

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

▪ FOOD HANDLING

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to the Part titled Food Code (77 IAC 750; 47 Ill Reg 17932) that adopt and incorporate the latest (2022) version of the federal Food and Drug Administration Food Code, update definitions to align with the FDA Code, and update provisions for inspection to reflect recent amendments to the Illinois Food, Drug and Cosmetic Act [410 ILCS 620] and adoption of the Latex Glove Ban Act [410 ILCS 180]. The rulemaking updates criteria for Category I facilities (those with complex food preparation or packaging processes, requirements for prolonged time and temperature control, or service to vulnerable populations such as children or the elderly), Category II facilities (have less complex preparation processes and serve food immediately after preparation), and Category III facilities (low risk facilities that merely reheat

or chill processed food or serve items that do not need time or temperature control). Items to be noted in food establishment inspections effective 1/1/25 include allergen notices, default beverages included in children's meals (e.g., nonfat, nondairy or 1% milk, 100% fruit or

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vegetable juice with no added sweeteners), and use of non-latex gloves for food handling and preparation. Food establishment employees who are ill must also observe any applicable exclusions or restrictions in the Control of Notifiable Diseases and Conditions Code (77 IAC 690) and these restrictions must be enforced by the owner, manager or other person in charge of the establishment. Those affected by this rulemaking include restaurants,

cafeterias, grocery stores, taverns and other businesses that prepare, serve or sell food.

Questions/requests for copies/comments through 1/22/24: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217-782-1159, dph.rules@illinois.gov

▪ RENT-TO-OWN TAXES

The DEPARTMENT OF REVENUE proposed a new Part titled Rental Purchase Agreement Occupation and Use Tax Act (86 IAC 125; 47 Ill Reg 17948) implementing Public Act 100-437, which was effective 1/1/18. The PA and this Part impose a 6.25% occupation tax upon merchants who rent merchandise under a rental-purchase agreement in Illinois (e.g., "rent-to-own" appliance and furniture stores), along with a use tax to the

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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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customer at the rate of 6.25% of the rental price paid to the merchant under the rental-purchase agreement. The tax applies to any rental agreement for personal or household items, with an initial term of 4 months or less, that is automatically renewable with each payment and that eventually allows the customer to become the owner of the items. Merchants must obtain certificates of registration from DOR (if they do not already have Retailer’s Occupation Tax registration with DOR) and record gross receipts from rental payments and pay tax on them as they are received. Rent-to-own merchants and their customers are affected.

• CANNABIS TAXES

DOR also proposed amendments to Cannabis Cultivation Privilege Tax (86 IAC 422; 47 Ill Reg 17966) clarifying that the transfer of cannabis or cannabis concentrate from a cultivator to an infuser under an agreement whereby the cultivator retains ownership of the cannabis or concentrate and the infuser, for a fee,

Emergency Rule

HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH adopted an emergency amendment to Hospital Licensing Requirements (77 IAC 250; 47 Ill Reg 18178) effective 11/24/23 for a maximum of 150 days, replacing an emergency rule that expired on 11/23/23. (A companion proposed amendment was published in the 7/7/23 *Illinois Register* at 47 Ill Reg 9134.) This emergency rule implements a federal waiver (valid through 12/31/24) 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 by this emergency rule.

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creates cannabis-infused products for the cultivator to sell, is not a “first sale” on which the cultivator would owe tax. Examples of transactions that meet these criteria are included, along with recordkeeping requirements for these transfers. Cannabis cultivators and infusers are affected.

