

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

• FINANCIAL INSTITUTIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed new Parts titled Credit Union Community Reinvestment (38 IAC 185; 48 Ill Reg 621), Bank Community Reinvestment (38 IAC 345; 48 Ill Reg 695) and Mortgage Community Reinvestment (38 IAC 1055; 48 Ill Reg 765) and proposed an amendment to the Part titled Rules Governing the Request for Reconsideration of Examination Findings (38 IAC 385; 48 Ill Reg 759), all implementing Public Act 101-657, the Illinois Community Reinvestment Act (ILCRA). These proposed rules are similar, but not identical, to ILCRA implementation rules proposed by DFPR in 2022 but never adopted. They are intended to ensure that regulated financial institutions equitably provide financial services to individuals and businesses in low-income (less than 50% of an area's median income) and moderate-income (50% to 80% of area

median income) neighborhoods and in areas that lack access to safe and affordable banking/lending services. The new Parts apply to credit unions, banks, and Illinois-licensed mortgage lenders that originated or lent 50 or more mortgage loans in the previous calendar year and were responsible for underwriting or approving these

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No Second Notices This Week**

loans. The new Parts 185, 345 and 1055 require DFPR to periodically evaluate how these credit unions, banks and mortgage lenders are performing with regard to community development, which includes activities that: support affordable housing; finance small businesses or farms with gross annual revenues of \$1 million or less; revitalize or stabilize areas of high poverty or unemployment or disaster-stricken areas; mitigate environmental harm

or encourage climate resilience in low-income areas; or provide community services to low- and moderate-income persons. Initial evaluations will begin 6 months after these rules take effect and continue for the next 6 years, with larger institutions being evaluated first. All banks and mortgage licensees, and credit unions with \$250 million or more in assets, have 6 months after adoption of these rules to come into compliance; smaller credit unions will have 1 year to comply. Activities DFPR will consider in its evaluations include the institution's participation in qualified investments such as small business and farm loans; origination of mortgage, home improvement and rehabilitation loans that enable low- and moderate-income residents to maintain affordable housing; technical assistance to small businesses, farms and non-profits to help them establish

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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.

Emergency Rule

▪ IMMIGRANT HEALTHCARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted emergency amendments to Special Eligibility Groups (89 IAC 118; 48 Ill Reg 988) effective 1/1/24, modifying emergency rules that were effective 11/13/23 for the remainder of their 150-day term. (Companion proposed amendments were published in the 6/30/23 *Illinois Register* at 47 Ill Reg 8994.) The emergency amendments reinstate provisions from the proposed rulemaking and a previous emergency rule concerning the Health Benefits for Immigrant Adults (HBIA) and Health Benefits for Immigrant Seniors (HBIS) programs, which provide medical assistance to noncitizens ages 42-64 (HBIA) and 65 or older (HBIS) who meet income criteria and do not qualify for federally matched medical assistance. The emergency amendment allows healthcare providers to charge copayments of up to \$250 per stay for inpatient hospitalizations, up to \$100 for hospital emergency visits, and up to 10% of the rates established under the Veterans' Health Care Program for outpatient services received by HBIA/HBIS enrollees at hospitals or ambulatory surgical treatment centers, unless any of these services meet HFS' criteria for emergency medical treatment (which qualifies for federal matching funds) or are otherwise covered under HFS rules without a copayment. Providers are responsible for collecting copayments and may charge no copayment or a lesser copayment than the maximum permitted under this rule. Healthcare providers who serve HBIA or HBIS recipients are affected.

Questions/requests for copies: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

Proposed Rulemakings

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creditworthiness; contributions to private, non-profit community development or improvement organizations; contributions to disaster relief or recovery efforts in any part of the State; provision of low-cost education loans to low-income borrowers; marketing and outreach to unbanked individuals (who have no savings or checking accounts with depository institutions) and underbanked individuals (who have such accounts but have resorted to financial services from other entities, such as installment/payday lenders); and activities in cooperation with minority- and women-owned financial institutions. Performance standards for small banks and credit unions, limited or special purpose institutions (banks and credit unions that provide only certain services, e.g., vehicle loans or credit cards) and other

