

2007

ILLINOIS

REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



Volume 31, Issue 21
May 25, 2007
Pages 7379-7486

Index Department
Administrative Code Division
111 East Monroe Street
Springfield, IL 62756
(217) 782-7017
<http://www.cyberdriveillinois.com>

Printed on recycled paper

PUBLISHED BY JESSE WHITE • SECRETARY OF STATE

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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

2007 REGISTER SCHEDULE VOLUME #31

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 26, 2006	January 5, 2007
2	January 2, 2007	January 12, 2007
3	January 8, 2007	January 19, 2007
4	January 16, 2007	January 26, 2007
5	January 22, 2007	February 2, 2007
6	January 29, 2007	February 9, 2007
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49	November 26, 2007	December 7, 2007
50	December 3, 2007	December 14, 2007
51	December 10, 2007	December 21, 2007
52	December 17, 2007	December 28, 2007

Editor's Note: The Secretary of State Index Department is providing this opportunity to notify you that the filing period for your Regulatory Agenda will occur from April 30, 2007 to July 2, 2007 as July 1, 2007 is a Sunday and the office is closed.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Provisions
- 2) Code Citation: 50 Ill. Adm. Code 2500
- 3)

<u>Section Number:</u> 2500.50	<u>Proposed Action:</u> Amendment
-----------------------------------	--------------------------------------
- 4) Statutory Authority: Implementing Sections 408, 409, 412, 444 and 444.1 and authorized by Sections 401 and 409(5) of the Illinois Insurance Code [215 ILCS 5/401, 408, 409, 409(5), 444 and 444.1] and Section 12 of the Fire Investigation Act [425 ILCS 25/12]
- 5) A Complete Description of the Subjects and Issues Involved: Section 412 of the Illinois Insurance Code [215 ILCS 5/412] allows the Director to refund taxes, fees, and other charges, paid to him, provided that certain conditions are met. Pursuant to that authority, in 1998 the Division promulgated this Part, allowing those required to pay the assessments the opportunity to request a hearing to determine if the assessment is appropriate. The Part applies to any person, or company conducting or transacting any of the actions where fees and charges are assessed pursuant to 408 of Code, or who is assessed privilege, or retaliatory taxes pursuant to Sections 409, 444 and 44.1 of the Illinois Insurance Code [215 ILCS 5/408, 409, 444 and 444.1] and Sections 12 and 13 of the Fire Investigation Act [425 ILCS 25/12 and 13]. At this time, the Division is revising its rule to clarify that the applicable tax, fee, or charge first be paid before the party contesting the assessment may receive a hearing as to its appropriateness.

This amendment conforms the rule to Section 412 of the Code where the Director is allowed to refund taxes, fees, or other charges where the taxpayer has overpaid due to some mistake of fact, error in calculation or erroneous interpretation of a statute [215 ILCS 5/412]. This proposed amendment is consistent with public policy, established in the State Officers and Employees Money Disposition Act, that contested monies due the State first be paid under protest [30 ILCS 230/1 et seq.].
- 6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:
- | | | |
|--|----|--|
| James C. Rundblom, Staff Attorney
Department of Financial and
Professional Regulation
Division of Insurance
320 West Washington, 4 th Floor
Springfield, Illinois 62767-0001

217/785-8559 | or | Craig Cellini, Rules Coordinator
Department of Financial and
Professional Regulation
320 West Washington
3 rd Floor
Springfield, Illinois 62767-0001

217/785-0813 |
|--|----|--|
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: This amendment will not affect small business, small municipalities or not for profit organizations.
- B) Reporting, bookkeeping or other procedures required for compliance: Payment of the assessment is required, prior to any hearing that may be requested.
- C) Types of professional skills necessary for compliance: Insurance/Accounting
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: the Division did not anticipate the need to modify our regulatory provisions on the hearing and assessment payment issue.

The full text of the Proposed Amendment begins on the next page:

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF [FINANCIAL AND PROFESSIONAL
REGULATION](#) ~~INSURANCE~~

SUBCHAPTER ee: FEES, CHARGES AND TAXES

PART 2500

GENERAL PROVISIONS

Section

2500.10	Purpose
2500.20	Applicability
2500.30	Severability
2500.40	Definitions
2500.50	Hearings
2500.60	Computation of Time and Time of Filing
2500.70	Form of Payment
2500.80	Calculation Guidelines

AUTHORITY: Implementing Sections 408, 409, 412, 444 and 444.1 and authorized by Sections 401 and 409(5) of the Illinois Insurance Code [215 ILCS 5/401, 408, 409, 409(5), 412, 444 and 444.1] and Section 12 of the Fire Investigation Act [425 ILCS 25/12].

SOURCE: Adopted at 22 Ill. Reg. 290, effective December 21, 1998; amended at 31 Ill. Reg. _____, effective _____.

Section 2500.50 Hearings

Any person or company required to pay a fee, charge or tax pursuant to 50 Ill. Adm. Code, Subchapter ee may request a hearing to be held for the purposes of determining if the assessed fee, charge or tax is appropriate. A request for hearing must be made, [after the assessment has been paid in full and](#) pursuant to the grounds set forth in Section 412 of the Code [215 ILCS 5/412] and subsection (b) of this Section. Such request will only be granted based on those [conditions](#) ~~grounds~~.

- a) A request for hearing shall be in writing and shall include:
 - 1) The name and address of the requester;
 - 2) The fee, charge or tax amount being assessed;

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

- 3) Under what provision of 50 Ill. Adm. Code, Subchapter ee the fee, charge or tax is being assessed;
 - 4) The Department invoice number, if applicable; and
 - 5) The name, address and phone number of a contact person.
- b) The grounds upon which the requester believes the amount being assessed is incorrect, which are:
- 1) A mistake of fact including, but not limited to:
 - A) Applying a previous year's income tax overpayment in the current year's corporate and/or replacement tax return; and
 - B) Using the premium written in the state of incorporation to determine the state of incorporation's basis for retaliatory tax purposes; or
 - 2) An error in calculation including, but not limited to:
 - A) An incorrect decimal assignment; and
 - B) An erroneous sum, result or total arising out of a mathematical function, operation or equation; or
 - 3) An erroneous interpretation of a statute of this or any other state, including, but not limited to:
 - A) A misapplication of a statute; and
 - B) A misunderstanding of an equivocal term or phrase used in a statute.
 - 4) However, an erroneous interpretation of a statute of this or any other state does not include a finding of unconstitutionality of the statute in question. Additionally, a mistake in fact shall not include the assertion that a statute is unconstitutional on its face.

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- c) Any hearing held pursuant to a request meeting the requirements of this Section will be conducted pursuant to the provisions set forth at 50 Ill. Adm. Code 2402. However, if the request is made by a company, the company must be represented by an attorney licensed to practice law in the State of Illinois. The provision at 50 Ill. Adm. Code 2402.70(a)(2) does not apply to hearings held pursuant to 50 Ill. Adm. Code, Subchapter ee.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Grade A Pasteurized Milk and Milk Products
- 2) Code Citation: 77 Ill. Adm. Code 775
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
775.10	Amendment
775.20	Amendment
775.30	Amendment
775.120	Amendment
775.130	Amendment
- 4) Statutory Authority: Authorized by and implementing the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will update references to several documents that are incorporated by reference in the Grade A Pasteurized Milk and Milk Products rules. Documents that are being updated include the Grade A Pasteurized Milk Ordinance (PMO), the Methods of Making Sanitation Ratings of Milk Shippers (MMSR), the Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration (FDA) Program of the National Conference on Interstate Milk Shipments, Evaluation of Milk Laboratories, and the incorporated sections of the Code of Federal Regulations, all published by the FDA, and the Standard Methods for the Examination of Dairy Products, as well as one reference to State of Illinois rules and statutes, the Veterinary Medicine and Surgery Act.

Key changes to the 2005 revision of the PMO include allowing for the determination of time/temperature control for the safety of milk and milk products. Also, many inspection and rating forms were updated. In addition, the cooling requirements for some cultured products have been changed. The revision also eliminates repetitive and outdated language. A major change in Appendix N allows for the exemption of quarterly sample collection provided the sites involved participate in the biennial on-site evaluation and annual split sample comparisons.

