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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 42

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.

Proposed Rulemakings

■ SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 42 Ill Reg 18831) concerning State assessment tests, now known as State accountability assessments. High school students must now complete the final State accountability assessment administered in grade 11 before they can be granted a regular diploma (currently, before promotion to grade 12), unless their school district applies to SBE for a waiver of this requirement. When applying for the waiver, schools must explain why the affected students were unable to take the assessment, provide justification for granting the waiver, and demonstrate that the waiver will not result in systemic exclusion of students from accountability

based on race, gender, disability, English learner status, income, or other demographic factors. This exemption will normally be limited to no more than 1 percent of the school's graduating class. A school that seeks this exemption for a larger percentage of its graduating class must provide additional evidence that it is not practicing

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systemic exclusion of a particular demographic or ability group. Students with Individualized Education Plans (IEPs) who receive alternative diplomas must take State accountability assessments during their years of compulsory attendance, but can be exempted after taking the final accountability assessment. The rulemaking also implements a provision of Public Act 100-465

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New Rules

■ GRANT PROCEDURES

The GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET adopted a new Part titled Grant Accountability and Transparency Act (44 IAC 7000; 41 Ill Reg 12265) and repealed the previous Part with the same title (44 IAC 7000; 41 Ill Reg 12219), both effective 10/5/18. The new Part implements further steps in GOMB's implementation of uniform rules (UR) for federal grants at 2 CFR 200, as well as State grant rules under the Grant Accountability and Transparency Act (GATA). New provisions include program-specific exceptions to UR and GATA; more detailed enumeration of GOMB and State agency responsibilities; pre-award requirements for State grants and federal pass-through grants; and post-award requirements,

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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) 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.

New Rules

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including performance measures, records retention and closeout procedures. Since 1st Notice, GOMB has added provisions of its Grantee Compliance Enforcement System and Merit Based Review Policy (previously available only at the Grant Accountability and Transparency Unit website) to the Part. Entities that receive federal or State-funded grants through State agencies will be affected by these rulemakings.

Questions/requests for copies: Carol Kraus (217/782-6464) or Jennifer Butler (217/785-5516), GOMB, 601 Stratton Bldg., Springfield IL 62706, jennifer.butler@illinois.gov or carol.kraus@illinois.gov

■ TAXES

The DEPARTMENT OF REVENUE adopted proposed amendments to Service Occupation Tax (86 IAC 140; 42 Ill Reg 8445), and Electronic Filing of Returns or Other Documents (86 IAC 760; 42 Ill Reg 8484), both effective 10/4/18, implementing PA 100-303. These rulemakings require retailers and service providers with annual gross receipts of \$20,000 or more to file returns electronically, on and after 1/1/18, unless they lack access to the internet or can demonstrate other hardship, in which case they may obtain a waiver from DOR. Retailers or service providers who meet the \$20,000 threshold, fail to file electronically and do

not have a waiver cannot claim the 1.75% discount for timely filing. Retail or service businesses subject to these taxes will be affected.

DOR also adopted amendments to the Part titled Telecommunications Excise Tax (86 IAC 495; 42 Ill Reg 8810), effective 10/3/18, that remove out of date and obsolete provisions and clarify that the service address for a mobile phone or similar system without a defined location is the customer's place of primary use. Finally, DOR repealed the Part titled Cannabis and Controlled Substances Tax Act (86 IAC 428; 42 Ill Reg 8769), effective 10/4/18, because the underlying statute was declared unconstitutional and is no longer enforced. (The tax imposed by the Act applied to illegal cannabis and other controlled substances, not to medicinal cannabis.)

Questions/requests for copies of the 4 DOR rulemakings: Richard Wolters, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

UNIVERSITIES RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM adopted amendments to Universities Retirement (80 IAC 1600; 42 Ill Reg 3715), effective 10/5/18, implementing changes to the Pension Code made by Public Acts 99-897 and 100-23. The definition of "earnings" subject to pension withholding and credit is expanded to include voluntary

pay reductions taken in lieu of a furlough, or basic compensation on which employee pension contributions are paid during a furlough period. Earnings that would have been paid to a SURS participant during a period of furlough or voluntary pay reduction occurring between 7/1/15 and 6/30/17 shall be counted toward the employee's pension and reported by the employer. For university employees who join the SURS system on or after 1/1/17, earnings do not include housing or vehicle allowances, social club or athletic club dues, or payments made under the Public Employee Disability Act. A new Section establishes rules for calculating full-time equivalent earnings, excess earnings and employer normal cost for SURS members whose salary exceeds the statutorily established salary of the Governor.

Questions/requests for copies: Albert Lee, SURS, 1901 Fox Drive, Champaign IL 61820, 217/378-8861.

