

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

☞ DRYCLEANER FACILITIES

The DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND COUNCIL adopted amendments to "General Program" (35 Ill Adm Code 1500; 36 Ill Reg 6875), effective 12/13/12, implementing Public Act 97-377. The Act and the rulemaking require any facility that receives reimbursement of remedial action costs from the Fund to purchase financial assurance coverage for pollution liabilities from 1/1/20 or the date the Council determines the facility is no longer active, whichever is earlier. The rulemaking also eliminates a prohibition against remedial program claimants receiving benefits if they declare bankruptcy after filing for remedial benefits. Since 1st Notice, a clarifying note has been added regarding the amount of civil penalties imposed for sale of drycleaning solvent to unlicensed drycleaners. Drycleaning facilities are affected by this rulemaking.

Questions/requests for copies: H. Patrick Eriksen, DERTFC, P.O. Box 480, Bensenville IL 60106-0480, 630/741-0022.

☞ VIDEO GAMING

The ILLINOIS GAMING BOARD adopted amendments to "Video Gaming (General)" (11 Ill Adm Code 1800; 36 Ill Reg 9863 and 10578), effective 12/14/12, that combine two separately proposed rulemakings and replace an emergency rulemaking, adopted on 7/6/12 at 36 Ill Reg 11492, that expired on 12/2/12. The amendments require each licensed location to have a payout device and requires prior approvals for devices and all programming changes and upgrades. Other provisions govern methods of payment; require players to receive a "facility pay" in the event a payout device malfunctions; allow payout devices to permit ATM cash withdrawals by patrons if the ATM's material components are segregated from the video gaming terminal's ticket payment system; and set requirements for payout device features. The rulemaking also requires licensed terminal handlers to assume certain duties also assigned to licensed technicians, including notification of electronic or mechanical malfunctions or of unauthorized gaming, verification of licensure before performing terminal service, and display of IGB-issued

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☞ INCOME TAX

The DEPARTMENT OF REVENUE proposed an amendment to "Income Tax" (86 Ill. Adm. Code 100; 36 Ill. Reg. 18149) clarifying the definition of residency for state income tax purposes. Residency is presumed when an individual receives a homestead exemption for an Illinois property or who, after being an Illinois resident in the previous year, spends more days in Illinois than any other state in the year in question (presently, if an individual spends more than 9 months in Illinois during any taxable year). Factors that an individual can use to rebut a presumption of residency include: location of spouse/dependents; the permanent or temporary nature of work assignments in a state; and the location of professional licenses, medical professionals, accountants, attorneys, and other service providers. Factors that cannot be considered include the locations of any organizations to which the individual makes tax-deductible donations, bequests, legacies, or devises. This rulemaking may affect small businesses.

Questions/requests for copies/comments through 2/11/13: Paul Caselton,

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

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identification. Licensed technicians and terminal handlers must maintain logs that record each instance in which they access any portion of a video gaming terminal. Licensed manufacturers must make the odds of winning available on each terminal's video monitor and accessible from a conspicuous touch screen or help button. Other provisions address grounds for disciplinary action against licensees, require managers and owners with more than a 5% direct or indirect interest in any licensed gaming location to be fingerprinted, authorize IGB to waive video gaming location restrictions, and require IGB to disclose certain information about applicants, licensees, and "persons with significant influence or control" over licensees upon request. Video gaming locations, licensees, and operators are affected by this rulemaking.

