

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, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

■ MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Payment (89 IAC 140; 40 Ill Reg 6936 and 9909), effective 1/19/17, combining two separately proposed rulemakings. The rulemaking replaces HFS' former scoring tool for determining the severity of an orthodontic condition with the nationally recognized Handicapping Labio-Lingual Deviation Index (HLD). Effective 1/1/17, orthodontic treatment for patients under age 21 whose conditions score 28 points or more on the HLD, or who have certain specified conditions (added since 1st Notice) such as cleft palate or significant deformities due to injury or illness, will be approved as medically necessary. Other amendments align payment rates for Medicaid

hospice care with those established in federal regulations for Medicare. Effective 1/1/16, different rates will be paid for routine home hospice care for the first 60 days and for the 61st day and beyond, and a service intensity add-on payment may be authorized for visits by a social worker or registered nurse during the last 7 days of life of a person

Peremptory Rule, Page 2

receiving routine hospice care. Ambulance services providing non-emergency transport will have 90 days from the date of a patient's discharge to obtain and submit a discharge order and medical certification form if the discharging facility failed to complete these documents prior to the transport. A failure by the discharging facility to complete these documents will not prevent

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Proposed Rulemakings

■ ABLE ACCOUNTS

The OFFICE OF THE TREASURER proposed a new Part titled Achieving a Better Life Experience (ABLE) Account Program (74 IAC 722; 41 Ill Reg 789) establishing a tax-advantaged savings program for disabled or blind persons. ABLE Accounts are open to persons whose blindness or disability status have been determined under the federal Social Security Act; the disability must have occurred before age 26, or before a disability certification was filed with the US Secretary of the Treasury. Funds deposited in an ABLE Account may be used for qualifying disability-related expenses, and will not be included among the assets used to determine eligibility for Social Security or other disability benefits. The Part defines key

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NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.
PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.
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 not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.
QUESTIONS/COMMENTS: Submit mail, email or phone calls to the agency personnel listed below each summary.
RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

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an ambulance provider from appealing an adverse decision by HFS to reduce or deny payment for the service. Changes since 1st Notice include revisions and clarifications of the approval and appeal procedures for ambulance services. Orthodontists, hospice providers, hospitals, nursing homes, and ambulance services may be affected. Other amendments exempt advanced practice nurses (APNs) practicing in hospitals, hospital affiliates, and Ambulatory Surgical Treatment Centers from the general requirement that APNs have a written collaborative agreement with a physician or practitioner in order to enroll in the Medical Assistance Program. (Formerly, this exception applied only to Certified Registered Nurse Anesthetists.) Also, the term “practitioner” in this context is replaced with “dentist or podiatric physician”. Effective 6/1/15, the rulemaking also permits nursing homes and specialized mental health rehabilitation facilities to receive bed reserve payments (at 75% of the current Medicaid per diem rate) for traumatic brain injury patients on therapeutic home visits, provided the facilities have at least a 90% occupancy rate and at least 80% of residents are Medicaid eligible. These payments are limited to 10 days per calendar month. Finally, the rulemaking clarifies that 6-month dental checkups for patients age 20 and under are covered in both office and school settings. Advanced

Peremptory Rule

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted a peremptory amendment to Pay Plan (80 IAC 310; 41 Ill Reg 1210) effective 1/19/17, implementing memorandum of agreement with 13 trade unions representing State employees whose pay is based upon prevailing wage. The peremptory rule implements merit incentive programs for State fiscal years 2017, 2018 and 2019. For fiscal year 2017, each bargaining unit shall establish a bonus pool equal to 2% of the total payroll for that unit, from which one-time, non-pensionable bonuses shall be paid. One-half of the bonus pool shall be divided among all bargaining unit members who have been active on payroll for at least 3 months of the evaluation period, have not used more than 56 hours per year or 28 hours per 6-month period of

undocumented sick leave, and have committed no work policy violations. This group of employees shall also be eligible for 12 hours additional paid time off. The remainder of the pool shall be divided among employees who, in addition to meeting the above criteria, receive a satisfactory performance rating; these employees will also earn 8 more hours of paid time off. Additional time off rewards may be given to employees for specific achievements such as identifying solutions to a significant issue or providing exceptional customer service. Details of the FY2018 and FY2019 merit incentive programs will be determined in future agreements.

Questions/requests for copies: Jason Doggett, CMS, 503 Stratton Bldg., Springfield IL 62706, 217/524-1055, fax 217/558-4497, e-mail: CMS.PayPlan@illinois.gov

practice nurses, long term care facilities, and school clinics may be affected.

