

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

COVID-19 LTC TESTING

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 18462) effective 10/23/20 for a maximum of 150 days. This emergency rulemaking continues and updates provisions of previous emergency amendments that were effective 5/28/20 (44 Ill Reg 10217) and 7/14/20 (44 Ill Reg 12931) and repealed effective 10/23/20. The new emergency amendments clarify DPH's infection control policies for long term care facilities in relation to the COVID-19 pandemic. Each facility must maintain its written infection control policies and procedures on site and make them available upon request to residents, their families or representatives, DPH, and the certified local health department. The rulemaking also lists specific Centers for Disease Control and

COVID-19 ACTIONS

Numerous Executive Orders and emergency rules have been issued in response to the COVID-19 pandemic. Executive Orders of the Governor concerning this pandemic can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

Prevention guidelines for COVID-19 testing and infection control that facilities must follow. If a resident, employee or volunteer of a long term care facility tests positive for COVID-19, all residents, staff and volunteers must be tested; those who do not test positive must be retested every 3 to 7 days until no new cases are identified. If there

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Proposed Rulemakings

SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to Educator Licensure (23 IAC 25; 44 Ill Reg 18003) updating various educator licenses and endorsements to reflect recent Public Acts. The rulemaking extends the validity of the visiting international teacher license to 5 years, requires educators trained in a language other than English to demonstrate English language proficiency before receiving a Professional Educator License (PEL), and allows the Teacher Performance Assessment to be waived during a public health emergency. Other provisions update the career and technical educator endorsement; allow issuance of a PEL with a school support personnel endorsement to a speech-

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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.

Adopted Rules

SCHOOL CHECKUPS

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Child and Student Health Examination and Immunization Code (77 IAC 665; 44 Ill Reg 1779), effective 11/2/20, implementing Public Act 100-829, which requires dental examinations for students entering or enrolled in 9th grade (formerly, this requirement applied to students in kindergarten, 2nd and 6th grades). The dental exam must be performed no earlier than Nov. 15 of the previous school year and no later than May 15 of that school year. Students who fail to present proof of dental examination by May 15 may have their report cards withheld until they document that an examination has been completed

or has been scheduled within the next 60 days.

HOSPITALS

DPH also adopted amendments to Hospital Licensing Requirements (77 IAC 250; 44 Ill Reg 2221) effective 10/29/20, implementing Public Act 100-1051. The PA and this rulemaking require hospitals to create workplace violence prevention programs that comply with federal Occupational Safety and Health Administration (OSHA) workplace violence prevention guidelines for health care and social service workers. Hospitals must post notices stating that verbal aggression will not be tolerated and that physical assaults (against staff, patients or visitors) will be reported to law

enforcement. In line with the OSHA guidelines, workplace violence prevention programs must distinguish among workplace violence that is committed by a person who has no legitimate business at the work site; directed at employees by customers, clients, patients, or others who accompany patients; directed at an employee by a present or former employee; or committed by a non-employee who is known to have had a personal relationship with an employee. The program must also address sexual assault and sexual violence and provide contact information for services to assist victims of sexual violence. Additionally, the rulemaking aligns provisions for medical forensic emergency services to sexual assault survivors with recent amendments to the Sexual Assault Survivors Emergency Treatment Act. Hospitals and their employees are affected by this rulemaking.

Emergency Rules

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are no active cases in a facility, staff and volunteers must be tested at least twice a week if the county's positivity rate for COVID-19 testing is above 10%; once a week if the positivity rate is between 5% and 10%; and once a month if the positivity rate is below 5%. Nursing homes are affected by these emergency amendments.

NURSING ASSISTANTS

DPH also adopted an emergency amendment to Long-Term Care Assistants and Aide Training Programs Code (77 IAC 395; 44 Ill Reg 18489) effective 11/2/20 through 12/18/20. This emergency

rule extends the Temporary Nursing Assistant (TNA) Program, which was to have terminated on 11/2, through 12/18. No new TNAs may be hired after 9/18/20. Persons currently working as TNAs may not work in that capacity after 12/18/20, but hours worked as a TNA may be counted toward clinical instruction requirements for CNA certification. TNAs, their instructors and their employers are affected by this emergency rule.