Questions/requests for copies/comments on the 2 DOR rulemakings through 1/22/24: Alexis K. Overstreet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217-782-2844, REV.GCO@illinois.gov

Adopted Rules

• DISEASE CONTROL & REPORTING

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to the Part now called Control of Notifiable Diseases and Conditions Code (77 IAC 690; proposed at 47 Ill Reg 7323), effective 11/22/23 at 47 Ill Reg 18112, that change the name of the Part (formerly Control of Communicable Diseases Code) and clarify or update various measures that DPH may take concerning the diseases and conditions listed in the Part. Since 1st Notice, DPH has removed Sec. 690.100 from this rulemaking (which contained a comprehensive list of all notifiable diseases) and will submit those amendments separately at a later date. Healthcare providers and workers, local health authorities, food service businesses, schools, and child care facilities may be affected by this rulemaking.

Definitions

The rulemaking replaces references to "dangerously contagious or infectious" diseases that must be reported to and investigated by DPH with "notifiable diseases and conditions". Notifiable diseases or conditions that must be reported to DPH under this Part include diseases deemed to be "of public interest by reason of their contagiousness, severity or frequency". The rulemaking adds definitions for terms such as closure, modified closure, infection preventionist, transmission-based precautions, and other terms currently used in regard to disease prevention and updates incorporated and referenced federal regulations and guidance, State statutes, and State regulations. The rulemaking also clarifies that sexually transmitted diseases and conditions are not reportable under this Part because reporting requirements for these

conditions are established elsewhere in rule.

Notifiable Diseases/Conditions

The following changes have been made concerning specific reportable/notifiable diseases:

-- *Reportable within 3 hours* – confirmed, suspected or probable cases of measles; variant Influenza A cases.

-- *Reportable within 24 hours* -- COVID-19 cases that are laboratory confirmed or connected to a pediatric death or intensive care unit admission (previously, all suspected or confirmed COVID-19 cases had to be reported within 3 hours); acute flaccid myelitis; streptococcal infections in hospitals or residential facilities; respiratory syncytial virus (RSV) deaths in children under age 5; lab confirmed influenza deaths in persons under 18 (previously, reportable within 7 days); *Cronobacter* cases in infants under 1 year old.

-- *Reportable within 3 (previously 7) days* – multi-drug resistant organisms (MDROs) deemed to be of epidemiological importance; tickborne infections, including African Tick Bite Virus, Bourbon Virus, and Heartland Virus. Arboviral infections (those spread by mosquitoes) in this category now include Zika, which can also be transmitted sexually; guidance on prevention strategies must be provided to Zika cases and their sexual contacts. If a person with Zika or West Nile Virus has recently donated blood, the donation facility must also be notified.

-- *Require notification to emergency personnel who may have been exposed*: now includes monkeypox, hantavirus, and histoplasmosis (previously, tuberculosis, meningococcal disease, plague, rabies, and hemorrhagic fevers including Ebola).

Persons required to report notifiable diseases and conditions of which they have knowledge now include infection preventionists, pharmacy technicians, and animal control or animal shelter employees. Procedures for reporting notifiable diseases and conditions electronically via the Electronic Disease Surveillance System (formerly, the Illinois-National Electronic Disease Surveillance System or I-NEDSS) are also updated.

Outbreaks

The number of cases used to determine an outbreak in a community, facility, workplace or region will vary based on the disease/condition, site conditions and hazards, size and type of population exposed, previous exposure or lack of exposure to the disease, and the time and place of occurrence. An existing requirement for individuals and business owners to cooperate with public health authorities in the event of an outbreak has been expanded to include instances of "confirmed health care association or colonization" of a notifiable condition, as well as "a single case with public health significance". Outbreaks of zoonotic diseases (transmissible from animals to humans) must be reported by veterinarians, animal control officials, animal holding facility personnel, pet store owners and wildlife professionals. Information that DPH may request when an outbreak is being investigated includes any utilization of therapeutics, vaccinations, prophylactics, or other products intended to mitigate the spread of the disease; employee work schedules, logs, and records of illnesses or absences; invoices; and shopper card records. Reports of an outbreak must be entered into DPH's

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Adopted Rules

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system by the local health authority within 24 hours, and final information must be entered within 30 days after investigation is concluded.

