

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.

Proposed Rulemakings

■ WELL CONSTRUCTION

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Water Well Construction Code (77 IAC 920; 46 Ill Reg 2798) that clarify and reorganize the Code; remove the permit requirement for well casing repairs above a pitless unit/adaptor (thereby allowing homeowners to make these repairs without waiting for a permit); and define the quality of materials that must be used in bored wells (used as water sources) and closed loop wells (used in heat pumps). Cement tile may be installed in bored wells by any method that is certified by the manufacturer and verified in writing by an Illinois-registered professional or structural engineer to withstand loads at a depth of 120 feet with a 2:1 load factor. DPH will issue approval numbers and letters of certification for approved tiles and maintain a list of approved products. The top of

COVID-19 ACTIONS

Executive Orders of the Governor concerning the COVID-19 public health emergency can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

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the casing must be no more than 30 feet below the ground surface if the bored well has a buried slab. Existing well pits that do not meet the standards in this Part must either be converted to a tank or valve pit with a pitless adaptor or unit, or eliminated by removing the floor or a wall and filling it in with dirt. Other provisions specify the

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Adopted Rules

COVID-19 VACCINATION

The DEPARTMENT OF HUMAN SERVICES adopted amendments to the Parts titled Medicaid Community Mental Health Services Program (59 IAC 132; 45 Ill Reg 11735), Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 IAC 2060; 45 Ill Reg 11737), Illinois Center for Rehabilitation and Education/Community Services for the Blind, Visually Impaired and Deafblind (89 IAC 730; 45 Ill Reg 11791) and Role of Residential Educational Facilities Operated by the Illinois Department of Human Services (89 IAC 750; 45 Ill Reg 11793), all effective 2/4/22, replacing emergency amendments that were effective 9/16/21. The amendments to Parts 132, 730 and 2060 implement the health care worker COVID-19 vaccination and testing

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ADOPTED 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.

Adopted Rules

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requirements of Executive Order 2021-22 for staff members of Medicaid community mental health services providers, DHS substance use treatment programs, and the Illinois Center for Rehabilitation and Education-Wood. Staff members at these entities must have completed an initial COVID-19 vaccination series or received the 1st of a 2-dose series by 9/19/21 and must receive the 2nd dose, if applicable, within 30 days after the first. Staff members who are not fully vaccinated must be tested for COVID-19 at least weekly and may not work on site if they test positive. The amendments to Part 750 apply the State Board of Education's vaccination and testing requirements for school personnel in 23 IAC 6 to the Illinois School for the Deaf and School for the Visually Impaired. Those affected by these rulemakings include community mental health and substance abuse treatment providers.

DISABILITY DETERMINATIONS

DHS also adopted amendments to the Part titled The Consultative Examination Process (89 IAC 840; 45 Ill Reg 11795) effective 2/4/22 that update an incorporation of federal standards for disability examinations that are used to determine eligibility for Social Security disability or Supplemental Security Income (SSI) benefits. (DHS uses these standards to determine eligibility for its disability programs.)

Questions/requests for copies of the 5 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Floor, Springfield IL 62762, 217/785-9772.

■ PUBLIC HEALTH REPORTING

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Health and Hazardous Substances Registry Code (77 IAC 840; 45 Ill Reg 10733) effective 2/1/22 that update definitions, guidelines and materials; update references to ICD-10 codes for the Adverse Pregnancy Outcome Reporting System (APORS) and Occupational Disease Registries (ODR); and add conditions and variables to be reported to the Department for APORS, which tracks instances of maternal, fetal and infant death, injury or potential injury. Conditions that must be reported to APORS include prenatal exposure to HIV, prenatal exposure to cannabis, and positive toxicology tests or other evidence of prenatal exposure to controlled substances. DPH will release ODR data for occupational injuries that have been approved by the federal Bureau of Labor Statistics (BLS). Data specific to a patient or employer are confidential and shall not be disclosed unless requested by BLS. ODR will release an annual report that will include the aggregate data collected for that year on the DPH website. Those affected by this rulemaking include health care providers and laboratories that report to APORS or the ODR.