Questions/requests for copies of the 2 DPH emergency rules: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

OUTPATIENT SURGERY

DPH adopted amendments to Ambulatory Surgical Treatment Center Licensing Requirements (77 IAC 205; 44 Ill Reg 7833) effective 11/2/20, implementing two Public Acts. The rulemaking implements PA 101-13 by repealing special licensing provisions for pregnancy termination specialty centers (abortion facilities) and excluding from the definition of an ambulatory surgical treatment center (ASTC) any facility that performs only abortion procedures without

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Proposed Rulemakings

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language pathologist under certain conditions; require SBE to conduct audits to verify educator licensee's professional development hours; and specify penalties for educator licensees who do not comply with these audits.

SCHOOL RECYCLING

SBE also proposed a new Part titled K-12 Recycling Grant Program (23 IAC 267; 44 Ill Reg 18275) implementing a provision of Public Act 101-10. The PA and this rulemaking establish a program that provides school districts, laboratory schools, special education cooperatives, charter schools, area career and technical education centers, and programs operated by regional offices of education or intermediate service centers grants of up to \$5,000 toward implementation or improvement of a recycling program. The State Superintendent will issue a Request for Proposals (RFP) when funding for the program is available; the RFP will include information on available funding and application procedures. Applications shall be evaluated on a point system based on need, plan quality, and sustainability.

Questions/requests for copies/ comments on the 2 SBE rulemakings through 12/28/20: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@jsbe.net

SOS HEARINGS

The SECRETARY OF STATE proposed amendments to Procedures and Standards (92 IAC 1001; 44 Ill Reg 17902) clarifying the process for various types of administrative hearings for persons seeking reinstatement of driving privileges. The rulemaking provides that persons who are subject to lifetime restricted driving permits due to multiple DUI convictions and who now live outside of Illinois cannot take advantage of the streamlined out of State hearing process (formal hearings are required in these cases). Formal hearings are also required for petitioners with 2 or more DUI dispositions and those with Breath Alcohol Ignition Interlock Device (BAIID) violations on their driving record. Petitioners seeking reinstatement of driving privileges have 18 months (currently, 365 days) to complete any requirements for reinstatement (e.g., substance abuse treatment). Other provisions clarify aspects of the BAIID Multiple Offender permit and the effects of BAIID violations on restricted driving permits and update provisions for persons who have been prescribed opiates or authorized to use medical cannabis.

Questions/requests for copies/ comments through 12/28/20: Pamela Wright, SOS, 298 Howlett Bldg., Springfield IL 62756, 217/785-3094.

■ CANNABIS TAX

The DEPARTMENT OF REVENUE proposed an amendment to Cannabis Purchaser Excise Tax (86 IAC 423; 44 Ill Reg 17893) stating that the definition of "cannabis-infused products" does not include cannabis concentrates (cannabinoids, including THC, extracted from the plant for smoking or for making cannabis infused products), and defining "smoking" as changing cannabis from a hard, soft, or liquid form via combustion, heat, electricity or batteries into a form that can be inhaled by the user. DOR states that these definitions clarify which products are taxed at the 20% rate applicable to cannabis-infused products and which are taxed at a rate based on the amount of THC in the product (e.g., cannabis concentrates, vaping devices). Sellers and purchasers of adult use cannabis are affected by this rulemaking.

Questions/requests for copies/ comments through 12/28/20: Richard S. Wolters, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

■ PROFESSIONAL LICENSING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Parts titled Illinois Certified Shorthand Reporters Act of 1984 (68 IAC 1200; 44 Ill Reg 17839),

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general, spinal or epidural anesthesia and that is not otherwise required to hold an ASTC license. The rulemaking also implements PA 101-323 by allowing dentists to have privileges at ASTCs when their patients require sedation beyond what the dentist is trained to administer. The dentist must have admitting privileges at a nearby hospital that would handle that dentist's patient emergencies or else have a memorandum of understanding with a physician who has privileges at that hospital. Other provisions clarify the conditions under which an ASTC is not required to have a physician on site (e.g., when all current patients have completed surgery, are awake and stable with no complications, and a qualified physician is on call and can arrive within 15 minutes), the staffing requirements when a physician is not on site, and the types of clinical records that must be kept. Outpatient surgery/procedure centers are affected by this rulemaking.

■ MENTAL HEALTH FACILITIES

DPH also adopted amendments to Specialized Mental Health Rehabilitation Facilities Code (77 IAC 380; 44 Ill Reg 3349), effective 10/29/20, implementing a consent/settlement decree from a federal lawsuit (*Williams vs. Pritzker*). The rulemaking requires specialized mental health rehabilitation facilities (SMHRFs) to inform residents of their right to explore, request or decline transition to

community-based services and of their right to be free of retaliation for requesting or declining community-based services. Licensed facilities under this Part shall provide transitional living assistance to prepare persons with serious mental illness to reintegrate into community living settings. A poster notifying residents of these rights and listing telephone hotline number for reporting retaliation to DPH must be conspicuously displayed in all SMHRFs. Display of this poster is a requirement for licensure or license renewal. Licensed SMHRFs are affected by this rulemaking.

