

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.

Adopted Rules

■ NURSING HOMES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to the Part titled Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 435) effective 1/8/21, implementing provisions of Public Acts 101-10 and 101-217. This rulemaking, which has undergone significant changes since 1st Notice, 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 existing 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

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*.

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

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Emergency Rulemakings

HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH adopted an emergency amendment to Hospital Licensing Requirements (77 IAC 250; 45 Ill Reg 1202) effective 1/8/21 for a maximum of 150 days. This emergency rule implements a federal waiver allowing qualifying hospitals, with approval from the federal Centers for Medicare and Medicaid Services, to provide limited inpatient services in patients' homes to alleviate hospital overcrowding and prevent spread of infection due to COVID-19. DPH's emergency rule requires Illinois hospitals that receive the Acute Hospital Care at Home (AHCH) waiver to provide DPH with copies of the waiver, the hospital's screening protocol for determining which patients are eligible for at-home inpatient services, and the hospital's policy

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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

(cont. from page 1)

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. 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 3 years (changed since 1st Notice from 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 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).

Skilled Care

Since 1st Notice, DPH has revised its definition of skilled care. Instead of listing specific services that constitute skilled care and intermediate care, "skilled care" is now defined as nursing or therapy care services, furnished pursuant to physician orders, that require the skills of a licensed nurse to treat, manage and observe a

resident's condition and evaluate that resident's care. A Certified Nurse Assistant may provide skilled care services under the supervision of a licensed nurse to ensure patient safety and desired results. Additionally, residents of skilled care facilities will be classified as receiving skilled care if they are receiving care that is covered by Medicare or would have been covered by Medicare if the patient were Medicare-eligible or had not exhausted his or her Medicare benefits. Services not classified as skilled care will be classified as intermediate care.

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 & Exceptions

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 not paid within 30 days after a facility receives a notice of violation may be offset by the Comptroller or Treasurer from other State payments to the facility, added to the facility's next annual or biennial license renewal fee, or obtained via circuit court action. Penalties may be adjusted if the deviation from staffing requirements was 10% or less and may be waived entirely if unforeseen circumstances (including, but not limited to, viral epidemic or pandemic, labor or civil unrest, family emergencies, or other causes beyond the facility's reasonable control) prevented scheduled staff from reporting to work. The "unforeseen circumstances" exception may be applied no more than 6 times (changed since 1st Notice from 6 days) in each quarter. If the

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Proposed Rulemakings

■ MENTAL HEALTH FACILITIES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to Specialized Health Care Delivery Systems (89 IAC 146; 45 Ill Reg 1096) implementing a provision of PA 101-636. The rulemaking clarifies that the therapeutic visit reimbursement rate, effective 7/1/20, for facilities licensed or provisionally licensed under the Specialized Mental Health Rehabilitation Facilities Act of 2013 is 75% of the facility's current paid rate. (This rate is paid for periods of up to 20 days per year when a SMHRF resident may leave the facility for therapeutic reasons, including visits to family or medical providers.) For the period 7/27/18 through 6/30/20, the therapeutic visit

reimbursement rate is 75% of the rate in effect on 7/27/18. Specialized mental health rehabilitation facilities are affected by this rulemaking.

■ NURSING HOMES

HFS also proposed an amendment to Reimbursement of Nursing Costs for Geriatric Facilities (89 IAC 147; 45 Ill Reg 1103) updating the formula for calculating the nursing component of per diem rates paid to nursing homes. For the period 1/1/20 through 6/30/20, the regional wage adjustor cannot be lower than 0.95; effective 7/1/20, the regional wage adjustor cannot be lower than 1.0. Nursing homes are affected by this rulemaking.

Questions/requests for copies/ comments on the 2 HFS

rulemakings through 3/8/21: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, HFS.Rules@illinois.gov

DRIVERS' LICENSES

The SECRETARY OF STATE proposed amendments to Issuance of Licenses (92 IAC 1030; 45 Ill Reg 1117) reorganizing two Sections so that an exemption from the general knowledge written CDL exam for certain military veterans with experience driving large trucks is placed in the appropriate Section.

Questions/requests for copies/ comments through 3/8/21: Pamela Wright, SOS, 298 Howlett Bldg., Springfield IL 62756, pwright@ilsos.gov

Emergency Rules

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and procedures for clinical management of at-home inpatients. Surveys, inspections or complaint investigations of hospitals with AHCH waivers will be handled by DPH under its State licensure authority. AHCH participating hospitals must also: provide safe and quality at-home care to each patient; comply with all abuse and neglect reporting requirements for hospitals; ensure access to health care information for limited- or non-English speaking patients; administer medications, treatments, and diagnostic tests only on the orders of a licensed medical professional

acting within his or her scope of practice; ensure that nursing services are given under the direction of an RN with qualifications in nursing administration; maintain adequate, complete, and timely medical records for each patient receiving at-home care; comply with hospital incident reporting requirements; ensure all drugs and medicines are stored and dispensed in compliance with DPH hospital rules; and comply with all COVID-19 directives and guidance issued by the Centers for Disease Control and Prevention, DPH, other State agencies, and local health departments. Hospitals that apply for or receive

the federal AHCH waiver are affected by this emergency rule.