RETIREMENT FUNDS

The ILLINOIS STATE BOARD OF INVESTMENT adopted amendments to Rules and Regulations of the Board (74 IAC 800; 42 Ill Reg 6630), effective 10/3/18, updating Board procedures and operations. The amendments remove the achievement of specific compounded rates of return as investment policies or objectives;

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Proposed Rulemakings

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requiring nonpublic school students who receive scholarships from the Invest in Kids Program to take the State's accountability assessment tests. Other provisions remove references to specific versions of the State assessment (Prairie State Achievement Examination and Illinois Alternate Assessment), update the scoring categories, and clarify which scores are considered relevant to a school's accountability rating (formerly known as adequate yearly progress). Finally, the rulemaking replaces obsolete references to the federal No Child Left Behind Act with the Every Student Succeeds Act (ESSA). Those affected by this rulemaking include recipients of nonpublic school scholarships under the Invest in Kids Program.

Questions/requests for copies/ comments through 12/3/18: Cara Wiley, SBE, 100 N. First St., E-222, Springfield IL 62777-0001, 217/782-5270, rules@isbe.net

■ LONG TERM CARE

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Long-Term Care for Under Age 22 Facilities Code (77 IAC 390; 42 Ill Reg 18581) updating the Part to reflect the MC/DD Act created by Public Act 99-180. The Act replaces the Long-Term Care for Under Age 22 category of facility licensure with Medically Complex for the Developmentally Disabled (MC/DD). This rulemaking changes

SCHOLARSHIPS

The ILLINOIS STUDENT ASSISTANCE COMMISSION adopted emergency amendments to the Parts titled Grant Program for Dependents of Correctional Officers (23 IAC 2731; 42 Ill Reg 19098) and Grant Program for Dependents of Police or Fire Officers (23 IAC 2732; 42 Ill Reg 19105) effective 9/27/18 for a maximum of 150 days. The emergency amendments implement Public Act 100-673, which expands eligibility for these college scholarship grants to include children born, adopted, or placed in the legal custody of a disabled correctional, police or fire officer

the name of the Part to Medically Complex for the Developmentally Disabled Facilities Code. (Facilities regulated under this Part care for developmentally disabled persons who also have physical disabilities or medical conditions requiring skilled care.) The rulemaking creates both 1-year and 2-year licenses for which DPH will establish staggered expiration dates based on the license expiration dates of other facilities in the same geographic area. A license cannot be issued, nor can ownership of another facility be transferred, to the owner of a facility that has been designated as a "distressed facility". (The MC/DD Act states that distressed facilities will be defined in rule by DPH and

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after the officer's disability occurred. (Formerly, the child was eligible only if born, adopted or placed prior to the disability.) Two previous emergency rules implementing the Public Act were repealed effective 9/27/18 because they erroneously expanded eligibility beyond the intent of the PA. Notices of proposed permanent rulemakings implementing the PA were published in the 8/24/18 *Illinois Register*.

Questions/requests for copies: Lynn Hynes, ISAC, 1755 Lake Cook Rd., Deerfield IL 60015, 847/948-8500, ext. 18032, lynn.hynes@illinois.gov

stipulates that this designation can only be applied to facilities whose violations or deficiencies have actually harmed residents. However, DPH has not defined distressed facility in this Part.) The rulemaking establishes a new Type AA violation category for conditions or actions that directly caused a resident's death (in addition to the existing Type A, B and C violation categories). A facility's license will be revoked if it commits two or more Type AA violations within a 2-year period. Fines for violations are based on the size of the facility (16 or fewer residents, 17-99 residents, or 100+residents) and on the severity of the violation. Fines for Type AA violations range from

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New Rules

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clarify applicable Open Meetings Act provisions for Board meetings; and provide that ISBI will submit its annual report at the end of each fiscal year to the Department of Insurance or any other regulatory body provided by law. Since 1st Notice, ISBI retained several provisions that had been proposed for repeal, clarified the requirements for a quorum, and removed provisions that addressed only internal activities of the Board which are not required to be in rule.

Questions/requests for copies:
Dipesh Mehta, ISBI, 180 N. La Salle

St., Ste. 2015, Chicago IL 60610,
3 1 2 / 7 9 3 - 1 4 8 6 ,
dmehta@isbinvestment.com

COMMUNITY COLLEGES

The ILLINOIS COMMUNITY COLLEGE BOARD adopted amendments to Administration of the Illinois Public Community College Act (23 IAC 1501; 42 Ill Reg 5624), effective 10/3/17, implementing updates and clarifications to various procedures. The amendments add or update definitions for various types of degrees and programs (e.g., Associate in Engineering Science, Adult Basic Education, Adult Secondary Education, Career and Technical

Education) and the terms used to describe aspects of these programs (e.g., contact hour, lecture); clarify the procedure for a community college to modify a unit of instruction, or reactivate an inactive unit of instruction; update the statewide and regional planning process; and clarify the composition of student advisory committees in multi-college districts.