institutions are outlined, along with the data and reports that each institution must provide. Banks and credit unions may choose to have loans made by their affiliates or by consortiums in which they participate considered in the evaluation process. After completing an evaluation, DFPR will assign each institution a rating of outstanding, satisfactory, needs to improve, or substantial noncompliance. The institution must provide public notice of this rating and the results of the evaluation. Reevaluations will be conducted at intervals of 3-5 years for institutions rated outstanding or satisfactory, 2 years for those rated as needs to improve, and 1 year for those rated in substantial noncompliance. The performance record of the institution will be taken into account whenever DFPR considers an application to establish or relocate a main office or branch, or to renew or reorganize that institution. Finally, the amendment to Part 385 adds savings banks to the definition of a regulated financial institution and includes the ILCRA

ratings assigned to State banks in the definition of a material supervisory determination. Those affected by these rulemakings include credit unions, banks, mortgage lenders, and small businesses or non-profits that use or seek their services.

Questions/requests for copies/comments on the 4 DFPR rulemakings through 2/26/24: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217-785-0810, fax 217-557-4451.

HOSPITALS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to Hospital Services (89 IAC 148; 48 Ill Reg 799) that aligns the annual effective dates for Medicaid High Volume Adjustment Payments with the Medicaid percentage determination year as established in Sec. 140.122. (That Section was recently amended to move the start

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Proposed Rulemakings

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date for Medicaid percentage determination years from October 1 to January 1.)

Questions/requests for copies/comments through 2/26/24: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

IMDC PUBLIC INFORMATION

The ILLINOIS MEDICAL DISTRICT COMMISSION proposed amendments to the Part titled Public Information and Organization (2 IAC 2525; 48 Ill Reg 811) updating procedures for Freedom of Information Act (FOIA) requests seeking public information or records of the Commission. The rulemaking aligns the Part with the current FOIA, updates the Commission's contact information, allows IMDC to provide electronic copies of records by e-mail, and updates the appeal procedure for FOIA request denials (which are now directed to the Public Access

Counselor in the Office of the Attorney General). Other provisions update IMDC procedures and the duties of its officers; move the annual Commission meeting to May or June (currently, November or December); and allow meetings by telephone or video conference in accordance with the Open Meetings Act.

Questions/requests for copies/comments through 2/26/24: Gina Oka, IMDC, 2100 W. Harrison St., Chicago IL 60612, 312-738-5851, goka@medicaldistrict.org

Adopted Rules

▪ LIBRARY POLICIES

The SECRETARY OF STATE adopted amendments to Illinois State Library Grant Programs (23 IAC 3035; proposed at 47 Ill Reg 13038) effective 1/1/24 at 48 Ill Reg 948, implementing Public Act 103-100. The PA and this rulemaking require public libraries, school district libraries, veterans' home libraries and library systems, as a condition of receiving State per capita, construction, equalization aid, technology, or Talking Book and Braille Service grants on and after 1/1/24, to adopt policies against removal or censorship of library materials based on disapproval from individuals or groups. In order to qualify for these grants, applicant entities must adopt either the American Library Association's Bill of Rights indicating that "material should not be proscribed or removed because of partisan or doctrinal disapproval", or a written policy adopted by the library board of trustees indicating that the library will "protect the intellectual freedom of the library user and shall prevent censorship of its library materials, ensuring that items are not withdrawn from its library collection merely because individuals or groups object to the material." For all grants made on or after 1/1/24, applicant libraries and library systems must, upon request of the State Librarian, provide the Illinois State Library with a record of any final decision for reconsideration of library materials during the term of the grant award. A grant recipient that does not maintain and abide by either the ALA Bill of Rights or a written policy declaring its "inherent authority to include a prohibition on the practice of banning specific books or resources" shall have its grant award revoked. Public libraries, library systems, and school district libraries that apply for State grants are affected.

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

FOID CARDS

The ILLINOIS STATE POLICE adopted an amendment to the Part titled Firearm Owner's Identification Card Act (20 IAC 1230; proposed at 47 Ill Reg 4388) effective 12/29/23 at 48 Ill Reg 981, clarifying various aspects of the Firearm Owner's Identification Card (FOID) application process. The amendments clarify that all FOID applications must be made electronically unless a religious or disability exemption applies; that information required on a FOID application includes, but is not limited to, information required under Section 4 of the FOID Act; replaces the term "processing fee" with "convenience fee"; and clarifies the process for submitting fingerprints to ISP. Since 1st Notice, ISP removed a proposed new Section outlining a process for law enforcement agencies to electronically submit FOID applications to ISP.

