

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

CONTRACEPTIVE COVERAGE

The DEPARTMENT OF INSURANCE adopted a new Part titled Contraceptive Coverage (50 IAC 2014; 48 Ill Reg 2033) which implements Illinois Insurance Code and other statutory requirements for health insurance coverage of over the counter (OTC) contraceptive drugs, devices and products. Effective 1/1/25, all individual and group health insurance plans, including pharmaceutical-only and voluntary health services plans, must cover OTC contraceptives without requiring a prescription as a precondition for coverage.

INSURANCE EXCHANGE

DOI also proposed amendments to the Part titled Illinois Health Benefits Exchange (50 IAC 4500; 48 Ill Reg 2038) implementing Public Act 103-103, under which Illinois will transition the current exchange to a State-based

exchange on a federal platform (SBE-FP) by 2025 and to a fully State-based exchange (SBE) by 2026. This rulemaking implements the first phase of the transition by establishing standards for certification of qualified health plans (QHPs) and for the Small Business Health Options Program (SHOP); establishing standards for

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certification of Certified Application Counselors (CACs) and CAC Organizations and for eligibility for federal Navigator grants; and implementing federal standards, including training standards, for agents and brokers that wish to assist individuals with enrolling in QHPs or employers with applying for QHPs. Those affected by this rulemaking may include small businesses seeking QHPs for their employees.

Questions/requests for copies/comments on the 2 DOI rulemakings through 3/25/24: Part 2014, John Krichbaum (312-814-5422, John.Krichbaum@illinois.gov); Part 4500, Robert Planthold (312-814-5445, robert.planthold@illinois.gov); both DOI, 122 S. Michigan Ave., 19th Floor, Chicago IL 60603. Both Parts: Susan Anders, DOI, 320 W. Washington St. 4th Floor, Springfield IL 62767, 217-558-0957, sue.anders@illinois.gov

DCFS HEARINGS

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to Administrative Case Reviews and Court Hearings (89 IAC 316; 48 Ill Reg 1999) updating the Part to reflect current practice. The rulemaking requires administrative case reviews, and allows decision reviews, to be conducted by telecon-

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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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ference or videoconference; an administrative case review may be done in person if the reviewer determines it is necessary. Notice of an administrative case review must be sent by U.S. Mail to the child's guardian ad litem, legal representative or court appointed special advocate (in addition to the child, parents, caregiver/foster parent and caseworker) and if a parent is incarcerated, to the facility in which the parent resides. Parents who become disruptive during a teleconference review may be terminated from the conference (currently, they may be excluded from an in-person review). The rulemaking also clarifies caseworker responsibilities during an administrative case review; adds federal statutory provisions regarding youth in qualified residential treatment programs; updates various definitions; updates the statutory definition of "family" to include fictive kin (persons not related by blood or marriage with whom the child has a family-like relationship); and requires (currently, encourages) visitation and contact between siblings when possible.

Questions/requests for copies/comments through 3/25/24: Jeff Osowski, DCFS, 406 E. Monroe St., Station 65, Springfield IL 62701-1498, 217-524-1983, fax 217-557-0692, DCFS.Policy@illinois.gov

AABD BENEFITS

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Aid to the Aged, Blind or Disabled (89 IAC 113; 48 Ill Reg 2021) reflecting the 2024 cost of living increase for Supplemental Security Income (SSI) payments. The rulemaking increases the grant adjustment allowance from \$735.90 to \$764.90 and increases all sheltered care, personal care and nursing care rates by \$29 per month.

Questions/requests for copies/comments through 3/25/24: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Floor, Springfield IL 62762, 217-785-9772.

▪ SURPLUS PROPERTY

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to the Part titled Federal Surplus Property: Illinois State Plan, State Agency for Federal Surplus Property (44 IAC 5020; 48 Ill Reg 1980) updating the Part (not amended since its adoption in 1983) to clarify which entities are eligible to obtain federal

surplus property that CMS acquires through the Federal Donation Program. Organizations that may receive such property (in addition to units of local government, public safety/law enforcement agencies, public schools, and private non-profit/tax exempt organizations) now include alcohol and drug abuse treatment centers; providers of assistance to the homeless; adult day care centers; nursing homes; veterans' organizations; veteran-owned small businesses; other small businesses; and service/educational organizations including Boy/Girl Scouts and the American Red Cross. The rulemaking also states that CMS representatives may (currently, shall) visit federal government installations to view property that is available for donation and assess a service charge to recipients of this property, and updates references to State statutes and federal regulations. Small businesses and municipalities may be affected by this rulemaking.