Questions/requests for copies:
Matt Berry, ICCB, 401 E. Capitol Ave., Springfield IL 62701-1711, 217/785-7411, e-mail: Matt.berry@illinois.gov

Proposed Rulemakings

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\$12,500 to \$25,000 per violation; for Type A violations, \$6,250 to \$12,500 (currently, not less than \$10,000); for Type B violations, \$550 to \$1,100 (currently, not less than \$500); and for 8 or more Type C violations, \$175 to \$250 per violation (currently, no fine is prescribed in rule). Fines may be doubled or tripled under specified circumstances (e.g., failure to comply with a plan of correction). Additionally, facilities must personally reimburse residents the greater of \$100 or the cost of the violation for actions that cause the resident harm or involve theft of their money. Facilities may contest imposition of penalties, or may waive their right to a hearing and pay 65% of any fines assessed. In addition

to notifying a facility of violations, DPH must also notify residents and their guardians or other representatives. DPH also may petition a circuit court to appoint a receiver (in addition to its existing authority to appoint a monitor) for a facility that is operating without a license; closing without making adequate arrangements for residents to move; losing its Medicare or Medicaid certification; jeopardizing residents' health, safety or welfare; or when DPH determines a threat to the residents' health, safety or welfare could exist based on its review of the facility's compliance history, incident reports, or reports of financial problems. This rulemaking also clarifies or

updates numerous existing provisions in this Part.

DPH also proposed amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 42 Ill Reg 18553) and Sheltered Care Facilities Code (77 IAC 330; 42 Ill Reg 18568) updating statutory language regarding notices of violation and administrative warnings for consistency with the Nursing Home Care Act.

■ HEALTH CARE WORKERS

DPH proposed amendments to Health Care Worker Background Check Code (77 IAC 955; 42 Ill Reg 18721) implementing

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changes to the DPH Health Care Worker Registry required by Public Acts 99-872 and 100-432. The rulemaking expands the criminal history checks required under the Part to include volunteer workers as well as paid workers and establishes a registry for unlicensed health care workers and trainees (e.g., nurse aides, personal care assistants, day training personnel). Information accessible to the public on the Health Care Worker Registry will indicate whether or not an individual or employee is or is not eligible to work, but will not report information regarding the granting or denial of waivers for disqualifying offenses. Educational entities, as well as health care employers, may initiate fingerprint-based criminal history checks. The rulemaking expands the definition of a health care employer to include nurse agencies, respite care providers, supportive living programs, day training programs and Community Integrated Living Arrangements (CILAs), and requires employees and volunteers of the Department on Aging's Long Term Care Ombudsman Program to undergo background checks required under this Part. However, health care employers cannot initiate background checks for persons applying for positions not subject to this Part (i.e., positions that do not involve contact with patients, clients or residents or provide access to their private living space or possessions). Livescan

fingerprinting vendors that contract with DPH must have at least 2 years experience transmitting electronic fingerprints to the Department of State Police. Livescan vendor contracts with DPH may be terminated if the vendor's rejection rate (percentage of fingerprints that were not of sufficient quality to be processed) from DSP is greater than 2%, or if their rejection rate from DPH is greater than 5%, in any 12-month period. A job counselor who knowingly advises a person convicted of a disqualifying offense to apply for a position involving direct contact with a client, patient or resident of a health care employer is guilty of a Class A misdemeanor, unless granted a waiver under the Act or this Part. Offenses added to the list of disqualifying offenses include: abuse or neglect of an elderly person, person with a disability, or long term care facility resident; permitting sexual abuse of a child; custodial sexual misconduct; presence of a sex offender in a school zone or near a public park; child abandonment; credit and debit card fraud; possession of a stolen firearm; and animal cruelty or torture. Health care employers regulated under the Home Health, Home Services, and Home Nursing Agency Licensing Act cannot employ an applicant until they have received the results of the applicant's fingerprint-based criminal history records check. (Other employers may conditionally employ an applicant for up to 3 months while awaiting the results of the

background check.) The rulemaking also adds provisions for including findings of abuse or neglect in the Registry; adds provisions for appeals and requests for removal from the Registry; repeals obsolete provisions for non-fingerprint based criminal background checks; and shields DPH and health care employers from liability in various situations. Health care employers, employees, and applicants are affected by this rulemaking.

