

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.

Emergency Rules

■ CANNABIS TAXES

The DEPARTMENT OF REVENUE adopted 2 new Parts by emergency rulemaking titled Cannabis Cultivation Privilege Tax (86 IAC 422; 44 Ill Reg 594) and Cannabis Purchaser Excise Tax (86 IAC 423; 44 Ill Reg 612), both effective 12/27/19 for a maximum of 180 days (based on a statutory exemption from the IAPA's 150-day limit on emergency rules). Both emergency rules implement provisions of Public Act 101-27, the Cannabis Regulation and Tax Act. The new Part 422 imposes a tax upon cultivators of adult use cannabis of 7% of gross receipts from the initial sale of their product to another cultivator or to a craft grower, infuser or dispensing organization. Any product containing any amount of cannabis or any cannabis derivative is subject to this tax on the full selling price of the product. Part 423 implements sales taxes upon non-

infused cannabis products of 10% of the purchase price if the product's THC level is at or below 35%, or 25% of the purchase price if the THC level is above 35%. All infused products are taxed at 20% of the purchase price. Both Parts provide that cultivators and dispensaries that are delinquent in collecting or paying these taxes, or any other State or local taxes, are subject to revocation or non-renewal of their DOR tax registration. The Department of Agriculture (which licenses cultivators) or the Department of Financial and Professional Regulation (which licenses dispensaries) will also be notified if a tax registration is revoked or not renewed. Explanations of how the tax is computed, how returns and records are to be filed, and of sales to which this tax does and does not apply are included. Businesses that cultivate or sell

(cont. page 2)

Proposed Rulemakings

■ NURSING HOMES

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to the Part titled Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 435) implementing provisions of Public Acts 101-10 and 101-217. The rulemaking establishes oversight procedures and penalties for nursing homes that violate minimum staffing requirements or that fail to obtain informed consent from residents prior to administering psychotropic medications.

Staffing Requirements

The rulemaking clarifies current DPH rules requiring that at least 10% of nursing and personal care time be provided by registered professional nurses (RNs) and another 15% of nursing/personal

(cont. page 2)

ADOPTED 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.

Emergency Rules

(cont. from page 1)

cannabis products are affected by these emergency rules.

Questions/requests for copies of the 2 DOR emergency rules: Richard S. Wolters, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

■ VEHICLE TRADE-INS

The DEPARTMENT OF REVENUE adopted emergency amendments to Retailers' Occupation Tax (86 IAC 130; 44 Ill Reg 552) and Use Tax (86 IAC 150; 44 Ill Reg 577) both effective 12/27/19 for a maximum of 150 days. Identical proposed rules appear in this week's *Illinois Register* at 44 Ill Reg 485 and 487. Both of these emergency and proposed rules implement Public Act 101-31 by limiting the amount of trade-in credit on first division motor vehicles (those carrying 10

or fewer passengers) that can be deducted from the taxable selling price of the sold vehicle to \$10,000 effective 1/1/20. Amendments to Part 130 (which concerns the retailer's tax liability; Part 150 addresses use tax charged to the buyer) additionally clarify that sport utility vehicles (SUVs), all-terrain vehicles (ATVs), off-highway motorcycles, and any motor vehicle that was designed as a passenger vehicle for 10 or fewer passengers, regardless of its current use (e.g., a minivan with the seats removed) are classified as first division motor vehicles. Second division motor vehicles, which are not subject to the trade-in credit limitation, include any vehicle designed to carry more than 10 passengers; vehicles designed or used for living quarters, such as RVs or campers; school buses; ambulances, medical carriers, and hearses; and any vehicle designed to pull or carry property, freight, or cargo

(e.g., pickup trucks and other open-bed vehicles, panel/cargo vans). The trade-in credit limitation applies only when one first division vehicle is traded in for another first division vehicle. A credit of more than \$10,000 can be applied, but only the first \$10,000 can be deducted from the selling price that determines State sales tax. Examples of when the credit limitation does and does not apply, and how it applies to multiple or split trade-in transactions, are included in Part 130. Vehicle dealers that accept trade-ins, and their customers, are affected by these emergency rules.

