

# 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

### ▪ GROCERY STORES

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed a new Part titled Grocery Store Initiative Grant Program (14 IAC 645; 47 Ill Reg 19258) implementing the Grocery Initiative Act [20 ILCS 750] by establishing a grant/loan program for grocery stores located in "food deserts". The Act and this Part define a food desert as a census tract that has a poverty rate of at least 20% or a median income at or below 80% of the State or metropolitan area median income, and in which at least 500 residents or at least 33% of the population lives more than 10 miles in rural areas or more than ½ mile in urban areas from the nearest grocery store. Applicants must: own or be planning to establish an eligible grocery store in a food desert; own no more than 5 stores in Illinois; sell or plan to sell primarily grocery products, including fresh produce; derive no more than 30% of annual revenue

from tobacco and alcohol sales; and accept SNAP and WIC benefits. Grants or loans to new grocery stores may be used to fund market and site feasibility studies; salaries and benefits for workers; rent or down payment to acquire a facility; purchase ownership of an existing or

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closed grocery store; capital improvements, including land acquisition, renovations, demolition, or equipment purchases; or other costs that DCEO determines eligible. Grants (amounting to no more than 20% of total program funding) may also be awarded to co-operatives or non-profit or for-profit corporations for upgrading equipment to make it more energy efficient. DCEO will post Notices of Funding Opportunity (NOFOs) when funding becomes available. DCEO may also prioritize

applicants that are units of local government; that earn less than \$5 million in annual revenue; that own or seek to establish groceries in low-income/high poverty areas; or that are located farther away from existing grocery stores in comparison to other applicants. Grant recipients must comply with the Grant Accountability and Transparency Act (GATA) and the Project Labor Agreement Act. Small businesses, small municipalities, and non-profit entities may be affected by this rulemaking.

### ▪ ENERGY TRANSITION

DCEO also proposed a new Part titled Energy Transition Community Grant Program (14 IAC 810; 47 Ill Reg 19269) implementing the Energy Community Reinvestment Act [20 ILCS 735]. The Act and this Part establish a grant program to promote economic development in communities that

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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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have experienced closure or significantly reduced operation of a coal mine, nuclear plant or fossil fuel power plant within the past 6 years, or that anticipate closure, decommissioning or reduced operation of such facilities within the next 6 years. Up to \$40 million annually may be made available for this program. A unit of local government that is the primary applicant for a grant may include other local governments, economic development organizations, local educational institutions, or community-based groups as secondary applicants. Units of local government that were taxing authorities for a nuclear plant decommissioned prior to 1/1/21 may apply annually for grants in amounts proportional to the volume of nuclear fuel still stored at the site and the property tax payments lost due to decommissioning of the plant. Applicants must be registered at the GATA portal before submitting their applications. DCEO will post NOFOs and accept applications when funding is available. Eligible expenses that may be covered by grant funds include: research and analysis of economic impact from the facility closure; business and/or workforce development; marketing of tourism and recreation opportunities; environmental remediation of closed sites; other local infrastructure improvements; financial assistance for unemployed, underemployed, and low-income residents; public health initiatives; or other initiatives intended to address the impact of the facility closure. Up to 3% of grant funds may be used to pay for the assistance of a third party vendor with grant writing and implementation

costs. Small businesses, municipalities, and non-profit organizations in communities undergoing energy transition are affected.

## ▪ INTERNET ACCESS

Finally, DCEO proposed amendments to the Part titled Broadband Grant Programs (14 IAC 548; 47 Ill Reg 19237) to implement the federally funded Broadband Equity, Access and Deployment (BEAD) Program established under the federal Infrastructure Investment and Jobs Act (Public Law 117-58). This rulemaking adopts the federal definition of “broadband service” as a mass market retail service providing capability to transmit and receive data from all, or substantially all, internet endpoints, but excluding dial-up service. Entities that may apply for program funding include incorporated businesses or partnerships; political subdivisions; cooperative associations; or limited liability companies organized for the purpose of expanding broadband access. School districts may also apply, but may be encouraged to seek other federal or education-specific funding before applying for BEAD funding. Applicant entities shall focus on providing reliable broadband service, which is defined in terms of download/upload speeds and the technology used for connection (e.g., fiber optic cable, DSL), to unserved or underserved areas. Priority shall also be given to ensuring reliable broadband service to “community anchor institutions”, such as schools, colleges/universities, libraries, healthcare providers, public safety agencies, and other community organizations serving vulnerable populations (e.g., children, aged individuals, low income or unemployed persons, incarcerated persons). Grant applicants must be qualified at the GATA Grantee Portal

