

THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

Proposed Rulemakings

• MIDWIVES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed a new Part titled Rules for the Licensed Certified Professional Midwife Practice Act (68 IAC 1345; 48 Ill Reg 7517) implementing Public Act 102-683 by establishing licensing procedures for licensed certified professional midwives (not to be confused with certified nurse-midwives who are licensed as nurses). This Part establishes procedures and requirements for licensure, license renewals, continuing education, restoration of licenses, and recordkeeping. Licensed certified professional midwives must be at least 21 years of age; have completed an accredited college-level midwifery education program that includes academic and clinical practice (or earned certification from the North American Registry of Midwives (NARM) by other means); be certified by the NARM; be certified in

cardiopulmonary resuscitation (CPR) and neonatal resuscitation; and complete the required licensing examination. All licenses are valid for 2 years and expire on October 31 of even-numbered years. The licensing fee for both initial licenses and renewals is \$500. At least 20 hours of continuing education (CE) will be required during each renewal cycle

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beginning with the 2028 renewal. CE sponsors must be approved by DFPR and pay a \$500 initial licensing fee and a \$250 renewal fee (State colleges, universities and community colleges are not subject to this fee). Licensed certified professional midwives may also employ midwife assistants whose duties are limited to routine tasks such as collecting patient information, drawing blood, and administering medications. This rulemaking also establishes definitions and standards

for what constitutes dishonorable, unethical or unprofessional conduct; establishes standards for determining rehabilitation when an individual seeks restoration of a license following disciplinary action; establishes application, renewal, and other fees; creates procedures and requirements for reporting adverse occurrences; and allows DFPR to grant variances from these rules on a case-by-case basis. Licensed professional midwives and their employers are affected.

Questions/requests for copies/comments through 7/8/24: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217-785-0810, fax 217-557-4451.

NURSING ASSISTANTS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Skilled

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days. **PROPOSED RULEMAKINGS:** Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days. **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/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.

QUESTIONS/COMMENTS: Submit mail, e-mail or phone calls to the agency personnel listed below each summary.

RULE TEXT: First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under "Illinois Register". Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

Proposed Rulemakings

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Nursing and Intermediate Care Facilities Code (77 IAC 300; 48 Ill Reg 7646), Sheltered Care Facilities Code (77 IAC 330; 48 Ill Reg 7663) and Illinois Veterans' Homes Code (77 IAC 340; 48 Ill Reg 7677) implementing Public Act 102-1037, which created a temporary (3-year) Certified Nursing Assistant Intern program for long-term care facilities. These rulemakings reflect statutory requirements for CNA Interns, who may perform limited duties under the direction of a supervisory nurse. Facilities that employ CNA Interns must have written policies specifying what tasks may be delegated to a CNA Intern and how they will be supervised and evaluated. If a CNA Intern performs any task outside the scope of their authorized duties, the facility must assign this task to appropriate personnel, correct any mistakes made, and ensure that a registered nurse conducts a thorough assessment of any resident affected by the work performed. No more than 15% of any resident's nursing and personal care time may be provided by a CNA Intern. All 3 rulemakings will be automatically repealed 3 years after their adoption.

Questions/requests for copies/comments on the 3 DPH rulemakings through 7/8/24: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217-782-1159, dph.rules@illinois.gov

▪ RADIOACTIVE MATERIAL

The ILLINOIS EMERGENCY MANAGEMENT AGENCY AND OFFICE OF HOMELAND SECURITY proposed amendments to Licensing of Radioactive Material (32 IAC 330; 48 Ill

Reg 7567), Medical Use of Radioactive Material (32 IAC 335; 48 Ill Reg 7606) and Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material (32 IAC 337; 48 Ill Reg 7636) implementing recent changes to regulations by the U.S. Nuclear Regulatory Commission. Amendments to Part 330 clarify various requirements for nuclear pharmacists and exemptions for specific licenses of broad scope. The Part 335 rulemaking simplifies the definition of a medical institution, updates cross references and incorporated materials, updates regulations for the use of sealed radiation sources, and requires sealed sources to be inspected before (currently, after) each use. Finally, amendments to Part 337 clarify procedures for conducting fingerprint background checks for individuals who have unescorted access to category 1 or category 2 quantities of radioactive material. Medical facilities that use radiation treatments or radioactive material are affected.

