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**Joint Committee on Administrative Rules**  
Illinois General Assembly

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*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

### NURSING HOMES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted emergency amendments to "Medical Payment" (89 Ill Adm Code 140; 33 Ill Reg 14324) and "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 33 Ill Reg 14350), effective 10/1/07 for a maximum of 150 days. Identical proposed amendments also appear in this week's *Illinois Register* at 33 Ill Reg 14269 and 14272, respectively. The amendments to Part 140 abolish the practice of county-owned nursing homes that receive Medicaid reimbursement from the State making quarterly payments to the State equivalent to 38 to 40 percent of the cost of care for their Medicaid residents. Instead, DHFS will seek federal reimbursement for documented covered expenditures incurred by county-owned nursing homes with Medicaid residents, and once federal monies are received, reimburse the county within 45 days after receipt. The Part 147 rulemaking implements Public Act 96-743, effective 8/25/09, which requires nursing homes to compute the nursing component of their reimbursement rates under the Minimum Data Set (MDS) methodology quarterly (instead of annually). The PA also requires nurs-

ing homes to calculate reimbursement rates for care of ventilator-dependent residents with a methodology other than MDS. The rulemaking establishes a formula based on the MDS rate for ventilator care combined with other factors, such as the average amount of time devoted to ventilator care by nursing homes in a given geographic area. Long-term care facilities that are small businesses or non-profits will be affected by the Part 147 rulemaking.

Questions/requests for copies/comments on the proposed rulemakings through 11/30/09: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield, IL 62763-0002, 217/782-1233.

### GUARDIANSHIP ASSISTANCE

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted emergency amendments to "Services Delivered by the Department of Children and Family Services" (89 Ill Adm Code 302; 33 Ill Reg 14310), effective 10/1/09, for a maximum of 150 days. An identical proposed rulemaking appears in this week's issue of the *Illinois Register* at 33 Ill Reg 14227. The rulemaking implements federal

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### CHILD WELFARE SERVICES

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to "Licensure of Direct Child Welfare Services Employees and Supervisors" (89 Ill Adm Code 412; 33 Ill Reg 14233), to implement Public Act 94-943 and recommendations of DCFS' Office of Inspector General and the Direct Child Welfare Services Employee Licensing Board. The rulemaking makes extensive changes to the Part concerning definitions, the division of responsibilities between DCFS and its purchase of service (POS) providers, and licensure requirements for direct child welfare services employees. Direct child welfare services employees are required to hold a license and must have the license renewed every 4 years. DCFS updates its licensure requirements to reflect new renewal provisions (listing of what positions are required to hold and renew licenses, background checks, minimum of a bachelor's degree or documentation of having achieved a foreign equivalency of a bachelor's degree and completion of a DCFS pre-service course of training, etc.). Initial licensure and renewal licensure applicants may be referred to DCFS' OIG for pre-licensing investigation if information provided by an applicant indicates that the individual may have engaged in acts that could invalidate their current license or prevent the issuance of a license. The rulemaking outlines DCFS' OIG referral provisions

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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.

# New Regulations

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Public Law 110-351, which allows states to provide assistance payments to grandparents and other relatives who assume permanent legal guardianship of children after caring for them as licensed foster parents. In response to this law, and to the expiration of DCFS' former subsidized guardianship program on 9/30/09, the rulemaking creates the KinGap program for children who must permanently remain in the care of relatives and cannot either return home or be adopted. Relatives who participate in the KinGap program must be licensed as relative foster parents. Subsidized guardianship agreements must detail the type, amount, and duration of subsidized guardianship, must be in writing, and must be signed prior to transfer of guardianship. The rulemaking details KinGap eligibility criteria, a process for determining whether subsidized guardianship under KinGap is in the best interests of the child, and types of assistance available under KinGap (e.g., non-recurring expenses (legal fees, etc.); ongoing monthly expenses; Medicaid coverage; physical, emotional and mental health needs not payable through insurance or public resources; therapeutic day care; employment related day care; and college scholarships/education and training vouchers). The rulemaking addresses both the subsidized guardian's and DCFS' responsibilities under KinGap. Subsidized guardians under KinGap are required to undergo periodic reviews

that are now required annually for children to maintain their Medicaid program eligibility. The rulemaking also lists circumstances under which subsidized guardianship agreements will be terminated.