Questions/requests for copies: Lynn Carter, IGB, 160 N. La Salle, Chicago IL 60601, 312/814-4143, fax 312/814-4143, e-mail: lynn.carter@igb.illinois.gov.

correction requirements and post-payment review criteria are updated. DHS adds regulations on certification suspension and reinstatement and states that certificate suspension longer than one calendar year will result in revocation. Off-site rates will be calculated to compensate service providers for necessary staff travel to off-site treatment locations, and providers must develop a system assuring compliance with all DHS client record requirements, including audit procedures. All service providers are required to perform background checks on all persons, paid or unpaid, who provide Part 132 services, and all service provider sites must be deemed accessible and in compliance with the federal Americans With Disabilities Act. The rulemaking also specifies recordkeeping requirements, updates accreditation standards, and revises criteria for completing a review of medical necessity for services. Other covered topics concern informed consent requirements, pre-service evaluations and planning, client-centered consultations, and case management. As this rulemaking is lengthy, please consult the agency person named below for further details. Changes since 1st Notice include the following: Provisions for coverage of persons under age 21 who do not have a complete mental health diagnosis were removed. If a client's rights are restricted, a plan with "measurable objectives" for restoring the client's rights must be documented and signed by the client or his or her parent or guardian, as well as by a qualified mental health professional or licensed medical professional. Grandfathering provisions apply to persons already licensed as mental health professionals or certified in rehabilitative services as of 7/1/13 (originally 7/1/11) who do not meet all the criteria specified in this rule. The deadline for submitting corrected compliance documentation was changed to 60 days (instead of 30 days) after the request. References to provider sites being "managed" by a provider (in addition to being owned or leased) were removed, and a definition of "mental health setting" was

added. This rulemaking may impact Medicaid-certified, community mental health service providers.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

INSURANCE

The DEPARTMENT OF INSURANCE (DOI) adopted amendments to "Internal Security Standard and Fidelity Bonds" (50 Ill Adm Code 904; 36 Ill. Reg. 9055), effective 12/17/12, revising policies insurance companies must have regarding signature of checks. A company must have a list of authorized signers by name or job classification with approved limits of authority for each authorized signer and minimum thresholds at which dual signatures are required. Policies must be available for inspection by DOI and approved by the Board of Directors for the insurance company. Verification of these requirements must be documented by the company's independent certified public accountant or the internal audit staff of the company. Electronic signatures of checks may be affixed to checks or drafts.

DOI also adopted amendments to "Medical Malpractice Database" (50 Ill. Adm Code 928; 36 Ill. Reg. 9692), effective 12/17/12, changing the name of the Part to "Medical Professional Liability Database" and conforming to the latest National Association of Insurance Commissioners (NAIC) model regulation. All insurance claims and lawsuits shall be reported electronically to DOI by insurers and contain the information set forth in a revised Exhibit B for this Part. Exhibits A, C and D of this Part, which currently also set out information that must be reported, are being repealed. Medical professional liability losses and claim counts are to be reported and reconciled for a prior year using the requirements in a new Exhibit E. Reports are due on a quarterly basis no later than 45 days after each quarter. The new Exhibit E reporting must be submitted no later than April 30 of the year

MENTAL HEALTH SERVICES

The DEPARTMENT OF HUMAN SERVICES adopted amendments to "Medicaid Community Mental Health Services Program" (59 Ill Adm Code 132; 35 Ill Reg 20039) effective 12/13/12, that update the regulations to reflect current agency practices and policies. The rulemaking adds several new definitions (e.g., accessibility), revises some existing definitions (e.g., mental health professional), and removes obsolete references to the Department of Corrections. DHS adds provider qualifying conditions, explains the minimum contractual requirements that service providers must meet, and expands program application requirements. Also, failure to submit corrected compliance documentation to DHS within 60 days after requested will result in the provider's decertification, and the certification period is changed from one to 3 years. DHS must complete a provider review within 14 months (currently 12) after the provider's initial certification, and

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following the year for which the reporting is required. Medical malpractice insurance providers will be affected.

DOI adopted a new Part titled "Accident and Health Expense Reporting" (50 Ill Adm Code 2043; 35 Ill. Reg. 12199), effective 12/17/12, to implement Public Acts 96-857 and 97-524, which require medical or accident and health insurance carriers to make 6 month term reports to the Department on or before April 1 and October 1 for the 6 month periods ending December 31 and June 30, respectively, to the Department regarding aggregate administrative expenses of a carrier. The Part defines key terms, provides the above stated dates for electronic reporting and requires carriers to provide the Department with a copy of medical loss ratio reports required under Section 2718 of the federal Public Health Service Act. An Appendix details the format of required reporting for earned premiums, incurred claims, costs related to claims, marketing and general administrative costs, State fees and federal and State taxes, and other items.

