

*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

### ■ SCHOLARSHIP TAX CREDITS

The DEPARTMENT OF REVENUE adopted amendments to Income Tax (86 IAC 100; 41 Ill Reg 14166), effective 2//28/18, implementing Public Act 100-465, which grants income tax credits for tax years 2017 through 2022 to taxpayers who make qualified contributions to approved scholarship granting organizations (SGOs) for scholarships to students attending non-public schools recognized by the State Board of Education. A tax credit equal to 75% of the taxpayer's total qualified SGO contributions during a tax year may be claimed, up to a maximum annual credit of \$1 million. The credit cannot be claimed for any contribution for which the taxpayer also claims a federal income tax deduction. In order to claim tax credit for a contribution, the taxpayer must obtain a

certificate of receipt for the contribution from the SGO. Individuals, businesses or non-profits that contribute to SGOs are affected by this rulemaking.

Questions/requests for copies: Brian Stocker, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

### ■ MEDICAL PAYMENT

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Payment (89 IAC 140; 41 Ill Reg 3098 and 11478), effective 3/1/18, combining two separately proposed rulemakings. The amendments implement Public Act 99-895, which affects Medicaid billing for medical equipment, supplies, and prosthetic/orthotic devices, and

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## Proposed Rulemakings

### ETHICS

The EXECUTIVE ETHICS COMMISSION proposed amendments to Organization, Information, Rulemaking and Hearings (2 IAC 1620; 42 Ill Reg 4622) concerning EEC review of sexual harassment allegations against lobbyists and State employees; exceptions to the procurement process; ex parte communications; and requests for information under the Freedom of Information Act. The rulemaking implements Public Act 100-554 by establishing requirements for executive branch State agencies to report on their sexual harassment training programs (the reports will be made available on the EEC's website) and by establishing procedures for review of sexual harassment cases against registered

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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](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://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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also implement federal regulations concerning face-to-face practitioner encounters to verify medical need for home health services and supplies. Beginning 6/1/19, providers of medical devices or equipment must be accredited by a healthcare accrediting body approved by the federal Centers for Medicare and Medicaid Services and recognized by HFS. The web address of a site listing accrediting bodies which meet these criteria is provided in the rule. The rulemaking also establishes the Medicare rate in the year the procedure code was established minus 6% as the basis of the Department's fee schedule for all medical equipment and supplies added to the fee schedule after 3/1/18. For wheelchairs, wheelchair parts and accessories, if no rate has been established on the Department's fee schedule, the maximum payment rate will be the manufacturer's suggested retail price minus 10%. For medical equipment other than wheelchairs and for medical supplies, the maximum rate if none is listed on HFS' fee schedule will be the lowest of: the average suggested retail price; the wholesale price plus 50%; or the Medicare allowable rate. Changes since 1<sup>st</sup> Notice set an effective date for the accrediting requirement; clarify that the rates outlined in this rulemaking apply only to items or services added on or after 3/1/18; and clarify that when Medicare lists more than one Illinois rate (e.g., rural and

non-rural) for an item on its fee schedule, HFS will base its payment on the higher rate. Additional amendments require a documented, face-to-face encounter between a patient and the practitioner requesting home health services no more than 90 days before, or 30 days after, home health aide services are initially certified. Effective 7/1/17, certain medical equipment and supplies provided in the home require a face-to-face encounter with a physician, nurse practitioner or clinical nurse specialist working in collaboration with the physician prior to approval. Items subject to this requirement will be listed on the HFS website and will include, at a minimum, any items for which Medicare requires an encounter. The encounter must take place no more than 6 months prior to the start of services and the certifying physician must document that the encounter was related to the primary reason that the patient requires medical equipment or supplies. The rulemaking also defines a "residence" in which home health services may be provided as any setting in which normal life activities take place, excluding hospitals, nursing homes, mental health facilities, and any other settings in which Medical Assistance payment is or could be made for inpatient services that include room and board. Changes since 1<sup>st</sup> Notice clarify the items to which the encounter requirement applies and remove supportive living centers from the list of facilities that are not considered residences. Those

affected by this rulemaking include providers of medical equipment and supplies, home health service providers, and practitioners who certify home health services.

Questions/requests for copies: Christopher Gange, HFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Floor, Springfield IL 62763-0002, 217/782-1233, [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov)

### ELECTIONS

The STATE BOARD OF ELECTIONS adopted amendments to Campaign Financing (26 IAC 100; 41 Ill Reg 12766), Practice and Procedure (26 IAC 125; 41 Ill Reg 12793) and Personnel (26 IAC 212; 41 Ill Reg 12813) all effective 2/28/18. The Part 100 amendments clarify various aspects of the Campaign Finance Act, including how to report in-kind contributions and loans made to political committees, the application of contribution limits, permissible expenditures by independent expenditure committees, the process of removing contribution limits due to self-funding and independent expenditures, and procedures for committee appeals based on electronic filing problems. Amendments to Part 125 establish that the date of a violation, rather than the date a penalty is assessed, marks the beginning of the 2-year stay period for penalties assessed against political committees. Other changes align the Part with

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# Proposed Rulemakings

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lobbyists that have been forwarded to EEC by the Secretary of State. It also implements PA 100-43 by allowing the Chief Procurement Officer for Higher Education to request, in writing, EEC approval to accept a bid or enter a contract with a business that assisted the higher ed institution in reviewing, drafting or preparing documents related to another bid or contract. The rulemaking also updates FOIA contact information for the EEC; implements statutory criteria for responding to recurrent or voluminous FOIA requests; clarifies various aspects of the administrative review process and the process of determining whether the revolving door prohibition applies to a former State employee; and clarifies certain exceptions to ex parte communication reporting rules. Those affected by this rulemaking include registered lobbyists and entities that are seeking or have sought State contracts.