A key change in the MMSR combines the PMO with the Grade A Dry Milk Ordinance into one document.

A key change in the Procedures document has spelled out the certification procedure for State Rating Officers (SROs) who will conduct HACCP (Hazard Analysis and Critical Control Point) listing audits.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Key changes to the Evaluation of Milk Laboratories include updating some 2400 series forms as well as allowing for drug residue test kits to be evaluated and approved for raw milk analysis up to 45 degrees.

Modifications in the 17th edition of the Standard Methods for the Examination of Dairy Products update the document to keep pace with the rapidly changing technology used by dairy laboratories, including the Department.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking; The Grade A Pasteurized Milk Ordinance (PMO), and Appendices A through R (except Sections 16 and 17) Recommendations of the United States Public Health Service/Food and Drug Administration, 2005 Revision (Publication 229).

Evaluation of Milk Laboratories (2005 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.

Methods of Making Sanitation Ratings of Milk Supplies (2005 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.

Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers (2005 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.

The Standard Methods for the Examination of Dairy Products (17th Edition, 2004, American Public Health Association, 1015 – 18th Street, N.W., Washington, D.C. 20036). (See Section 775.70(b).)

Official Methods of Analysis of the Association of Official Analytical Chemists (16th Edition, 1996, Association of Official Analytical Chemists, P.O. Box 540, Ben Franklin Station, Washington, D.C. 20044).

- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand any State mandate on units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after the publication of this issue of the *Illinois Register* to:
- Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield, Illinois 62761
- 217/782-2043
e-mail: rules@idph.state.il.us
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Bulk milk hauler/samplers, milk tank truck owners, dairy producers and processors.
- B) Reporting, bookkeeping or other procedures required for compliance: There will be no change in the reporting, bookkeeping or other procedures required for compliance.
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2006

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER m: FOOD, DRUGS AND COSMETICSPART 775
GRADE A PASTEURIZED MILK AND MILK PRODUCTS

Section

775.1	Minimum Regulations (Renumbered)
775.10	Definitions
775.20	Incorporated and Referenced Materials
775.30	Minimum Requirements
775.40	Local Government Implementation
775.50	Permits
775.60	Suspension of Permits
775.70	Inspections and Investigations
775.80	Approval of Construction Plans
775.90	Administrative Hearings
775.100	Milk Hauler-Samplers Examination
775.110	Milk Tank Trucks
775.120	Cleaning and Sanitizing Procedures
775.130	Action Levels for Added Water in Milk
775.140	Pesticide, Herbicide and Mycotoxin Residue Control Program
775.150	Drug Residue Control Program

AUTHORITY: Authorized by and implementing the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635].

SOURCE: Adopted and codified at 8 Ill. Reg. 4190, effective March 16, 1984; amended at 11 Ill. Reg. 1464, effective February 1, 1987; amended at 12 Ill. Reg. 17925, effective December 1, 1988; amended at 17 Ill. Reg. 14015, effective August 15, 1993; amended at 19 Ill. Reg. 12271, effective August 10, 1995; amended at 22 Ill. Reg. 20633, effective November 10, 1998; amended at 25 Ill. Reg. 11904, effective September 1, 2001; amended at 25 Ill. Reg. 12629, effective September 25, 2001; amended at 27 Ill. Reg. 15979, effective October 1, 2003; amended at 31 Ill. Reg. _____, effective _____.

Section 775.10 Definitions

In addition to the definitions contained in Section 1 of the Grade A Pasteurized Milk Ordinance

DEPARTMENT OF PUBLIC HEALTH

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~~and Grade A Condensed and Dry Milk Products and Dry Whey Supplement~~, the following definitions shall apply:

"Act" means the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635].

"Bulk milk pickup tank" means the tank, and those *appurtenances necessary for its use, used by a milk hauler-sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.* (Section 3(b)(16) of the Act)

"Clarification" means an operational procedure that removes sediment from milk.

"*Cleaning and sanitizing facility*" means any place, premise or establishment where milk tank trucks are cleaned and sanitized. (Section 3(b)(15) of the Act)

"Cultured dairy products" means milk and milk products that have been soured after pasteurization using harmless lactic-acid producing bacteria, food grade phosphoric acid, lactic acid, citric acid or hydrochloric acid, with or without rennet and/or other safe, suitable milk-clotting enzymes.

"*Dairy farm*" means any place or premise where one or more cows, goats or sheep are kept, and from which a part or all of the milk or milk products are provided, sold or offered for sale to a milk plant, transfer station, or receiving station. (Section 3(b)(1) of the Act)

"*Department*" means the Illinois Department of Public Health. (Section 3(b)(7) of the Act)

"*Director*" means the Director of the Illinois Department of Public Health. (Section 3(b)(8) of the Act)

"~~Downstream~~ ~~Down-stream~~" means after the automatic milk flow safety device.

"*Embargo or hold for investigation*" means a detention or seizure designed to deny the use of milk or milk products which may be unwholesome or to prohibit the use of equipment which may result in contaminated or unwholesome milk or dairy products. (Section 3(b)(9) of the Act)

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"Enforcing agency" means the Illinois Department of Public Health or a unit of local government electing to administer and enforce the Act as provided for in the Act. (Section 3(b)(12) of the Act)

"Field representative" means a person qualified and trained in the sanitary methods of production and handling of milk as set forth in this Part, and generally employed by a processing or manufacturing plant for the purpose of doing quality control work.

"Grade A" means that milk and milk products are produced and processed in accordance with the latest United States Public Health Service – Food and Drug Administration Grade A Pasturized Milk Ordinance as may be amended. The term Grade A is applicable to "dairy farm", "milk hauler-sampler", "milk plant", "milk product", "receiving station", "transfer station", "bulk milk pickup tank", and "certified pasteurizer sealer" whenever used in the Act. (Section 3(a) of the Act)

"High temperature short time flow-diversion device" or "H.T.S.T." means an automatic milk-flow safety device that controls the flow of milk in relation to the temperature of the milk or heating medium and/or pressure, vacuum, or other auxiliary equipment.

"Imminent hazard to the public health" means any hazard to the public health when the evidence is sufficient to show that a product or practice, posing or contributing to a significant threat of danger to health, creates or may create a public health situation that should be corrected immediately to prevent injury and that should not be permitted to continue while a hearing or other formal proceeding is being held. (Section 3(b)(10) of the Act)

"Milk" means the milk of cows, goats or sheep and includes skim milk and cream. (Section 3(b)(2) of the Act)

"Milkfat and Nonfat Solid Content Standards" means the standards set forth in 21 CFR 131.110 ([20052004](#)). (See Section 775.20.)

"Milk hauler-sampler" means a person who is qualified and trained for the grading and sampling of raw milk in accordance with federal and State quality standards and procedures (Section 3(b)(14) of the Act) and transports bulk raw milk for pasteurization from a dairy farm to a receiving station, transfer station,

DEPARTMENT OF PUBLIC HEALTH

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or milk plant. (Section 3(b)(16)(A) of the Act)

"Milk product" means any product including cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat (skim) milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk or nonfat (skim) milk, cottage cheese (including dry curd, reduced fat, lowfat, and nonfat), yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, or nonfat (skim) milk, low-sodium milk, low-sodium reduced fat lowfat milk, low-sodium nonfat (skim) milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat (skim) milk, aseptically processed and packaged milk and milk products, and milk, reduced fat, lowfat milk or nonfat (skim) milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined in this Section. (Section 3(b)(4) of the Act)

"Milk tank truck" is the term used to describe both a bulk or milk pickup tanker and a milk transport tank.

"Milk transport tank" means a vehicle, including the truck and tank used to transport bulk shipments of milk from a transfer station, receiving station or milk plant to another transfer station, receiving station or milk plant.

"PMO" means the Grade A Pasteurized Milk Ordinance incorporated by reference. (See Section 775.20.)