Questions/requests for copies/comments on the 2 proposed DOR rulemakings through 2/24/20: Samuel J. Moore, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

Proposed Rulemakings

(cont. from page 1)

care time be provided by either RNs or Licensed Practical Nurses, for a total of 25% of care time that must be provided by licensed nurses. The remaining 75% may be provided by other direct care staff, including certified nurse assistants; psychiatric or physical rehabilitation aides; and licensed physical, occupational, speech or respiratory therapists. Minimum staffing ratios are 3.8 hours of nursing/personal care per day for each skilled care resident and 2.5

hours of nursing/personal care per day for each intermediate care resident. The services that constitute skilled care (e.g., administering medication by injection or intravenously) and intermediate care (e.g., administering routine oral medication) are listed. Time spent in meals or breaks, scheduled training, or unpaid clinical nurse aide training shall not be included in staffing ratio calculations. Written work schedules shall be posted at least 10 days in advance and kept on file in paper or

electronic format for at least 2 years after the scheduled work period. Procedures for facilities to submit quarterly compliance review data to DPH are outlined. When conducting inspections, surveys and evaluations, DPH will calculate a facility's direct care staffing based on the finalized working schedule and daily resident census reports for the 2 weeks preceding the first day of the inspection. Facilities that do not meet minimum staffing ratios must

(cont. page 3)

Proposed Rulemakings

(cont. from page 2)

post notices on their websites and in prominent locations within the facility (including all public entrances, next to the registration desk, and inside the main lobby).

RN Staffing Waivers

A facility that has been cited for failure to meet RN staffing requirements may obtain a waiver from those requirements if it demonstrates that it has been unable to hire a sufficient number of RNs, that it has made diligent efforts to recruit RNs (including by offering competitive wages) and that the waiver will not endanger resident health or safety. Facilities with RN staffing waivers must have a physician or RN immediately available by telephone when minimum RN staffing is not on site. Waivers will be reviewed on a quarterly basis and the facility must notify all residents, their guardians or representatives, applicants/prospective residents, and the Office of the State Long Term Care Ombudsman of the waiver. Facilities that have had major violations or deficiencies within the previous 3 years are not eligible for RN staffing waivers.

Penalties

During the initial implementation period for this rulemaking (7/1/20 through 9/30/20) no monetary penalties for noncompliance with staffing requirements will be imposed, but DPH will issue written notices of noncompliance and facilities must submit a plan

of correction for deficiencies. Monetary penalties will be imposed beginning no later than 1/1/21. For a first violation, the penalty shall be 125% of the cost of wages and benefits for the missing staffing hours, increasing to 150% of wage/benefit costs for the second violation and 200% of wage/benefit costs for third and subsequent violations. Penalties may be adjusted if the deviation from staffing requirements was 10% or less and may be waived entirely if unforeseen circumstances prevented scheduled staff from reporting to work (this exception may be applied no more than 6 days in each quarter).

Psychotropic Medications

With regard to psychotropic medications, the rulemaking requires the process of securing informed consent in non-emergency situations to include a private discussion of the medication's risks and benefits, the most likely consequences of taking or not taking the medication, and possible alternatives to the proposed medication, among the resident, the resident's representative/decision maker and at least one of the following: the resident's physician; a registered pharmacist other than the dispensing pharmacist for the facility in which the resident lives; or a licensed nurse. Information addressed in this discussion must be given to the resident or decision maker in writing, with provisions in that document for the resident/decision maker to either give or refuse informed consent.

The resident/decision maker shall also be advised that informed consent may be withdrawn at any time and that the resident may refuse to take the medication at any time even if informed consent has been given. In an emergency, the facility shall document the situation in detail and present this documentation to the resident and his or her decision maker. Informed consent must be renewed when the type or dosage of the medication changes, when the resident's care plan changes in a manner that affects the medication prescription, or at least once a year. Dosages in excess of the maximums recommended in pharmacy reference guides shall not be proposed or administered unless the prescriber can state a justifying reason for doing so; dosages in excess of the recommended maximums shall be reviewed on a weekly basis. A resident who refuses to take psychotropic medication cannot be discharged from a facility on that basis unless the facility demonstrates that this refusal places the health and safety of that resident, other residents, facility staff, or visitors at risk. In such cases, documentation of the alleged risk must be presented to the resident/decision maker, DPH and to the Office of the State Long Term Care Ombudsman. No later than 4/10/21, all nursing facilities must implement written procedures for compliance with these informed consent provisions. Violations of any individual's informed consent that

(cont. page 5)

Adopted Rules

■ VIDEO GAMING

The ILLINOIS GAMING BOARD adopted amendments to Video Gaming (General) (11 IAC 1800; 43 Ill Reg 9209) effective 12/27/19, replacing emergency amendments adopted effective 8/13/19 (43 Ill Reg 9261). The rulemaking implements provisions of Public Act 101-31. It increases the licensing fee for terminal handlers from \$50 to \$100 and states that IGB shall apply the occupational licensing criteria in Section 9 of the Illinois Gaming Act (which, prior to the PA, applied only to riverboat casinos) to all occupational license applicants. Definitions and provisions are added for progressive jackpot video games in which the top prize increases with each play until the prize is won. A new licensing category is created for licensed large truck stop establishments that sell at least 50,000 gallons of diesel or biodiesel fuel per month. Additional responsibilities of licensed terminal operators include: purchasing keys and locks for video gaming terminals; installing and maintaining digital surveillance cameras in all areas where gaming takes place and vouchers are redeemed; and creating a receipt form for winners of progressive jackpots to claim their prizes. Additional responsibilities of licensed technicians and terminal handlers include complying with all requests by IGB agents to access the logic box within a video gaming terminal; recording the details of any instance in which a terminal is accessed, possessed or