Questions/requests for copies/comments through 4/30/18: Stephen J. Rotello, EEC, 410 S. Spring St., 513 Stratton Office Bldg., Springfield IL 62706, [EEC.LegalStaff@illinois.gov](mailto:EEC.LegalStaff@illinois.gov)

## FIRE DRILLS

The OFFICE OF THE STATE FIRE MARSHAL proposed repeal of the Part titled Fire Drills in Schools (41 IAC 110; 42 Ill Reg 4692) because the statute authorizing that Part was repealed in 2005.

The current statute (School Safety Drill Act) has been implemented since 2006 by OSFM and the State Board of Education through joint rules at 29 IAC 1500.

## AMBULANCE LOANS

OSFM also proposed an amendment to the Part titled Ambulance Revolving Loan Program (41 IAC 292; 42 Ill Reg 4698) implementing PA 100-152, which raises the maximum loan amount from \$100,000 to \$200,000.

## BOILER SAFETY

The BOARD OF BOILER AND PRESSURE VESSEL RULES proposed amendments to Boiler and Pressure Vessel Safety (41 IAC 2120; 42 Ill Reg 4610) incorporating the most recent versions of nationally recognized technical and safety codes in accordance with the Boiler and Pressure Vessel Safety Act.

Questions/requests for copies/comments on the 2 OSFM rulemakings and the BBPVR rulemaking through 4/30/18: Tom Andryk, OSFM, 1035 Stevenson Dr., Springfield IL 62703, 217/785-5758 (OSFM), 217/785-4184 (BBPVR).

## WATER POLLUTION

The POLLUTION CONTROL BOARD proposed amendments to Sewer Discharge Criteria (35 IAC 307; 42 Ill Reg 4701) implementing U.S. Environmental Protection Agency rules concerning wastewater

pretreatment that were adopted from 1/1/17 through 12/31/17.

Requests for copies/comments through 4/30/18: Don A. Brown, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601. Please reference consolidated docket R18-6/R18-14. Questions: Michael J. McCambridge, same address, 312 / 814 - 6924, [michael.mccambridge@illinois.gov](mailto:michael.mccambridge@illinois.gov)

## LOCAL SALES TAXES

The DEPARTMENT OF REVENUE proposed amendments to the following 8 Parts: Home Rule County Retailers' Occupation Tax (86 IAC 220; 42 Ill Reg 4725), Home Rule Municipal Retailers' Occupation Tax (86 IAC 270; 42 Ill Reg 4737), Regional Transportation Authority Retailers' Occupation Tax (86 IAC 320; 42 Ill Reg 4749), Metro East Mass Transit District Retailers' Occupation Tax (86 IAC 370; 42 Ill Reg 4761), Metro East Park and Recreation District Retailers' Occupation Tax (86 IAC 395; 42 Ill Reg 4773), Special County Retailers' Occupation Tax for Public Safety (86 IAC 670; 42 Ill Reg 4785), Salem Civic Center Retailers' Occupation Tax (86 IAC 690; 42 Ill Reg 4797), and Non-Home Rule Municipal Retailers' Occupation Tax (86 IAC 693; 42 Ill Reg 4809). These rulemakings implement Public Act 99-126, which provides that retailers who sell items to a purchaser under a nominal lease or other agreement with an option to

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# New Rules

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current hearing procedures and lengthen the amount of time for a motion to reconsider. Finally, amendments to Part 212 address SBEL personnel matters such as hiring interviews, access to employee personnel files, family medical leave, and compensatory time for staff who work on the biannual General Election Day (a State holiday).

Questions/requests for copies of the 3 SBEL rulemakings: Kenneth R. Menzel or Heather V Kimmons, SBEL, 2329 S. MacArthur Blvd., Springfield IL 62704, 217/782-4141, e-mail: [kmenzel@elections.il.gov](mailto:kmenzel@elections.il.gov) or [hkimmons@elections.il.gov](mailto:hkimmons@elections.il.gov)

## DRIVER'S LICENSES

The SECRETARY OF STATE adopted an amendment to Issuance of Licenses (92 IAC 1030; 41 Ill Reg 13964), effective 3/5/18, modifying the road test for persons applying for a restricted local driver's license that allows residents of localities with 3,500 or fewer residents to travel only to designated locations. The amendment specifies that the road test for a restricted local license will utilize the locations to which the applicant wishes to drive, rather than a specific route.