"Permit" means a document awarded to a person for compliance with the provisions of and under conditions set forth in the Act and this Part. (Section 3(b)(13) of the Act)

"Person" means any individual, group of individuals, association, trust, partnership, corporation, person doing business under an assumed name, the State of Illinois, or any political subdivision or Department thereof, or any other entity. (Section 3(b)(11) of the Act)

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"Quality assurance program" means the Milk and Dairy Beef Quality Assurance Program, Boeckman, Steve and Carlson, Keith R., Agri-Education Inc., Stratford, Iowa 50249 or equivalent program as determined by the Department.

"Receiving station" means any place, premise, or establishment where raw milk is received, collected, handled, stored or cooled and prepared for further transporting. (Section 3(b)(5) of the Act)

"Separation" means an operational procedure that removes butterfat from milk.

"Transfer station" means any place, premise, or establishment where milk or milk products are transferred directly from one milk tank to another. (Section 3(b)(6) of the Act)

"Violative drug residue" means a drug residue at or above the tolerance and/or safe levels as set forth in 21 CFR 556 (~~20052004~~) and Appendix N of the PMO.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 775.20 Incorporated and Referenced Materials

a) The following regulations, guidelines, standards, rules, and statutes are incorporated or referenced in this Part:

1) Federal government publications:

A) The Grade A Pasteurized Milk Ordinance (PMO), and Appendices A through ~~RP~~ (except Sections 16 and 17) Recommendations of the United States Public Health Service/Food and Drug Administration, ~~20052004~~ Revision (Publication 229). In addition, the jurisdiction name, left blank in Sections 1, 2, 3, 5, and 11 of the PMO, for the purposes of this Part, shall mean the State of Illinois; and the regulatory agency referred to in Section 1 shall mean the Illinois Department of Public Health. (See Section 775.30(a).)

~~B) The Grade A Condensed and Dry Milk Ordinance, 1995 Revision, Part II and Appendices A through N (Grade A Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement I to the Grade A Pasteurized Milk Ordinance, 1995~~

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~~Recommendations).~~—(See Section 775.30(b).)

- ~~B)C)~~ Evaluation of Milk Laboratories (~~2005~~1995 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.
- ~~C)D)~~ Methods of Making Sanitation Ratings of Milk Supplies (~~2005~~2004 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.
- ~~D)E)~~ Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers (~~2005~~2004 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration.

2) Private and professional standards:

- A) The Standard Methods for the Examination of Dairy Products (~~17th~~16th Edition, ~~2004~~1992, American Public Health Association, 1015 – 18th Street, N.W., Washington, D.C. 20036). (See Section 775.70(b).)
- B) Official Methods of Analysis of the Association of Official Analytical Chemists (16th Edition, 1996, Association of Official Analytical Chemists, P.O. Box 540, Ben Franklin Station, Washington, D.C. 20044). (See Section 775.70(b).)

3) Federal regulations:

- A) 21 CFR 131.110, Milk (~~2005~~2004). (See Section 775.10, the definition of "milkfat and nonfat solid content standards".)
- B) 21 CFR 556, Tolerances for Residues or New Animal Drugs in Food (~~2005~~2004). (See Section 775.10, the definition of "violative drug residue".)
- C) 40 CFR 180, Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food (~~2005~~2004). (See Section

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

775.140(a)(1.)

- 4) State of Illinois rules and statutes:
- A) Illinois Plumbing Code – 77 Ill. Adm. Code 890, Illinois Department of Public Health. (See Section 775.30(c)(4).)
 - B) Rules of Practice and Procedure in Administrative Hearings – 77 Ill. Adm. Code 100, Illinois Department of Public Health. (See Section 775.90.)
 - C) The Veterinary Medicine and Surgery Practice Act of [20041994](#) [225 ILCS 115].
- b) All incorporations by reference [of federal guidelines and regulations and the standards of professional organizations](#) refer to the materials on the date specified and do not include any [amendments or editions](#)~~additions or deletions~~ subsequent to the date specified.
- c) All citations to federal regulations in this Part concern the specified regulation in the [20052004](#) Code of Federal Regulations, unless another date is specified.
- d) Copies of all incorporated materials are available for inspection and copying by the public at the Department's Central Office, Division of Food, Drugs, and Dairies, 525 West Jefferson Street, Springfield, Illinois 62761.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 775.30 Minimum Requirements

- a) The production, transportation, processing, handling, sampling, examination, grading, labeling and sale of all milk and milk products; the inspection of dairy herds, dairy farms and milk plants, receiving and transferring stations, and cleaning and sanitizing facilities; the suspension of permits to milk producers and haulers, shall be regulated in accordance with the provisions of the Grade A Pasteurized Milk Ordinance (PMO) and Appendices A through [RP](#) (with the exception of Sections 16 and 17) of the PMO. (See Section 775.20.)
- b) The production, manufacture, packaging, labeling and sale of all Grade A

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condensed milk , Grade A dry milk products, Grade A condensed whey and Grade A dry whey, for use in the commercial preparation of Grade A pasteurized milk products; the inspection of condensing plants and/or drying plants; and the suspension of permits to condensing plants and/or drying plants, shall be regulated in accordance with the provisions of the Grade A Pasteurized Milk Ordinance (PMO) and Appendices A through R (with the exception of Sections 16 and 17 of the PMO).Part II and Appendixes A through N of the Grade A Condensed and Dry Milk Ordinance, 1995 Revision (Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement I to the Grade A Pasteurized Milk Ordinance). (See Section 775.20.)

- c) In addition to ~~the provisions contained in~~ Section 775.30(a) and (b), the following provisions shall apply:
- 1) In addition to ~~the provisions of~~ Section 7, item 15p of the PMO:
 - A) All raw milk piping and equipment must be completely separated from pasteurized milk and milk product piping and equipment during processing. No raw milk piping or fittings shall be interchanged with pasteurized milk piping and fittings unless they have been washed and sanitized before use.
 - B) Heat-treated and pasteurized milk or milk products that are not produced at the packaging plant, but, that are to be used within a plant for processing pasteurized milk or milk products, shall be repasteurized.
 - C) No separation or clarification may occur ~~downstreamdown stream~~ from any high temperature short time (H.T.S.T.) flow-diversion device.
 - D) Blending of pasteurized milk or milk products may ~~only~~ occur ~~downstreamdown stream~~ from the high temperature short time (H.T.S.T.) flow-diversion device only when approved by the Department in accordance with the following specific requirements:
 - i) All pasteurized milk product lines, raw product lines and cleaning lines within the milk plant shall be labeled so in

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- ~~such a manner~~ that the lines can be differentiated by visual inspection. The specific configuration of the lines must be verified by a Department on-site inspection prior to the issuance or renewal of a permit. In addition, any segments of lines that are or can be removed for cleaning must be individually labeled.
- ii) All products subject to blending ~~downstream~~~~down-stream~~ of the high temperature short time flow diversion device shall be required to undergo daily testing for standard plate count, coliform, phosphatase and salmonella. These analyses shall be conducted by a state-certified laboratory, and the results shall be maintained for one year.
- iii) Cultured dairy products are exempt from this requirement.
- 2) In addition to ~~complying with the provisions of~~ Section 6 of the PMO, ~~it shall be the responsibility of~~ each approved milk plant shall ~~to~~ retain from each processing day at least one time and date stamped sample from each continuous processing of a specific pasteurized fluid milk product as defined in the Grade A Pasteurized Milk Ordinance (see Section 1 of the PMO). These samples shall be of the pasteurized milk product itself and not of each type of container in which the milk product is packaged. In addition, the samples shall be retained until two days after the guaranteed sale date in accordance with the refrigeration requirements of the PMO (see Section 7 of the PMO).
- 3) In addition to the provisions of Section 7, items 8r and 7p, of the PMO, the Illinois Plumbing Code (77 Ill. Adm. Code 890) shall apply.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 775.120 Cleaning and Sanitizing Procedures

Milk tank trucks used to haul Grade A milk and milk products must be cleaned and sanitized in accordance with ~~Part H~~, Section 7, items 10r and 11r, or item 12p and Appendix F, of the PMO. A cleaning and sanitizing tag shall be attached to all milk tank trucks used to haul Grade A Milk and Milk Products. In addition, the tag must reflect the name of ~~the~~ substance hauled in the milk tank truck prior to being cleaned and sanitized.