Questions/requests for copies/comments through 3/25/24: Administrative Rules Coordinator, CMS, 313 S. Sixth St., 3rd Floor, Springfield IL 62702, CMS.Rule@illinois.gov

JCAR Meeting Action

At its 2/6/24 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 be adopted by their agencies. Emergency rules not acted upon at this meeting may be reconsidered at later meetings.

POSTPONEMENT

JCAR postponed action on the Department of Labor rulemaking titled Paid Leave for All Workers Act (56 IAC 200; 47 Ill Reg 15559) until the March 12 meeting, which is within its current Second Notice period.

NO ACTION

JCAR took no action on the Illinois Gaming Board rulemaking titled Video Gaming (General) (11 IAC 1800; 47 Ill Reg 2540). This rulemaking will expire before the end of its Second Notice period and cannot not be adopted.

Adopted Rules

DRIVER'S LICENSES

The SECRETARY OF STATE adopted an amendment to Issuance of Licenses (92 IAC 1030; proposed at 47 Ill Reg 14308) effective 1/25/24 at 48 Ill Reg 2268, replacing an emergency amendment that was effective 9/26/23. This rulemaking raises the age at which drivers must complete a road test at every renewal from 75 to 79 years of age, in accordance with the results of a study of older drivers conducted pursuant to Public Act 103-140.

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

▪ UNMARKED BURIALS

The DEPARTMENT OF NATURAL RESOURCES adopted emergency amendments to the Part now titled Rules for the Protection of Human Remains, Grave Artifacts, Grave Markers and Unregistered Graves (17 IAC 4170; proposed at 47 Ill Reg 13149) effective 1/25/24 at 48 Ill Reg 2189, replacing emergency rules that were effective 8/31/23. The rulemaking implements Public Act 103-446, which expands DNR's authority regarding protection of human remains, grave artifacts, grave markers and unregistered graves that are more than 100 years old and are discovered, or believed to be located, outside of established cemeteries. The rulemaking changes the name of the Part and establishes a process through which the contents of an unmarked or unregistered grave may be repatriated to an individual or group with documentable kinship (biological, legal or affinal relationship) to the deceased person or persons, or to a tribal nation or other related group with an historically documented claim

to the contents. It also requires excavations or other work that may disturb unregistered graves, or which unexpectedly encounters an unregistered grave, to receive a permit from DNR before commencing or continuing.

Unregistered Graves

If DNR has credible information indicating that one or more unmarked/unregistered graves are located on private land, it may notify the owner in writing and require the owner to obtain a permit from DNR before undertaking any work that may disturb these graves. DNR may also, with the property owner's permission, recommend that a professional archeologist investigate the grave site. If Native American grave sites are encountered, approval of the tribal nation is required prior to any invasive archeological field investigation. An application for a permit to undertake work at or near an unregistered grave site must specify whether it is feasible to remove the remains or grave contents, or whether the site will be preserved and avoided. If an emergency situation exists (e.g., a grave is accidentally discovered at an excavation site and the grave is in imminent danger of being destroyed or lost due to factors beyond the control of the excavators) DNR may authorize excavation and analysis of the grave contents by a professional archeologist at no cost to the property owner. The contents shall be turned over to DNR within 10 days and other reporting/notification requirements completed within 30 days. A field summary of the work performed (removal or avoidance), analysis of the contents of a grave site, and the final disposition of the contents must be submitted to DNR within 60 days after this work is completed. DNR may suspend a permit (and the permit holder may appeal the suspension) if

public health or safety is endangered or the permittee is in violation of the conditions of the permit, the Act or this Part. Existing rules establishing criminal and civil penalties and damages for violations of the Act are repealed.

