

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

■ EDUCATION GRANTS

The STATE BOARD OF EDUCATION proposed a new Part titled Freedom Schools Grant Program (23 IAC 269; 46 Ill Reg 19312) implementing Public Act 102-209, which has appropriated \$17 million in federal funding for Freedom Schools programming (a multicultural model curriculum, developed during the 1960s civil rights movement, to supplement the regular school curriculum). The purpose of the grant program is to improve educational outcomes for historically disadvantaged students, including African American students and other students of color, in grades pre-K through 12. The Part establishes the application procedure and criteria for grant selection and lists the information and documentation grant applicants must provide. Public schools, public community colleges, and non-profit community-based organizations

(including, but not limited to, those that work with the Children's Defense Fund or offer established programs with proven results and outcomes) may apply for grants of up to \$350,000, renewable annually if funding is available. SBE will issue Requests for Proposals when grant funding becomes available. Grant

Next JCAR Meeting:
Tues. Dec. 13, 11 a.m.
160 N. La Salle, Chicago

Live streaming on JCAR website

recipients must offer, at a minimum, a 6-week summer program or a before/after school or weekend program during the school year. Eligible programs must use a research-based and multicultural curriculum for disenfranchised communities that, by expanding the teaching of African American history, develops leadership skills and

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Adopted Rules

■ ALTERNATIVE UTILITIES

The ILLINOIS COMMERCE COMMISSION adopted amendments to Obligations of Retail Electric Suppliers (83 IAC 412; 46 Ill Reg 697) and adopted a new Part titled Obligations of Alternative Gas Suppliers (83 IAC 512; 46 Ill Reg 748), both effective 11/23/22, reflecting recent statutory changes to the Public Utilities Act. The amendments to Part 412 and the new Part 512 align the definition of an alternative retail electric supplier (ARES) or alternative gas supplier (AGS) with the Public Utilities Act and define an ARES or AGS sales agent as an employee, contractor, agent or other person engaged by an ARES/AGS to solicit new customers (agents acting on behalf of customers are excluded from this definition). The term "customer" is applied equally to

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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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residential and small commercial customers. An ARES/AGS is generally (with specified exceptions) prohibited from submitting an enrollment to change a customer's electric or gas supplier if the customer received utility assistance in the previous 12 months from the Low Income Home Energy Assistance Program (LIHEAP) or the Low Income Home Water Assistance Program (LIWHAP), or is currently participating in a Percentage of Income Payment Plan (PIPP). Marketing materials and in-person or telephone solicitations used by an ARES or AGS must adequately disclose the prices, terms and conditions of the products and services offered; include a "price to compare" in cents per kilowatt hour (kWh) for electricity or price per therm for gas; and clearly state that the ARES or AGS is not the customer's current utility and the customer has no obligation to change suppliers. In-person solicitations to non-English speaking prospective customers must be conducted in that person's chosen language by an agent fluent in that language, or through an interpreter. These requirements, however, do not apply to "goodwill" or institutional advertising used simply to increase public awareness of an ARES or AGS. Sales contracts must disclose whether the contract renews automatically at the end of each contract period; whether rates are variable; include estimated total monthly costs in cents per kWh or price per therm;

and advise the customer that the agreement can be terminated at any time without fees or penalties. The rulemakings also include specifications for uniform disclosure statements, rate notices, and online marketing materials; conditions for renewing, rescinding, or terminating contracts or reassigning customers to a new supplier; dispute resolution procedures; rules for the conduct and training of ARES and AGS sales agents; records retention requirements; and, in Part 412, conditions for describing an energy product as "green" or renewable. Since 1st Notice, ICC has set a compliance date of 5/1/23 for both rulemakings. Alternative retail electric suppliers, alternative gas suppliers, and their small business/commercial customers are affected.

Questions/requests for copies of the 2 ICC rulemakings: Brian W. Allen, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/558-2387.

■ NURSING HOMES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Payment (89 IAC 140; 46 Ill Reg 10143) and Reimbursement for Nursing Costs for Geriatric Facilities (89 IAC 147; 46 Ill Reg 10183), both effective 11/28/22, replacing emergency amendments that were effective 7/1/22. These rulemakings implement PA 102-1035, which institutes a new nursing home

provider assessment and reimbursement system. Changes since 1st Notice align certain provisions of the proposed rulemakings with those of the emergency rules they have replaced.

Assessments

Amendments to Part 140 terminate the former licensing fee of \$1.50 per licensed nursing bed day and assessment of \$6.07 per occupied bed day effective 6/30/22. Effective 7/1/22, assessment amounts will vary (from \$10.67 to \$22.40 per resident day) based on the number of paid Medicaid resident days, which will include provisional and hospice days, per annum. For non-profit facilities without Medicaid certified beds, the assessment will be \$7 per occupied bed day. HFS will update assessment amounts annually and publish each facility's updated rates on its website at least 30 days before they take effect. The assessments that will be effective on 7/1, and all updated assessments thereafter, will be calculated based on HFS' records of Medicaid resident days for each facility for the year ending 9 months previously. This assessment will be due and payable monthly. Notices of a facility's assessment shall specify how many paid Medicaid days for each facility are attributable to managed care organization (MCO) payments, fee for service payments, and contracted Medicare-Medicaid Alignment Initiative plans. The

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provides an understanding of the tenets of the civil rights movement. Teachers in these programs must be from the grantee's local community, with an emphasis on historically disadvantaged youth, including African American students and other students of color. Students must also participate in pre-program and post-program assessments of literacy and other program objectives. Grant applications will be evaluated based on a point system with points for need, program quality, and capacity to fulfill the goals of the program. Those affected by this rulemaking include school districts and non-profit community organizations.