Investigations

In "extreme circumstances" when highly infectious diseases or conditions with high risk of death or complications are involved and normal attempts to contact cases in the course of an investigation have failed, DPH may obtain access to computer, cell phone, or mobile device data from a case in order to identify possible contacts or exposures. State and local law enforcement shall also share information with DPH or local health departments if requested for the control, treatment, response, investigation or prevention of a notifiable disease, condition or outbreak.

Schools

With regard to schools and child care facilities, this rulemaking clarifies that persons infected with a reportable infectious disease shall be barred from the school or facility until they are free of fever, diarrhea and/or vomiting for at least 24 hours without the use of medication to reduce fever or prevent diarrhea or vomiting (formerly, "while acute symptoms are present"). Identifiable information regarding any student or staff member, including their name or contact information, can be reported to DPH or local public health authorities for any notifiable disease or condition for which DPH requires reporting within 3 to 24 hours, including but not limited to Hepatitis A, measles, pertussis (whooping cough), or any disease or condition outbreak.

Food Service and Healthcare

Health care workers are now specifically cited as among the "sensitive occupations" in which persons with diarrhea, vomiting or other infectious symptoms cannot work until 48 hours after those symptoms have resolved. Persons with jaundice are now prohibited from working in sensitive occupations until 7 days after the jaundice has ceased, unless the employee provides documentation from a health care provider that the jaundice is not caused by Hepatitis A or another fecal-orally transmitted infection. Local health authorities may notify food service business owners that an employee with a disease that can be transmitted via food cannot return to work until the local health authority has cleared the employee to return.

Confidentiality

Data that must be kept confidential by DPH when reported in connection with a notifiable disease or condition or outbreak includes: personally identifying information regarding any individual (e.g., name, sex, age, address, telephone number, Social Security Number); medical record or health insurance file/account numbers; and data for geographic areas smaller than zip codes. With regard to food-related outbreaks, recipes, vendor and distributor information collected in the course of an investigation will be treated as confidential. Epidemiologic information exchanged between DPH, local health authorities, the Centers for Disease Control and Prevention (CDC), or other State or federal agencies is also considered confidential, but may be shared with public health partners as necessary for purposes of an outbreak or illness investigation.

Questions/requests for copies: Tracey Trigillo, DPH, 524 S. Second St., 6th

Floor, Springfield, IL 62701, 217-782-1159, dph.rules@illinois.gov

• BUILDING CODES

The CAPITAL DEVELOPMENT BOARD adopted amendments to Illinois Energy Conservation Code (71 IAC 600; proposed at 47 Ill Reg 7177) effective 11/27/23 at 47 Ill Reg 17974, incorporating the 2021 edition (formerly the 2018 edition) of the International Code Council's International Energy Conservation Code (IECC), with certain Illinois-specific amendments, as the energy code for Illinois in accordance with the Energy Efficient Building Act. Technical updates and amendments address building envelope; electrical power and lighting systems; total building performance; additions, alterations and repairs of existing buildings; alternative compliance methods; and duct and ventilation requirements for residential buildings. The rulemaking also implements Public Act 102-0662 by adding 5 new members to the Illinois Energy Conservation Advisory Council: a representative from an environmental justice group; a representative of a nonprofit or professional environmental advocacy association; and energy-efficiency advocates with technical expertise in single-family residential buildings, multifamily buildings, and commercial buildings. Changes since 1st Notice include exceptions to alterations and roof replacements in commercial and residential buildings and changes to ceiling insulation requirements in residential buildings. Those affected by this rulemaking include businesses that are constructing, renovating or adding to commercial and residential building structures and units of local government that issue build permit applications.