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(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 775.130 Action Levels for Added Water in Milk

The presence of added water in raw or pasteurized milk constitutes adulteration. The violative level for added water in either raw or pasteurized milk is equal to or higher than 3% when converted from a milk cryoscope reading on the Hortvet or Centigrade scale when tested in accordance with the ~~17th~~16th edition of the Standard Methods for the Examination of Dairy Products. After two occurrences of adulterated milk within a six-month period, the plant or producer ~~shall~~~~will be required to~~ show cause and reason for the addition of water. After a third occurrence, the Department will institute administrative proceedings to revoke the plant or producer's permit.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Number: 150.306 Proposed Action:
Amendment
- 4) Statutory Authority: 20 ILCS 2505/2505-90
- 5) A Complete Description of the Subjects and Issues Involved: This rule concerns an exemption for tangible personal property that is purchased by a retailer for resale, but is also used by that retailer prior to its retail sale. This proposed rulemaking sets out the criteria the Department will look at in determining whether an item remains available for sale during the interim use period. Examples of the application of those criteria are provided. The proposed rulemaking also lists the information the Department will use when considering whether a person is primarily a retailer or lessor in regards to lessors claiming the interim use exemption. The proposed rulemaking also clarifies that, on and after July 1, 2007, manufacturers may claim the interim use exemption only when the manufacturer can establish that the property for which the claim is made will be sold by the manufacturer in a retail sale.
- 6) Published Studies or Reports, and Sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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Terry D. Charlton
Senior Counsel, Sales and Excise Taxes
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

217/782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Small retailers of all types, but especially automobile dealers and lessors and manufacturers who claim the interim use exemption may be affected by this rulemaking.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2007

The full text of the Proposed Amendment begins on the next page:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 150
USE TAX

SUBPART A: NATURE OF THE TAX

Section	
150.101	Description of the Tax
150.105	Rate and Base of Tax
150.110	How To Compute Depreciation
150.115	How To Determine Effective Date
150.120	Effective Date of New Taxes
150.125	Relation of Use Tax to Retailers' Occupation Tax
150.130	Accounting for the Tax
150.135	How to Avoid Paying Tax on Use Tax Collected From the Purchaser

SUBPART B: DEFINITIONS

Section	
150.201	General Definitions

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section	
150.301	Cross References
150.305	Effect of Limitation that Purchase Must be at Retail From a Retailer to be Taxable
150.306	Interim Use and Demonstration Exemptions
150.310	Exemptions to Avoid Multi-State Taxation
150.311	Commercial Distribution Fee Sales Tax Exemption
150.315	Non-resident Exemptions
150.320	Meaning of "Acquired Outside This State"
150.325	Charitable, Religious, Educational and Senior Citizens Recreational Organizations as Buyers
150.330	Governmental Bodies as Buyers
150.331	Persons Who Lease Tangible Personal Property to Exempt Hospitals
150.332	Persons Who Lease Tangible Personal Property to Governmental Bodies
150.335	Game or Game Birds Purchased at Game Breeding and Hunting Areas or Exotic

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- Game Hunting Areas
- 150.336 Fuel Brought into Illinois in Locomotives
- 150.337 Food, Drugs, Medicines and Medical Appliances When Purchased for Use by a Person Receiving Medical Assistance under the Illinois Public Aid Code

SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

- Section
- 150.401 Collection of the Tax by Retailers From Users
- 150.405 Tax Collection Brackets
- 150.410 Tax Collection Brackets for a 2¼% Rate of Tax (Repealed)
- 150.415 Tax Collection Brackets for a 2½% Rate of Tax (Repealed)
- 150.420 Tax Collection Brackets for a 2¾% Rate of Tax (Repealed)
- 150.425 Tax Collection Brackets for a 3% Rate of Tax (Repealed)
- 150.430 Tax Collection Brackets for a 3½% Rate of Tax (Repealed)
- 150.435 Tax Collection Brackets for a 3¾% Rate of Tax (Repealed)
- 150.440 Tax Collection Brackets for a 4% Rate of Tax (Repealed)
- 150.445 Tax Collection Brackets for a 4½% Rate of Tax (Repealed)
- 150.450 Tax Collection Brackets for a 4¾% Rate of Tax (Repealed)
- 150.455 Tax Collection Brackets for a 5% Rate of Tax (Repealed)
- 150.460 Tax Collection Brackets for a 5½% Rate of Tax (Repealed)
- 150.465 Tax Collection Brackets for a 5¾% Rate of Tax (Repealed)
- 150.470 Tax Collection Brackets for a 6% Rate of Tax (Repealed)
- 150.475 Tax Collection Brackets for a 6½% Rate of Tax (Repealed)
- 150.480 Tax Collection Brackets for a 6¾% Rate of Tax (Repealed)
- 150.485 Tax Collection Brackets for a 7% Rate of Tax (Repealed)
- 150.490 Tax Collection Brackets for a 7½% Rate of Tax (Repealed)
- 150.495 Tax Collection Brackets for a 7¾% Rate of Tax (Repealed)
- 150.500 Tax Collection Brackets for a 8% Rate of Tax (Repealed)
- 150.505 Optional 1% Schedule (Repealed)
- 150.510 Exact Collection of Tax Required When Practicable
- 150.515 Prohibition Against Retailer's Representing That He Will Absorb The Tax
- 150.520 Display of Tax Collection Schedule (Repealed)
- 150.525 Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates

SUBPART E: RECEIPT FOR THE TAX

- Section
- 150.601 Requirements

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SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section	
150.701	When and Where to File a Return
150.705	Use Tax on Items that are Titled or Registered in Illinois
150.710	Procedure in Claiming Exemption from Use Tax
150.715	Receipt for Tax or Proof of Exemption Must Accompany Application for Title or Registration
150.716	Display Certificates for House Trailers
150.720	Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User
150.725	Direct Payment of Tax by User to Department on Intrastate Purchase Under Certain Circumstances
150.730	Direct Reporting of Use Tax to Department by Registered Retailers

SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section	
150.801	When Out-of-State Retailers Must Register and Collect Use Tax
150.805	Voluntary Registration by Certain Out-of-State Retailers
150.810	Incorporation by Reference

SUBPART H: RETAILERS' RETURNS

Section	
150.901	When and Where to File
150.905	Deduction for Collecting Tax
150.910	Incorporation by Reference
150.915	Itemization of Receipts from Sales and the Tax Among the Different States from Which Sales are Made into Illinois

SUBPART I: PENALTIES, INTEREST, STATUTE OF LIMITATIONS AND ADMINISTRATIVE PROCEDURES

Section	
150.1001	General Information

SUBPART J: TRADED-IN PROPERTY

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Section
150.1101 General Information

SUBPART K: INCORPORATION OF ILLINOIS RETAILERS'
OCCUPATION TAX REGULATIONS BY REFERENCE

Section
150.1201 General Information

SUBPART L: BOOKS AND RECORDS

Section
150.1301 Users' Records
150.1305 Retailers' Records
150.1310 Use of Signs to Prove Collection of Tax as a Separate Item
150.1315 Consequence of Not Complying with Requirement of Collecting Use Tax
Separately From the Selling Price
150.1320 Incorporation by Reference

SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
150.1401 Claims for Credit – Limitations – Procedure
150.1405 Disposition of Credit Memoranda by Holders Thereof
150.1410 Refunds
150.1415 Interest

150.TABLE A Tax Collection Brackets

AUTHORITY: Implementing the Use Tax Act [35 ILCS 105] and authorized by Section 2505-90 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-90].

