allowing a maximum of 2 special use

permits to be issued for commercial removal of selected fish in Bay Creek (Pope County) or Kiser Creek (Pike County).

DNR also adopted amendments to Sport Fishing Regulations for the Waters of Illinois (17 IAC 810; 42 Ill Reg 19373) effective 2/27/19, making site-specific changes, declaring June 14-17, 2019, as the annual Free Fishing Days, and setting a daily harvest limit of 5 fish per boat for youth-only (age 18 and under) sanctioned fishing tournaments. Since 1st Notice, DNR has replaced references to "aquatic life" with more specific references to reptiles, amphibians, mollusks and crustaceans. Commercial fishermen and sponsors of fishing tournaments may be affected by these rulemakings.

Questions/requests for copies of the 2 DNR rulemakings: John Heidinger, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/557-6379.

JCAR Meeting Action

At its 3/12/19 meeting, the Joint Committee on Administrative Rules approved these actions:

OBJECTIONS

JCAR objected to the Illinois Environmental Protection Agency's refusal to respond to the Department of Commerce and Economic Opportunity's request for information about the small business impact of the rulemaking titled Procedure for the Certification of Operations of Wastewater Treatment Works (35 IAC 380; 42 Ill Reg 8033). IEPA justified its refusal to respond on Sec. 5-165 of the Illinois Administrative Procedure Act, which sets requirements governing ex parte communications in the rulemaking process. However, Sec. 5-165 does not prohibit such communication. It simply requires that it be reported and made part of the official record. Furthermore, DCEO was fulfilling its mandate under Sec. 5-30(c) of the IAPA, which requires it to carry out an analysis of a rule's impact on small business upon JCAR's request. It is unlikely that the intent of Sec. 5-165 was to allow agencies to use concerns about ex parte communications to avoid talking to the public. It is more improbable that the intent was to enable agencies to obstruct DCEO's process of discerning a proposed rule's effect on small businesses.

JCAR objected to the Department of Healthcare and Family Services rulemaking titled Medical Payment

(89 IAC 140; 42 Ill Reg 18242) because it does not adequately define or explain the elements of the Integrated Health Home program that it purports to implement. The Department has indicated that it intends to withdraw this rulemaking and further consider the issues addressed in this rulemaking in the context of other programs, policies and best practices.

JCAR objected to the Secretary of State rulemaking titled Public Use of Capitol Complex and Springfield Facilities (71 IAC 2005; 42 Ill Reg 24819) because of the agency's inability to address concerns raised by public comment within the remainder of the Second Notice period.

JCAR objected to the Illinois Racing Board's rulemaking titled Prohibited Conduct (11 IAC 423; 42 Ill Reg 23707) because the repeal of this Part would allow the Board to determine, outside of rule, what is considered prohibited conduct by a licensee.

EXTENSION

JCAR and the State Board of Education agreed to extend the Second Notice period for the rulemaking titled Gifted Education (23 IAC 227; 42 Ill Reg 12920) an additional 45 days. This rulemaking will be considered again at the April 9 JCAR meeting.

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 the April 9, 2019 JCAR meeting. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF EMPLOYMENT SECURITY

General Applications (56 IAC 2712; 42 Ill Reg 23311) proposed 12/21/18

Interstate and Federal Cooperation (56 IAC 2714; 42 Ill Reg 23318) proposed 12/21/18

Claims, Adjudication, Appeals and Hearings (56 IAC 2720; 42 Ill Reg 23324) proposed 12/21/18

Administrative Hearings and Appeals (56 IAC 2725; 42 Ill Reg 23370) proposed 12/21/18

Wages (56 IAC 2730; 42 Ill Reg 23379) proposed 12/21/18

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Second Notices

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Employment (56 IAC 2732; 42 Ill Reg 23386) proposed 12/21/18

Notices, Records, Reports (56 IAC 2760; 42 Ill Reg 23408) proposed 12/21/18

Payment of Unemployment Contributions, Interest and Penalties (56 IAC 2765; 42 Ill Reg 23419) proposed 12/21/18

Determination of Unemployment Contributions (56 IAC 2770; 42 Ill Reg 23443) proposed 12/21/18

Recovery of Benefits (56 IAC 2835; 42 Ill Reg 23452) proposed 12/21/18

Claimant's Reason for Separation from Work (56 IAC 2840; 42 Ill Reg 23457) proposed 12/21/18

Claimant's Availability for Work, Ability to Work and Active Search for Work (56 IAC 2865; 42 Ill Reg 23462) proposed 12/21/18

Alien Status (56 IAC 2905; 42 Ill Reg 23491) proposed 12/21/18

Academic Personnel (56 IAC 2915; 42 Ill Reg 23496) proposed 12/21/18

Disqualifying Income and Reduced Benefits (56 IAC 2920; 42 Ill Reg 23504) proposed 12/21/18

General Provisions (56 IAC 2960; 42 Ill Reg 23525) proposed 12/21/18

Joint Committee on Administrative Rules

Senator Don Harmon

Senator Kimberly Lightford

Senator Tony Muñoz

Senator Sue Rezin

Senator Paul Schimpf

Senator Chuck Weaver

Representative Tom Demmer

Representative Michael Halpin

Representative Frances Ann Hurley

Representative Steven Reick

Representative André Thapedi

Representative Keith Wheeler

**Vicki Thomas
Executive Director**