Questions/requests for copies/comments through 1/23/23: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312/783-2757, rules@isbe.net

HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Hospital Licensing Requirements (77 IAC 250; 46 Ill Reg 19403) that implement 3 Public Acts. This rulemaking implements Public Act 102-155, which requires hospitals to offer facility-provided medications to patients upon discharge when the medication provided has not been completely used and is required for continuous treatment. The rulemaking also implements PA 102-989, which requires hospitals to develop patient visitation

policies and procedures for use during disasters or outbreaks of communicable disease, and PA 102-1007, which requires hospitals to ensure that employees are made aware of of employee assistance programs or similar programs available to promote their physical and mental well-being. Additional changes requested by the hospital industry include clarification of the General Acute Care and Specialty hospital licensing categories and their associated requirements; procedures for temporary closure and reinstatement of hospital operations following a natural or human-made disaster; procedures for notifying law enforcement agencies when a patient appears to have been injured as a result of a sexual assault or other criminal offense; and updated policies and procedures regarding care and treatment of psychiatric patients.

■ VISA WAIVERS

DPH also proposed amendments to the Part titled Visa Waiver Program for International Medical Graduates (77 IAC 591; 46 Ill Reg 19435) that will, upon adoption, replace emergency amendments that were effective 9/19/22. The rulemaking implements a Public Act that expands DPH's J-1 visa waiver program, through which DPH, on behalf of foreign medical school graduates enrolled in residencies in the U.S., applies to the U.S. State Department for a limited number of waivers allowing these graduates to remain in the U.S. after completing their

residencies. (Normally, J-1 visa holders must return to their home countries after completing their residencies.) In return, these visa holders must agree to work in a federally designated Health Professional Shortage Area for at least 3 years after completing their residency. The amendments expand the DPH waiver program to include forensic pathology graduates seeking residencies in medical examiner offices and also update or clarify waiver program requirements for applicants in other medical fields. Numerous definitions, including those for various medical specialties, are added or clarified. Medical facilities that accept J-1 visa waiver applicants must attest that they will accept all patients regardless of ability to pay, accept Medicare and Medicaid on assignment, and charge fees on a sliding income-based scale to uninsured low-income patients. (Currently, this attestation applies only to the visa waiver applicant and any patients that individual will accept.) Medical examiner offices and other healthcare providers that accept J-1 visa waiver applicants will be affected by this rulemaking.

Questions/requests for copies/comments on the 2 DPH rulemakings through 1/23/23: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield, IL 62701, 217/782-1159, dph.rules@illinois.gov.

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notices shall also specify the dates of service used in the determination of the assessment and the date on which this data was queried. Facilities may appeal their assessments to HFS in writing. If a successful appeal was filed within 30 days after assessment rate notification, the new rate will be effective from the beginning of the assessment year. If a successful appeal was filed more than 30 days after the assessment rate notification, the new rate takes effect on the 1st day of the month after the complete appeal was received. If an appeal is successful, HFS shall apply the money it owes the facility as credits toward future assessments. This rulemaking also requires nursing homes, effective 1/1/23, to notify HFS of any individual owners or organizations that are part of a limited liability company and the percentage ownership of each owner.

Reimbursements

The Part 147 rulemaking institutes the Patient Driven Payment Model (PDPM) reimbursement system developed by the federal Centers for Medicare and Medicaid Services (CMMS) and phases out the current Resource Utilization Groups-IV (RUG-IV) system. Base per diem rates will be increased by \$7 effective 7/1/22. From 7/1/22 through 9/30/23, the nursing component of reimbursement rates will be based on a combination of the RUG-IV and PDPM systems. Beginning 10/1/23, the nursing component will be

entirely based on PDPM, but HFS must continue to provide RUG-IV data through 9/30/23. Facilities will also receive add-on payments based on their levels of staffing and a Medicaid Access Adjustment based on their percentage of Medicaid residents. Facilities may also receive incentive payments for hiring, retention and promotion of Certified Nursing Assistants (CNAs) as well as quality incentive payments based on the facility's CMMS Star Rating. No later than 7/20/22, HFS must post on its website and publish in its provider handbook all its data sources, formulas, and collection periods for calculating per diem, add-on, and incentive payments, in sufficient detail for facilities to estimate their appropriate payments. In advance of each quarter, HFS must notify each facility of its updated nursing component rate and all add-ons and adjustments. These notices must clearly state the amount attributable to each add-on or adjustment. Notices must also clearly state the percentage of Medicaid bed days used to determine eligibility for the Medicaid Access Adjustment. Reimbursements may be appealed via the procedures outlined in 89 IAC 140 for appealing assessment determinations. Finally, these rules require MCOs to pay nursing facilities within 7 business days after the MCO receives its payment from HFS, or be subject to financial penalties. Nursing homes with Medicaid residents and MCOs that pay for Medicaid nursing home care are affected by these rules.