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at 5 Ill. Reg. 11072, effective October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12, 1984; amended at 8 Ill. Reg. 7278, effective May 11, 1984; amended at 8 Ill. Reg. 8623, effective June 5, 1984; amended at 11 Ill. Reg. 6275, effective March 20, 1987; amended at 14 Ill. Reg. 6835, effective April 19, 1990; amended at 15 Ill. Reg. 5861, effective April 5, 1991;

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emergency amendment at 16 Ill. Reg. 14889, effective September 9, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 1947, effective February 2, 1993; amended at 18 Ill. Reg. 1584, effective January 13, 1994; amended at 20 Ill. Reg. 7019, effective May 7, 1996; amended at 20 Ill. Reg. 16224, effective December 16, 1996; amended at 22 Ill. Reg. 21670, effective November 25, 1998; amended at 24 Ill. Reg. 10728, effective July 7, 2000; amended at 25 Ill. Reg. 953, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1821, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 5059, effective March 23, 2001; amended at 25 Ill. Reg. 6540, effective May 3, 2001; amended at 25 Ill. Reg. 10937, effective August 13, 2001; amended at 26 Ill. Reg. 971, effective January 15, 2002; amended at 26 Ill. Reg. 9902, effective June 24, 2002; amended at 27 Ill. Reg. 1607, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 11209, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; emergency amendment at 28 Ill. Reg. 15266, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7079, effective April 26, 2005; amended at 31 Ill. Reg. _____, effective _____.

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section 150.306 Interim Use and Demonstration Exemptions

- a) Interim Use Exemption
 - 1) Except as provided in subsection (c) of this Section, tangible personal property purchased by a retailer for resale, and used by the retailer or his agents prior to its ultimate sale at retail, is exempt from Use Tax, provided the tangible personal property remains that the tangible personal property is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period. In order to determine if the property is available for sale during the interim use period, the Department will consider the following factors, including but not limited to:
 - A) Purchaser's intent at time of purchase;
 - B) Books, records, inventory, and retail sales history of the business in general;
 - C) Retailer's ability to recall subject property if a buyer is located during interim use period;

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- D) Retailer's depreciation of property or claiming an IRC section 179 deduction on the vehicle as a depreciable business asset;
- E) How vehicle ownership is displayed: plates, titles and insurance;
- F) Income received by retailer relative to actual use of property;
- G) Displays of intent to sell property, window stickers, notices, advertisements;
- H) Length of interim use period.

EXAMPLES:

- i) A car dealer purchases a motor vehicle from a manufacturer for retail sale. From the time of initial purchase of the motor vehicle from the manufacturer until its ultimate resale, the dealer allows his family members to use the vehicle. The interim use exemption may be claimed providing the vehicle remains available for resale during the interim use period. The Department would examine the books and records of the dealer, notices or window stickers placed in or on the car indicating it is available for sale, and length of interim use period, among other things, to determine if the vehicle remained available for sale during the interim use period.
- ii) A car dealer purchases a truck from a manufacturer claiming it is a purchase for retail sale. The dealer uses the truck as a parts and supplies truck from the time of initial purchase until it is resold. The dealer does not use dealer plates when registering the vehicle. In addition, the dealer takes advantage of a \$2,500 manufacturer's markdown at time of purchase, and claims a depreciation deduction for the truck on his or her tax returns. The truck is insured as being property not placed in the sales inventory of the dealer. This transaction would not qualify for the interim use exemption.

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- iii) A car dealer purchases a truck and uses it as a parts and supplies vehicle from the time of initial purchase until it is resold one year later. The dealer places signs on and inside the truck indicating the truck is available for retail sale. In addition, the truck maintains dealer plates and is carried on the dealers books and records as sales inventory. This transaction would qualify for the interim use exemption.
- 2) Except as limited in subsection (c), the leasing of tangible personal property by persons who are primarily engaged in the business of selling such property at retail is within the interim use exemption if such property is ~~carried as inventory on the books of the retailer or is otherwise~~ available for sale during the lease period. ~~The~~~~Except as to motor vehicles described in subsection (a)(4), the~~ interim use exemption is not available to persons who purchase tangible personal property with the intent to engage in the business of leasing such property and who sell such property only as an incident to their leasing activity. Persons who are primarily engaged in the business of leasing motor vehicles may not claim an interim use exemption when purchasing motor vehicles for use in their business even though such lessors are subject to Retailer's Occupation Tax on the sale of used motor vehicles pursuant to 35 ILCS 120/1c. Motor vehicles of the first division as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146] are exempt from Use Tax if the vehicles purchased are to be rented under lease terms of one year or less. (See 35 ILCS 105/3-5(10).) When considering whether a person is primarily a retailer or lessor of the subject property, the Department will consider the following factors, including but not limited to:
- A) Intent of retailer/lessor at time of purchase;
 - B) Retail sales history of leased property in general;
 - C) Percentage of annual sales revenue compared to rental revenue;
 - D) Books, records, and inventories;
 - E) Advertisements of retailer/lessor.
- 3) In determining whether a taxpayer is "primarily" a retailer, the Department

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will examine only the activities of his Illinois operations. In addition, the Department will examine the activities of divisions of a corporate entity that are not separately registered with the Department. If divisions of a corporate entity are separately registered, however, their activities will not be examined in making this determination.

- 4) The leasing of motor vehicles by motor vehicle dealers is within the interim use exemption if the leased motor vehicles are ~~carried as inventory on the books of the dealers or are otherwise~~ available for sale during the lease period. For example, many times motor vehicle dealers enter into leases of motor vehicles with lessees and simultaneously sell both those motor vehicles and leases to third parties. If a motor vehicle dealer enters into a lease of a motor vehicle with a lessee and simultaneously sells that motor vehicle to a third party, the interim use exemption is available to the dealer in regard to the purchase of the motor vehicle when it was purchased by the dealer for lease provided that the motor vehicle is ~~carried as inventory on the books of the dealer or is otherwise~~ available for sale during the lease period. However, the dealer's sale of the motor vehicle, with or without the lease, to the third party is taxable and the third party incurs a Use Tax liability. In order to determine if a motor vehicle remains available for sale during a lease period, the Department will consider the following factors, including but not limited to:
- A) Contracts signed by lessee indicating vehicle is available for recall, substitution allowance, and sale, during lease period;
 - B) Depreciation of property or claiming an IRC section 179 deduction on the vehicle as a depreciable business asset;
 - C) Terms of purchase, manufacturer rebates and discounts;
 - D) Advertisements on vehicle and at place of location, displaying vehicle remains available for sale to prospective buyers;
 - E) Ownership and control documents, including but not limited to books, records, titles and insurance documents;
 - F) Length of time property is leased prior to sale;

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G) History of retail sales of leased property.

- 5) Subject to all requirements of this subsection (a), for purposes of manufacturers claiming the interim use exemption on or after July 1, 2007, a manufacturer may claim the interim use exemption for tangible personal property leased to its employees, or used by its employees, only when the manufacturer can establish that the tangible personal property for which the claim is made will be sold by that manufacturer in a retail sale. ~~The leasing of motor vehicles by motor vehicle manufacturers to their employees is within the interim use exemption if the leased motor vehicles are carried as inventory on the books of the manufacturers or are otherwise available for sale during the lease period.~~

b) Demonstration Use Exemption

- 1) Except as provided in subsection (c), tangible personal property purchased for resale and used by its owner for demonstration purposes is not subject to Use Tax.
- 2) The leasing of tangible personal property by a retailer to prospective buyers for the purpose of allowing them to ascertain whether or not the property suits their particular needs and for the purpose of trying to induce them to buy such property is a use for demonstration purposes, except as provided in subsection (c).
- 3) The demonstration use exemption may not be claimed for tangible personal property purchased for resale which is consumed or destroyed in order to promote or demonstrate the product available for sale or is given away to a prospective customer as an inducement to make future purchases. For example, a retail grocer offering free samples of pizza to customers in his store in order to promote the sale of a new frozen pizza would not be able to claim a demonstration use exemption on his purchase price of the pizza consumed in the promotion.
- 4) A vendor may not claim a demonstration use exemption on the use of a competing product, not available for sale by that vendor, even though the vendor uses the competing product to assist in the demonstration of the product which he sells. Nor may a vendor claim a demonstration use exemption on ancillary items used in the demonstration of a product (i.e.,

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a microwave used to heat the pizza samples in the above example). The demonstration use exemption is available only to a vendor of the product being demonstrated.

