

The Flinn Report Illinois Regulation

Elaine Spencer, Editor
jcar@ilga.gov

Joint Committee on Administrative Rules
Illinois General Assembly

700 Stratton Bldg. Springfield IL 62706
217/785-2254 ilga.gov/commission/jcar

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Issue 16

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

■ HEALTH INSURANCE

The DEPARTMENT OF INSURANCE proposed a new Part titled Network Adequacy and Transparency (50 IAC 4540; 46 Ill Reg 5835) clarifying the requirements of the Network Adequacy and Transparency Act (NATA) [215 ILCS 24] with regard to information health insurers must file when there are material changes to a provider network or when a provider contract is terminated or not renewed. For network plans issued, delivered or renewed on or after 1/1/23, the rulemaking establishes time and distance standards for each provider specialty, based on federal requirements for qualified health plans for plan year 2023. Statutory standards established under NATA apply to behavioral health providers. The rulemaking also establishes minimum provider ratios (determined by the Department of Public Health) for

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*.

NEXT JCAR MEETING

Tues. April 19, 11 a.m.
Rm C-600, Bilandic Bldg.
160 N. La Salle St., Chicago

each provider specialty type. Insurers with network plans must also submit to DOI copies of the notices that will be issued to providers and beneficiaries when a provider leaves the network. These notices must include

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Adopted Rules

■ NURSING HOMES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 45 Ill Reg 15216) effective 4/1/22, implementing statutory requirements for skilled nursing facilities to designate an infection prevention and control professional (infection preventionist) and implement policies for control of infections and communicable diseases. The rulemaking also addresses training, minimum experience, and staffing requirements for infection preventionists. Infection prevention and control requirements regarding outbreaks of communicable diseases, including testing plans and response strategies to address infectious disease outbreaks, are

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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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added. The rulemaking also incorporates updated guidance documents from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration concerning infection prevention and control, and requires facilities to maintain a confidential record of health-related information, including vaccinations and required test results, for their employees. Since 1st Notice, DPH has set an effective date of 7/1/22 for the infection preventionist training requirements. Nursing homes are affected by this rulemaking.

■ SEXUAL ASSAULT

DPH also adopted amendments to Sexual Assault Survivors Emergency Treatment Code (77 IAC 545; 45 Ill Reg 16259 and 46 Ill Reg 840), effective 4/4/22, combining two separately proposed rulemakings and replacing an emergency amendment that was effective 1/1/22. The rulemaking, which implements several Public Acts, allows federally qualified health centers to submit sexual assault treatment plans to DPH for approval and provide medical forensic services to sexual assault survivors through 12/31/23. The rulemaking also clarifies that a sexual assault survivor may present for a medical forensic examination and evidence collection may be conducted more than 7 days following an assault when clinically indicated. The effective date for various

requirements under the Sexual Assault Survivors Emergency Treatment Act is postponed from 1/1/22 to 1/1/23. Other provisions update incorporations by reference, clarify when law enforcement may be present at a medical forensic examination on a survivor who is in police custody, and require area-wide sexual assault treatment plans to indicate which facility is responsible for transporting survivors back to the location where the survivor originally sought medical forensic services (when the survivor or a non-offending parent/guardian has not already made other arrangements for transportation). Hospitals, federally qualified health centers, and approved pediatric health care facilities with sexual assault treatment plans are affected by this rulemaking.

■ BACKGROUND CHECKS

DPH adopted amendments to Health Care Worker Background Check Code (77 IAC 955; 45 Ill Reg 16292) effective 4/4/22, implementing Public Act 102-26, which added the Department of Corrections and third-party vendors who employ certified nursing assistants working with DOC to the definition of a “health care employer” subject to the Health Care Background Check Code. These amendments also clarify that waiver applications must include a work history or resume covering the most recent 5-year period, and no longer require a complete employment history, criminal conviction history, or fingerprint based background

check when an individual petitions to remove a finding of neglect from the Registry. Persons seeking health care employment may be affected by this rulemaking.

Questions/requests for copies of the 3 DPH rulemakings: Tracey Trigillo, DPH, 524 S. 2nd St., 6th Fl., Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

■ HOUSING DEVELOPMENTS

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY adopted a new Part titled COVID-19 Affordable Housing Grant Program (47 IAC 369; 45 Ill Reg 11732), effective 3/31/22, replacing an emergency rule that expired 2/12/22. The new Part implements a COVID-19 Affordable Housing Grant Program created by Public Act 102-175 that provides grants for new construction or rehabilitation of multifamily housing. Maximum grant amounts to qualified developers are normally 35% of total development cost, but additional grant funds may be awarded to cover increased construction costs or maintain the financial stability of the project. Priority will be given to developer applicants from areas disproportionately impacted by COVID-19 or by high rates of poverty or unemployment; applicants who are, or who have contracts with, disadvantaged or underrepresented businesses (e.g., minorities, women, persons with disabilities); and applicants

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Proposed Rulemakings

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information regarding transitional services, how to find a new preferred provider in the same specialty, in-network benefits available for out-of-network services when an appropriate preferred provider is not available, and information regarding appeals or complaints. Other provisions allow insurers to request exceptions to provider ratios or time and distance standards (some exceptions related to behavioral health providers are prohibited); clarify the NATA self-audit requirements and require insurers to report the results of these self-audits to DOI annually; specify data that must be included in a report summary; and outline procedures for determining which documents filed or exchanged under NATA are subject to disclosure, inspection and copying under the Freedom of Information Act. Those affected by this rulemaking include health insurers with preferred provider or member networks and health providers enrolled in these networks.