Finally, DOI adopted amendments to "Insurance Data Reporting Requirements" (50 Ill Adm Code 4203; 36 Ill. Reg. 1100), effective 12/17/12, requiring insurance firms to collect and report data on a calendar year basis and eliminating the options of reporting on an accident year or policy year basis. Data must be reported on coverage for residential fire, homeowners multi-peril, business owners packages, medical malpractice, earthquake, auto, and other liability. Except for medical malpractice data, which must be reported "no later than April" each year, data from other lines of coverage must be submitted electronically no later than 8/1/12 and every August 1st thereafter. The rulemaking also repeals a subpart concerning occurrence liability insurance markets within Illinois. Insurance providers will be affected by this rulemaking.

Questions/requests for copies of the 4

adopted DOI rulemakings: All addresses are DOI, 320 W. Washington St., Springfield IL 62767-0001 unless otherwise specified. For Part 904: Louis Butler (100 W. Randolph, Suite 9-301, Chicago IL 60601-3251, 312/814-5398) or Etta Mae Credi (217/782-1757). For Part 928: Neetha Mamoottile (217/557-1397). For Part 2043: Gerald Lucht (217/785-0260). For Part 4203: Caryn Carmean (217/524-5420) or Robert Rapp (217/785-1680).

WATER QUALITY

The POLLUTION CONTROL BOARD adopted amendments to Parts titled "Introduction" (35 Ill Adm Code 301; 36 Ill Reg 5713), "Water Quality Standards" (35 Ill Adm Code 302; 36 Ill Reg 5721), and "Water Use Designations and Site-Specific Water Quality Standards" (35 Ill Adm Code 303; 36 Ill Reg 5756), effective 12/12/12. All three rulemakings update water quality standards based upon a review required every 3 years by federal law. Amendments to Part 302 update standards for boron, fluoride, and manganese, correct a zinc standard, and repeal an outdated site-specific fluoride standard. Also, the schedule for publishing derived water quality criteria in the *Illinois Register* is changed from quarterly to annually. The Part 301 amendment updates an incorporation by reference to include a new cyanide testing method, and the Part 303 amendment removes fluoride drainage standards that applied to now-defunct fluorspar mining operations in southern Illinois.

Questions/requests for copies of the 3 PCB rulemakings above: Kathleen Crowley, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-6929. Copies of these rulemakings may also be downloaded from the Board's website, www.ipcb.state.il.us. Please reference docket R11-18 for all inquiries or requests.

AGRICULTURAL EDUCATION

The STATE BOARD OF EDUCATION adopted amendments to "Agricultural

Education" (23 Ill Adm Code 75; 36 Ill Reg 13496) to reflect the transition to electronic performance reporting for recipients of incentive grants for secondary agricultural education and to deny funding in subsequent years to any recipient who has not yet submitted a performance report for an existing grant. Grant recipients will be required to provide both narrative program reports and expenditure reports.

CALCULATION OF EXCESS COST

SBE also adopted amendments to "Calculation of Excess Cost Under Section 18-3 of the School Code" (23 Ill Adm Code 140; 36 Ill Reg 13501) to add a reference to Section 18-3 of the School Code and correct the formatting of a cross-reference to another section of the Illinois Administrative Code.

Questions/requests for copies of the 2 SBE rulemakings above: Dora Welker (C-215, 217/782-4620) for Part 75 and Debbie Vespa (N-330, 217/785-8779) for Part 140, SBE, 100 North First Street, Springfield, Illinois 62777.