■ HEALTHCARE WORKERS

Finally, DPH adopted amendments to Health Care Worker Background Check Code (77 IAC 955; 44 Ill Reg 8151) effective 10/29/20, implementing Public Act 101-176, which allows staffing agencies, workforce intermediaries (i.e., organizations that provide job training and employment services) and organizations that provide pro bono legal services to initiate fingerprint-based criminal history background checks for their clients seeking employment in health care jobs. These organizations may also initiate requests for waivers allowing an individual who would otherwise be disqualified from health care employment due to a past criminal conviction to be cleared for employment. Businesses and non-profit organizations may be affected by this rulemaking.

Questions/requests for copies of the 5 DPH rulemakings: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

■ ANHYDROUS AMMONIA

The DEPARTMENT OF AGRICULTURE adopted amendments to the Part titled Anhydrous Ammonia, Low Pressure Nitrogen Solutions, Equipment, Containers, and Storage Facilities (8 IAC 215; 44 Ill Reg 10292) effective 10/29/20 requiring anhydrous ammonia releases equal to or exceeding 100 pounds or 18 gallons (reportable quantity) to be reported to local emergency responders and other local, State and federal authorities. The rulemaking also updates the DOA-approved training programs under which persons who handle, transfer, transport or apply anhydrous ammonia may become certified competent attendants. Grower training, which had been voluntary, will be mandatory effective 4/1/22 for farmers/growers and persons who handle anhydrous ammonia or maintain equipment for growers, including grower family members, full- or part-time hired help, and others who provide these services at no fee. Competent attendant training may be attendance-based or completed online. Temporary certification of competent attendants based on online

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training expires on the following July 15 or December 31 and cannot be renewed, while certification based on in-person training is valid for 3 years and is renewable with refresher training. Persons or entities that conduct temporary online certified competent attendant training must submit to DOA a roster of the individuals trained that includes their company names, home addresses, company addresses and date of training. These programs shall be reapproved by DOA every 3 years. For growers/farm operators, certified grower training in the properties of ammonia, safe operating practices, and appropriate emergency actions shall be offered at no cost via an attendance-based or online program approved by DOA. Grower certification will be valid for 3 years based on either in-person or online training. Other provisions impose a 25 mph speed limit on tanks being transported on public roads, update requirements for safety equipment and testing of tanks, update incorporated federal regulations, and establish DOA's right to withdraw approval of new technologies/methods of securing hoses based on observed non-performance. Changes since 1st Notice removed the 90-day limit on temporary certification of competent attendants (so that temporary certifications could continue throughout a growing season) and established an effective date for mandatory grower training. Those affected by

this rulemaking include farmers/growers and agricultural equipment/service businesses that sell, deliver or apply anhydrous ammonia.

Questions/requests for copies: Pamela Harmon, DOA, State Fairgrounds, PO Box 19281, Springfield IL 62794-9281, 217/524-6905, fax 217/785-4505.

■ MORTGAGES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Credit Union Act (38 IAC 190; 44 Ill Reg 12703) effective 11/13/20 aligning the Part more closely with federal regulations. The rulemaking increases to \$400,000 (currently \$250,000) the threshold for credit union mortgage loans that require appraisal of the property by a state certified or licensed appraiser. Loans at or below this amount require a written estimate of market value performed by an individual who has no direct or indirect interest in the property and has experience in estimating comparable property values. For transactions that close on or before 12/31/20, appraisals or written estimates of market value may be deferred up to 120 days after the date of closing if other alternatives are not available and scheduling an appraisal/evaluation would delay the closing. This deferral applies to all residential and commercial real

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Proposed Rulemakings

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Electrologist Licensing Act (68 IAC 1246; 44 Ill Reg 17853), Funeral Directors and Embalmers Licensing Code (68 IAC 1250; 44 Ill Reg 17859), Nursing Home Administrators Licensing and Disciplinary Act (68 IAC 1310; 44 Ill Reg 17868) and Illinois Physical Therapy Act (68 IAC 1340; 44 Ill Reg 17879) concerning online continuing education (CE) requirements for the affected professions. Amendments to Parts 1200, 1246, 1250, and 1310 allow all CE requirements to be fulfilled online; amendments to Part 1340 allow 75% (currently 50%) of physical therapists' CE to be earned online. Persons in the licensed professions and their employers are affected by these rulemakings.