Questions/requests for copies: Tracey Trigillo, DPH, 524 S. 2nd Street, 6th Floor, Springfield, IL 62701, 217/782-1159, dph.rules@illinois.gov

■ HIGHER ED PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION (CPO-HE) adopted amendments to the Part titled Chief Procurement Officer for Public Institutions of Higher Education Standard Procurement (44 IAC 4; 45 Ill Reg 9686), effective 2/18/22, updating the evaluation criteria for competitive bidding (Requests for Proposals or RFPs) to include diversity criteria. RFPs shall be submitted in 3 parts: the first covering price, the second addressing commitment to diversity, and the third addressing all other items. The second part must include a demonstrated commitment to diversity (doing business with enterprises owned by minorities, women or persons with disabilities) and will determine 20% of the total evaluation points. Additional factors to be considered in this determination are listed. Businesses seeking contracts with State colleges and universities are affected by this rulemaking.

Questions/requests for copies: John Donato, CPO-HE, University of Illinois Springfield, One University Plaza, MS HRB 120, Springfield IL 62703, 312/350-7676, john.donato@illinois.gov

Proposed Rulemakings

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types of piping, heat exchange fluid and refrigerant to be used in closed loop well systems; establish sealing requirements for closed loop wells that will no longer be used; and clarify the examination and registration process for closed loop well contractors. Businesses that install, repair or use bored wells or heat pump/heat exchanger systems are affected by this rulemaking.

SCHOOL BASED CLINICS

DPH also proposed an amendment to School-Based/Linked Health Centers (77 IAC 641; 46 Ill Reg 2789) that includes socio-emotional and developmental screening in the components of a well-child or adolescent exam that can be administered at a school-based or linked health center.

Questions/requests for copies/comments on the 2 DPH rulemakings through 4/4/22: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

■ DISPLACED WORKERS

The ILLINOIS STUDENT ASSISTANCE COMMISSION proposed a new Part titled Displaced Energy Worker Dependent Transition Scholarship Program (23 IAC 2746; 46 Ill Reg 2889) implementing Public Act 102-382. The program provides higher education scholarships to

Emergency Rules

SPECIAL EDUCATION

The STATE BOARD OF EDUCATION adopted emergency amendments to the Parts titled Special Education (23 IAC 226; 46 Ill Reg 3005), Special Education Facilities Under Section 14-7.02 of the School Code (23 Ill. Adm. Code 401; 46 Ill Reg 3016), and Illinois Purchased Care Review Board (89 IAC 900; 46 Ill Reg 3031) effective 2/4/22 for a maximum of 150 days. These emergency rules allow school districts to make emergency or student-specific placements of special education students in non-public special education facilities that do not have SBE approval, provided that the facility has appropriately certified teachers and an age-appropriate curriculum; provides enrollment

and attendance data; and demonstrates ability to implement the child's Individualized Education Plan (IEP). The school district also must demonstrate that it made good faith efforts to place the student in an SBE-approved facility but could not find one that had an opening or would accept the student. If the placement meets these conditions, SBE will reimburse the district for its costs. The placement can continue as long as the student's IEP team determines at least annually that it is appropriate and reviews SBE-approved facilities for openings at least every 3 years.

Questions/requests for copies of the 3 SBE emergency rules: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312/783-2757, rules@isbe.net

children or stepchildren of energy workers who have lost employment due to the reduced operation or closure of a coal mine or fossil fuel power plant. Applicants must be enrolled or accepted for enrollment, either full- or part-time, at an Illinois public university or community college and must have unmet financial aid needs due to the parent/stepparent's employment loss. The scholarship covers up to one calendar year (fall, spring and summer terms) of tuition and fees for full-time enrollment, or up to 14 eligibility units (6 units per semester for full-time enrollment in the fall or spring semesters; 3 units

per semester for part-time fall/spring enrollment; 2 units for summer enrollment). Application deadline is Oct. 1 for all terms, March 15 for spring/summer terms only, and June 15 for summer term only. Scholarship payments are limited to the amount of funding available for the program. Families of displaced energy workers may be affected by this rulemaking.