TEACHERS' RETIREMENT

The TEACHERS' RETIREMENT SYSTEM (TRS) adopted amendments to "The Administration and Operation of the Teachers' Retirement System" (80 Ill Adm Code 1650; 35 Ill. Reg. 12248), effective 12/14/12. The rulemaking makes technical corrections and clarifies when a TRS member separates from service in conformity with the Illinois Pension Code and federal law. An annuitant must not be employed by the annuitant's last employer prior to 30 days after the annuitant's last day of contributing service, and may not accept employment as a teacher during the school year in which the member terminated service. An annuitant and employer cannot avoid the limitations in post-employment required by Section 16-118 of the Pension Code by allowing an annuitant to relinquish his teaching certificate and continue in the same position, or by changing an annuitant's pre-retirement

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job title or by a minor adjustment in job duties. School districts may be affected by this rulemaking.

Questions/requests for copies: Tom Gray, TRS, 2815 W. Washington, PO Box 19253, Springfield IL 62794-9253, 217/753-0375.

HOSPITALS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to "Hospital Services" (89 Ill Adm Code 148; 36 Ill Reg 18976), effective 12/12/12 through 6/30/13 in accordance with PA 97-689 (SMART Act). The amendment imposes a \$900 reduction upon inpatient hospital claims on or after 7/1/12 that include treatment of a hospital acquired condition (HAC) in accordance with federal law forbidding Medicaid payment to hospitals for treatment of HACs. (A previous emergency rule, suspended by JCAR on 8/14/12, denied payment for the entire hospital stay if a HAC occurred during the stay.) The reduction will remain in effect until DHFS implements the All Patient Refined Diagnosis Related Groups (APR-DRG) system, which identifies specific costs related to the treatment of HACs. Hospitals are affected by this rulemaking.

Questions/requests for copies: Jeanette Badrov, DHFS, 201 S. Grand Ave., 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

WAGE REPORTING

The DEPARTMENT OF EMPLOYMENT SECURITY adopted emergency amendments to "Wages" (56 Ill Adm Code 2730, 36 Ill Reg 18928), "Employment" (56 Ill Adm Code 2732, 36 Ill Reg 18936), "Notices, Records, Reports" (56 Ill Adm Code 2760, 36 Ill Reg 18947), and "Payment of Unemployment Contributions, Interest and Penalties" (56 Ill Adm Code 2765, 36 Ill Reg 18968), effective 12/17/12 through 6/30/13, implementing Public Act 97-689 (SMART Act). Identical proposed amendments appear in this week's *Illinois Register* at 36 Ill Reg 18065, 18067, 18069, and 18072. The Act requires DES to check employer reports of income and unemployment insurance payment information and employment information in its new hire directory database to protect against duplicate or fraudulent approvals of medical assistance. The amendments allow for the option of monthly reporting of tips and wages in addition to quarterly reporting by an employer. The amendments also

make changes to the reporting requirements for employers who have filed for reorganization under the federal Bankruptcy Code. Additionally, the amendments set out guidelines for filing the wage report and how to report any wages that were paid in excess to an employee. Standards for electronic filing are set for the 4th quarter of 2012 and for any subsequent filing period. The number of employees per calendar year that are required for an employer to file its wage report is reduced to 25 from 250. Finally, the amendments establish criteria for waiving reporting requirements. An employer may receive a temporary waiver of penalties for not filing its wage report electronically if an employer has more than 25 but less than 250 employees for the first 2 months of the calendar year if the employer submits its wage report for the third month or quarter electronically. The employer does not have to apply for the waiver. Some small businesses will be affected.

Questions/requests for copies/comments on the 4 DES proposed rulemakings through 2/11/13: Gregory Ramel, DES, 33 S. State St.-Room 937, Chicago, IL 60603, 312/793-4240.

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DOR, Legal Services Office, 101 West Jefferson, Springfield, IL 62794, 217/782-7055.

other than inactive status is raised from \$20 to \$50 with a maximum of \$675 (the current limit is \$500). Polygraph examiners are affected.

