

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

■ MENTAL HEALTH

The DEPARTMENT OF HUMAN SERVICES proposed a new Part titled Recovery and Mental Health Tax Credit (59 IAC 130; 47 Ill Reg 13443) implementing the Recovery and Mental Health Tax Credit Act [35 ILCS 50]. The Act provides income tax credits to qualified employers who hire, on or after 1/1/23, individuals diagnosed with mental illness and/or substance use disorder that are in "a state of wellness and recovery". An eligible individual is in a state of wellness and recovery when signs and symptoms of active substance use disorder or mental illness have abated and the individual is currently undergoing or has completed treatment for the disorder or illness. In order to qualify for the credit (\$1 for each hour an eligible individual works during the calendar year for which it is claimed, up to a maximum of \$2,000 per eligible individual), an

employer must receive a certificate from DHS verifying that it provides "a recovery supportive environment"; has a formal working relationship with a mental health provider/facility or substance use disorder treatment provider; provides reasonable accommodation to employees with mental illness or substance use disorder at no cost to the individual; and meets all other criteria established by DHS. An employer may determine an employee's recovery status for purposes of this credit only after the employee has been hired, and the employee's disclosure of their status must be entirely voluntary. Employers must apply for the credit annually, although they do not have to resubmit documentation of a recovery-supportive environment once that has been established. Evidence of a recovery supportive

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Adopted Rules

■ FOID APPEALS

The FIREARM OWNER'S IDENTIFICATION CARD REVIEW BOARD adopted amendments to the Part titled Reinstatement of Firearm Rights (20 IAC 3500; 47 Ill Reg 5870) effective 9/8/23, replacing emergency amendments that were effective 4/17/23 for a maximum of 150 days. The rulemaking establishes appeal procedures for persons who are denied a Firearm Owner's Identification (FOID) card upon applying to the Illinois State Police. The FOID Review Board will function as an independent agency, with ISP appointing an Executive Director and a liaison to the Board. The Board must meet at least quarterly, and at the call of its chair, to consider appeals from persons whose FOID applications have been denied. Persons

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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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whose FOID applications are denied, or whose FOID cards are suspended or revoked, based on a criminal or arrest record, mental health facility commitment within the past 5 years, mental or developmental disability, or “clear and present danger” determination must file their appeals with the Board within 90 days after the FOID denial, suspension or revocation. The Board must issue a decision within 45 days after receiving a complete appeal. An expedited appeal process is available for law enforcement officers seeking reinstatement of a FOID card. Documents that must accompany an appeal include court records, psychiatric or counseling records, forensic evaluations (for persons denied on clear and present danger grounds), and at least two character references. If the appeal is based on an alleged records inaccuracy, the appellant has had a temporary firearm possession prohibitor expire (e.g., more than 5 years have passed since commitment to a mental health facility), or a disqualifying criminal conviction has been expunged or pardoned, the individual must contact ISP rather than the Board. Other provisions address hearing procedures, circumstances in which a Board member must refrain from voting on or presiding over a particular appeal due to a conflict of interest, and requirements for the Board to report to the Governor and General Assembly on a monthly basis. Since 1st Notice, the FOID Card

Review Board has added web links for the necessary appeal forms. Those affected by this rulemaking may include local law enforcement officers or private security personnel whose FOID applications have been denied or FOID cards revoked.

Questions/requests for copies: Lauren Raymond, Executive Director, FOID Card Review Board, 801 S. Seventh St., 400 N, Springfield IL 62703, 773/797-6877.

■ Rx MONITORING

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Electronic Prescription Monitoring Program (77 IAC 2080; 46 Ill Reg 16961) effective 9/8/23 that implement Public Acts 100-125, 100-564, 100-1093, and 101-414, along with other updates in program administration and procedure. The rulemaking, which has undergone numerous revisions since 1st Notice, updates the definition of the Illinois Prescription Monitoring Program (ILPMP) as an electronic database that collects, tracks, and stores information regarding retail prescriptions of controlled substances (Schedule II through V) and other drugs of interest and also removes a 12-month limit on retaining prescription information. Medications that interact with controlled substances, but are not themselves controlled substances, may also be included in the ILPMP. Every prescriber who possesses an Illinois Controlled Substance License must register with the