Questions/requests for copies: Jennifer Egizii, SOS, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

## ■ SMALL BUSINESSES

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted amendments to Illinois Small Business Development Program (14 IAC 570; 41 Ill Reg 12956), effective 3/2/18, implementing recent changes to the Small Business Development Act (PA 100-377). The amendments add veteran owned businesses (along with minority, female and disabled-owned businesses) to those eligible for certain business participation loans and raise the general loan limits (covering no more than 25% of the total project amount) from \$750,000 to \$2 million. For minority, female, veteran and disabled-owned businesses, the maximum loan amount is the lesser of 50% of the project cost or \$400,000 (currently \$100,000) unless the DCEO Director grants a waiver. Small businesses may be affected by this rulemaking.

Questions/requests for copies: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, 217 / 557 - 1820, [jolene.clarke@illinois.gov](mailto:jolene.clarke@illinois.gov)

## JCAR Meeting Action

At its 3/13/18 meeting, the Joint Committee on Administrative Rules approved the following action:

### OBJECTION

JCAR objects to the Department of Revenue rulemaking titled Property Tax Code (86 IAC 110; 41 Ill Reg 15043) because it is contrary to Section 8-35 of the Property Tax Code [35 ILCS 200], which requires publication of property tax assessments in the State newspaper.

## LTC INSURANCE

The DEPARTMENT OF INSURANCE adopted amendments to Long Term Care Insurance (50 IAC 2012; 41 Ill Reg 6835), effective 2/27/18, implementing changes to the model rules for long term care insurance adopted by the National Association of Insurance Commissioners (NAIC). These changes include new annual rate certification requirements, requiring companies requesting rate increases to provide more detailed financial information, and requiring notice to the consumer in any notice of rate increase that the consumer may opt for reduced coverage in lieu of the premium cost increase. Changes since 1<sup>st</sup> Notice establish specific effective dates of 7/1/18 or 1/1/19 for various provisions.

Questions/requests for copies: Eric Anderson, DOI, 320 W. Washington St. Springfield IL 62767, 217/782-6284.

# Proposed Rulemakings

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purchase the items are considered to be engaged in the business of selling at the location where the item is first delivered to the lessee for its intended use.

Questions/requests for copies/comments on the 8 DOR rulemakings through 4/30/18: Jerilynn T. Gorden, DOR, 101 W. Jefferson St., Springfield IL 62704, 217/782-2844.

## ■ PROCUREMENT

The OFFICE OF THE ATTORNEY GENERAL proposed amendments to Attorney General's Procurement (44 IAC 1300; 42 Ill Reg 4657) implementing Public Acts 100-43 and 100-203. The rulemaking raises the small purchase threshold to \$100,000 for supplies and services (currently \$25,000) as well as professional and artistic services (currently, \$20,000). The rulemaking also authorizes electronic procurements; permits extensions of time to allow vendors to comply with State Board of Elections registration requirements; adds reporting requirements for contracts needed to prepare for anticipated litigation, permits clarifying communications related to a contract solicitation, and updates various definitions.

Questions/requests for copies/comments through 4/30/18: Melissa Mahoney, OAG, 100 W. Randolph St., 12<sup>th</sup> Fl., Chicago IL 60601, 312/814-3950.

## FINANCIAL ASSISTANCE

The OAG also proposed an amendment to Hospital Financial Assistance under the Fair Patient Billing Act (77 IAC 4500; 42 Ill Reg 4688) updating federal poverty guidelines upon which eligibility for financial assistance is based.

Questions/requests for copies/comments through 4/30/18: Lynn Patton, OAG, 500 S. Second St., Springfield IL 62706, 217/524-1504 or David F. Buysse, OAG, 100 W. Randolph St., 12<sup>th</sup> Fl., Chicago IL 60601, 312/814-7236.

## IEPA REPEALER

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY proposed repeal of the Part titled Guidelines for Determination of Construct Only Status Pursuant to 35 Ill. Adm. Code 309.202 (35 IAC 393; 42 Ill Reg 4617). IEPA now presumes permits for new sanitary sewer projects to be "construct only" unless otherwise specified.

Questions/requests for copies/comments through 4/30/18: Gabriel H. Neibergall, IEPA, 1021 N. Grand Ave. East, PO Box 19276, Springfield IL 62794-9276, 217 / 782 - 5544 , [gabriel.neibergall@illinois.gov](mailto:gabriel.neibergall@illinois.gov)

## Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at the Committee's April 17, 2018 meeting. Further comments on these rulemakings should be sent to JCAR using the contact information on page 1.

### DEPT OF CENTRAL MANAGEMENT SERVICES

Merit and Fitness (80 IAC 302; 41 Ill Reg 15434) proposed 12/29/17

Extensions of Jurisdiction (80 IAC 305; 41 Ill Reg 15444) proposed 12/29/17

### IL HOUSING DEVELOPMENT AUTHORITY

State Housing Appeals Board (47 IAC 395; 41 Ill Reg 13556) proposed 11/13/17

### DEPT OF NATURAL RESOURCES

Sport Fishing Regulations for the Waters of Illinois (17 IAC 810; 42 Ill Reg 577) proposed 1/12/18