Questions/requests for copies/comments on the DFPR rulemaking through 2/11/13: Craig Cellini, 320 W. Washington, 3rd Floor, Springfield IL 62786, 217/785-0813.

POLYGRAPH TESTING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to "Detection of Deception Examiners Act" (68 Ill Adm Code 1230; 36 Ill Reg 18075) implementing Public Act 97-168, which removes the photograph requirement for polygraph examiners and trainees. The fee for a detection of deception examiner trainee application is set at \$50. The minimum restoration fee for

ZIP LINES

The DEPARTMENT OF LABOR proposed amendments to "Carnival and Amusement Ride Safety Act" (56 Ill Adm Code 6000, 36 Ill Reg 18130)

providing standards and guidelines for zip lines. A substantially similar emergency rulemaking effective 6/1/12 appeared in the 6/15/12 edition of the *Illinois Register* at 36 Ill Reg 8979 and expired on 10/28/12. The rulemaking sets standards for site plans, equipment design and construction, including considerations for various weather conditions. Inspection by a third party inspector must be performed at least annually and any time a major component is modified. DOL outlines general compliance criteria for equipment; arrival point, protection and braking; and the takeoff platform. The information that must be

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included in the site operation manual is outlined and includes a site plan, job descriptions, and testing procedures and recording. Each site must have an emergency plan and a medium first aid kit as well as lighting and a plan for inclement weather. Finally, DOL's approval must not be used in any advertising. Operators of zip lines are affected.

Questions/requests for copies/comments through 2/11/13: Ryan Culton, DOL, 900 S. Spring St., Springfield, IL 62704, 217/558-7194.

cluding the penalty amount. The penalty for additional offenses within one year is to have all video gaming terminals shut down until all overdue taxes are paid, including the penalty amount, and the terminal operator posts a bond or cash deposit of certified funds to guarantee future payment. Terminal operators may be subject to discipline. Overdue remittance caused by an error on the part of financial institutions is not subject to these rules. Businesses operating video gaming terminals are affected.

Questions/requests for copies/comments through 2/11/13: Emily Mattison, IGB, 160 N. LaSalle St., Chicago, IL 60601, 312/814-4700.

☞ VIDEO GAMING

The ILLINOIS GAMING BOARD proposed amendments to "Video Gaming (General)" (11 Ill Adm Code 1800, 36 Ill Reg 18081) establishing penalties for terminal operators who are overdue on remitting taxes. The penalty for terminal operators the first time they are more than 48 hours late paying taxes because of insufficient funds is to have all video gaming terminals turned off until all overdue taxes are paid by certified funds in-

☞ DHFS APPEALS PROCESS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to "Practice in Administrative Hearings" (89 Ill Adm Code 140; 36 Ill Reg 18090) and "Medical Payment" (89 Ill Adm Code 140; 36 Ill Reg 18105). Amendments to Part 104 establish an appeals process for two

types of adverse DHFS actions: 1) denial or reduction of payment to ground ambulance service providers and 2) certification of past-due child support, or notice of failure to comply with a subpoena or warrant in a child support case, that triggers disciplinary action by a State licensing agency. The rulemaking outlines the process for ambulance providers to file appeals as well as the timeline and procedure for hearings. The Part 140 amendment gives ambulance providers 60 days to appeal after receiving notice of a payment denial or reduction if the provider did not receive a denial prior to transport. (DHFS requires prior approval for most non-emergency ambulance transportation.) Medical transportation providers will be affected by this rulemaking.

Questions/requests for copies/comments on the 2 DHFS rulemakings above through 2/11/13: Jeanette Badrov, DHFS, 210 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's January 8, 2013 meeting.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

"State Housing Appeals Board" (47 Ill Adm Code 395) proposed 9/14/12 (36 Ill Reg 14050)

DEPARTMENT OF CORRECTIONS

"Records of Committed Persons" (20 Ill Adm Code 107) proposed 10/12/12 (36 Ill Reg 14928)