and must comply with GATA and other applicable state and federal laws. DCEO will post NOFOs and accept applications when funding is available. Eligible costs that may be covered by BEAD grants include digital infrastructure improvements; personnel costs for staff and consultants implementing the program; software upgrades; cybersecurity measures; workforce development; and other digital equity initiatives such as user training, remote learning, telehealth, pre-release training in digital literacy for incarcerated persons, and subsidies to make broadband services more affordable. Small businesses and municipalities and non-profit community organizations may be affected.

*Questions/requests for copies/comments on the 3 DCEO rulemakings through 2/13/24: Gina Arterberry, DCEO, 607 E. Adams St., 12<sup>th</sup> Fl., Springfield IL 62701, [Gina.M.Arterberry@Illinois.gov](mailto:Gina.M.Arterberry@Illinois.gov)*

## VIDEO GAMING

The ILLINOIS GAMING BOARD proposed amendments to Video Gaming (General) (11 IAC 1800; 47 Ill Reg 19279) that allow IGB to temporarily deactivate video gaming terminals (VGTs) at licensed video gaming locations that have failed to fulfill their obligations under the Video Gaming Act or this Part, but whose conduct does not warrant revocation of their licenses. Deactivation may be prompted by actions such as failure to timely pay sums owed to IGB; the lapse, expiration or inactive status of a liquor license; failure to comply with a Board order; or a Board investigation that finds the location is not eligible in statute or rule to operate VGTs. Locations must pay an administrative fee of \$150 per terminal in order to

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# Proposed Rulemakings

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have them reactivated. Licensed video gaming locations are affected by this rulemaking.

*Questions/requests for copies/comments through 2/13/24: Daniel Gerber, IGB, 160 N. LaSalle St., Chicago IL 60601, fax 312-814-7253, [IGB.RuleComments@illinois.gov](mailto:IGB.RuleComments@illinois.gov)*

## HEALTH INSURANCE

The DEPARTMENT OF INSURANCE proposed amendments to the Part titled Premium Increase Justification and Reporting (50 IAC 2026; 47 Ill Reg 19290) implementing Public Act 103-106. The PA and the rulemaking give DOI authority, beginning in the 2026 plan year, to determine that proposed health insurance premium rates for small group or individual insurers are inadequate. (Currently, DOI may determine that a proposed rate is unjustified, unfairly discriminatory, or not excessive.) The rulemaking changes the name of the Part to Health Insurance Rate Review and updates the process by which insurers provide notice of proposed rate changes and accept public comment on them, after which DOI approves, disapproves or modifies the proposed rates. DOI may determine that a proposed rate is inadequate if it is insufficient to cover projected losses and expenses or that it could eventually endanger the solvency of the insurer. All rate changes that take effect on or after 1/1/25, even if they are not subject to DOI review, must be posted on DOI's website and will be subject to public comment. DOI must complete its review of applicable rates

# Emergency Rule

## DISTANCE LEARNING

The BOARD OF HIGHER EDUCATION adopted emergency amendments to Higher Education Distance Learning and Interstate Reciprocity (23 IAC 1033; 47 Ill Reg 19449) effective 12/15/23 for a maximum of 150 days. Companion proposed amendments were published in the 9/29/23 *Illinois Register* at 47 Ill Reg 13759. These amendments align the Part with the National Council for State Authorization Reciprocity Agreements (SARA) policy manual, which regulates awarding of credit for distance learning among institutions in most states. (BHE states that it is adopting the emergency amendments to ensure that these requirements are in place by SARA's 1/1/24 deadline.) These amendments clarify that accreditation, for the purposes of this Part, includes distance education recognition; clarifies how private institutions that do not participate in federal student aid programs can demonstrate financial stability; defines and clarifies aspects of the formulas BHE uses to determine financial stability and whether an out of State institution has physical presence in Illinois; explain how an institution which offers courses leading to professional certification satisfies federal requirements for disclosure regarding their professional licensure programs (e.g., listing all states in which the program does, or does not, satisfy licensure criteria for that profession); and requires BHE to consider actions by federal and state regulatory agencies, other states' attorneys general, or similar bodies when reviewing an institution's application to participate in SARA. Two new Sections establish a "provisional" admission or renewal status for institutions that do not meet various criteria for admission, along with a procedure for institutions to appeal denial of membership or removal from SARA.

