

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

■ DATA CENTERS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed a new Part titled Data Center Investment Program (14 IAC 521; 46 Ill Reg 5010) implementing rules for companies seeking to participate in DCEO's data center investment program. The program grants exemptions from local sales and use taxes, as well as State income tax credits, to qualifying new or existing computer data centers that have made, or plan to make, expansions or upgrades. A data center is defined as a facility whose primary services are storage, management, and processing of digital data and which houses computer or network systems; systems for monitoring and managing infrastructure performance; internet-related equipment and services; data communications connections; environmental

COVID-19 ACTIONS

Executive Orders of the Governor concerning the COVID-19 public health emergency 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*.

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controls; fire protection systems; or security systems and services. A qualifying data center must be located in Illinois and must have made, or be committed to making, a capital investment of at least \$250 million over 5 years. An existing data center may qualify based on a capital investment made in the 5 years preceding 1/

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Adopted Rules

MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Assistance Programs (89 IAC 120; 45 Ill Reg 14080 and 14303) effective 3/11/22, combining two separately proposed rulemakings. The rulemaking reduces from 6 months to 3 months the time period prior to the month of application for Medicaid long-term care assistance during which medically necessary expenses may be deducted from the applicant's income, provided these expenses are still a current liability to the applicant and were not used to meet a spenddown requirement. The rulemaking also implements Public Act 102-74, which requires the annual review of medical assistance eligibility with spenddown (when an applicant

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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

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meets the income threshold after deducting allowable medical expenses) to begin in the 7th month (formerly, 6th month) of the 12-month enrollment period. It also requires enrollment to be terminated in most cases if the individual did not meet medical eligibility requirements in at least one of the 6 months (formerly 3 months) prior to the review.

■ DENTAL SERVICES

HFS also adopted an amendment to Medical Payment (89 IAC 140; 45 Ill Reg 13510) effective 3/11/22, implementing PA 102-95. The rulemaking authorizes medical assistance payment to All Kids School-Based Dental Program providers who provide preventative dental services in school settings to children under 19 years of age. The rulemaking includes enrollment and documentation requirements for participating dental care providers and requires follow-up care referrals for children found to be at a higher than normal risk of caries (tooth decay). Follow-up referrals may be made through the InsureKidsNow website, to the office/practice of the participating provider, or through a school-based case manager, or follow-up care may be provided at the school. Since 1st Notice, HFS has clarified the involvement of Public Health Dental Hygienists in the program. Dentists and dental practices that participate in the school-based dental program are affected.

HOSPITALS

HFS adopted an amendment to Hospital Services (89 IAC 148; 45 Ill Reg 13535) effective 3/11/22 implementing PA 102-364, which establishes a payment rate for psychiatric hospitalizations at Safety Net Hospitals (those in underserved or economically distressed areas which serve all patients regardless of insurance status or ability to pay) of \$630 per day or the inpatient psychiatric rate in effect as of 6/30/21, whichever is greater. Safety Net Hospitals are affected by this rulemaking.

CHILD SUPPORT

Finally, HFS adopted amendments to Child Support Services (89 IAC 160; 45 Ill Reg 13549) effective 3/11/22, clarifying various definitions related to the Title IV-D child support program (through which HFS collects child support on behalf of custodial parents who are receiving public assistance, or who request this service from HFS) and allowing document signatures, hearings and conferences for various purposes, including the Administrative Accountability Analysis (AAA) program, to be completed electronically as well as on paper or in person. (The AAA program allows clients to obtain explanations of HFS decisions that cannot be appealed.)

Questions/requests for copies of the 4 HFS rulemakings: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, HFS.Rules@illinois.gov

TANF BENEFITS

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Temporary Assistance for Needy Families (89 IAC 112; 45 Ill Reg 11739) effective 3/9/22, removing references to the Work First/Pay After Performance program that was available only in Cook County and has been discontinued. TANF participants who had been assigned to the program will be reassigned to other available work training and educational activities.