- c) Aircraft and Watercraft |
For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay Use Tax on the original cost price of the aircraft or watercraft, and no credit for that tax is permitted if the aircraft or watercraft is subsequently sold by the retailer. For purposes of this Section, the term "watercraft" means a Class 2, Class 3 or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

- 1) Heading of the Part: Reimbursement for Nursing Costs for Geriatric Facilities
- 2) Code Citation: 89 Ill. Adm. Code 147
- 3) Section Numbers:

147.125	Amendment
147.150	Amendment
147.175	Amendment
147.200	Amendment
147.TABLE A	Amendment
- 4) Date Proposal published in Illinois Register: January 27, 2006; 30 Ill. Reg. 1255
- 5) Date Adoption published in Illinois Register: September 22, 2006; 30 Ill. Reg. 15141
- 6) Date Request for Expedited Correction Published in Illinois Register:
- 7) Adoption Effective Date: September 11, 2006
- 8) Correction Effective Date: September 11, 2006
- 9) Reason for Approval of Expedited Correction: The Department has determined that discrepancies between the text for this adopted rulemaking and previously published rule text, as well as second notice text, require this action. The agency is also taking this opportunity to correct non-substantive errors that are of a typographical, clerical, grammatical, or formatting nature.

The full text of the Corrected Rule begins on the next page:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER d: MEDICAL PROGRAMS

PART 147

REIMBURSEMENT FOR NURSING COSTS FOR GERIATRIC FACILITIES

Section

147.5	Reimbursement For Nursing Costs For Geriatric Residents in Group Care Facilities (Repealed)
147.15	Comprehensive Resident Assessment (Repealed)
147.25	Functional Needs and Restorative Care (Repealed)
147.50	Service Needs (Repealed)
147.75	Definitions (Repealed)
147.100	Reconsiderations (Repealed)
147.105	Midnight Census Report
147.125	Nursing Facility Resident Assessment Instrument
147.150	Minimum Data Set (MDS) Based Reimbursement System
147.175	Minimum Data Set (MDS) Integrity
147.200	Minimum Data Set (MDS) On-Site On-Site Review Documentation
147.205	Nursing Rates (Repealed)
147.250	Costs Associated with the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) (Repealed)
147.300	Payment to Nursing Facilities Serving Persons with Mental Illness
147.301	Sanctions for Noncompliance
147.305	Psychiatric Rehabilitation Service Requirements for Individuals With Mental Illness in Residential Facilities (Repealed)
147.310	Inspection of Care (IOC) Review Criteria for the Evaluation of Psychiatric Rehabilitation Services in Residential Facilities for Individuals with Mental Illness (Repealed)
147.315	Comprehensive Functional Assessments and Reassessments (Repealed)
147.320	Interdisciplinary Team (IDT) (Repealed)
147.325	Comprehensive Program Plan (CPP) (Repealed)
147.330	Specialized Care – Administration of Psychopharmacologic Drugs (Repealed)
147.335	Specialized Care – Behavioral Emergencies (Repealed)
147.340	Discharge Planning (Repealed)
147.345	Reimbursement for Program Costs in Nursing Facilities Providing Psychiatric Rehabilitation Services for Individuals with Mental Illness (Repealed)
147.350	Reimbursement for Additional Program Costs Associated with Providing

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

Specialized Services for Individuals with Developmental Disabilities in Nursing
Facilities

147.TABLE A	Staff Time (in Minutes) and Allocation by Need Level
147.TABLE B	Staff Time and Allocation for Restorative Programs (Repealed)
147.TABLE C	Comprehensive Resident Assessment (Repealed)
147.TABLE D	Functional Needs and Restorative Care (Repealed)
147.TABLE E	Service (Repealed)
147.TABLE F	Social Services (Repealed)
147.TABLE G	Therapy Services (Repealed)
147.TABLE H	Determinations (Repealed)
147.TABLE I	Activities (Repealed)
147.TABLE J	Signatures (Repealed)
147.TABLE K	Rehabilitation Services (Repealed)
147.TABLE L	Personal Information (Repealed)

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Recodified from 89 Ill. Adm. Code 140.900 thru 140.912 and 140.Table H and 140.Table I at 12 Ill. Reg. 6956; amended at 13 Ill. Reg. 559, effective January 1, 1989; amended at 13 Ill. Reg. 7043, effective April 24, 1989; emergency amendment at 13 Ill. Reg. 10999, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 16796, effective October 13, 1989; amended at 14 Ill. Reg. 210, effective December 21, 1989; emergency amendment at 14 Ill. Reg. 6915, effective April 19, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 9523, effective June 4, 1990, for a maximum of 150 days; emergency expired November 1, 1990; emergency amendment at 14 Ill. Reg. 14203, effective August 16, 1990, for a maximum of 150 days; emergency expired January 13, 1991; emergency amendment at 14 Ill. Reg. 15578, effective September 11, 1990, for a maximum of 150 days; emergency expired February 8, 1991; amended at 14 Ill. Reg. 16669, effective September 27, 1990; amended at 15 Ill. Reg. 2715, effective January 30, 1991; amended at 15 Ill. Reg. 3058, effective February 5, 1991; amended at 15 Ill. Reg. 6238, effective April 18, 1991; amended at 15 Ill. Reg. 7162, effective April 30, 1991; amended at 15 Ill. Reg. 9001, effective June 17, 1991; amended at 15 Ill. Reg. 13390, effective August 28, 1991; emergency amendment at 15 Ill. Reg. 16435, effective October 22, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 4035, effective March 4, 1992; amended at 16 Ill. Reg. 6479, effective March 20, 1992; emergency amendment at 16 Ill. Reg. 13361, effective August 14, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 14233, effective August 31, 1992; amended at 16 Ill. Reg. 17332, effective November 6, 1992; amended at 17 Ill. Reg. 1128, effective January 12, 1993; amended at 17 Ill. Reg. 8486, effective June 1, 1993; amended at 17

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Ill. Reg. 13498, effective August 6, 1993; emergency amendment at 17 Ill. Reg. 15189, effective September 2, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 2405, effective January 25, 1994; amended at 18 Ill. Reg. 4271, effective March 4, 1994; amended at 19 Ill. Reg. 7944, effective June 5, 1995; amended at 20 Ill. Reg. 6953, effective May 6, 1996; amended at 21 Ill. Reg. 12203, effective August 22, 1997; amended at 26 Ill. Reg. 3093, effective February 15, 2002; emergency amendment at 27 Ill. Reg. 10863, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18680, effective November 26, 2003; expedited correction at 28 Ill. Reg. 4992, effective November 26, 2003; emergency amendment at 29 Ill. Reg. 10266, effective July 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 18913, effective November 4, 2005; amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006.

Section 147.125 Nursing Facility Resident Assessment Instrument

- a) Except as specified in subsection (b) of this Section, all Medicaid certified nursing facilities shall comply with the provisions of the current federal Long Term Care Resident Assessment Instrument User's Manual, version 2. (Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 (December 2005), and the Resident Assessment Instrument - Mental Health [Illinois](#) version 2 (July 2003), adopted from Minimum Data Set - Mental Health version 2. This incorporation by reference includes no later amendments or editions.)
- b) Nursing facilities shall, in addition, comply with the following requirements:
 - 1) Complete a full Minimum Data Set (MDS) assessment, which includes required items A through R, in addition to any State required items, for each resident quarterly, regardless of the resident's payment source. Facilities are not required to complete and submit the MDS Quarterly Assessment Form. When completing the full MDS assessment for quarterly submittal to the Department, it is not necessary to also complete the Resident Assessment Protocols (RAPs) or Section T. RAPs and Section T are only required with the comprehensive assessment described in the current federal Long Term Care Resident Assessment Instrument User's Manual, which includes assessments completed at admission, annually, for a significant change or for a significant correction of a prior MDS.