Questions/requests for copies/comments on the 3 IEMA-OHS rulemakings through 7/8/24: Traci Burton, IEMA-OHS, 1035 Outer Park Drive, Springfield IL 62704, 217-785-9860, Traci.Burton@illinois.gov

MEDICAL PAYMENT RATES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed an amendment to Medical Payment (89 IAC 140; 48 Ill Reg 7543) that adjusts HFS' schedule for notifying nursing facilities of their nursing, support and capital payment rates. Facilities shall be notified of their nursing rates quarterly (currently, no later than 30 days before the beginning of the rate quarter) and shall be notified of their support and capital rates annually (currently, no later than 30 days

before the beginning of the rate/fiscal year). Nursing facilities are affected.

Questions/requests for copies: Katie Hill, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

STATE TRAVEL

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed an amendment to Travel (80 IAC 2800; 48 Ill Reg 7512) implementing a provision of the Open Meetings Act. The amendment provides that a member of the Travel Regulation Council (which establishes travel reimbursement policy for all State agencies) may attend a meeting by video or audio conference when a quorum is physically present at the meeting site; the member is prevented from attending due to personal illness, disability, employment duties, or a family or other emergency; and when a majority of the Council approves the member's remote attendance by a majority vote. The absent member must notify the chair and the Council staff in advance unless advance notice is impractical.

Questions/requests for copies/comments through 7/8/24: Administrative Rules Coordinator, Governor's Travel Control Board, 313 S. Sixth St., 3rd Floor, Springfield IL 62702, 217-782-9669, CMS.Rule@illinois.gov

Adopted Rules

SCHOOLS

The ILLINOIS STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; proposed at 47 Ill Reg 18199), effective 5/9/24 at 48 Ill Reg 7717, that require school districts seeking waivers from School Code requirements or SBE rules to submit their applications to SBE with a postmark date no later than July 15 (formerly Aug. 15) for the fall application cycle and no later than Dec. 15 (formerly Jan. 15) for the spring application cycle. The rulemaking also clarifies that a waiver applicant's State legislators must be notified at least 7 days prior to a public hearing on a waiver request, and adds statutory language clarifying that SBE will not grant waivers from School Code requirements that pertain to special education, educator licensure, teacher seniority or teacher tenure.

▪ CAREER EDUCATION

ISBE also adopted a new Part titled College and Career Pathway Endorsement System (23 IAC 258; proposed at 47 Ill Reg 16343) effective 5/9/24 at 48 Ill Reg 7835, implementing a School Code requirement that districts (other than Chicago Public Schools) serving grades 9-12 either implement a College and Career Pathway Endorsement System for its students or opt out of implementation by 7/1/25. A district that opts to implement the endorsement must apply and send its endorsement plan to SBE via an online portal by Dec. 15 of the school year in which the district intends to award the endorsement. SBE will notify the district of its approval or disapproval status by Feb. 28 of the same school year. A district that opts out must send copies of its school board resolution to SBE and explain its reasons for opting

out. For participating districts, up to 7 possible career pathways may be offered: agriculture, food and natural resources; arts and communications; finance and business services; health sciences and technology; human and public services; information technology; and manufacturing, engineering, technology, and trades. Students who enroll in a career pathway will develop and periodically update an individualized plan for postsecondary education or training, career goals, and financial aid. The plan must align with coursework offered in one or more postsecondary partner institutions in that region and the district must list those institutions, along with the credentials that can be earned through them (e.g., associate degree, bachelor's degree, apprenticeship, certificate). Participating districts must also develop their own instructional sequences that include at least 4 semesters (2 years) of courses aligned to a specific pathway, and each sequence must include an opportunity to earn at least 6 hours of early college credit. Courses may be offered at the high school, a community college or career center, or online. In order to earn an endorsement, a student must demonstrate readiness for postsecondary (non-remedial) reading and mathematics by high school graduation, and also complete: a minimum of 2 career exploration activities (e.g., job shadowing, site tours, mentorships) or one intensive career exploration experience; 2 team-based challenges during which participants solve a problem or develop a product or service under the guidance of an adult mentor; and at least 60 hours of supervised career development experiences that include authentic work conditions and tasks (including timekeeping, evaluations, and safety protocols). Career exploration activities in grades 6

through 8 may count toward the exploration requirement, provided at least one activity takes place in grades 9 through 12. A school district may also provide a multidisciplinary endorsement for students who change career pathways and still meet the basic requirements of the endorsement program. Schools that implement the endorsement system must file an annual report to SBE by July 31 listing all their students who have earned an endorsement and the pathway in which the endorsement was awarded. Since 1st Notice, ISBE has clarified the definition of an intensive career exploration activity/experience. Those affected by this rulemaking include businesses, municipalities, and non-profit organizations that participate in or offer career pathway opportunities.