Questions/requests for copies/comments on the 5 DFPR rulemakings through 12/28/20: Craig Cellini, DFPR, 320 W. Washington, 2nd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

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estate-secured transactions, except those for acquisition, development or construction of real estate. State-chartered credit unions and their customers seeking mortgage loans are affected by this rulemaking.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington St., 2nd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

■ WIC VENDORS

The DEPARTMENT OF HUMAN SERVICES adopted amendments to the Part titled WIC Vendor Management Code (77 IAC 672; 44 Ill Reg 11741) effective 10/29/20, replacing an emergency rule effective 7/1/20. The rulemaking clarifies that pharmacy-only vendors participating in the Women, Infants and Children (WIC) nutrition program are exempt from providing foods other than infant formula to WIC participants that present Electronic Benefits Transfer cards. (DHS states that this rulemaking was prompted by the inability of certain pharmacy chains that participate in multi-state point of sale systems to accept WIC EBT payment for any items other than infant formula.) Pharmacy-only WIC vendors are affected.

PUBLIC ASSISTANCE

DHS adopted an amendment to General Administrative Provisions (89 IAC 10; 44 Ill Reg 5991)

effective 10/29/20, replacing an emergency rule effective 4/6/20 that expired on 9/2/20. The rulemaking allows applicants for cash assistance, medical assistance, or the Supplemental Nutrition Assistance Program (SNAP) to verbally assent to an application by telephone if they cannot sign an application in person or submit an electronic signature meeting the normal security requirements. The option to verbally assent will end upon the expiration of the Gubernatorial COVID-19 Disaster Proclamations or upon the expiration of the federal waiver permitting this option, whichever occurs first. DHS states that this emergency rule allows Family Community Resource Centers to handle increased requests for assistance during the COVID-19 pandemic. Since 1st Notice, DHS has clarified how long the verbal assent option will continue.

■ DISABILITY SERVICES

DHS also adopted an amendment to Developmental Disabilities Services (89 IAC 144; 44 Ill Reg 11743) effective 10/29/20, replacing an emergency rule effective 7/1/20. This amendment implements, subject to federal approval, rate increases for community-based providers of developmental disability services that are contained in PA 101-636 (FY 21 Budget Implementation Plan). Effective 7/1/20, providers are to increase wages for non-executive staff (e.g., direct support persons, front line supervisors, qualified intellectual disabilities

professionals, nurses) by \$1 per hour, with an additional 50 cents per hour increase effective 1/1/21. In both cases, at least 80% of the funds provided for the wage increase must be used for that purpose, with priority given to direct care staff. Since 1st Notice, DHS has added a definition of non-executive staff. Providers of community-based services to the developmentally disabled are affected.

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

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted an amendment to Conditions of Employment (80 IAC 303; 44 Ill Reg 11294), effective 10/30/20, clarifying that a State employee who is denied a request to use an agency's sick leave bank (into which employees of an agency deposit their unused sick days for use by other agency employees who exhaust their sick leave due to catastrophic illness) may submit additional medical documentation to the agency's sick leave bank review committee for consideration.

Questions/requests for copies: Sean Coombe, CMS, 720 Stratton Bldg., Springfield IL 62706, 217/782-2141.

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 listed in next week's *Illinois Register* and considered at the December 15, 2020 JCAR meeting. Other items not published in the *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 COMMERCE AND ECONOMIC OPPORTUNITY

Business Interruption Grant Program (14 IAC 690; 44 Ill Reg 12993) proposed 8/7/20

DEPT OF REVENUE

Income Tax (86 IAC 100; 44 Ill Reg 11132) proposed 7/6/20

IL EMERGENCY MANAGEMENT AGENCY

Safe Operation of Nuclear Facility Boilers and Pressure Vessels (32 IAC 505; 44 Ill Reg 12) proposed 1/3/20

Joint Committee on Administrative Rules

Senator Bill Cunningham, <i>co-chair</i>	Representative Tom Demmer
Senator John F. Curran	Representative Michael Halpin
Senator Kimberly Lightford	Representative Frances Ann Hurley
Senator Tony Muñoz	Representative Steven Reick
Senator Sue Rezin	Representative André Thapedi
Senator Paul Schimpf	Representative Keith Wheeler, <i>co-chair</i>

**Vicki Thomas
Executive Director**