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- 2) Transmit electronically to the State MDS database the MDS for all assessments within 31 days after the completion date of the assessment. Except for nursing facilities that are defined as Class I Institutions for Mental Diseases (IMDs) pursuant to 89 Ill. Adm. Code 145.30, the rate set will be based on the MDS received two quarters prior to the rate effective date and MDS not received within 31 days will be given a default rate.
- c) While a new rate system referenced in Section 147.150 is under development, Medicaid-certified Class I IMDs shall electronically submit both the MDS pursuant to subsections (a) and (b) of this Section and the Illinois Minimum Data Set-Mental Health (IL MDS-MH) as specified by the Department at the following frequencies:
 - 1) Complete a full IL MDS-MH within 14 days after admission for each resident, regardless of the resident's payment source.
 - 2) Complete a full IL MDS-MH at 90 days after admission for each resident, regardless of the resident's payment source.
 - 3) Complete a full IL MDS-MH at six months after admission for each resident, regardless of the resident's payment source, and every six months thereafter.
 - 4) Transmit electronically to the Department's IL MDS-MH database, the IL MDS-MH for all required assessments within 31 days after the completion date of the assessment.

(Source: Amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006)

Section 147.150 Minimum Data Set (MDS) Based Reimbursement System

- a) Public Act 92-0848 requires the Department to implement, effective July 1, 2003, a payment methodology for the nursing component of the rate paid to nursing facilities. Except for nursing facilities that are defined as Class I Institutions for Mental Diseases (IMDs) pursuant to 89 Ill. Adm. Code 145.30, reimbursement for the nursing component shall be calculated using the Minimum Data Set (MDS). Increased reimbursement under this payment methodology shall be paid only if specific appropriation for this purpose is enacted by the General Assembly. For

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Class I IMDs, the nursing component shall be the rate in effect on June 30, 2005 until a payment methodology using the Illinois Minimum Data Set-Mental Health (IL MDS-MH), appropriate for the care needs of the IMD resident population, is implemented. The payment methodology using the IL MDS-MH shall be implemented no later than July 1, 2007.

- b) The nursing component of the rate shall be calculated annually and may be adjusted quarterly. The determination of rates shall be based upon a composite of MDS data collected from each eligible resident in accordance with Section 147. Table A for those eligible residents who are recorded in the Department's Medicaid Management Information System as of 30 days prior to the rate period as present in the facility on the last day of the second quarter preceding the rate period. Residents for whom MDS resident identification information is missing or inaccurate, or for whom there is no current MDS record for that quarter, shall be placed in the lowest MDS acuity level for calculation purposes for that quarter. The nursing component of the rate may be adjusted on a quarterly basis if any of the following conditions are met:
- 1) Total variable nursing time for a rate quarter as calculated in subsection (c)(1) of this Section exceeds total variable nursing time calculated for the previous rate quarter by more than five percent.
 - 2) Total variable nursing time for a rate quarter as calculated in subsection (c)(1) of this Section exceeds:
 - A) total variable nursing time as calculated for the annual rate period by more than ten percent;
 - B) total variable nursing time as recalculated and adjusted for the annual period by more than five percent.
 - 3) Total variable nursing time for a rate quarter as calculated in subsection (c)(1) of this Section declines from the total variable nursing time as calculated for the annual period by more than five percent. No quarterly nursing component rate reduction shall exceed five percent from the previous rate quarter.
- c) Per diem reimbursement rates for nursing care in nursing facilities consist of three elements: variable time reimbursement; fringe benefit reimbursement; and

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reimbursement for supplies, consultants, medical directors and nursing directors.

- 1) Variable Time Reimbursement. Variable nursing time is that time necessary to meet the major service needs of residents that vary due to their physical or mental conditions. Each need level or specific nursing service measured by the Resident Assessment Instrument is associated with an amount of time and staff level (Section 147. Table A). Reimbursement is developed by multiplying the time for each service by the wage(s) of the type of staff performing the service except for occupational therapy, physical therapy and speech therapy. If more than one level of staff are involved in delivering a service, reimbursement for that service will be weighted by the wage and number of minutes allocated to each staff type. In calculating a facility's rate, the figures used by the Department for wages will be determined in the following manner:
 - A) The mean wages for the applicable staff levels (RNs, LPNs, certified nursing assistants (CNAs), activity staff, social workers), as reported on the cost reports and determined by regional rate area, will be the mean wages.
 - B) Fringe benefits will be the average percentage of benefits to actual salaries of all nursing facilities based upon cost reports filed pursuant to 89 Ill. Adm. Code 140.543. Fringe benefits will be added to the mean wage.
 - C) The base wage, including fringe benefits, will then be updated for inflation from the time period for which the wage data are available to the midpoint of the rate year to recognize projected base wage changes.
 - D) Special minimum wage factor. The process used in subsection (c)(1)(A) of this Section to determine regional mean wages for RNs, LPNs and CNAs will include a minimum wage factor. For those facilities below 90% of the Statewide average, the wage is replaced by 90% of the Statewide average.
 - E) Beginning January 1, 2007, facilities shall be paid a rate based upon the sum of the following:

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- i) the facility MDS-based rate multiplied by the ratio the numerator of which is the quotient obtained by dividing the additional funds appropriated specifically to pay for rates based upon the MDS nursing component methodology above the December 31, 2006 funding by the total number of Medicaid patient days utilized by facilities covered by the MDS-based system and the denominator of which is the difference between the weighted mean rate obtained by the MDS-based methodology and the weighted mean rate in effect on December 31, 2006.
 - ii) ~~the~~The facility rate in effect on December 31, 2006, which is defined as the facility rate in effect on December 31, 2006 plus the Exceptional Care per diem computed in 89 Ill. Adm. Code 140.569(a)(1), multiplied by one minus the ratio computed in Section 147.150(c)(1)(E)(i). The Exceptional Care reimbursement per diem effective January 1, 2007 computed in 89 Ill. Adm. Code 140.569 shall be included in the nursing component of the June 30, 2006 rate unless the total variable nursing time for a rate quarter as calculated in subsection (c)(1) of this Section is more than a five percent drop from the total variable nursing time calculated for the June 30, 2006 rate quarter. Then the facility will receive for the rate period zero percent of the Exceptional Care reimbursement per diem computed in 89 Ill. Adm. Code 140.569
- F) The amount of new funds allocated for MDS reimbursement methodology for Fiscal Year 2007, beginning January 1, 2007, is \$30 million.
- 2) Vacation, Sick Leave and Holiday Time. The time to be added for vacation, sick leave, and holidays will be determined by multiplying the total of Variable Time by 5%.
 - 3) Special Supplies, Consultants and the Director of Nursing. Reimbursement will be made for health care and program supplies, consultants required by the Department of Public Health (including the Medical Director), and the Director of Nursing by applying a factor to

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variable time and vacation, sick leave and holiday time. (A list of consultants required by the Department of Public Health can be found in 77 Ill. Adm. Code 300.830).

- A) Supplies will be updated for inflation using the General Services Inflator (see 89 Ill. Adm. Code 140.551). Health care and program salaries shall be updated for inflation using the Nursing and Program Inflator (see 89 Ill. Adm. Code 140.552). A factor for supplies will be the Statewide mean of the ratio of total facility health care and programs supply costs to total facility health care and programs salaries.
 - B) The Director of Nursing and the consultants will be updated for inflation using the Nursing and Program Inflator (see 89 Ill. Adm. Code 140.552). A factor for the Director of Nursing and consultant costs shall be the Statewide mean of the ratio of all facilities' Director of Nursing and consultant costs to total facility health care and programs salaries.
 - C) These costs shall be updated pursuant to cost reports as referenced in 89 Ill. Adm. Code 153.125(f).
- d) **Determination of Facility Rates.**
An amount for each resident will be calculated by multiplying the number of minutes from the assessment by the appropriate wages for each assessment item (see subsection (c)(1) of this Section), adding the amounts for vacation, sick and holiday time (see subsection (c)(2) of this Section), and supplies, consultants, and the Director of Nursing (see subsection (c)(3) of this Section). The average of the rates for eligible residents assessed will become the facility's per diem reimbursement rate for each eligible resident in the facility.
- e) A transition period from the payment methodology in effect on June 30, 2003 to the payment methodology in effect July 1, 2003 shall be provided for a period not exceeding December 31, 2006, as follows:
- 1) MDS-based rate adjustments under this Section shall not be effective until the attainment of a threshold. The threshold shall be attained at the earlier of either:

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- A) when all nursing facilities have established a rate (sum of all components) which is no less than the rate effective June 30, 2002, or
 - B) January 1, 2007.
- 2) For a facility that would receive a lower nursing component rate per resident day under the payment methodology effective July 1, 2003 than the facility received June 30, 2003, the nursing component rate per resident day for the facility shall be held at the level in effect on June 30, 2003 until a higher nursing component rate of reimbursement is achieved by that facility.
 - 3) For a facility that would receive a higher nursing component rate per resident day under the payment methodology in effect on July 1, 2003 than the facility received June 30, 2003, the nursing component rate per resident day for the facility shall be adjusted based on the payment methodology in effect July 1, 2003.
 - 4) Notwithstanding subsections (e)(2) and (3) of this Section, the nursing component rate per resident day for the facility shall be adjusted in accordance with subsection (c)(1)(E) of this Section.