EDUCATOR LICENSURE

ISBE adopted amendments to Educator Licensure (23 IAC 25; proposed at 47 Ill Reg 16206) effective 5/9/24 at 48 Ill Reg 7730, that implement 7 Public Acts and other agency-initiated changes. It establishes educator license with stipulations (ELS) endorsements for alternative provisional educators (ELS-APE); restricts ELS-Transitional Bilingual Educator (ELS-TBE) license holders to teaching only in transitional bilingual education programs; reinstates, effective 9/1/25, provisions for licensure candidates that have successfully completed all requirements of an educator preparation program except a teacher performance assessment; and institutes a pilot program under which the Chicago Public Schools may, with SBE approval, institute their own professional development programs for up to 7 hard to staff endorsement

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Adopted Rules

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areas through 6/30/28. Alternative educator licensure programs will require a minimum of one year (currently, two years) of full-time teaching residency under the guidance of a mentor. If the principal of the school and the coordinator of the alternative licensure program do not agree on the candidate's teaching effectiveness at the end of the first year, a second year of residency will be required, and a third year shall be added if there is still disagreement at the end of the second year. Foreign nationals recruited for employment as teachers on a J-1 visa will no longer be required to receive endorsements as Visiting International Educators. Other provisions allow a school counselor endorsement to be granted to a Professional Educator License (PEL) holder with a master's degree or higher in school counseling "or a related field"; no longer require ISBE to discontinue an educator preparation program that does not enroll candidates for three consecutive years or a professional development provider that did not offer activities in the previous year; apply the process for voluntary removal of one or more endorsements to removal of one or more approvals; clarify the application review process under Section 25.480 (for candidates who have certain criminal convictions or license sanctions); establish an application review process for persons who have had previous licenses, endorsements, or approvals revoked for sexual misconduct; update various Sections to better reflect current agency practice; and remove the one-year waiting period following completion of a criminal conviction sentence (before reapplying for licensure) in Section 25.490. A change since 1st Notice clarifies the dates when passage of the teacher

performance assessment was or will be required.

ISBE also adopted an amendment to Standards for Endorsements in Specific Teaching Fields (23 IAC 27; proposed at 47 Ill Reg 16304) effective 5/9/24 at 48 Ill Reg 7830, that adds new standards for initial licensure programs in computer science.

Questions/requests for copies of the 4 ISBE rulemakings: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312-783-2757, rules@isbe.net

• INTERNET ACCESS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted amendments to the Part titled Broadband Grant Programs (14 IAC 548; proposed 47 Ill Reg 19237) effective 5/8/24 at 48 Ill Reg 7691, to implement the federally funded Broadband Equity, Access and Deployment (BEAD) Program established under the federal Infrastructure Investment and Jobs Act (Public Law 117-58). This rulemaking adopts the federal definition of "broadband service" as a mass market retail service providing capability to transmit and receive data from all, or substantially all, internet endpoints, but excluding dial-up service. Entities that may apply for program funding include incorporated businesses or partnerships; political subdivisions; cooperative associations; or limited liability companies organized for the purpose of expanding broadband access. School districts may also apply, but may be encouraged to seek other federal or education-specific funding before applying for BEAD funding. Applicant entities shall focus on providing reliable broadband service, which is defined in terms of download/upload speeds and the technology used for connection (e.g.,

fiber optic cable, DSL), to unserved or underserved areas. Priority shall also be given to ensuring reliable broadband service to "community anchor institutions", such as schools, colleges/universities, libraries, healthcare providers, public safety agencies, and other community organizations serving vulnerable populations (e.g., children, aged individuals, low income or unemployed persons, incarcerated persons). Grant applicants must be qualified at the GATA Grantee Portal and must comply with GATA and other applicable state and federal laws. DCEO will post NOFOs and accept applications when funding is available. Eligible costs that may be covered by BEAD grants include digital infrastructure improvements; personnel costs for staff and consultants implementing the program; software upgrades; cybersecurity measures; workforce development; and other digital equity initiatives such as user training, remote learning, telehealth, pre-release training in digital literacy for incarcerated persons, and subsidies to make broadband services more affordable. Since 1st Notice, DCEO has added incorporated documents, clarified ineligible costs under federal law, and added factors that will be considered when awarding grants for both priority and non-priority projects. Small businesses and municipalities and non-profit community organizations may be affected.