Questions/requests for copies/comments on the proposed rulemaking through 11/30/09: Jeff Osowski, DCFS, 406 E. Monroe, Station #65-D, Springfield IL 62701-1498, 217/524-1983, TTY 217/524-3715, Fax 217/557-0692, e-mail: [cfpolicy@idcfs.state.il.us](mailto:cfpolicy@idcfs.state.il.us)

## FOSTER CARE

DCFS also adopted amendments to "Indian Child Welfare Services" (89 Ill Adm Code 307; 33 Ill Reg 5990), effective 10/1/09, that implement a provision of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). The rulemaking requires DCFS to negotiate with any federally recognized Indian tribe, tribal organization, or tribal consortium that requests to develop agreements with DCFS for the provision of foster care services on behalf of eligible Indian children under the authority of the tribe. These agreements may include foster care maintenance payments on behalf of children placed in DCFS or tribally licensed foster family homes, adoption assistance payments, and tribal access to DCFS resources. Federally recognized Indian tribes, tribal organizations, or tribal consortia that

do not directly receive an allotment under the Chafee Foster Care Independence Program or federal Department of Health and Human Services education and training vouchers may enter into an agreement with DCFS to administer, supervise, or oversee these 2 federal programs on behalf of eligible Indian children who are under the authority of the tribe.

Questions/requests for copies: Jeff Osowski at the DCFS address and telephone number above.

## STATE POLICE

The DEPARTMENT OF STATE POLICE adopted a new Part titled "Bait Car Procedures" (20 Ill Adm Code 1297; 33 Ill Reg 8900), effective 10/5/09, implementing the exemption from eavesdropping prosecution for conversations recorded near a "bait car" surveillance vehicle. (Bait cars are any motor vehicles that are not occupied by law enforcement officers and are used by a law enforcement agency to deter, detect, identify, and assist in the apprehension of an auto theft suspect in the act of stealing a motor vehicle.) Interception and recording standards and equipment specifications are detailed. Small municipalities may be affected by this rulemaking.

Questions/requests for copies: John M. Hosteny, ISP, 801 S. 7<sup>th</sup> St., Ste. 1000-S, Springfield IL 62794-9461, 217/782-7658.

# Proposed Regulations

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and provides timelines. Licensure applicants will now be allowed 3 attempts (currently 2) to pass the licensure examination. After 1/1/2014, no individual holding a direct child welfare services license shall be allowed to practice without meeting renewal requirements for his or her license. Licensees are required to maintain accurate contact information with DCFS or waive their right to object to improper service when information is

delivered to a wrong address. The rulemaking provides detailed qualifications for licensure renewal and voluntary relinquishment of a license. Finally, the rulemaking implements PA 94-493, which requires any child welfare services employee who transports children by motor vehicle to have a valid driver's license. This rulemaking also makes changes other than those highlighted in this summary. Non-profit organizations that

are DCFS service providers will be affected. For more information concerning this rulemaking, contact the DCFS agency representative listed above.

## DCFS ADDRESS UPDATE

DCFS also proposed amendments to "Public Notice of Change in License" (89 Ill Adm Code 376; 33 Ill Reg 14229) that change the address to

# Proposed Regulations

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which public comments may be sent in response to DCFS' publication of a notice of proposed changes that a child care institution, maternity center, or group home is requesting to make in its services. The amendment changes the address from the Division of Operations and Community Services in Chicago to the director's office in Springfield.

## ABANDONED NEWBORNS

DCFS proposed amendments to "Reports of Abuse and Neglect" (89 Ill Adm Code 300; 33 Ill Reg 14209) that implement Public Act 96-345, effective 1/1/10. The rulemaking changes the definition of a "fire station" to which a newborn infant may be relinquished by his or her custodial parent to mean a fire station within the State of Illinois with at least one staff person. (Currently, rule requires at least one full-time emergency medical professional.) The rulemaking allows any fire station staff person to receive an abandoned infant. In accordance with statute, it also extends the time period during which an infant may be relinquished from 7 to 30 days after the child's birth.

Questions/requests for copies/comments on the 3 proposed rulemakings through 11/30/09: Jeff Osowski at the DCFS address and telephone number above.

## AIR POLLUTION

The POLLUTION CONTROL BOARD proposed an amendment to "Definitions and General Provisions" (35 Ill Adm Code 211; 33 Ill Reg 14275) that conforms the State's definition of volatile organic material (VOM) or volatile organic compound (VOC) to reflect certain amendments adopted by the federal Environmental Protection Agency (USEPA) during the period from 1/1/09 through 6/30/09. The amendment to the federal definition of volatile organic compound adds the compounds propylene carbonate and dimethyl carbonate to the list of compounds excluded from the definition

on the basis that these compounds make a negligible contribution to tropospheric ozone formation. Those affected by this rulemaking include entities that use or emit the affected chemicals proposed for deletion from the definition. PCB has scheduled a public hearing at 1:00 p.m., 11/19/09 in Room 11-500, James R. Thompson Center, 100 W. Randolph St., Chicago IL 60601.

Questions/requests for copies/comments until 11/30/09: Michael J. McCambridge, PCB, 100 W. Randolph, Ste 11-500, Chicago IL 60601, 312/814-6924, e-mail: [mccambm@ipcb.state.il.us](mailto:mccambm@ipcb.state.il.us)

## SOS PERSONNEL PROVISIONS

The SECRETARY OF STATE proposed an amendment to "General Rules, Definitions" (92 Ill Adm Code 1000; 33 Ill Reg 14296) making changes to SOS police personnel provisions that conform to the Secretary of State Merit Employment Code. The amendments also clarify that the Director of Personnel for SOS prescribes the written qualifying examinations for investigator trainees, investigators, and investigator sergeants within the SOS police force.