Kinship Determination

DNR will also attempt to determine the kinship of any human remains recovered from an unregistered grave via adequate historical documentation, which may include deeds, church records, treaties, atlases, maps, tribal knowledge and traditions, and any other written or oral sources (formerly, documentation required at least two of the following: deeds, church records, maps and other written/oral sources). If kinship is established, DNR will notify the relevant persons or entities by registered mail. If the recipient individual or group responds within 30 days accepting kinship, repatriation or care of the remains will require written permission from the individual or group. If kinship cannot be established, DNR will attempt to determine whether a related group or groups has an historical connection to the grave site. If the group/groups connected to the site are Native American in origin, DNR will notify all related tribal nations and invite them to consult with DNR regarding the removal of the remains or care of the site. In cases where the origin of the grave cannot be determined or no person or entity responds to DNR's notifications, DNR may post public notice in a newspaper of general circulation in the county where the grave is located, prior to any excavation of the grave contents. DNR will maintain a list of tribal nations that have or may have connections to unregistered grave sites and shall

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Adopted Rules

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notify them of any encounter with human remains or grave artifacts. DNR must consult (in person, in writing or virtually) with the relevant tribal nation or nations before deciding whether to remove and repatriate the remains/artifacts or leave them in place and protect the burial site.

Unregistered Cemeteries

The emergency and proposed rules also require persons or groups that will be digging or probing an unregistered cemetery for the purpose of recovering and restoring grave markers to obtain a permit from DNR before doing so. The permit application shall include the location/address of the cemetery; the proposed preservation plan; the applicant's knowledge regarding the nature of the remains (e.g., religious, tribal or national affiliation, veteran status); and proof of ownership of the property or written permission from the property owner.

Questions/requests for copies: John Fischer, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217-782-1809, dnr.rules@illinois.gov

• LEAD MITIGATION

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY adopted a new Part titled Procedures for Issuing Loans from the Public Water Supply Loan Program to Provide Funding for Lead Service Line Replacement (35 IAC 663; proposed at 47 Ill Reg 11879) effective 1/26/24 at 48 Ill Reg 2088, implementing federal Public Law 117-58, which provides funds to states for replacement of public water service lines made of or containing lead. The new Part establishes an application process for zero-interest loans to community water supplies that need

to replace lead-containing public water service lines, with the amount of each loan matched by the State with funds provided via USEPA. The maximum loan term is 40 years for disadvantaged communities and 30 years for other recipients, and loan agreements may be restructured if necessary. Any project funded under this Part to replace lead service lines must replace the entire line, including goosenecks, pigtails and connectors, unless portions of the line have already been replaced or are being funded from another source. Projects that replace water meters, provide bottled water to customers, or replace on-premise plumbing are not eligible for these loans. Loans also cannot be made to water supplies that are federally owned or for-profit; that lack the capability to meet federal Safe Drinking Water Act standards; or that are in significant noncompliance with national primary drinking water standards. IEPA must, on an annual basis, prepare and submit to USEPA an Intended Use Plan for these funds that includes its criteria for ranking individual projects, prioritizing applications and distribution of funds. Criteria for ranking projects include the median income, number of children under age 6, unemployment rate, poverty rate, number of Social Security and SSI recipients, number of homes built prior to 1990, and the percentage of water lines containing lead in the project area. The IEPA Director may waive some loan procedures if they are not necessary to the integrity of the project. The rulemaking also addresses allowable costs, procedures for repayment and closeout of loans, project labor and contract/subcontract requirements, actions in case of noncompliance or delinquency in paying loans, and recordkeeping and audit requirements. Those affected by this rulemaking include municipalities and other units of local government that operate public water supplies.

Questions/requests for copies: Stephanie Flowers, IEPA, 1021 N. Grand Ave. East, P. O. Box 19276, Springfield IL 62794-9276, 217-782-5544, stephanie.flowers@illinois.gov

• CHILD CARE

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Child Care (89 IAC 50; proposed at 47 Ill Reg 10679) effective 1/24/24 at 48 Ill Reg 2159, implementing the transition of the Strengthen and Grow Child Care Grant Program to the Smart Start Transition Grants Program. Eligible child care providers must be licensed by DCFS as of 6/1/23 (formerly, 3/11/21) and currently open; must operate year-round, defined as offering at least 8 consecutive hours of care per day, 5 days a week, for at least 47 weeks per year; have at least 10% of enrolled children being subsidized by the Child Care Assistance Program (CCAP) in at least one month since 1/1/22; receive no more than 75% (previously 50%) of revenues through Head Start, Preschool for All, and similar streams; be currently enrolled in the Registry Director portal; and have complete and accepted reporting for any previous federally-funded child care provider relief grants. Grant recipients must spend 75% (previously 50%) of grant funds on new or expanded investments in personnel, including but not limited to increased wages or salaries, bonuses, scholarships, retirement plans, health insurance, paid sick or family leave, and professional development or training. Child care providers enrolled in CCAP are affected by these rulemakings.