HOSPITALS

HFS adopted amendments to Hospital Services (89 IAC 148; 40 Ill Reg 13504) and Diagnosis Related Grouping (DRG) Prospective Payment System (PPS) (89 IAC 149; 40 Ill Reg 13522) effective 1/19/17 that change the payment methodology for inpatient acute

care services at large public hospitals (those owned by a county or a university) from cost-based per diem payments to the APR-DRG methodology for dates of discharge on or after 1/1/16. The per diem methodology remains in effect for all outpatient services, as well as inpatient services with discharge dates on or before 12/31/15. The Part 149 amendments also clarify that the payment rate for inpatient

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Proposed Rulemakings

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terms, such as “Account Administrator” (the person selected by the Treasurer to administer the ABLÉ account plan by providing recordkeeping, investment management and other services for the plan); “Administrative Expenses” (all expenses associated with the ABLÉ program, including fees payable to third parties providing services to the plan); “Earnings” (the aggregate total of all dividends and interest received by an account plan following the plan’s startup), etc. The Treasurer serves as the State administrator of the ABLÉ program and accepts applications, maintains account records, makes payments under the program and may delegate these duties to others. The Treasurer shall establish participant fees to pay for the costs of administration, recordkeeping and investment management, and establish an investment policy. A recordkeeper (which may be a third party contractor) may manage recordkeeping services such as developing forms and operating documents; processing enrollments; maintaining accounts; receiving contributions; disbursing funds; provide account participants with account information; filing required reports with federal agencies; and provide fraud prevention. The Treasurer is responsible for the marketing and promotion of the program, or, may hire a vendor to assist with those efforts. The Treasurer may

also elect to make Illinois a “contracting state” for the purpose of managing another state’s ABLÉ program and use forms developed by federal agencies, or original forms. Applicants for the program must provide personal information and certify that the applicant understands the maximum account value and how excessive account values exceeding an amount in federal law may affect an applicant’s resources governing their eligibility under the program. Qualified expenses for which ABLÉ account funds may be used include education; housing; transportation, employment training and support; assistive technology and personal support services; financial management services; legal fees; funeral and burial expenses, among others. Penalties for nonqualified withdrawals from an account shall be in accordance with the federal Internal Revenue Code. Those affected by this rulemaking include persons with disabilities and their guardians or representatives.

Questions/requests for copies/comments through 3/20/17: Allan Mayer, State Treasurer, 219 State House, Springfield IL 62706, 217/557-2673, Fax: 217/785-2777, AMayer@illinoistreasurer.gov

UNIVERSITIES RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM proposed amendments to Universities Retirement (80 IAC

1600; 41 Ill Reg 808). The rulemaking adds a SIMPLE IRA (an employer sponsored IRA offered by an employer in lieu of other retirement vehicles) as a permissible retirement plan which can accept pension rollover distributions (other acceptable recipients include a personal IRA, ROTH IRA, or deferred compensation plan). Regarding employees who receive disability, the rulemaking clarifies that the date of termination of salary or sick leave benefits under the Pension Code shall be delayed by the number of work days that are attributable to the vacation leave payment. Another clarification regarding QILDROs (Qualified Illinois Domestic Relations Orders, which are used to divide retirement benefits between divorced spouses) establishes that if a QILDRO is dated no more than 6 months after a member’s death, its effective date is deemed to be the day before the member’s death. Also, a certified copy of a dissolution of marriage accompanied by a written marital settlement agreement signed by both parties that provides direction for the division of the member’s benefits under a QILDRO shall serve as a required consent by a System member for payment to an alternate payee under the QILDRO.

Questions/requests for copies/comments through 3/20/17: Albert Lee, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8861.

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New Rules

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services provided by non-cost reporting hospitals (the higher of \$672.24 per day or the rate in effect on 6/30/14) applies only to non-transplant services. HFS also adopted an amendment to Hospital Reimbursement Changes (89 IAC 152; 40 Ill Reg 6966), effective 1/19/17, clarifying its method for measuring changes in a hospital's case mix that are attributable to documentation and coding improvement (DCI) rather than to actual changes in the hospital's patient population. (The DCI calculations affect hospital Medicaid payment rates.)

Questions/requests for copies of the 4 HFS rulemakings: Mollie Zito, HFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/782-1233, HFS.Rules@illinois.gov

■ BOILER SAFETY

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments to Boiler and Pressure Vessel Safety (41 IAC 2120; 40 Ill Reg 6974), effective 1/17/17, requiring intake and exhaust points of ventilation piping in any boiler system installed after 12/1/14 to be located outside of the building served and at least 36 inches above grade, and requiring performance of a full grid ultrasonic testing (UT) inspection on historical boilers (those that power steam locomotives, antique tractors, steamboats or other historic vehicles or

conveyances) that miss the required 2-year certificate inspection. Since 1st Notice, OSFM removed proposed requirements for CO2 detectors. Those affected by this rulemaking include owners of buildings with boiler systems and museums or other entities that operate historical boiler equipment.