Questions/requests for copies: Suzanne Bond, ISP, 801 S. Seventh St., Suite 1000-S, Springfield IL 62703, 217-782-7658.

▪ REAL ESTATE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Real Estate License Act of 2000 (68 IAC 1450; proposed at 47 Ill Reg 13429) effective 1/1/24 at 48 Ill Reg 851, increasing licensing fees for real estate brokers and agents and licensing education course providers. For residential leasing agent licenses, the initial fee is \$100 (formerly \$75) and the renewal fee is \$150 per renewal

cycle (formerly, \$50 per year). Broker licenses are increasing from \$125 to \$150 for an initial license and from \$75 per year to \$200 per renewal cycle for renewals. The fee to transfer from a managing broker to a broker license is increasing from \$125 to \$150. For real estate auction certification, the initial licensing fee remains unchanged at \$125 but renewal fees are increasing from \$150 per year to \$300 per renewal. Licensing fees are also being increased for corporations, partnerships, and limited liability corporations/partnerships; education providers and pre- and post-licensing courses; and continuing education providers and course licenses. Real estate agents, brokers, and licensing instructors are affected.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington St. 2nd Fl., Springfield IL 62786, 217-785-0810, fax 217-557-4451, Craig.Cellini@illinois.gov

▪ AUTISM SERVICES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Payment (89 IAC 140; proposed at 47 Ill Reg 315) effective 12/27/23 at 48 Ill Reg 864, implementing Public Act 101-10, which mandates coverage of treatment for autism spectrum disorders on and after 2/1/22. The rulemaking authorizes payment for Adaptive Behavior Support (ABS) services provided by Behavioral Health Clinics or independent ABS clinicians, who may include Board Certified Behavior Analysts, Licensed Clinical Psychologists, Licensed Clinical Professional Counselors, Licensed Clinical Social Workers, Licensed Marriage and Family Therapists, licensed Occupational Therapists, or

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licensed Speech-Language Pathologists. ABS services may also be provided by ABS technicians working under the supervision of an ABS clinician. A new Section lists covered ABS services (which may be subject to prior authorization) that include Behavior Assessment and Treatment Planning (on at least a semi-annual basis) and Behavior Analysis Intervention, which includes Applied Behavior Analysis (ABA) and ABA coaching or training for parents/caregivers. Services not covered under this Section include comprehensive diagnostic evaluation; any activities or interventions that involve restraint or seclusion; psychiatric/mental health assessments and therapies intended to address other behavioral health needs; activities that are solely educational, social or recreational; and services provided under an Individualized Family Service Plan or Individualized Education Plan. Since 1st Notice, HFS has removed proposed age limits for coverage of certain ABA services; clarified the categories of professionals who may serve as ABS clinicians; and clarified which professionals may supervise an ABS technician. Providers of ABS or ABA services are affected.

MENTAL HEALTH FACILITIES

HFS also adopted an amendment to Specialized Health Care Delivery Systems (89 IAC 146; proposed at 47 Ill Reg 11994) effective 12/27/23 at 48 Ill Reg 895, implementing PAs 101-10 and 102-699. The PAs and this rulemaking increase payment rates to Specialized Mental Health Rehabilitation Facilities (SMHRFs) by 5%; increase an add-on payment for certain single occupancy rooms from \$10 to \$15 per day; and establish a

new \$10 per day add-on for certain double occupancy rooms. The add-on payments will not apply to days when the room occupant is on a leave of absence. Providers that had 3 or more licensed beds in at least half of their facility rooms prior to 11/1/22 but have since reduced all rooms to no more than 2 licensed beds will receive a \$32 add-on to their facility rates. Specialized mental health rehabilitation facilities are affected by this rulemaking.