Questions/requests for copies/comments through 11/30/09: Stephan Roth, Office of the Secretary of State, Dept. of Personnel, 197 Howlett Bldg., Springfield IL 62756, 217/782-1750.

## ABUSE REPORTS

The DEPARTMENT OF HUMAN SERVICES has published a Notice of Correction to Proposed Amendments to "Office of Inspector General Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies" (59 Ill Adm Code 50; 33 Ill Reg 13244), which appeared in the 9/25/09 *Illinois Register*. (Emergency amendments identical to the original proposed text took effect on 9/10/09 for a maximum of 150 days.) The corrections make two changes in the proposed text. In Section 50.10,

the proposed definition of "unfounded" has been changed to "There is no credible evidence to verify the substance of the allegation." Also, in Section 50.60(a)(6), the "required reporter" has been removed from the list of persons whom the DHS Inspector General is required to notify of any findings in an abuse or neglect investigation. The publication of the Notice of Correction changes the beginning of the First Notice public comment period on the proposed amendments to 10/16/09.

Questions/requests for copies/comments on the proposed rulemaking through 11/30/09: Tracie Drew, DHS, 100 S. Grand Ave. E., 3<sup>rd</sup> Fl., Springfield, IL 62762, 217/785-9772.

## IEMA PUBLIC HEARING

The IL EMERGENCY MANAGEMENT AGENCY published a Notice of Public Hearing concerning a proposed new Part titled "Licensing Requirements for a Low-Level Radioactive Waste Disposal Facility" (32 Ill Adm Code 601; 33 Ill Reg 14006). The hearing will take place Tuesday, 11/17/09, from 1 to 4 p.m. at the IEMA office at 1035 Outer Park Drive, Springfield. (A Notice of Publication Error in a previous announcement of this hearing also appears in this week's *Illinois Register*.) The proposed new Part will replace two existing Parts with one set of revised rules covering application, licensure, design, construction, operation, closure, and license termination requirements for low-level radioactive waste disposal sites. According to IEMA, the only significant difference between the proposed and existing rules is the proposed elimination of a requirement that sites covered by these rules avoid exposing anyone outside the facility boundary to more than one millirem of radiation per year.

Questions/requests for copies/comments on the rulemaking through 11/23/09: Louise Michels, IEMA, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9876, TDD 217/782-6133.

# The Flinn Report

# Illinois Regulation

Illinois General Assembly

Joint Committee on Administrative Rules  
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## JCAR Meeting Action

At its 10/14/09 meeting, the Joint Committee on Administrative Rules voted to issue one recommendation regarding a proposed rulemaking. The Committee also extended for an additional 45 days the Second Notice periods for three proposed rulemakings: "Carnival and Amusement Ride Safety Act" (56 Ill Adm Code 6000; 33 Ill Reg 1836), proposed by the Carnival-Amusement Safety Board; "Vending Facility Program for the Blind" (89 Ill Adm Code 650; 33 Ill Reg 6621), proposed by the Department of Human Services; and "Campaign Financing" (26 Ill Adm Code 100; 33 Ill Reg 9597), proposed by the State Board of Elections.

### DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

With regard to the rulemaking titled "Medical Payment" (89 Ill Adm Code 140; 33 Ill Reg 5178), JCAR recommends that the Department update its rules to create policy before it implements that policy. DHFS has been implementing this proposed policy covering routine foot care for diabetics and persons with circulatory/nerve conditions at least since 2003 under its Handbook for Podiatric Services.

## 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 November 17, 2009 meeting.

### DEPARTMENT OF PUBLIC HEALTH

"Newborn Metabolic Screening and Treatment Code" (77 Ill Adm Code 661) proposed 6/12/09 (33 Ill Reg 7553)

### DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Conditions of Employment" (80 Ill Adm Code 303) proposed 8/21/09 (33 Ill Reg 11919)

### DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Medical Payment" (89 Ill Adm Code 140) proposed 1/30/09 (33 Ill Reg 1617)

"Medical Payment" (89 Ill Adm Code 140) proposed 7/31/09 (33 Ill Reg 11174)

### DEPARTMENT OF INSURANCE

"Workers' Compensation Pools" (50 Ill

Adm Code 575) proposed 12/26/08 (32 Ill Reg 19856)

Repeal of "Workers' Compensation Self Insurance" (50 Ill Adm Code 2901) proposed 12/26/09 (32 Ill Reg 19867)

### DEPARTMENT OF REVENUE

"Retailers' Occupation Tax" (86 Ill Adm Code 130) proposed 8/21/09 (33 Ill Reg 11921)