ILPMP, and facilities that dispense or administer controlled substances may participate in additional data sharing with ILPMP to identify patients at risk of addiction. A prescriber or dispenser may appoint up to 5 (changed since 1st Notice from 3) designees to access the ILPMP, who must be registered nurses, licensed practical nurses, pharmacy technicians, certified medical assistants, dental hygienists, student pharmacists, or dental assistants (the latter two have been added since 1st Notice). Hospitals, long term care facilities, opioid treatment facilities and other facilities are not limited in the number of designees they may appoint for this purpose. Dispensers must transmit required ILPMP data for each prescription (or a zero report if no prescriptions were dispensed that day) by the end of the business day, and hospitals must also report any discharge or outpatient prescription for a 72-hour or greater supply of medication by the end of the business day (formerly, the reporting deadline for all prescriptions was the following business day). The \$100 per day fine for willful noncompliance with ILPMP reporting requirements shall be assessed by DHS on a monthly basis. (Since 1st Notice, DHS added provisions for warning and notifying prescribers and software vendors of impending fines for noncompliance.) The fine for failure to comply with electronic health records (EHR)-to-ILPMP integration requirements on the

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Proposed Rulemakings

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environment can include a documented training program for management and human resources personnel on supporting employees in recovery; engagement in community-based prevention or recovery-focused activities at least once a year; or certification as a recovery supportive workplace by a non-profit, third-party recovery organization. An eligible employee must work for the employer at least 500 hours per calendar year. Documentation of an eligible employee's recovery must be maintained confidentially by the employer and may be requested by DHS for audit purposes. Applications for credits will be received between 1/1 and 3/1 annually and will apply to taxes paid for that calendar year. The certificate verifying eligibility for the credit must be attached to the employer's income tax return submitted to the Department of Revenue. The credit cannot reduce the taxpaying employer's liability to less than zero and the total credits awarded by DHS per year cannot exceed \$2 million. Businesses that hire or have recently hired eligible individuals are affected by this rulemaking.

Questions/requests for copies/ comments through 11/6/23: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772, DHS.AdministrativeRules@illinois.gov

■ OPTOMETRISTS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Optometric Practice Act of 1987 (68 IAC 1320; 47 Ill Reg 13402) that allow most continuing education (CE) to be completed online either through live or pre-recorded presentations beginning 4/1/24. However, online courses cannot be counted toward out of state CE credit. Previous limits on the number of hours of CE that can be completed online are removed. New CE requirements, for all license renewals after 1/1/23, include sexual harassment prevention and implicit bias awareness training (required for all DFPR healthcare licensees in 68 IAC 1130) and, for licensees who hold controlled substance licenses, opioid education required by the Illinois Controlled Substances Act. These courses must be repeated each license renewal period. The rulemaking also removes specific time requirements for training courses in diagnostic and topical ocular pharmaceutical agents and therapeutic clinical procedures. Applicants for licensure will now be required to complete a comprehensive course in ocular pharmaceutical agents (currently, a 120-hour course) and prevent "evidence satisfactory" to DFPR of training in these subjects within 3 years prior to application. Other changes allow optometrists with controlled substance licenses to prescribe up to a 30-day supply (currently, 72 hours) of Schedule III

through V controlled substances; allow oral steroids to be prescribed for no more than 7 days; remove fees for wall certificates (which are no longer being issued) and for producing a roster (as the information is available online), and no longer require the Director to notify the Board of variances. Optometrists and their employers are affected by this rulemaking.

■ REAL ESTATE

DFPR also proposed amendments to the Part titled Real Estate License Act of 2000 (68 IAC 1450; 47 Ill Reg 13429) increasing licensing fees for real estate brokers and agents and licensing education course providers. For residential leasing agent licenses, the initial fee is \$100 (currently \$75) and the renewal fee is \$150 per renewal cycle (currently, \$50 per year). Broker licenses are increasing from \$125 to \$150 for an initial license and from \$75 per year to \$200 per renewal cycle for renewals. The fee to transfer from a managing broker to a broker license is increasing from \$125 to \$150. For real estate auction certification, the initial licensing fee remains unchanged at \$125 but renewal fees are increasing from \$150 per year to \$300 per renewal. Licensing fees are also being increased for corporations, partnerships, and limited liability corporations/partnerships; education providers and pre- and post-licensing courses; and