Questions/requests for copies: Gina Arterberry, DCEO, 607 E. Adams St., 12th Fl., Springfield IL 62701, 217-524-8974, Gina.M.Arterberry@Illinois.gov

STATE RETIREMENT

The STATE EMPLOYEES' RETIREMENT SYSTEM adopted amendments to the

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Adopted Rules

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Part titled The Administration and Operation of the State Employees' Retirement System of Illinois (80 IAC 1540; proposed at 48 Ill Reg 1662) effective 5/7/24 at 48 Ill Reg 7845, clarifying certain aspects of SERS disability benefits. The rulemaking states that a SERS member receiving disability benefits is entitled to the first automatic increase after having received benefits for 48 consecutive months without any interruption or suspension. It also replaces the limit of \$3,600 per quarter in "gainful activity"

earnings with the gainful economic activity limitations established annually by the federal Social Security Administration.

Questions/requests for copies: Jeff Houch, SERS, 2101 S. Veterans Pkwy., PO Box 19255, Springfield IL 62794-9255, 217-524-8105, fax 217-557-3943, jeff.houch@srs.illinois.gov

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted an amendment to Extensions of Jurisdiction (80 IAC 305; proposed at 48 Ill Reg 81) effective 5/13/24 at 48 Ill

Reg 7687. This rulemaking implements an amendment to the Personnel Code stating that extensions of Personnel Code jurisdiction made on or after 6/28/23 must be maintained in CMS records but no longer have to be adopted in rule.

Questions/requests for copies: Administrative Rules Coordinator, CMS, 313 S. Sixth St., 3rd Floor, Springfield IL 62702, 217-782-9669, CMS.Rule@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 June 4, 2024 meeting in Springfield. Further comments concerning these rulemakings should be addressed to JCAR at jcar@ilga.gov.

DEPT OF CHILDREN AND FAMILY SERVICES

Placement and Visitation Services (89 IAC 301; 47 Ill Reg 17563) proposed 12/1/23

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Pharmacy Practice Act (68 IAC 1330; 47 Ill Reg 18373) proposed 12/15/23

ILLINOIS COMMUNITY COLLEGE BOARD

Administration of the Illinois Public Community College Act (23 IAC 1501; 47 Ill Reg 14632) proposed 10/8/23

HEALTH FACILITIES AND SERVICES REVIEW BOARD

Narrative and Planning Policies (77 IAC 1100; 47 Ill Reg 17619) proposed 12/1/23

Processing, Classification Policies and Review Criteria (77 IAC 1110; 47 Ill Reg 17650) proposed 12/1/23

DEPT OF INNOVATION AND TECHNOLOGY

Uniform Electronic Transaction Act (14 IAC 2000; 48 Ill Reg 1122) proposed 1/19/24

DEPT OF REVENUE

Retailer's Occupation Tax (86 IAC 130; 48 Ill Reg 3576) proposed 3/15/24

Automobile Renting Occupation Tax (86 IAC 180; 48 Ill Reg 3640) proposed 3/15/24

Informal Conference Board (86 IAC 215; 48 Ill Reg 3084) proposed 3/1/24

OFFICE OF THE STATE FIRE MARSHAL

Petroleum Equipment Contractor Licensing (41 IAC 172; 48 Ill Reg 3646) proposed 3/15/24

General Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 IAC 174; 48 Ill Reg 3654) proposed 3/15/24

Technical Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and use of Petroleum and Other Regulated Substances (41 IAC 175; 48 Ill Reg 3665) proposed 3/15/24

Administrative Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and use of Petroleum and Other Regulated Substances (41 IAC 176; 48 Ill Reg 3703) proposed 3/15/24

SECRETARY OF STATE

Issuance of Licenses (92 IAC 1030; 48 Ill Reg 5082) proposed 3/29/24

Next JCAR Meeting: Tuesday, June 4, 11 a.m.

Room C-600, Bilandic Bldg. 160 N. LaSalle St., Chicago

Meeting will be live streamed on the JCAR website

Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair

Senator Cristina Castro

Senator Donald DeWitte

Senator Dale Fowler

Senator Napoleon Harris, III

Senator Sue Rezin

Representative Ryan Spain, Co-Chair

Representative Eva-Dina Delgado

Representative Jackie Haas

Representative Steven Reick

Representative Curtis Tarver, II

Representative Dave Vella

Kim Schultz, Executive Director ■ Kevin Kulavic, Deputy Director

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