SNAP BENEFITS

DHS also adopted amendments to Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 45 Ill Reg 11777) effective 3/9/22, reinstating an expansion of student SNAP benefits under the federal Consolidated Appropriations Act (PL 116-260) to include students who qualify for federal or state work-study programs and those whose expected family contribution to educational expenses (determined during the application process for federal student aid) is zero. These exemptions were scheduled to expire on 6/30/21 but will now remain in effect until 30 days after the federal government ends the nationwide COVID-19 public health emergency.

Questions/requests for copies of the 2 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Floor, Springfield IL 62762, 217/785-9772.

Proposed Rulemakings

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1/20; new centers or existing centers undergoing expansion must make this investment in a 5-year period beginning on or after 1/1/20. During this 5-year period, a qualifying data center must create at least 20 new full-time or full-time equivalent jobs that, in aggregate, pay at least 20% above the average full-time wage in the county where the data center is located. A qualifying data center must also certify to DCEO, within 90 days after beginning service, that it is carbon neutral or has attained certification as a green building under recognized national standards, and must have a project labor agreement approved by DCEO. A qualifying data center may receive a State income tax credit equal to 20% of the wages paid to full- or part-time employees of its construction contractor if the data center construction project is located in an economically distressed area. Tax exemptions are renewable every 5 years for a maximum of 20 years. The rules also outline the program application process, the required memoranda of understanding (MOU) between DCEO and participating businesses, consequences of noncompliance with an MOU, and the appeal process for participants appealing a DCEO finding of noncompliance. Those affected by this rulemaking include small municipalities in which data centers may be located and small

Emergency Rules

■ COVID-19 TRAINING

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to Assisted Living and Shared Housing Establishment Code (77 IAC 295; 46 Ill Reg 5333), Sheltered Care Facilities Code (77 IAC 330; 46 Ill Reg 5342), Illinois Veterans' Homes Code (77 IAC 340; 46 Ill Reg 5357), Intermediate Care for Developmentally Disabled Facilities Code (77 IAC 350; 46 Ill Reg 5367), Community Living Facilities Code (77 IAC 370; 46 Ill Reg 5384), Specialized Mental Health Rehabilitation Facilities Code (77 IAC 380; 46 Ill Reg 5395) and Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; 46 Ill Reg 5403), all effective 3/13/22 for a maximum of 150 days, continuing policies enacted in previous emergency rules that expired 3/12/22. These emergency rules require frontline clinical and management staff at the regulated facilities to undergo free COVID-19 training provided by the federal Centers for Medicare & Medicaid Services. Persons hired after 1/31/21 must complete the training within 14 days after hiring. At least 50% of staff who were hired on or before that date must have completed training by 2/28/21 and all staff hired prior to 1/31/21 must have completed training by 3/31/21.

Topics addressed in the training program include infection control, personal protective equipment, disinfection, screening, and caring for individuals with dementia during a pandemic. Additional topics addressed in training for management staff include emergency preparedness and surge capacity, emotional health of residents and staff, telehealth for nursing homes, and preparing the facility's vaccine delivery system. Frontline staff required to complete this training include facility medical directors and nursing directors, treating physicians, nurses, aides, rehabilitation coordinators, social service directors, and any licensed physical, occupational or speech therapists. Volunteers, students, contractors, consultants and caregivers who provide or engage in direct care or services to residents on behalf of a facility are also considered frontline staff and must complete the training program. Those affected by these emergency rules include long term care facilities, specialized mental health facilities, and facilities for the developmentally disabled.

Questions/requests for copies of the 7 DPH emergency rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

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Proposed Rulemakings

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businesses providing construction or other services to these centers.