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

• MENTAL HEALTH

The DEPARTMENT OF HUMAN SERVICES adopted a new Part titled Recovery and Mental Health Tax Credit (59 IAC 130; proposed at 47 Ill Reg 13443) effective 12/29/23 at 48 Ill Reg 903, implementing the Recovery and Mental Health Tax Credit Act [35 ILCS 50]. The Act provides income tax credits to qualified employers who hire, on or after 1/1/23, individuals diagnosed with mental illness and/or substance use disorder that are in "a state of wellness and recovery". An eligible individual is in a state of wellness and recovery when signs and symptoms of active substance use disorder or mental illness have abated and the individual is currently undergoing or has completed treatment for the disorder or illness. In order to qualify for the credit (\$1 for each hour an eligible individual works during the calendar year for which it is claimed, up to a maximum of \$2,000 per eligible individual), an employer must receive a certificate from DHS verifying that it provides "a recovery supportive environment"; has a formal working relationship with a mental health provider/facility or substance use disorder treatment

provider; provides reasonable accommodation to employees with mental illness or substance use disorder at no cost to the individual; and meets all other criteria established by DHS. An employer may determine an employee's recovery status for purposes of this credit only after the employee has been hired, and the employee's disclosure of their status must be entirely voluntary. Employers must apply for the credit annually, although they do not have to resubmit documentation of a recovery-supportive environment once that has been established. Evidence of a recovery supportive environment can include a documented training program for management and human resources personnel on supporting employees in recovery; engagement in community-based prevention or recovery-focused activities at least once a year; or certification as a recovery supportive workplace by a non-profit, third-party recovery organization. An eligible employee must work for the employer at least 500 hours per calendar year. Documentation of an employee's recovery must be maintained confidentially by the employer and may be requested by DHS for audit purposes. Applications for credits will be received between 1/1 and 3/1 annually and will apply to taxes paid for that calendar year. The certificate verifying eligibility for the credit must be attached to the employer's income tax return submitted to the Department of Revenue. The credit cannot reduce the taxpaying employer's liability to less than zero and the total credits awarded by DHS per year cannot exceed \$2 million. Since 1st Notice, DHS has clarified the definition of a newly hired employee and also clarified confidentiality requirements. Businesses that hire eligible individuals are affected by this rulemaking.

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Adopted Rules

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VACCINE MANDATE REPEAL

DHS also adopted amendments to the Parts titled Medicaid Community Mental Health Services Program (59 IAC 132; proposed at 47 Ill Reg 12626), Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 IAC 2060; proposed at 47 Ill Reg 12628), Illinois Center for Rehabilitation and Education Community Services for the Blind, Visually Impaired and Deafblind (89 IAC 730; proposed at 47 Ill Reg 12630) and Role of Residential Educational Facilities Operated by the Illinois Department of Human Services (89 IAC 750; proposed at 47 Ill Reg 12638), all effective 12/29/23 at 48 Ill Reg 918, 926, 935, and 943. The 59 IAC 132 and 77 IAC 2060 rulemakings replace emergency rules that were effective 8/11/23. These rulemakings repeal COVID-19 vaccination and testing requirements for staff at DHS-funded or certified community mental health programs and substance abuse

treatment programs; the Illinois Center for Rehabilitation and Education-Wood in Chicago; and the Illinois Schools for the Deaf and Visually Impaired in Jacksonville.

Questions/requests for copies of the 5 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217-785-9772, DHS.AdministrativeRules@illinois.gov

• ELEVATOR SAFETY

The ELEVATOR SAFETY REVIEW BOARD adopted amendments to Illinois Elevator Safety Rules (41 IAC 1000; proposed at 47 Ill Reg 6388) effective 12/28/23 at 48 Ill Reg 825, implementing Public Act 102-715 and updating or clarifying various provisions. The rulemaking extends by 1 year (to 1/1/24 for traction elevators and 12/31/24 for hydraulic elevators) the deadlines for testing initiating devices enabling use of an elevator by firefighters in an emergency and clarifies when firefighter's emergency operation devices must be upgraded. It also clarifies that while the Part does not apply to a municipality with a

population of more than 500,000, it does apply to any State-owned buildings within that municipality; it also clarifies the types of lifting equipment that are not subject to the Part (e.g., conveyors, cranes, material hoists). Temporary inspection and operation of elevators may be permitted by local authorities only for use in construction or demolition to transport personnel, tools and materials; the Office of the State Fire Marshal will no longer issue temporary operation certificates. The rulemaking also updates the Board's Chicago address. Businesses and municipalities that use or inspect elevators and small businesses that perform elevator installation or repair are affected.

Questions/requests for copies: Nancy Robinson, Office of the State Fire Marshal, 1035 Stevenson Drive, Springfield IL 62703, 217-785-7629, fax 217-524-5487.

Next JCAR Meeting: Tuesday, Jan. 16, 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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