

*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

### NURSING HOMES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to Medical Payment (89 IAC 140; 46 Ill Reg 10143) and Reimbursement for Nursing Costs for Geriatric Facilities (89 IAC 147; 46 Ill Reg 10183) implementing Public Act 102-1035. Amendments to Part 140 institute a new licensing fee and nursing home provider assessment tax. The current licensing fee of \$1.50 per licensed nursing bed day and assessment of \$6.07 per occupied bed day will be terminated effective 6/30/22. Effective 7/1/22, assessment amounts will vary (from \$10.67 to \$22.40 per resident day) based on the number of paid Medicaid resident days per annum. For non-profit facilities without Medicaid certified beds, the assessment will be \$7 per occupied bed day. HFS will update assessment amounts

### 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*.

[Emergency Rules, Page 3](#)  
[JCAR Meeting Action, Page 4](#)

annually and publish each facility's updated rates on its website at least 30 days before they take effect. The assessments that will be effective on 7/1, and all updated assessments thereafter, will be calculated based on HFS' records of Medicaid resident days for each facility for the year ending 9 months

(cont. page 3)

## Adopted Rules

### LONG TERM CARE

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 45 Ill Reg 15442) effective 5/31/22, and to Sheltered Care Facilities Code (77 IAC 330; 45 Ill Reg 15250) and Illinois Veterans' Homes Code (77 IAC 340; 45 Ill Reg 15270) effective 6/2/22, that require these facilities to adopt policies for regular testing of water systems for Legionella bacteria (which cause Legionnaire's Disease). These policies must specify how frequently testing will be conducted; include risk assessment and testing protocols; include a system for documenting test results and corrective actions; and be based on national standards established by the American Society of Heating, Refrigerating and Air Conditioning

(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](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://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)

Engineers (ASHRAE) for preventing the growth and spread of Legionella in building water systems. Nursing homes are affected by these rulemakings.

## ■ HOME HEALTH SERVICES

DPH also adopted amendments to Home Health, Home Services, and Home Nursing Agency Code (77 IAC 245; 45 Ill Reg 16210) effective 5/31/22 that change references to a physician to “health care professional” in various Sections for consistency throughout the Part. The rulemaking also updates staff responsibilities for home services workers with regard to activities of daily living and updates the required training and competency evaluations for skin care, ambulation, bathing, hair and nail care, positioning and transfer of clients, and respiratory care. Since 1<sup>st</sup> Notice, DPH has clarified that the definition of a health care professional includes advanced practice registered nurses and physician assistants licensed under their respective Acts; clarified which services can be provided by home services workers; removed references to “client specific” competency evaluations; clarified qualifications for staff training; and removed a requirement that persons training non-medical home services workers be certified or licensed as nursing assistants or nurses. Agencies that provide home health, nursing, or other home services and their employees are affected.

## ICF/DD FACILITIES

DPH adopted amendments to Intermediate Care for Developmentally Disabled Facilities Code (77 IAC 350; 46 Ill Reg 2419) effective 6/2/22 that reflect the change in the Part’s statutory authority from the Nursing Home Care Act to the ID/DD Community Care Act and implement numerous updates. The rulemaking revises language throughout the Part to conform to the ID/DD Community Care Act and adds criteria and procedures for determining whether a facility is a “distressed facility” under the Act. The distressed facility designation will be based on the type and number of violations or deficiencies resulting in harm to residents that the facility has committed in the previous 24 months. DPH will publish a list of distressed facilities that will be reviewed and updated on a quarterly basis. A distressed facility may be placed under the management of a monitor or receiver by DPH, or the owners may contract with an independent consultant to make improvements. Distressed facilities cannot admit new residents until a plan of correction has been implemented, and will be removed from the list when they have passed at least 2 consecutive annual surveys without any violations of sufficient severity or frequency to warrant the distressed facility designation. The rulemaking also establishes Type AA (directly causing the death of a resident) and Type C (minimal risk of harm to residents) categories of violations in addition