■ MANUFACTURED HOMES

DPH also proposed amendments to Manufactured Home Community Code (77 IAC 860; 42 III Reg 18682) updating requirements for water supplies, sewage disposal systems, electrical systems and refuse disposal in mobile home parks and manufactured home communities. The rulemaking distinguishes between community and non-community water systems and public water systems; updates incorporated standards and other documents; and classifies violations of each requirement in the Part as Type A, B or C violations. Type C violations are those that may cause serious injury or death to residents, employees or the public; DPH may take immediate action, including closure of a facility, to abate Type C violations and will impose fines of \$100 per violation, per day. Type A violations carry no penalty if

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Proposed Rulemakings

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corrected immediately or within no more than 10 days. Type B violations and uncorrected Type A violations carry fines of \$25 per violation, per day. Owners and managers of mobile home parks and manufactured home communities are affected by this rulemaking.

Questions/requests for copies/ comments on the 5 DPH rulemakings through 12/3/18: Erin Conley, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

■ SALES TAXES

The DEPARTMENT OF REVENUE proposed amendments to Retailers' Occupation Tax (86 IAC 130; 42 Ill Reg 18780) implementing Public Act 100-594. The rulemaking extends an exemption for coal and aggregate exploration, mining, off-highway hauling, processing, maintenance and reclamation equipment until 7/1/23 and clarifies that an exemption for fuel used or consumed by air

common carriers on international flights will not sunset. Small businesses that purchase the items or commodities cited in this rulemaking may be affected.

Questions/requests for copies/ comments through 12/3/18: Debra M. Boggess, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

■ PROCUREMENT

The OFFICE OF THE STATE TREASURER proposed amendments to the Part titled Procurement (44 IAC 1400; 42 Ill Reg 18847) implementing Public Act 100-43. The rulemaking raises the small purchase limit, below which competitive bidding or other methods of source selection are not required, to \$100,000 (formerly \$80,000) and also applies this limit to professional and artistic contracts (for which the former limit was \$20,000). The rulemaking also allows for multiple awards to 2 or more bidders or offerors for similar supplies and services, updates references to the Business Enterprise for Minorities, Women, and Persons

with Disabilities Act, and updates preferences that may be used based on that Act. Small businesses seeking contracts with the Treasurer's office may be affected.

Questions/requests for copies/ comments through 12/3/18: Chris Flynn, Office of the Treasurer, 400 W. Monroe St., Suite 401, Springfield IL 62704, 217/558-0115, fax 217/785-2777, CFlynn@illinoistreasurer.gov

PCB RULE WITHDRAWAL

The POLLUTION CONTROL BOARD has withdrawn proposed amendments to Control of Emissions from Large Combustion Sources (35 IAC 225; 41 Ill Reg 13299) that were published in the 11/3/17 *Illinois Register*. The amendments would have modified emission standards for certain coal-fired electric generating units owned by Dynegy in central and southern Illinois. PCB recently voted to withdraw these proposed rule changes rather than advance them to Second Notice.

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 November 13, 2018 meeting. Other items not published in the *Illinois 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 HUMAN SERVICES

Medicaid Community Mental Health Services Program (New Part)
(59 IAC 132; 42 Ill Reg 7408) proposed 4/13/18

DEPT OF NATURAL RESOURCES

Public Use of State Parks and Other Properties of the Department of Natural Resources
(17 IAC 110; 42 Ill Reg 7905) proposed 5/11/18

JCAR Meeting Action

At its 10/16/18 meeting, the Joint Committee on Administrative Rules approved the following actions:

RECOMMENDATION

JCAR recommends that, if the Department of Financial and Professional Regulation believes the Wholesale Drug Distribution Licensing Act [225 ILCS 120] should apply to drugs for animal use as well as drugs for human use, it seek a change in statute extending the scope of that Act to include animal drugs. Section 5 of the Act currently states the Act applies only to the distribution of human prescription drugs. In the alternative, DFPR should remove, from Section 10 of its rules titled Wholesale Drug Distribution Licensing Act (68 IAC 1510), the inclusion of veterinarians in the definition of "practitioner".

Department of Children and Family Services, Licensing Standards for Day Care Homes (89 IAC 406; 42 Ill Reg 8366), Licensing Standards for Day Care Centers (89 IAC 407; 42 Ill Reg 8369), and Licensing Standards for Group Day Care Homes (89 IAC 408; 42 Ill Reg 8372)

Property Tax Appeal Board, Practice and Procedure for Appeals Before the Property Tax Appeal Board (86 IAC 1910; 42 Ill Reg 3862)

POSTPONEMENT

JCAR postponed action on the Pollution Control Board rulemaking titled Emissions Reduction Market System (35 IAC 205; 42 Ill Reg 6572), currently on extended Second Notice, until the November 13 meeting.

EXTENSIONS

JCAR and the respective agencies agreed to extend the Second Notice periods for the following rulemakings an additional 45 days:

JCAR MEMBERSHIP CHANGE

JCAR welcomes new member Sen. Paul Schimpf, R-Murphysboro. He replaces former Sen. Pamela Althoff, R-McHenry.