*Questions/requests for copies: David A. Kelm, BHE, 1 N. Old State Capitol Plaza, Suite 333, Springfield IL 62701, 217-866-1428, [Kelm@IBHE.org](mailto:Kelm@IBHE.org)*

and issue its determination within 60 days after the end of the public comment period. Insurers may request a hearing to contest a determination within 10 days after the determination is issued. A new determination may be issued if new information becomes available to DOI before the proposed rate takes effect.

*Questions/requests for copies/comments through 2/13/24: Robert Planthold (312-814-5445, [robert.planthold@illinois.gov](mailto:robert.planthold@illinois.gov)); or Kathryn Williams (217-843-0050, [kathryn.a.williams@illinois.gov](mailto:kathryn.a.williams@illinois.gov)); DOI,*

*122 S. Michigan Ave., 19<sup>th</sup> Floor, Chicago IL 60603. Also, Susan Anders, DOI, 320 W. Washington St., 4<sup>th</sup> Floor, Springfield IL 62767, 217-558-0957, [sue.anders@illinois.gov](mailto:sue.anders@illinois.gov)*

# Adopted Rules

## • HOME SERVICES PROGRAM

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Provider Requirements, Type Services, and Rates of Payment (89 IAC 686; proposed at 47 Ill Reg 7038), effective 12/13/23 at 47 Ill Reg 19328, updating references to the DHS Division (formerly Office) of Rehabilitation Services and the Home Services Program's AIDS Waiver Unit, now called the Ashburn Unit, and including provisions for case management of customers enrolled in Medicaid managed care organizations (MCOs). The proposed amendments require case managers for the Ashburn Unit to act as liaisons with hospital discharge planners, physicians, home health agencies, and other medical providers when a customer is referred to them by a hospital, the Department of Public Health's AIDS Hotline, a physician or another individual or agency. (Formerly, the case manager had the option of delegating some or all of these responsibilities to a registered nurse.) Provisions allowing the required monthly case manager contact with each customer to be conducted by telephone during the COVID-19 Gubernatorial Disaster Proclamations have been made permanent, subject to federal approval. Records of closed cases will be retained by the Ashburn Unit for 2 years and then archived pursuant to DHS records retention policy. The designated administrator of the Ashburn Unit case management program for each provider agency must have, or be working toward earning, a bachelor's degree in health, human services or a related field; licensure as a registered nurse; or certification as a home health, medical clinic or other health services administrator. A candidate who lacks these qualifications may be hired with at least one year of work experience in

social services or a health agency for each year of education that would be required to meet these qualifications, provided that at least one of these years of experience was in a program serving persons with disabilities. A case manager who is an RN or has a bachelor's degree in a human services field may be hired with one year (formerly, 4 or 5 years) of case management experience. Case managers must have experience working with racial and ethnic minorities, plus experience working with any of the following: persons affected by domestic abuse; the LGBTQ community; persons living with HIV/AIDS; or persons with substance use disorders. (Formerly, case managers were required to have experience with all of the listed customer populations.) A full-time case manager is limited to no more than 100 (previously 30) customers, of which up to 70 may be enrolled in an MCO and up to 30 may be fee-for-service (FFS) Medicaid enrollees. Half-time case managers are limited to 50 (formerly 15) customers, of which up to 35 may be MCO enrollees and up to 15 may be FFS. The proportions of MCO and FFS customers assigned to a single case manager may be appropriately adjusted as long as total enrollment does not exceed the limit. Other provisions address certification of case managers and the number of MCO and/or FFS case file reviews required as part of the certification process. Changes since 1<sup>st</sup> Notice replace most references to providers with "case management agency" and align anti-discrimination provisions with the Illinois Human Rights Act. Those affected by this rulemaking include home health or other agencies that provide services to HIV/AIDS patients through the Home Services Program.

*Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, Harris Building, 3<sup>rd</sup> Floor, Springfield IL 62762, 217-785-9772.*

## • SALES TAXES

The DEPARTMENT OF REVENUE adopted amendments to Retailers' Occupation Tax (86 IAC 130; proposed at 47 Ill Reg 10351) effective 12/12/23 at 47 Ill Reg 19349, implementing various Public Acts and other updates. These amendments include references to cannabis dispensaries and add references to the Cannabis Regulation and Tax Act; incorporate DOR policies contained in letter rulings regarding computer software; update tax rules applicable to medical appliances; extend the manufacturing machinery and equipment exemption to graphic arts equipment; clarify that federal taxes on diesel fuel are not deductible from gross receipts when calculating sales tax liability; update the rate used for prepayment of sales taxes on motor fuel; clarify that a hearing must be requested within 20 days in disputes involving certificates of registration; and update or correct various cross references, statutory references, and language. Businesses subject to sales taxes are affected.

*Questions/requests for copies: Kimberly Rossini, DOR, 101 W. Jefferson St., Springfield IL 62794, 217-782-2044, [REV.GCO@illinois.gov](mailto:REV.GCO@illinois.gov)*

## LABOR RELATIONS

The ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD adopted amendments to Representation Procedures (80 IAC 1110; proposed at 47 Ill Reg 11509) and Unfair Labor Practice Procedures (80 IAC 1120;

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# Adopted Rules

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proposed at 47 Ill Reg 11525), both effective 12/21/23 at 47 Ill Reg 19307 and 19324. Amendments to Part 1110 allow for the use of electronic authorization cards and signatures to demonstrate a showing of interest, provide that authorization cards and signatures remain valid for 12 (formerly 6) months, clarify IELRB's procedure regarding representation

petitions for combined (professional and non-professional) bargaining units, and create a procedure (disclaimer of interest petition) for unions to relinquish their status as exclusive bargaining representatives. Changes since 1<sup>st</sup> Notice clarify exception and objection procedures. The Part 1120 amendment establishes a procedure for addressing charges that an employee organization has unlawfully collected dues from one or more employees in violation of the Educational Labor Relations Act. The

organization may continue to collect dues from the objecting employees while the case is pending but must deposit them in an escrow account until the case is resolved.

*Questions/requests for copies of the 2 IELRB rulemakings: Ellen Maureen Strizak, IELRB, 160 N. LaSalle St., Suite N-400, Chicago IL 60601-3103, 312-793-3170, [ellen.strizak@illinois.gov](mailto:ellen.strizak@illinois.gov)*

## Second Notices

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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 January 16, 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](mailto:jcar@ilga.gov).

### OFFICE OF THE ATTORNEY GENERAL

Attorney General's Procurement (44 IAC 1300; 47 Ill Reg 14857) proposed 10/27/23

### BOARD OF EXAMINERS

Certificate of Education and Examination Requirements (23 IAC 1400; 47 Ill Reg 14911) proposed 10/27/23

### BOARD OF HIGHER EDUCATION

Higher Education Distance Learning and Interstate Reciprocity (23 IAC 1033; 47 Ill Reg 13759) proposed 9/29/23

### DEPT OF CENTRAL MANAGEMENT SERVICES

The Travel Regulation Council (80 IAC 3000; 47 Ill Reg 15547) proposed 11/3/23

### DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Home Inspector License Act (68 IAC 1410; 47 Ill Reg 14917) proposed 10/27/23

### HIGHER EDUCATION TRAVEL CONTROL BOARD

Higher Education Travel (80 IAC 2900; 47 Ill Reg 14652) proposed 10/20/23

### DEPT OF HUMAN SERVICES

Criteria for the Evaluation of Programs of Services in Community Rehabilitation Agencies (89 IAC 530; 47 Ill Reg 2593) proposed 2/24/23

WIC Vendor Management Code (77 IAC 672; 47 Ill Reg 13787) proposed 9/29/23

### DEPT OF PUBLIC HEALTH

Loan Repayment Assistance for Physicians (77 IAC 581; 47 Ill Reg 12852) proposed 9/1/23

Underserved Health Care Provider Workforce Code (77 IAC 590; 47 Ill Reg 12990) proposed 9/8/23

Control of Notifiable Diseases and Conditions Code (77 IAC 690; 47 Ill Reg 7323) proposed 6/2/23

Control of Notifiable Diseases and Conditions Code (77 IAC 690; 47 Ill Reg 10251) proposed 7/14/23

### DEPT OF REVENUE

Uniform Penalty and Interest Act (86 IAC 700; 47 Ill Reg 14714) proposed 10/20/23

**Next JCAR Meeting: Tuesday, Jan. 16, 10:30 a.m.**

Room D-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

Kim Schultz, Executive Director ■ Kevin Kulavic, Deputy Director

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