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part of a facility, pharmacy, or EHR vendor is raised to \$100 per day (formerly, \$50 per month), also assessed on a monthly basis. Fines will not be imposed if delays in the integration process are due to DHS' limitations or lack of resources. Providers or pharmacies who have no EHR system and prescribers who do not dispense more than 150 prescriptions (changed since 1st Notice from 25, to reflect provisions of PA 103-425) every 12 months are exempt from the connection/integration requirements. If an unsolicited report of potential "medication shopping" by an individual to 5 (formerly, 3) or more unrelated prescribers or pharmacies within a 6-month (formerly, 30 day) period is sent by DHS to a prescriber, the same report must also be sent to the applicable dispensing pharmacies. The rulemaking also changes the composition of the ILPMP Advisory Committee to include a pain specialist physician and a family or primary care physician (in addition to the 4 physicians currently included), 2 advanced practice registered nurses (formerly 1), and a clinical representative from a statewide organization representing hospitals. It requires the Advisory Committee to review ILPMP's website and various communications on a semi-annual (formerly, quarterly) basis. The Advisory Committee's Peer Review Subcommittee is increased from 5 to 10 members, who must now include 3 (formerly

2) pharmacists, a dentist, an APRN, a physician assistant, and an optometrist. The rulemaking requires the Peer Review Subcommittee to meet at least semi-annually and clarifies its review functions concerning prescribers or dispensers that do not conform to current professional standards. Other provisions outline the registration and approval process for prescribers, dispensers and their designees to gain access to the ILPMP; establish a process for ILPMP access by APRNs with full practice authority; require prescription errors to be reported to the dispensing pharmacy and corrected within 7 days; and allow confidential information from the ILPMP database to be released to the Department of Children and Family Services. Since 1st Notice, DHS removed a requirement that hospitals and other medical facilities report injury and accident information to ILPMP for comparison and matching with controlled substance prescription data. DHS also removed provisions stating that it may develop a fee structure to cover the costs of maintaining secure one-to-one connections between the ILPMP and EHR systems; updated or revised various definitions; and made changes to reflect the enactment of PA 103-425, which expands the categories of prescribers exempt from connection/integration requirements. Those affected by this rulemaking include physicians, dentists, other healthcare providers and pharmacies.

DISABILITY SERVICES

DHS also adopted amendments to the Part titled Comparable Benefits (89 IAC 567; 47 Ill Reg 6250) effective 9/7/23 defining comparable benefits (to those offered by the DHS Vocational Rehabilitation Program) as those provided or paid for, entirely or partially, by other federal, State or local agencies, private health insurance or employee benefits; available to an individual when needed to ensure progress toward an employment outcome; and commensurate to service that the individual would otherwise receive from DHS. Comparable benefits do not include merit-based awards or scholarships or student loans. The rulemaking also clarifies that Vocational Rehabilitation customers seeking medical or physical restoration services must apply for Medicaid and complete the eligibility determination process unless there is clear evidence of Medicaid ineligibility, which may include instances in which a customer's income or assets exceed eligibility limits or the customer is seeking services not covered by Medicaid. (A customer may remain eligible for VR services even if they are not eligible for Medicaid.)

DHS also adopted amendments to the Part titled Services (89 IAC 590; 47 Ill Reg 6255) effective 9/7/23 that remove restrictions on payment for summer school instruction; provide that VR

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customers who must travel or obtain temporary lodging in order to achieve an employment outcome will be reimbursed for mileage at the full rate (formerly, 50% of the rate) established for State employee travel by the Travel Regulation Council; and clarify that customers in residence at a college or training program will be reimbursed for travel to and from another location for required training, but will not be reimbursed for travel to and from their homes. The rulemaking also clarifies what are considered “increased costs” in excess of normal living expenses, for which DHS will reimburse customers if these increased costs are attributable to participation in VR services or in an eligibility assessment. Amounts deemed normal living expenses for food, housing and clothing, as determined by the DHS Division of Rehabilitation Services, will not exceed the monthly SNAP allotment for a one-person household for food or the TANF payment level for a single adult for housing. Reimbursement at State travel and lodging rates for increased costs that are due to the customer having to leave home to obtain services will be limited to 2 (formerly 4) weeks. Since 1st Notice, DHS has clarified its benchmarks for normal food and housing costs to be paid by the customer.

Questions/requests for copies of the 3 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave.

East, 3rd Floor, Springfield IL 62762, 217/785-9772.