Questions/requests for copies/comments through 5/9/22: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, jolene.clarke@illinois.gov

■ CANNABIS DISPENSARIES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to Cannabis Regulation and Tax Act (68 IAC 1291; 46 Ill Reg 5127) implementing Public Act 102-98, which requires DFPR to issue at least 50 additional Conditional Adult Use Dispensing Organization Licenses with license allocations determined by lottery on or before 12/21/22. The rulemaking outlines the application and selection process for the 2022 license lottery, including the application fee (\$20); license distribution by federal Bureau of Labor Statistics (BLS) regions and number of licenses to be distributed per BLS region; and the criteria for qualifying as a social equity applicant (individual/entity adversely affected by enforcement of past cannabis laws or located in a disproportionately impacted area marked by economic distress and a high rate of arrests for cannabis related offenses). Applicants may submit only one application per region and may not apply in more than one region. Procedures for proving social equity applicant eligibility,

timelines for submission and review of applications, and procedures for challenging a DFPR finding are included. Other provisions address the penalties and corrective actions required if two or more applications include the same principal officer, actions to be taken in the event of a principal officer's death, and restrictions placed upon a conditional license. Those affected by this rulemaking include current or potential holders of cannabis dispensing organization licenses.

DFPR HEARINGS

DFPR also proposed amendments to the Parts titled Currency Exchange Act (38 IAC 120; 46 Ill Reg 5032), Debt Management Service Act (38 IAC 140; 46 Ill Reg 5039), Debt Settlement Consumer Protection Act (38 IAC 145; 46 Ill Reg 5046), Sales Finance Agency Act (38 IAC 160; 46 Ill Reg 5053), Illinois Credit Union Act (38 IAC 190; 46 Ill Reg 5061), Illinois Development Credit Corporation Act (38 IAC 195; 46 Ill Reg 5074), Financial Institutions Code (38 IAC 200; 46 Ill Reg 5078), and Title Insurance Act (50 IAC 8100; 46 Ill Reg 5101) that repeal separately established administrative hearing rules for each Part. DFPR's combined hearing rules for the Divisions of Banking and Financial Institutions (38 IAC 100) have replaced the rules contained within this Parts.

Questions/requests for copies/comments on the 9 DFPR rulemakings through 5/9/22: Craig Cellini, DFPR, 320 West

Washington St., 2nd Floor, Springfield IL 62786, 217/785-0813, fax: 217/557-4451.

■ SALES & USE TAXES

The DEPARTMENT OF REVENUE proposed amendments to Retailers' Occupation Tax (86 IAC 130; 46 Ill Reg 5162), Service Occupation Tax (86 IAC 140; 46 Ill Reg 5178), Use Tax (86 IAC 150; 46 Ill Reg 5187), and Service Use Tax (86 IAC 160; 46 Ill Reg 5197), clarifying the use of verified credits that DOR issues to taxpaying entities when it is evident from the tax return that the taxpayer has overpaid sales, service or use taxes. (A credit issued after the taxpayer proves to DOR that an overpayment occurred is known as a credit memorandum.) A verified credit can be rolled into a taxpayer's account to offset sales, service or use tax liability, or can be converted to a credit memorandum at any time (previously, DOR allowed conversion only within 3 ½ years after the verified credit arose). No interest will be paid on a verified credit that is converted to a credit memorandum. Businesses that pay sales, service or use taxes may be affected.

Questions/requests for copies/comments on the 4 DOR rulemakings through 5/9/22: Thomas Grudichak, DOR, 101 W. Jefferson St., Springfield, IL 62794.

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Proposed Rulemakings

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■ COMMERCIAL FISHING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to the Part titled Commercial Fishing and Musseling in Certain Waters of the State (17 IAC 830; 46 Ill Reg 5149) changing areas open to commercial fishing in the Ohio River and correcting references to State and federal regulations.

Questions/requests for copies/comments through 5/9/22: John Fischer, DNR, One Natural Resources Way, Springfield IL 62702, 217/782-1809.

AIDS DRUG ASSISTANCE

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to AIDS Drug Assistance Program (77 IAC 692; 46 Ill Reg 5157) updating the income eligibility threshold for the program (300% of the Federal Poverty Level) to reflect the most recent update of FPL figures.