controlled (e.g., for service or repair); and informing the central communications system before clearing meters on a video gaming terminal. Applicants for video gaming licenses must disclose all persons with significant influence or control (PSIC) over the applicant or licensee. The definition of PSIC is expanded to include each person directly owning an applicant or licensee as well as each person with an indirect ownership interest of 5% or more. Finally, the Administrator of IGB shall have authority to direct and oversee the installation, maintenance or improvement of any technology needed to implement the Act or this Part, and the applicant or licensee may be required to reimburse the Board for the cost of testing, certification, training, and other tasks associated with such implementation. Changes since 1st Notice reduce the minimum storage period for digital surveillance recordings from 90 to 30 days; require video surveillance data to be backed up twice monthly to a secure location not accessible to anyone except the terminal operator or a Board agent; allow video surveillance data to be stored either onsite or offsite (e.g., cloud storage); prohibit access to onsite-stored video surveillance data by owners, employees, or PSICs of the licensed location; and set a 7/1/20 effective date for the surveillance provisions. IGB also removed a provision that would have allowed the Administrator to impose automatic fines of up to \$500 upon terminal operators who fail to notify

the central communications system before clearing meters on a video gaming terminal. Those affected by this rulemaking include small businesses such as restaurants, taverns, and truck stops; fraternal and veterans organizations; and persons employed as terminal handlers and technicians.

■ GAMING DEVICES

IGB also adopted an amendment to Riverboat Gambling (86 IAC 3000; 43 Ill Reg 9315) effective 12/30/19, replacing an emergency amendment effective 8/23/19 (43 Ill Reg 9801). The rulemaking implements provisions of Public Act 101-31 requiring IGB to license independent testing laboratories and accept test reports from any such laboratory chosen by a gaming machine or gaming equipment manufacturer, whether or not that laboratory has a contract with the State. (Formerly, testing was performed only by laboratories that had entered contracts with IGB via the procurement process.) The rulemaking establishes the application process and criteria for independent testing laboratories to obtain IGB licensure. Laboratories that are accredited and are authorized to perform testing services in a gaming jurisdiction similar to Illinois may be licensed by IGB. Since 1st Notice, IGB has revised the definition of a “jurisdiction similar to Illinois” to mean any jurisdiction with more than one casino that

(cont. page 5)

Adopted Rules

(cont. from page 4)

operates a mix of slot machines and table games approved by the regulator. A definition of critical program storage media has also been added. Those affected by this rulemaking include independent gaming equipment testing labs and gaming equipment manufacturers.

Questions/requests for copies of the 2 IGB rulemakings: Agostino Lorenzini, IGB, 160 N. La Salle St., Chicago IL 60601, fax 312/814-7253.

STATE RETIREMENT

The STATE EMPLOYEES' RETIREMENT SYSTEM adopted amendments to The

Administration and Operation of the State Employees' Retirement System of Illinois (80 IAC 1540; 43 Ill Reg 10771) effective 12/27/19, implementing Public Act 101-54, which updated the SERS disability program. References to age 65 as the universal Social Security retirement age have been replaced with "Social Security full retirement age" (at least age 66 for persons born from 1943 to 1959; 67 for persons born in 1960 or later) for purposes of determining the Social Security offset amount. Licensed healthcare professionals (formerly, licensed physicians) may certify disability. Effective 1/1/19, the limitation on earnings from gainful employment is raised from \$2,490 to \$3,660 per calendar quarter (disability benefits may be suspended if the

beneficiary earns more than this amount). However, "gainful employment" for this purpose does not include income derived from passive investments or money earned from income producing activities or opportunities that the System member had prior to the onset of his or her disability. The rulemaking also clarifies how survivor's benefits will be calculated if two or more survivors of a Tier 2 System member (initially hired on or after 1/1/11) are eligible to receive survivors' annuities.

Questions/requests for copies: Jeff Houch, SERS, 2101 S. Veterans Parkway, P.O. Box 19255, Springfield IL 62794, 217/524-8105, jeff.houch@srs.illinois.gov

Proposed Rulemakings

(cont. from page 3)

last 7 days or more will carry fines of up to \$1,100 per occurrence and, if repeated, reduce the facility's license to a conditional license. Additionally, any facility that violates informed consent rules will be required to obtain the signatures of two licensed health

care professionals on every informed consent form for psychotropic medication. Nursing homes providing skilled or intermediate care are affected by this rulemaking.

Questions/requests for copies/ comments through 2/24/20: Erin

Conley, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

No Second Notices This Week