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Adopted Rules

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Questions/requests for copies: Lisa Hennigh, CDB, 401 S. Spring St., 3rd Fl. Stratton Building, Springfield IL 62706, 217/524-6408, fax 217-524-4208, Lisa.Hennigh@illinois.gov

ESTATE RECOVERY

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to the Part titled Rights and Responsibilities (89 IAC 102; proposed at 47 Ill Reg 6230) effective 11/21/23 at 47 Ill Reg 18017, implementing Public Act 102-1037. The rulemaking establishes a cost-effectiveness threshold of \$25,000 for recovery claims against estates (typically, for Medicaid long-term care assistance provided to a deceased individual without a surviving spouse or minor children) for estates of persons who died on or after 7/1/22 (changed since 1st Notice from estates opened on or after 7/1/22), meaning that HFS will not make any claims against the first \$25,000 of an estate. HFS shall consider the gross assets in the estate, including, but not limited to, the net value of real estate less mortgages or liens with priority over the Department's claims.

MANAGED CARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an amendment to Medical Payment (89 IAC 140; proposed at 47 Ill Reg 12212), effective 11/21/23 at 47 Ill Reg 18024, establishing the managed care assessments for fiscal years 2024 and 2025. Tier 1 MCO assessments (applicable to the first 4,195,000 member months in the base year of 2018) will be \$78.90 (formerly, \$74.50) per member per month; Tier 2 assessments (member months in the base year beyond those in Tier 1) will be \$1.40 (formerly \$1.20) per member month; and Tier 3 assessments (all member months for non-Medicaid MCOs in the base year) will be \$2.40 per member month (unchanged). The rulemaking also clarifies that assessments from Cook County MCO providers will be deposited into the County Provider Trust Fund rather than the Healthcare Provider Relief Fund.

MC/DD FACILITIES

HFS also adopted amendments to Specialized Health Care Delivery Systems (89 IAC 146; proposed at 47 Ill Reg 12239) and Long Term Care Reimbursement Changes (89 IAC 153; proposed at 47 Ill Reg 12282), both effective 11/21/23 at 47 Ill Reg 18051 and 18096, establishing reimbursement rates and exceptional

care rates for Medically Complex for the Developmentally Disabled (MC/DD) facilities, which serve persons with developmental disabilities and complex medical needs. These rates were formerly established by the Department of Human Services under 89 IAC 144. Amendments to Part 146 create a new Subpart that includes criteria for determining when MC/DD services are appropriate and determining active treatment costs; requirements for receiving and methodologies for calculating exceptional care rates (e.g., for residents with feeding tubes, ventilators or tracheostomies); reimbursement criteria for behavior development, health, and sensory disabilities programs; guidelines for determining residents' level of functioning; and an appeal process for rate determinations and assessments. The Part 153 rulemaking updates rates to reflect various Public Acts and changes references to pediatric skilled nursing facilities (SNF/Ped) to MC/DD.

Questions/requests for copies of the 4 HFS rulemakings: Steffanie Garrett, HFS, 201 S. Grand Ave., East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@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 December 12, 2023 meeting in Chicago. 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.

IL STATE POLICE

Firearm Owner's Identification Card Act (20 IAC 1230; 47 Ill Reg 4338) proposed 4/7/23

Firearm Owner's Identification Card Act (20 IAC 1230; 47 Ill Reg 13846) proposed 9/29/23

DEPT OF AGRICULTURE

Cannabis Regulation and Tax Act (8 IAC 1300; 47 Ill Reg 14077) proposed 10/6/23

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Real Estate License Act of 2000 (68 IAC 1450; 47 Ill Reg 13429) proposed 9/22/23

DEPT OF REVENUE

Retailers' Occupation Tax (86 IAC 130; 47 Ill Reg 12858) proposed 9/1/23

Service Occupation Tax (86 IAC 140; 47 Ill Reg 12928) proposed 9/1/23

Use Tax (86 IAC 150; 47 Ill Reg 12939) proposed 9/1/23

Next JCAR Meeting: Tuesday, Dec. 12, 11 a.m.

Room C600, Bilandic Bldg., 160 N. LaSalle St., Chicago

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 Kimberly Lightford
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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