Questions/requests for copies/comments through 5/9/22: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

STATE FACILITIES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to the Part titled Acquisition, Management and Disposal of Real Property (44 IAC 5000; 46 Ill Reg 4990) that simplify the cost analysis process for proposed improvements to State properties that are leased from another owner. Instead of requiring an agency to choose from among multiple possible means of controlling the cost of an improvement project (e.g., soliciting at least 3 bids, using an in-house work crew), CMS shall provide “a fair and reasonable (cost) analysis” for any project costing more than \$50,000. The rulemaking also requires all leased State properties to be accessible to persons with disabilities and

removes the process for requesting and obtaining exceptions.

STATE EMPLOYMENT

CMS also proposed amendments to the Part titled Merit and Fitness (80 IAC 302; 46 Ill Reg 5000) implementing PA 102-617. The rulemaking removes addiction to narcotics or alcohol as a categorical reason for removing a State employment candidate from an eligible list and requires that a person removed from an eligible list for an alleged attempt at deception or fraud be given an opportunity to appeal this determination and provide evidence in their favor.

Questions/requests for copies/comments on the 2 CMS rulemakings through 5/9/22: Sean Coombe, CMS, 313 South Sixth St., 3rd Floor, Springfield IL 62701, 217/557-3761, sean.coombe@illinois.gov

Joint Committee on Administrative Rules

Senator Bill Cunningham, *co-chair*
Senator John F. Curran
Senator Donald DeWitte
Senator Kimberly Lightford
Senator Tony Muñoz
Senator Sue Rezin

Representative Tom Demmer
Representative Michael Halpin
Representative Frances Ann Hurley
Representative Steven Reick
Representative Curtis Tarver, II
Representative Keith Wheeler, *co-chair*

Kim Schultz
Executive Director

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 appear in next week's *Illinois Register* and be considered at the April 19, 2022, JCAR meeting in Chicago. 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 REVENUE

Retailers' Occupation Tax (86 IAC 130; 46 III Reg 1784) proposed 1/28/22

SECRETARY OF STATE

Issuance of Licenses (92 IAC 1030; 45 III Reg 14329) proposed 11/19/21

DEPT OF PUBLIC HEALTH

Practice and Procedure in Administrative Hearings (77 IAC 100; 45 III Reg 16176) proposed 12/27/21

Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; 46 III Reg 299) proposed 1/3/22

JCAR Meeting Action

At its 3/22/22 meeting, the Joint Committee on Administrative Rules took the following actions. All other rulemakings on the agenda received No Objection.

RECOMMENDATIONS

With respect to the Department of Public Health rulemaking titled Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 45 III Reg 15216), JCAR recommends that the Department revisit the requirements for Infection Preventionists in 6 months to evaluate whether additional details regarding the submission of infectious disease surveillance testing and outbreak response can be added to Section 300.696, and whether commenter suggested changes to the rule could be made without jeopardizing the quality of resident care if facilities are having a difficult time complying with the detailed requirements of this rule.

With respect to the Department of Public Health emergency rulemakings titled Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 46 III Reg 3243), Intermediate Care for Developmentally Disabled Facilities Code (77 IAC 350; 46 III Reg 3315), and Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; 46 III Reg 3387), JCAR recommends that

DPH review the COVID-19 testing and vaccine requirements contained in these emergency rulemakings and consider: 1) aligning the requirements to the current CDC guidance for long term care providers; 2) incorporating the suggestions of public commenters; and 3) the impact testing and vaccine requirements have on long term care provider staffing and costs.

EXTENSIONS

JCAR, with the concurrence of the respective agencies, extended the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the April 19 JCAR meeting:

Chief Procurement Officer for General Services, Chief Procurement Officer for General Services Standard Procurement (44 IAC 1; 45 III Reg 20193)

Department of Insurance, Notice of Non-Compliance with Workers' Compensation Act (50 IAC 2915; 45 III Reg 16150)

Illinois State Police, Child Murderer and Violent Offender Against Youth Registration Act (20 IAC 1283; 46 III Reg 848)