Questions/requests for copies: Tom Andryk, OSFM, 1035 Stevenson Dr., Springfield IL 62703, 217/785-5758, fax 217/524-5487.

■ ATHLETIC TRAINERS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Illinois Athletic Trainers Practice Act (68 IAC 1160; 40 Ill Reg 13750) effective 1/27/17 implementing PA 99-469, which extended the sunset date of the Act for another 10 years. The rulemaking clarifies when the temporary right to practice in Illinois ends for an out of state license holder applying for Illinois licensure (6 months after the application is filed, or immediately if the application is denied); removes a limit on how many continuing education hours may be earned via webinars; and makes various corrections and updates regarding approved training programs. Those affected by this rulemaking include fitness centers, schools, park or recreation districts, and other

entities that employ athletic trainers.

OPEN MEETINGS

DFPR also adopted amendments to Recording of Proceedings at Meetings and Hearings (68 IAC 1120; 40 Ill Reg 13745) effective 1/27/17 that update its Open Meetings Act rules applicable to meetings of DFPR boards and committees. Meetings may be recorded by any person, audibly, visually or by any other means, but recording devices must be located at a sufficient distance from the committee or board members to avoid interference with their discussion. Any person may also address a committee or board, subject to time limits, relevance to the meeting agenda or scope of the body's authority, and preservation of decorum. Hearings conducted by administrative law judges are not subject to these rules.

Questions/requests for copies/comments on the 2 DFPR rulemakings: Craig Cellini, DFPR, 320 W. Washington St., 3rd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

■ ELECTRIC GENERATION

The ILLINOIS COMMERCE COMMISSION adopted amendments to Electric Interconnection of Distributed Generation Facilities (83 IAC 466; 40 Ill Reg 2300) and Electric

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Proposed Rulemakings

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STUDENT ASSISTANCE

The ILLINOIS STUDENT ASSISTANCE COMMISSION proposed amendments to 3 Parts titled Illinois National Guard (ING) Grant Program (23 IAC 2730; 41 Ill Reg 825); Veterans' Home Nurse Loan Repayment Program (23 IAC 2757; 41 Ill Reg 832) and Illinois Special Education Teacher Tuition Waiver (SETTW) Program (23 IAC 2765; 41 Ill Reg 838). The Part 2730 rulemaking removes fixed dates for priority claims in favor of a more flexible, annually established priority claim date. Payment requests are processed in the sequence of receipt. Institutions may submit payment requests beginning 10 days prior to the start of classes for the term for which payment is being requested. Part 2757 amendments open up repayment assistance to individuals who are physicians, certified nurse practitioners and certified nursing assistants at veterans' homes. The amendments to Part 2765 establish that any leftover tuition waivers not awarded under the provision for recent high school graduates will be awarded to previous high school graduates.

Questions/requests for copies/comments concerning the 3 ISAC rulemakings above through 3/20/17: Lynn Hynes, ISAC, 1755 Lake Cook Rd, Deerfield IL 60015, 847/948-8500, ext. 2216, e-mail: lhynes@isac.org.

VOTER REGISTRATION

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Voter Registration Program (89 IAC 512; 41 Ill Reg 782) clarifying certain aspects of procedures through which DHS staff, in accordance with federal law, must offer clients of public assistance or disability programs the opportunity to register to vote if they are not already registered. DHS staff must inform clients of their right to complete, or decline to complete, a voter registration application and offer clients assistance in completing the form if they desire it. No action may be taken to encourage or discourage a client from registering, and clients must not be led to believe that their decision for or against registering will affect the availability of services or benefits. The rulemaking provides that voter registration applications sent from DHS offices will be identified by a confidential office number assigned by a deputy registrar, in order to preserve the privacy of persons who register to vote in this manner. Clients of State-operated residential mental health facilities must register using their last address prior to admission (not the address of the facility). Clients who miss the traditional registration deadline (28 days prior to an election) may still be registered through election day utilizing the grace period provided in the Election Code.

Questions/requests for copies/comments through 3/20/17: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

■ WATER SUPPLY OPERATORS

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY proposed amendments to Water Supply Operator Certification (35 IAC 681; 41 IR 748) updating the certification process, in part to reflect statutory changes made by PA 98-822 and PA 98-856. Among the updates are tighter requirements on certification exam requirements and security, changing experience prerequisites from years to hours (1 year = 1,780 hours), adding reciprocal certification without exam for similarly experienced veterans, adding more details for administrative hearings conducted under this Part, making fees paid to EPA under this Part non-refundable, and reflecting changes to water supply facility classifications and required operator duties.