SNAP BENEFITS

DHS also adopted amendments to Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; proposed

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at 47 Ill Reg 12298) effective 1/24/24 at 48 Ill Reg 2170, clarifying that court-ordered child support payments paid by or to a SNAP household member are excluded from the household's gross monthly income for purposes of determining financial eligibility.

Questions/requests for copies of the 2 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave. East, Harris Building, 3rd Floor, Springfield IL 62762, 217-785-9772.

• EDGE TAX CREDITS

The DEPARTMENT OF REVENUE adopted amendments to Income Tax (86 IAC 100; proposed at 47 Ill Reg 13167) effective 1/29/24 at 48 Ill Reg 2243, implementing two Public Acts and clarifying various aspects of the Economic Development for a Growing Economy (EDGE) tax credit. The amendments clarify documentation and procedure for claiming an EDGE credit on an income tax return and provide additional guidance to owners of a partnership or subchapter S corporation for pass through of the credit. Other provisions implement changes to the EDGE Credit withholding election made by Public Acts 102-700 and 103-9. An election

may be made by a startup taxpayer, as defined in the Economic Development for a Growing Economy Tax Credit Act, for any credit awarded under an agreement executed on or after 4/19/22 and shall be effective until the startup taxpayer has incurred Illinois income tax liability. Additionally, an EDGE Credit withholding election shall allow the credit to be taken against payments due during the first withholding reporting period that begins after the end of the withholding reporting period in which the credit is awarded, rather than in the first calendar year after the credit is awarded. Additional updates and corrections are also included. Businesses that qualify for or are receiving EDGE tax credits are affected by this rulemaking.

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

AUDITOR GENERAL

The OFFICE OF THE AUDITOR GENERAL adopted amendments to the Part titled Public Information, Rulemaking, Organization and Personnel (2 IAC 600; proposed at 47 Ill Reg 12959) effective 1/29/24 at 48 Ill Reg 2069, aligning the Office's paid parental leave policies with those of other executive branch agencies by

increasing total leave time from 10 weeks/50 working days to 12 weeks/60 working days. The rulemaking also expands eligibility for unpaid domestic violence leave to include any crime of violence, including dating violence, gender-related violence and stalking, in accordance with the Victim's Economic Security and Safety Act.

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

UNIVERSITIES EMPLOYMENT

The STATE UNIVERSITIES CIVIL SERVICE SYSTEM adopted amendments to the Part titled State Universities Civil Service System (80 IAC 250; proposed at 47 Ill Reg 13457) effective 1/26/24 at 48 Ill Reg 2281, that add a definition of law enforcement personnel and remove references to work areas within class specifications, which are no longer being used in the System.

Questions/requests for copies/comments through 11/6/23: Gail Schiesser, SUCSS, 1717 Philo Rd., Suite 24, Urbana IL 61802, 217-278-3150, rulemaking@sucss.illinois.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 be considered at the March 12, 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 HUMAN SERVICES

Medicaid Home and Community-Based Services Waiver Program for Individuals with Developmental Disabilities
(59 IAC 120; 47 Ill Reg 3904) proposed 3/24/23

DEPT OF NATURAL RESOURCES

Off-Highway Vehicle Trails on Properties Owned, Leased or Managed by the Department of Natural Resources
(17 IAC 135; 47 Ill Reg 15080) proposed 10/27/23

DEPT OF REVENUE

Rental Purchase Agreement Occupation and Use Tax Act (86 IAC 125; 47 Ill Reg 17948) proposed 12/8/23

Taxpayer Rights (86 IAC 205; 47 Ill Reg 17380) proposed 11/27/23

Cannabis Cultivation Privilege Tax (86 IAC 422; 47 Ill Reg 17966) proposed 12/8/23

County Water Commission Retailers' Occupation Tax (Repealer) (86 IAC 630; 47 Ill Reg 17384) proposed 11/27/23

County Water Commission Service Occupation Tax (Repealer) (86 IAC 640; 47 Ill Reg 17392) proposed 11/27/23

County Water Commission Use Tax (Repealer) (86 IAC 650; 47 Ill Reg 17398) proposed 11/27/23

TEACHERS' RETIREMENT SYSTEM

The Administration and Operation of the Teachers' Retirement System (80 IAC 1650; 47 Ill Reg 17403) proposed 11/27/23

Next JCAR Meeting: Tuesday, March 12, 10:30 a.m.

Room C-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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