BIRTH CENTERS

The DEPARTMENT OF PUBLIC HEALTH adopted a new Part titled Birth Center Licensing Code (77 IAC 264; 47 Ill Reg 1846) effective 9/8/23, implementing PA 102-518, the Birth Center Licensing Act [210 ILCS 170] and PA 102-964, which establishes licensing for certified professional midwives. The Part requires all birth centers in existence as of 8/20/21 (the effective date of the Birth Center Licensing Act) to obtain a license under this Part by 9/1/25, and to obtain accreditation from The Joint Commission or the Commission for Accreditation of Birth Centers within 2 years after becoming licensed. Birth centers are defined

in the Act and in this Part as non-hospital sites with 10 or fewer beds, in which births are planned to occur following uncomplicated, full-term, low-risk pregnancies, and in which clients and newborns stay for 48 hours or less following delivery. Each birth center must also have a transfer agreement with a hospital that allows clients and/or infants who develop complications or require an emergency cesarean section to be admitted to the hospital within 30 minutes and also addresses clinical criteria for determining whether a transfer is necessary. Many of the rules in this Part, including service, equipment and construction standards, have been carried over from the existing Birth Center Demonstration Program

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Proposed Rulemakings

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continuing education providers and course licenses. Real estate agents, brokers, and licensing instructors are affected.

Questions/requests for copies/ comments on the 2 DFPR rulemakings through 11/6/23: Craig Cellini, DFPR, 320 W. Washington St. 2nd Fl., Springfield IL 62786, 217/785-0810, fax 217/ 557-4451, Craig.Cellini@illinois.gov

UNIVERSITIES EMPLOYMENT

The STATE UNIVERSITIES CIVIL SERVICE SYSTEM proposed

amendments to the Part titled State Universities Civil Service System (80 IAC 250; 47 Ill Reg 13457) that add a definition of law enforcement personnel and remove references to work areas within class specifications, which are no longer being used.

Questions/requests for copies/ comments through 11/6/23: Gail Schiesser, SUCSS, 1717 Philo Road., Suite 24, Urbana IL 61802, 217/278-3150, rulemaking@sucss.illinois.gov

Adopted Rules

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Code (77 IAC 265). Since 1st Notice, DPH has added provisions allowing birth centers to admit clients for a trial of labor/vaginal birth after cesarean (TOLAC/VBAC) if they have had only one previous cesarean 19 months or more prior to the current delivery, sign an informed consent form outlining the potential risks of TOLAC/VBAC to the client and newborn, and meet other obstetrical risk factor criteria. DPH has also updated its list of medical and obstetrical risk factors that birth centers will use to determine whether or not to admit a client, and added provisions from the Reproductive Health Act allowing birth centers to provide other services within their practitioners' licensing and scope of practice.

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

■ INCOME TAXES

The DEPARTMENT OF REVENUE adopted amendments to Income Tax (86 IAC 100; 46 Ill Reg 20172) effective 9/11/23, implementing PA 101-31, which makes winnings from sports wagering in Illinois subject to Illinois income tax for tax years ending on or after 12/31/21. The rulemaking also requires Illinois income tax be withheld from winnings for both Illinois residents and non-residents, provided that the payer is required to withhold tax under the federal Internal Revenue Code. Licensed sports wagering establishments are affected.

Questions/requests for copies:
Brian Fliflet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

HRC PROCEDURES

The ILLINOIS HUMAN RIGHTS COMMISSION adopted amendments to the Part titled Procedural Rules (56 IAC 5300; 47 Ill Reg 5611) effective 9/11/23 that clarify the effective dates of service for motions, orders, notices, and pleadings. Service of documents by mail is complete four days after the date of mailing while service in person or electronically is complete on the date of transmission.

Questions/requests for copies:
Evelio Mora, HRC, 160 N. LaSalle St., Suite N-1000, Chicago IL 60601, 312/814-6269, evelio.mora@illinois.gov

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 October 17, 2023, 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 FINANCIAL AND PROFESSIONAL REGULATION

Music Therapy Licensing and Practice Act (68 IAC 1316; 47 Ill Reg 1600) proposed 2/3/23

DEPT OF HUMAN SERVICES

Provider Requirements, Type Services, and Rates of Payment
(89 IAC 686; 47 Ill Reg 7038) proposed 5/26/23

DEPT OF PUBLIC HEALTH

Home Health, Home Services, and Home Nursing Agency Code
(77 IAC 245; 47 Ill Reg 8817) proposed 6/23/23

DEPT OF REVENUE

Retailers' Occupation Tax (86 IAC 130; 47 Ill Reg 10353) proposed 7/14/23

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

Public Information, Rulemaking and Organization (2 IAC 5350; 47 Ill Reg 7868) proposed 6/9/23

Joint Committee on Administrative Rules

Senator Cristina Castro
Senator Bill Cunningham, *co-chair*
Senator Donald DeWitte
Senator Dale Fowler
Senator Kimberly Lightford
Senator Sue Rezin

Representative Eva-Dina Delgado
Representative Jackie Haas
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Representative Dave Vella

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Executive Director