Questions/requests for copies/comments through 3/20/17: Stephanie Flowers, IEPA, 1021 N. Grand Ave E, P.O. Box 19276, Springfield IL 62794-9276; 217/782-5544; Stephanie.Flowers@illinois.gov.

New Rules

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Interconnection of Large Distributed Generation Facilities (83 IAC 467; 40 Ill Reg 2396), both effective 1/20/17, concerning distributed generation (DG) electric power facilities that generate electricity from multiple locations and use a variety of methods (e.g., solar, wind) rather than relying upon a single large generating station. Part 466 addresses distributed generation (DG) facilities of 10 megavolt-amperes (MVA) or smaller, while part 467 addresses DG facilities larger than 10 MVA. These rules streamline the process by which a DG facility owner applies to a utility to connect that facility to the electric grid. Applications that do not meet the requirements for expedited approval (e.g., because they are more technically complex than routine installations) can be resubmitted for up to three additional phases of review, each of which involves an increasing intensity of technical review. Changes since 1st Notice to the Part 466 rulemaking clarify information regarding fees and studies. These rulemakings may affect small businesses and local governments that own DG facilities, as well as small businesses and local governments that are electric utility ratepayers.

Questions/requests for copies: Brian W. Allen, ICC, 527 E. Capitol Ave., Springfield IL 6270, 217/558-2387. Copies of the

rulemaking and other associated materials can be found at <http://icc.illinois.gov>.

WASTEWATER TREATMENT

The POLLUTION CONTROL BOARD adopted amendments to Sewer Discharge Criteria (35 IAC 307; 40 Ill Reg 14580) and Pretreatment Programs (35 IAC 310; 40 Ill Reg 14602), effective 1/23/17, reflecting changes to corresponding USEPA regulations. The amendments expand the scope of pretreatment requirements for wastewater from steam electric power generation facilities and adopt the portions of USEPA's mandatory digital reporting rules for NPDES-permitted facilities and indirect dischargers that apply to wastewater pretreatment.

AIR POLLUTION

PCB adopted amendments to Definitions and General Provisions (35 IAC 211; 40 Ill Reg 15294) and Air Quality Standards (35 IAC 243; 40 Ill Reg 15319), effective 1/23/17, implementing updates to federal regulations. The Part 211 rulemaking reflects USEPA's exclusion of tertiary-butyl acetate from the definition of volatile organic compound (VOC) and makes a number of minor corrections. The Part 243 rulemaking updates incorporations by reference of USEPA regulations to include the most recent revisions of the National Ambient Air Quality Standards (NAAQS).

■ LANDFILLS

PCB also adopted amendments to Procedural Requirements for Permitted Landfills (35 IAC 813; 40 Ill Reg 15329) effective 1/23/17 that reflect USEPA's decision to change the maximum term of a research, development and demonstration permit from 12 years to 21 years. The rulemaking also makes minor corrections to the text.

Questions/requests for copies of the 5 PCB rulemakings: Michael McCambridge, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-6924, Michael.McCambridge@illinois.gov.

PUBLIC INFORMATION

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY repealed the Part titled Access to Public Records of the Illinois Housing Authority (2 IAC 1976; 41 Ill Reg 1072) and adopted a new Part titled Access to Records of the Illinois Housing Development Authority (2 IAC 1976; 41 Ill Reg 1074), both effective 1/23/17. These rulemakings repeal outdated Freedom of Information Act (FOIA) procedures for requesting public records from IHDA and institute updated procedures.

Questions/requests for copies of the 2 IHDA rulemakings: Robin Jones, IHDA, 111 E. Wacker Dr., Suite 1000, Chicago IL 60601.

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 Committee's February 15, 2017 meeting. 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 using the contact information on page 1.

DEPT OF HEALTHCARE AND FAMILY SERVICES

Medical Assistance Program (89 IAC 120; 40 Ill Reg 14982) proposed 11/4/16

Medical Payment (89 IAC 140; 40 Ill Reg 15271) proposed 11/14/16

POLLUTION CONTROL BOARD

Permits and General Provisions (35 IAC 201; 40 Ill Reg 13545) proposed 9/30/16

Definitions and General Provisions (35 IAC 211; 40 Ill Reg 13580) proposed 9/30/16

Joint Committee on Administrative Rules

Senator Bill Brady

Representative Tom Demmer

Senator Karen McConnaughay

Representative Greg Harris

Senator Don Harmon

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**Vicki Thomas
Executive Director**