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

■ BUSINESS DOCUMENTS

The SECRETARY OF STATE adopted an emergency amendment to the Part titled Business Corporation Act (14 IAC 150; 45 Ill Reg 1215) effective 1/8/21 for a maximum of 150 days.

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Adopted Rules

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unforeseen circumstance is a viral epidemic/pandemic, the facility must be submitting regular reports to DPH as required under 77 IAC 300.696.

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 an advanced practice registered nurse or RN. 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 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.

Changes

Changes since 1st Notice, in addition to those previously noted, include expanded provisions for unforeseen circumstances, clarification of the formula for determining penalties for shortfalls in staffing, and additional provisions for paying fines. Nursing homes providing skilled or intermediate care are affected by this rulemaking.

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

Emergency Rules

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An identical proposed amendment appears in this week's *Illinois Register* at 45 Ill Reg 1114. These rulemakings clarify that, while filing deadlines for business documents required under the Act (e.g., organizational documents, annual reports) have been extended until 90 days after the expiration of the final COVID-19 Gubernatorial Disaster Proclamation, all statutorily required fees are due at the time of filing and late filing fees are no longer being waived. Businesses that file documents with SOS are affected by this emergency rule.

■ SCHOOL BUS DRIVERS

SOS also adopted an emergency amendment to School Bus Driver Permit (92 IAC 1035; 45 Ill Reg 1222), effective 1/6/21 for a maximum of 150 days, extending time periods for school bus drivers to complete their required annual refresher training. An identical proposed amendment appears in this week's *Register* at 45 Ill Reg 1132. These rulemakings allow drivers whose current deadline for completing refresher training was in December 2020 or January, February or March 2021 an additional 90 days to complete this training. SOS states that this emergency rule was prompted by the postponement of recent refresher training classes until spring 2021 due to COVID-19 mitigations.

Questions/requests for copies/ comments on the 2 proposed SOS rulemakings through 3/8/21: Pamela Wright, SOS, 298 Howlett Bldg., Springfield IL 62756, pwright@ilsos.gov

■ ID/DD FACILITIES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to Long Term Care Reimbursement Changes (89 IAC 153; 45 Ill Reg 1191) effective 1/6/21 for a maximum of 150 days. An identical proposed amendment appears in this week's *Register* at 45 Ill Reg 1112. The emergency and proposed rulemakings implement provisions of PA 101-636 increasing reimbursement rates to facilities for the developmentally disabled (licensed under either the ID/DD Community Care Act or the MC/DD Community Care Act) in order to provide wage increases to non-executive staff of 26 cents per hour effective 6/1/20; \$1 per hour effective 7/1/20 (of which at least 80 cents per hour must be earmarked for wage increases); and 50 cents per hour effective 1/1/21 (of which at least 40 cents/hr must be earmarked for wage increases). Priority must be given to wage increases for direct care staff. Long term care facilities for the developmentally disabled, including medically complex/developmentally disabled facilities serving those with more intensive

medical needs, are affected by this emergency rule.

Questions/requests for copies/ comments on the proposed rulemaking through 3/8/21: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, HFS.Rules@illinois.gov

■ CREDIT UNIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, Division of Financial Institutions, adopted an emergency amendment to the Part titled Illinois Credit Union Act (38 IAC 190; 45 Ill Reg 1186) effective 1/8/21 for a maximum of 150 days. An identical proposed amendment appears in this week's *Register* at 45 Ill Reg 1093. The emergency and proposed rulemakings allow credit union boards of directors to conduct annual or special meetings remotely by audio or video conference or any suitable communication technology. Credit unions are affected by this emergency rule.

Questions/requests for copies/ comments on the proposed rulemaking through 3/8/21: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217/785-0813, fax 217/557-4455.

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 February 16, 2021 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.

IL GAMING BOARD

Video Gaming (General) (11 IAC 1800; 44 Ill Reg 18620) proposed 11/30/20

Joint Committee on Administrative Rules

Senator Bill Cunningham, *co-chair*

Senator John F. Curran

Senator Kimberly Lightford

Senator Tony Muñoz

Senator Sue Rezin

Representative Tom Demmer

Representative Michael Halpin

Representative Frances Ann Hurley

Representative Steven Reick

Representative André Thapedi

Representative Keith Wheeler, *co-chair*

**Vicki Thomas
Executive Director**