Questions/requests for copies of the 2 HFS rulemakings: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, HFS.Rules@illinois.gov

■ ARCHITECTS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Illinois Architecture Practice Act of 1989 (68 IAC 1150; 46 Ill Reg 11026) effective 11/23/22. These amendments streamline pre-licensure education by allowing candidates to participate in the national Integrated Path to Licensure program, which allows education requirements and examinations to be completed at the same time, and by allowing DFPR to accept alternative and foreign architect programs approved by the National Council of Architectural Registration Boards (NCARB). Graduates of NCARB approved foreign programs no longer have to establish an NCARB record before requesting an evaluation of their education. Other provisions add sexual harassment prevention training and one hour of education regarding high winds and other natural disasters to continuing education requirements; allow an expedited restoration process for a license that has been inactive for less than 5 (formerly, 3) years; clarify firm registration for limited liability companies; state that licensure applicants have 3 years

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■ SUPPORTIVE LIVING

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to Specialized Health Care Delivery Systems (89 IAC 146; 46 Ill Reg 19321) reflecting federal requirements that apply to Supportive Living Programs which are regulated under this Part. The rulemaking implements requirements of the Centers for Medicare and Medicaid Services, Home and Community-Based Services (HCBS) Waivers Final Rule that was effective 1/1/14, by incorporating person-centered planning requirements, ensuring participants' access to the community and control of their environments, updating and clarifying SLP facility requirements, and making general clarification changes. Residents and employees of supportive living program facilities are affected.

Questions/requests for copies/comments through 1/23/23:

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to complete the application process before the application expires; and expand the historical summary of previous requirements for experience and examination.

Questions/requests for copies: Craig Cellini, DFPR, 320 W.

Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, HFS.Rules@illinois.gov

■ INCOME TAX

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 46 Ill Reg 19471) that provide guidance regarding when buying allowances (reductions/rebates in the cost of goods sold to a retailer), merchandising allowances, and cost sharing agreements provided by vendors to retailers should be included in or excluded from the formula used to compute income tax on the retailer's sales. The rulemaking provides examples for when these types of receipts should be included or excluded from the sales factor. Retailers that receive buying or merchandising allowances from vendors are affected.

Questions/requests for copies/comments through 1/23/23: Brian Fliflet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

Washington, 2nd Floor, Springfield IL 62786, 217/785-0810, Fax: 217/557-4451.

SOS PERSONNEL

The SECRETARY OF STATE adopted an amendment to the Part titled Department of Personnel (80 IAC 420; 46 Ill Reg 14524) effective 11/23/22,

FAMILY LEAVE

The OFFICE OF THE AUDITOR GENERAL proposed amendments to Public Information, Rulemaking, Organization and Personnel (2 IAC 600; 46 Ill Reg 19293) that expand eligibility for its employees' family (currently, child) bereavement leave of up to 10 working days to include the death of a spouse, domestic partner, parent, step-parent, grandparent, grandchild, or parent-in-law. Leave may also be requested following a miscarriage, stillbirth, failure of an adoption or surrogacy agreement or assisted reproductive procedure, or a medical diagnosis that negatively impacts pregnancy or fertility. In these cases, documentation must be provided by a medical practitioner or an adoption or surrogacy organization in order to substantiate the request for leave.

Questions/requests for copies/comments through 1/23/23: Margaret Livingston, Office of the Auditor General, 740 E. Ash St., Springfield IL 62703, 217/782-6046, TTY 888/261-2887.

clarifying that employees who are on unpaid leave of absence to serve in an elected full-time public office may remain on leave until their term in office ends or for 5 years, whichever is shorter.

Questions/requests for copies: Pamela Wright, SOS, 298 Howlett Building, Springfield IL 62756, 217/785-3094, pwright@ilsos.gov

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 January 10, 2023, meeting in Springfield. 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.

IL COMMERCE COMMISSION

Standards of Service for Local Exchange Telecommunications Carriers
(83 IAC 730; 46 Ill Reg 4469) proposed 3/18/22

POLLUTION CONTROL BOARD

Drycleaner Environmental Response Trust Fund Program
(35 IAC 1501; 46 Ill Reg 4621) proposed 3/18/22

Joint Committee on Administrative Rules

Senator Bill Cunningham, <i>co-chair</i>	Representative Tom Demmer
Senator John F. Curran	Representative Michael Halpin
Senator Donald DeWitte	Representative Frances Ann Hurley
Senator Don Harmon	Representative Steven Reick
Senator Kimberly Lightford	Representative Curtis Tarver, II
Senator Sue Rezin	Representative Keith Wheeler, <i>co-chair</i>

Kim Schultz
Executive Director