STUDENT ASSISTANCE

ISAC also proposed amendments to the Parts titled General Provisions (23 IAC 2700; 46 Ill Reg

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Proposed Rulemakings

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2863), Illinois Veteran Grant (IVG) Program (23 IAC 2733; 46 Ill Reg 2881), Community Behavioral Health Care Professional Loan Repayment Program (23 IAC 2753; 46 Ill Reg 2897), Nurse Educator Loan Repayment Program (23 IAC 2758; 46 Ill Reg 2903), Illinois Special Education Teacher Tuition Waiver (SETTW) Program (23 IAC 2765; 46 Ill Reg 2908) and Illinois Teachers and Child Care Providers Loan Repayment Program (23 Ill. Adm. Code 2767; 46 Ill Reg 2917) updating these Parts to reflect recent Public Acts and other changes. Amendments to Part 2700 add definitions of displaced energy worker (reflecting the scholarship program established in new Part 2746), qualified bilingual minority applicant (for the Minority Teachers of Illinois scholarship program in 23 IAC 2763), educational planning services, and educational planning service providers; add consumer protection requirements established by the Educational Planning Services Consumer Protection Act; and clarify the definition of mandatory fees to include those imposed on distance education/online students as well as on-campus students. The Part 2733 rulemaking clarifies that an honorable discharge for purposes of grant eligibility may include a general discharge under honorable conditions, or an “other than honorable” discharge, that was based only on the individual’s sexual orientation or gender identity. It does not include a bad

conduct or dishonorable discharge. Amendments to Parts 2753, 2758, 2765 and 2767 remove gender-specific language, state that applications for these programs are available on the ISAC website, and remove references to print applications being available at ISAC offices.

Questions/requests for copies/comments on the 7 ISAC rulemakings through 4/4/22: Jackie Eckley, ISAC, 500 W. Monroe St., 3rd Floor, Springfield IL 62704, 217/782-5161, jackie.eckley@illinois.gov

■ INCOME TAX CREDITS

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 46 Ill Reg 2824) implementing 3 Public Acts. The rulemaking updates the sunset date for the Student Assistance Contributions Credit to 12/31/24 and for the Angel Investment Credit and Affordable Housing Donations Credit to 12/31/26. Individuals or businesses claiming these tax credits are affected.

■ SALES TAX

DOR also proposed an amendment to Retailers’ Occupation Tax (86 IAC 130; 46 Ill Reg 2845) that allows DOR to post a notice of expiration of a certificate of registration on the premises of a business whose sales tax registration has expired (existing rule only provides for notices of revocation of a certificate). The rulemaking

includes an example of a notice of expiration. Businesses that hold DOR certificates of registration for sales tax purposes may be affected.

Questions/requests for copies/comments on the 2 DOR rulemakings through 4/4/22: Part 100, Brian Fliflet (217/782-2844); Part 130, Thomas Grudichak; DOR, 101 W. Jefferson St., Springfield IL 62794.

DHS RULE WITHDRAWAL

The DEPARTMENT OF HUMAN SERVICES has withdrawn proposed amendments to the Part titled Standards and Licensure Requirements for Community-Integrated Living Arrangements (59 IAC 115; 45 Ill Reg 2324) that were published in the 2/26/21 *Illinois Register*. The rulemaking extensively revised and updated DHS’ rules for Community Integrated Living Arrangements (CILAs) that provide services and support to persons with developmental disabilities or mental illnesses. DHS received numerous public comments and suggestions for change concerning the withdrawn rulemaking. A new rulemaking incorporating these changes will be proposed in the near future so that the public has adequate time to review these changes.

JCAR Meeting Action

At its 2/15/22 meeting, the Joint Committee on Administrative Rules took the following actions:

OBJECTION & SUSPENSION

JCAR objects to and suspends the Department of Public Health's emergency amendments to Control of Communicable Diseases Code (77 Ill. Adm. Code 690) that were filed and effective February 14, 2022, because they do not meet the criteria for emergency rulemaking in 1 Ill. Adm. Code 230.400 (a)(1)(E) and (G) and the rulemaking meets the criteria for emergency rule suspension in 1 Ill. Adm. Code 230.550(a)(1)(C). DPH has not taken steps to make this rule known to the parties directly affected by it. After reviewing the text of the emergency rule, the accompanying notice page, which notes the Department's initial emergency rule on this Part is subject to review in the consolidated appellate case *Graves v. Pritzker*, (No. 4-22-0090, 4-22-0092, 4-22-0093, and 4-22-0094), and the Temporary Restraining Order subject to review in the consolidated appellate cases, DPH failed to clearly state whether this rule is intended to apply to all K-12 schools in Illinois, or only to schools and school districts that were not parties to that legal action. DPH has not clarified this point either in the rule itself or in the Notice of Emergency Rulemaking. JCAR finds that this unlawfully inhibits the equitable free exercise of the rights of citizens of this State and poses a serious threat to the public interest.