to the existing Type A and B violations and institutes a schedule of monetary penalties, ranging from \$175 for Type C violations in small facilities of fewer than 17 residents, up to \$25,000 for a Type AA violation in a large facility with over 100 residents. Other provisions establish procedures for assessing and appealing penalties; institute whistleblower protections and statutory limitations on experimental research or treatment involving ICF/DD residents; require child abuse/neglect and sex offender background checks for prospective employees (in addition to checks of the DPH Health Care Worker Registry); add provisions for care and treatment of sexual assault survivors; and update definitions, terminology and incorporations by reference. Changes since 1<sup>st</sup> Notice remove references to a mentorship program that DPH has not yet instituted in rule and update life-safety codes and Centers for Disease Control and Prevention guidelines to the most current versions.

*Questions/requests for copies of the 5 DPH rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield, IL 62701, 217/782-1159, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)*

## ■ STATE PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES (CPO-GS) adopted

# Proposed Rulemakings

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(cont. from page 1)

previously. (For example, the assessment effective on 7/1/22 will be based on Medicaid resident days for the 12-month period from 10/1/20 through 9/30/21.) This assessment will be due and payable monthly. This rulemaking also requires nursing homes, effective 1/1/23, to notify HFS (via its cost reports or other means) of any individual owners or organizations that are part of a limited liability company and the percentage ownership of each owner. The Part 147 rulemaking institutes the Patient Driven Payment Model (PDPM) reimbursement system developed by the federal Centers for Medicare and Medicaid Services (CMMS) and phases out the current Resource Utilization Groups-IV (RUG-IV) system. Base per diem rates will be increased by \$7 effective 7/1/22. From 7/1/22 through 9/30/23, the nursing component of reimbursement rates will be based on a combination of the RUG-IV and PDPM systems; beginning 10/1/23, the nursing component will be entirely based on PDPM. Facilities will also receive add-on payments based on their levels of nurse staffing and their percentage of Medicaid residents. Facilities may also receive incentive payments for hiring, retention and promotion of Certified Nursing Assistants as well as quality incentive payments based on the facility's CMMS Star Rating. Finally, the rulemaking requires Medicaid Managed Care Organizations (MCOs) to pay nursing facilities within 7 business

## ■ PUBLIC LANDS

The DEPARTMENT OF NATURAL RESOURCES adopted emergency amendments to the Part titled Open Space Lands Acquisition and Development Grant Program (17 IAC 3025; 46 Ill Reg 10700) effective 6/3/22 for a maximum of 150 days. An identical proposed amendment appears in this week's *Illinois Register* at 46 Ill Reg 10206. The emergency and proposed rulemakings remove a requirement that OSLAD grant applications be submitted to the Natural Resources Advisory Board (NRAB) for review and recommendation before being submitted to the DNR Director. DNR states that by eliminating NRAB review (which is not required by statute) processing of OSLAD grant applications will be expedited and projects that have been delayed due to supply shortages and COVID-19 restrictions will be able to proceed during the 2022 summer and fall construction season. Those affected by this emergency rule include units of local government, including park districts, that have applied for OSLAD grants.

days after the MCO receives its payment from HFS, or be subject to financial penalties.

*Questions/requests for copies/ comments on the 2 HFS rulemakings through 8/1/22: Steffanie Garrett, HFS, 201 S.*

## Emergency Rules

*Questions/requests for copies/ comments on the proposed rulemaking through 8/1/22: Renee Snow, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.*

## ■ OPTOMETRISTS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted an emergency amendment to the Part titled Optometric Practice Act of 1987 (68 IAC 1320; 46 Ill Reg 10687) effective 6/3/22, modifying an earlier emergency rule effective 3/25/22 for the remainder of its 150-day term. The emergency amendment clarifies that all required continuing education hours may be earned online and removes requirements that certain types of CE or minimum hours be earned via in-person instruction. Optometrists are affected by this emergency amendment.

*Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington, 2nd Floor, Springfield IL 62786, 217/785-0810, Fax: 217/557-4451.*

*Grand Ave. East, 3<sup>rd</sup> Floor, Springfield IL 62763-0002, HFS.Rules@illinois.gov*

## Adopted Rules

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(cont. from page 2)

amendments to the Part titled Chief Procurement Officer for General Services Standard Procurement (44 IAC 1; 45 Ill Reg 10293) effective 6/2/22 to reflect 7 Public Acts enacted since 2013, update the structure and procurement authority of the CPO-GS, revise various definitions, clarify certain procedures, and provide direction to State agencies regarding procurement matters. The rulemaking raises the small purchase limit (below which competitive bidding is not required) to \$100,000, removes the \$20,000 limit on professional and artistic services procurements that do not require bidding, and addresses adjustments for inflation and periodic review by the various Chief Procurement Officers and the Procurement Policy Board. Procurements of legal, accounting, medical/dental and clinical psychology services are no longer required to be procured as professional and

artistic services; factors for evaluating these procurements are included. Statutory exemptions from the Illinois Procurement Code for procurements that are necessary for the implementation of the Cannabis Regulation and Tax Act by the Departments of Public Health, Agriculture, Financial and Professional Regulation, Human Services, and Commerce and Economic Opportunity are implemented. The Illinois Procurement Bulletin is replaced with an e-procurement system and procedures for accepting and opening electronic bids, offers, and other procurement-related submissions are specified. Additionally, the CPO-GS' website replaces the official State newspaper as a method of supplemental notice. Numerous other amendments address issues such as renewals and emergency procurements, sole source procurement, documentation and review of property leases, preference for Illinois products and vegetable-

based inks, small business set-asides, financial disclosures, conflicts of interest, joint/cooperative purchasing, cancellation of contracts, and suspension and debarment procedures. Since 1<sup>st</sup> Notice, CPO-GS has clarified exceptions to the Part, removed references to personal service contracts, specified that prequalification does not guarantee that a contract will be awarded, removed a provision that would have allowed the CPO-GS to issue "policies and procedures" outside of rule to further implement the Government Joint Purchasing Act, and made other corrections and updates. Those affected by this rulemaking include small businesses seeking State contracts.

*Questions/requests for copies: Alexandria Wilson, CPO-GS, 401 S. Spring St., Room 712, Stratton Office Building, Springfield IL 62706, 217/685-0568, [Alexandria.Wilson@Illinois.gov](mailto:Alexandria.Wilson@Illinois.gov)*

## JCAR Meeting Action

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At its 6/14/22 meeting, the Joint Committee on Administrative Rules took the following actions:

### EXTENSIONS

JCAR, with the concurrence of the respective agencies, extended the Second Notice period for the following rulemakings an additional 45 days. These rulemakings will be considered again at the July 12 JCAR meeting.

Department of Children and Family Services, Licensing Standards for Group Homes (89 IAC 403; 46 Ill Reg 657) and Licensing Standards for Child Care Institutions and Maternity Homes (89 IAC 404; 46 Ill Reg 661)

Illinois Liquor Control Commission, The Illinois Liquor Control Commission (11 IAC 100; 45 Ill Reg 16154)

## Second Notices

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The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings were considered at the June 14 JCAR meeting. Rulemakings received next week will be considered at the July 12, 2022 meeting in Chicago.

### IL LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

Surcharge Fund Financial Assistance (20 IAC 1700; 46 Ill Reg 6196) proposed 4/22/22

Law Enforcement Camera Grant Act (20 IAC 1705; 46 Ill Reg 6202) proposed 4/22/22

## Joint Committee on Administrative Rules

<b>Senator Bill Cunningham, <i>co-chair</i></b>	<b>Representative Tom Demmer</b>
<b>Senator John F. Curran</b>	<b>Representative Michael Halpin</b>
<b>Senator Donald DeWitte</b>	<b>Representative Frances Ann Hurley</b>
<b>Senator Kimberly Lightford</b>	<b>Representative Steven Reick</b>
<b>Senator Tony Muñoz</b>	<b>Representative Curtis Tarver, II</b>
<b>Senator Sue Rezin</b>	<b>Representative Keith Wheeler, <i>co-chair</i></b>

**Kim Schultz**  
**Executive Director**