Questions/requests for copies/comments through 5/31/22: Robert Planthold, DOI, 122 S. Michigan Ave., Fl. 19, Chicago IL 60603, 312-814-5445, or Susan Anders, DOI, 320 W. Washington St., Fl. 4, Springfield IL 62767, 217-558-0957.

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Emergency Rules

UNEMPLOYMENT BENEFITS

The DEPARTMENT OF EMPLOYMENT SECURITY adopted emergency amendments to Recovery of Benefits (56 IAC 2835; 46 Ill Reg 6126) effective 4/4/22 for a maximum of 150 days. An identical proposed rulemaking appears in this week's *Illinois Register* at 46 Ill Reg 5830. The emergency and proposed rulemakings implement procedures for claimants of federal Lost Wages Assistance (LWA) from the Federal Emergency Management Agency (FEMA) to request a waiver of DES attempts to recover unintentionally overpaid LWA benefits. Similar to other DES rules involving overpaid federal or State unemployment benefits, the emergency rule provides that DES will waive recovery of overpaid benefits if the overpayment occurred without fault on the part of the recipient and if recovery would be contrary to equity and good conscience. Other provisions explain how waiver requests for overpaid LWA benefits will be coordinated with waiver requests for overpayments of other forms of federal or State pandemic-related unemployment assistance.

Questions/requests for copies/comments on the proposed rulemaking through 5/31/22: Kevin Lovellette, DES, 33 S. State

St., Room 910, Chicago IL 60603, 312 793-1224, Kevin.Lovellette@illinois.gov

■ CREDIT UNIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted emergency amendments to the Part titled Illinois Credit Union Act (38 IAC 190; 46 Ill Reg 6135) effective 3/29/22 for a maximum of 150 days. An identical proposed amendment appears in this week's *Register* at 46 Ill Reg 5832. The emergency and proposed amendments extend through 3/31/23 the temporary suspension of a requirement that credit unions with a net-worth-to-asset ratio between 6% and 7% at the end of a calendar quarter transfer an amount equal to 0.1% of their total assets from undivided earnings to regular reserve at the end of the next calendar quarter and continue to do so quarterly until their net worth to assets ratio is at or above 7%. (A recently adopted permanent rulemaking suspended this requirement only through 3/31/22.) The rulemakings also permit the DFPR Secretary to require a specific credit union to make this transfer, if necessary, to address safety and soundness concerns. Credit unions may be affected by this emergency rule.

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Adopted Rules

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who have project labor agreements or active apprenticeship programs. Grant recipients must also enter into recapture agreements that allow IHDA to demand repayment of the grant if the recipient does not abide by the affordable housing restrictions contained in the agreement, or if it transfers ownership or control of the development without IHDA's permission, during the 15-year compliance period.

Questions/requests for copies: Kathryn Finn, IHDA, 111 E. Wacker Dr., Suite 1000, Chicago IL 60601.

■ LAND CONSERVATION

The DEPARTMENT OF NATURAL RESOURCES

adopted amendments to Conservation Reserve Enhancement Program (CREP) (17 IAC 1515; 45 Ill Reg 15938) effective 3/30/22 that clarify and update requirements for the State CREP program, adjust easement options to make them more desirable for landowners, and add an option for landowners with non-permanent easements the option to extend their easement at the end of the easement term. (The program, which has both a State and a federal component, compensates land owners who set aside acreage for fish and wildlife habitat or to enhance surface water quality in the Illinois and Kaskaskia River watersheds.) Landowners who had acreage enrolled in a federal CREP contract prior to 5/26/21, or who currently have a State CREP agreement, may add 15 years to their State enrollment or make that

enrollment permanent. (Formerly, State CREP agreements were for 15 or 35 years.) Landowners who enroll in federal CREP on or after 5/26/21 may enter into a new State CREP agreement for 15 years or permanently. All acreage enrolled in federal CREP must be included in the State CREP agreement. Other provisions address the content of enrollment applications, conservation management plans and modifications, enrolling additional acres in an existing plan, and payments for enrolled land. Farmers and other land owners may be affected by this rulemaking.

Questions/requests for copies: Nicole Thomas, DNR, One Natural Resources Way, Springfield, IL 62702, 217/782-1809.

Emergency Rules

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Questions/requests for copies/comments on the proposed rulemaking through 5/31/22: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217/785-0813, fax 217/557-4451.

HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH adopted an emergency amendment to Hospital Licensing Requirements (77 IAC 250; 46 Ill Reg 6142) effective 4/3/22 for a

maximum of 150 days. This emergency rule (which replaces an emergency rule that expired 4/2/22) implements a federal waiver allowing qualifying hospitals, with approval from the federal Centers for Medicare and Medicaid Services, to provide limited inpatient services in patients' homes to alleviate hospital overcrowding and prevent spread of COVID-19 infection. DPH's emergency rule requires Illinois hospitals that receive the Acute Hospital Care at Home (AHCH) waiver to provide DPH with specified documents, comply with

various hospital health and safety requirements, and comply with all COVID-19 directives and guidance issued by the Centers for Disease Control and Prevention, DPH, other State agencies, and local health departments. Hospitals that have applied for or received the federal AHCH waiver are affected.

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

Proposed Rulemakings

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■ NOTARY COMMISSIONS

The SECRETARY OF STATE proposed amendments to the Part titled Notary Public Records (14 IAC 176; 46 Ill Reg 5874) implementing Public Act 102-0160, which authorizes electronic and remote notarizations in Illinois. The PA and the rulemaking establish a new electronic notarial commission (in addition to the traditional notary commission) and set forth how notaries may remotely or electronically notarize a document. The fee and bond for a traditional notary commission is \$15 plus a \$5,000 bond; for an electronic notary commission, an additional \$25 fee and \$25,000 bond are required. All notaries must keep a journal of notarizations performed and complete a 3-hour course of study (from an SOS-approved provider) and examination before initial commissioning and at every renewal. The content of the course and examination, which may be offered online or remotely, and requirements for approved providers are included. Other provisions establish procedures for notary transaction remittance agents; outline prohibited conduct that applies to electronic notarizations; list grounds for SOS to revoke a notary public commission or the approval of a course provider; and allow notaries public who reside in states bordering Illinois to also be commissioned as notaries in Illinois if their place of work or business is in Illinois and their

home state allows them to receive this notary commission. Notaries public and their employers or businesses will be affected by this rulemaking.

Questions/requests for copies/ comments through 5/31/22: Pamela Wright, SOS, 298 Howlett Building, Springfield, IL 62756, pwright@ilsos.gov

■ UTILITY RATE CASES

The ILLINOIS COMMERCE COMMISSION proposed amendments to the Part titled Rate Case Expense (83 IAC 288; 46 Ill Reg 5800) implementing PA 102-662. The PA and the rulemaking establish a fund and create a process for compensating consumer interest representatives for eligible expenses they incur in proceedings involving public utility rates, costs, or other charges. A consumer interest representative is defined as: a residential utility customer or group of customers represented by a not-for-profit group or organization; a representative of a non-profit organization whose membership is limited to residential utility customers; or representatives of non-profits whose membership includes Illinois residents and that address the community, economic, environmental or social welfare of Illinois residents. Eligible expenses include reasonable attorney's or advocate's fees, expert witness fees, and other costs of preparation for or participation in a hearing. Travel and meal expenses are not eligible

expenses. The rulemaking also outlines conditions that consumer interest representatives must meet to qualify for compensation from the fund and changes the name of the Part to Utility Rate Case Expense and Consumer Intervenor Compensation Fund. Those affected by this rulemaking include small businesses and non-profits that are involved in ICC rate cases.

Questions/requests for copies/ comments through 5/31/22: Elizabeth Rolando, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/782-7434.

■ INCOME TAX

The DEPARTMENT OF REVENUE proposed an amendment to Income Tax (86 IAC 100; 46 Ill Reg 5856) regarding tax liability to another country. Current rule stipulates that an Illinois taxpayer is not subject to income taxation by a foreign country if that country has a treaty with the U.S. exempting the taxpayer or the taxpayer's business or activities from taxation. The rulemaking limits this rule to taxable years beginning prior to 1/1/21; for subsequent tax years, this provision will not apply and the existence of a treaty will not override the other country's tax jurisdiction.

Questions/requests for copies/ comments through 5/31/22: Brian Fliflet, DOR, 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 appear in next week's *Illinois Register* and be considered at the May 17, 2022, JCAR meeting. Other items not published in the *Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF INSURANCE

Registration of Workers' Compensation Utilization Review Organizations (50 IAC 2905; 46 Ill Reg 269) proposed 1/3/22

Managed Care Reform and Patient Rights (50 IAC 4520; 46 Ill Reg 290) proposed 1/3/22

DEPT OF COMMERCE & ECONOMIC OPPORTUNITY

Illinois Promotion Act Programs (14 IAC 510; 46 Ill Reg 1705) proposed 1/28/22

DEPT OF REVENUE

Income Tax (86 IAC 100; 46 Ill Reg 1977) proposed 2/4/22

Income Tax (86 IAC 100; 46 Ill Reg 2824) proposed 2/18/22

Retailers' Occupation Tax (86 IAC 130; 46 Ill Reg 2845) proposed 2/18/22

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Executive Director**