NOTE: *This emergency rulemaking will appear in next week's Illinois Register. It replaced an emergency rule that was stayed by a temporary restraining order on 2/4/22 and expired on 2/13/22.*

OBJECTION

JCAR objects to DCFS' refusal to respond to requests for clarification of certain group home staffing requirements in the emergency rulemaking titled Licensing Standards for Group Homes (89 Ill. Adm. Code 403; 46 Ill. Reg. 1120). DCFS justified its refusal to respond based on Sec. 5-165 of the IAPA, 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. DCFS responded to comments concerning this emergency rulemaking, which has been in effect since December 22, 2021, on February 10, 2022. Affected parties should receive prompt responses from agencies regarding emergency rules so they may determine whether they are in compliance with rules that take immediate effect. 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 and it is even more improbable that the intent was to enable an agency to avoid clarifying compliance requirements for an emergency rule it enacted to address a threat to the public health, safety or welfare.

RECOMMENDATION

JCAR recommends, with respect to the Department of Labor peremptory rule titled Health and Safety (56 IAC 350; 46 Ill Reg 1668), that DOL take care to use peremptory rulemaking only in instances when it is clear that the agency's exercise of discretion was completely precluded by the federal requirement as to the content of the rule it was required to adopt. Sec. 5-50 of the IAPA [5 ILCS 100] explicitly states that peremptory rulemaking means rulemakings that are required as a result of federal law, federal rules and regulations, an order of a court, or a collective bargaining agreement and those rules must be filed within 30 days after a change in rules is required. It was not clear that peremptory rulemaking is appropriate in this case because USDOL gave states the discretion to accept the federal standard or propose their own equally protective standard and the requirement to adopt the standard by the January 7, 2022 date was provided in guidance, not regulation.

EXTENSIONS

JCAR and the respective agencies agreed to extend the Second Notice periods for the following

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JCAR Meeting Action

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rulemakings an additional 45 days. These rulemakings will be considered again at the March 22 meeting:

Department of Employment Security, Recovery of Benefits (56 IAC 2835; 45 Ill Reg 13805) proposed 11/5/21

Department of Financial and Professional Regulation, Consumer Installment Loan Act (38 IAC

110; 45 Ill Reg 6086), Payday Loan Reform Act (38 IAC 210; 45 Ill Reg 6117), Predatory Loan Prevention Act (38 IAC 215, 45 Ill Reg 6137), Retail Installment Sales Act (38 IAC 216; 45 Ill Reg 6146) and Motor Vehicle Retail Installment Sales Act (38 IAC 217; 45 Ill Reg 6151), all proposed 5/14/21

State Board of Education, Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 45 Ill Reg 12250) proposed 10/8/21

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 March 22, 2022, JCAR meeting in Springfield. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF HUMAN SERVICES

Temporary Assistance for Needy Families (89 IAC 112; 45 Ill Reg 13562) proposed 10/29/21

DEPT OF PUBLIC HEALTH

Resources (77 IAC 150; 45 Ill Reg 14323) proposed 11/19/21

DEPT OF REVENUE

Retailers' Occupation Tax (86 IAC 130; 45 Ill Reg 13575) proposed 10/29/21

Liquor Control Act (86 IAC 420; 45 Ill Reg 13642) proposed 10/29/21

Cigarette Tax Act (86 IAC 440; 45 Ill Reg 13646) proposed 10/29/21

Cigarette Use Tax Act (86 IAC 450; 45 Ill Reg 13651) proposed 10/29/21

Joint Committee on Administrative Rules

Senator Bill Cunningham, *co-chair*
Senator John F. Curran
Senator Donald DeWitte
Senator Kimberly Lightford
Senator Tony Muñoz
Senator Sue Rezin

Representative Tom Demmer
Representative Michael Halpin
Representative Frances Ann Hurley
Representative Steven Reick
Representative Curtis Tarver, II
Representative Keith Wheeler, *co-chair*

Kim Schultz
Executive Director