(Source: Amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006)

Section 147.175 Minimum Data Set (MDS) Data Integrity

- a) The Department shall conduct reviews to determine the accuracy of resident assessment information transmitted in the Minimum Data Set (MDS) that are relevant to the determination of reimbursement rates. Such reviews may, at the discretion of the Department, be conducted electronically or in the facility.
- b) The Department shall quarterly select, at random, a number of facilities in which to conduct on-site reviews. In addition, the Department may select facilities for on-site review based upon facility characteristics, past performance, or the Department's experience.

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- c) Electronic review. The Department shall conduct quarterly an electronic review of MDS data for eligible individuals to identify facilities for on-site review.
- d) On-site review. The Department shall conduct an on-site review of MDS data for eligible individuals.
 - 1) On-site reviews may be conducted with respect to residents or facilities that are identified pursuant to subsection (b) or (c) of this Section. Such review may include, but shall not be limited to, the following:
 - A) Review of resident records and supporting documentation, as identified in Section ~~147.200~~174.200, observation and interview, to determine the accuracy of data relevant to the determination of reimbursement rates.
 - B) Review and collection of information necessary to assess the need for a specific service or care area.
 - C) Review and collection of information from the facility that will establish the direct care staffing level.
 - 2) The number of residents in any selected facility for whom information is reviewed may, at the sole discretion of the Department, be limited or expanded.
 - 3) Upon the conclusion of any review, the Department shall conduct a meeting with facility management to discuss preliminary conclusions of the review. If facility management disagrees with those preliminary conclusions, facility management may, at that time, provide additional documentation to support their position.
- e) Corrective action. Upon the conclusion of the review and the consideration of any subsequent supporting documentation provided by the facility, the Department shall notify the facility of its final conclusions, both with respect to accuracy of data and recalculation of the facility's reimbursement rate.
 - 1) Data Accuracy

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- A) Final conclusions with respect to inaccurate data shall be referred to the Department of Public Health.
 - B) The Department, in collaboration with the Department of Public Health, shall make available additional training in the completion of resident assessments and the coding and transmission of MDS records.
- 2) Recalculation of Reimbursement Rate. The Department shall determine if reported MDS data or facility staffing data that were subsequently determined to be unverifiable would cause the direct care component of the facility's rate to be calculated differently when using the accurate data. No change in reimbursement required as a result of a review shall take effect before July 1, 2004. A facility's rate shall only be recalculated on those residents who have been subject to a Department review. A facility's rate will be subject to change if the recalculation of the direct care component rate, as a result of using MDS data that are verifiable
- A) Increases the rate by more than one percent. The rate is to be changed, retroactive to the beginning of the rate period, to the recalculated rate.
 - B) Decreases the rate by more than one percent. The rate is to be changed, retroactive to the beginning of the rate period, to the recalculated rate.
 - C) Decreases the rate by more than ten percent in addition to the rate change specified in this subsection (e)(2). The direct care component of the rate shall be reduced, retroactive to the beginning of the rate period, by \$1 for each whole percentage decrease in excess of two percent.
- 3) Any evidence or suspicion of deliberate falsification or misrepresentation of MDS data shall be referred to the Department's Inspector General and the Department of Public Health.
- f) Appeals. Facilities disputing any rate change may request a hearing pursuant to 89 Ill. Adm. Code 140.830.

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(Source: Amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006)

Section 147.200 Minimum Data Set (MDS) On-Site Review Documentation

- a) Pursuant to Section 147.175, Department staff shall conduct on-site reviews of Minimum Data Set (MDS) data to determine the accuracy of resident information that is relevant to the determination of reimbursement rates. ~~Pursuant to Section 147.175, Department staff shall conduct on-site reviews of Minimum Data Set (MDS) data to determine the accuracy of resident information that is relevant to the determination of reimbursement rates.~~ Each nursing facility shall make accessible to the Department all provider, resident and other records necessary to determine that the needs of the resident are being met, and to determine the appropriateness of services. The Department shall provide for a program of delegated utilization review and quality assurance. The Department may contract with Medical Peer Review organizations to provide utilization review and quality assurance.
- b) There shall be documentation in the resident's record to support an MDS coded response indicating that the condition or activity was present or occurred during the observation or look back period. Directions provided by the RAI User's Manual (as described in Section 147.125) are the basis for all coding of the MDS. Section S is reserved for additional State-defined items. All documentation requirements pertain to the MDS 2.0 and Section S items.
- c) Each nursing facility shall ensure that MDS data for each resident accurately and completely describes the resident's condition, as documented in the resident's clinical records, maintained by the nursing facility, and the clinical records shall be current, accurate and in sufficient detail to support the reported resident data.
- d) Documentation guidance has been compiled from the RAI Manual, instructions that are present on the MDS 2.0 form itself, RAI-MH, and Illinois additional documentation requirements. If later guidance is released by CMS that contradicts or augments guidance provided in this Section, the more current information from CMS becomes the acceptable standard. If additional ICD9 codes are published, they will be reviewed for appropriateness.

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- e) Documentation from all disciplines and all portions of the resident's clinical record may be used to verify an MDS item response. All supporting documentation shall be found in the facility during an on-site visit.
- f) All conditions or treatments shall have been present or occurred within the designated observation period. Documentation in the clinical record shall consistently support the item response and reflect care related to the symptom/problem. Documentation shall apply to the appropriate observation period and reflect the resident's status on all shifts. In addition, the problems that are identified by the DS item responses that affect the resident's status shall be addressed on the care plan. Insufficient or inaccurate documentation may result in a determination that the ~~MDS~~ item response submitted could not be validated.
- g) Disease Diagnoses
 - 1) Code only those diseases or infections ~~that~~ which have a relationship to the resident's current ADL (~~Activities of Daily Living~~) status, cognitive status, mood or behavior status, medical treatments, nursing monitoring or risk of death as directed in the RAI Manual.
 - 2) The disease conditions require a physician-documented diagnosis in the clinical record. It is good clinical practice to have the resident's physician provide supporting documentation for any diagnosis.
 - 3) Do not include conditions that have been resolved or no longer affect the resident's functioning or care plan. One of the important functions of the MDS assessment is to generate an updated, accurate picture of the resident's health status.
- h) Activities of Daily Living (ADL)
Facilities shall maintain documentation that supports the coding of Section G, Physical Functioning, and Structural Problems on the MDS during the assessment reference period. The documentation shall show the MDS coded level of resident self-performance and support has been met.
- i) Restorative specific documentation shall include:

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- 1) Documentation shall define the resident's needs and identify a restorative nursing plan of care to assist the resident in reaching and/or maintaining his or her highest level of functioning. Documentation shall contain objective and measurable information so that progress, maintenance or regression can be recognized.
- 2) Goals shall be resident specific, realistic, and measurable. The resident's endurance and ability to participate in the programs shall be addressed.
- 3) Written evidence of measurable objectives and interventions shall be in the resident's care plan, reviewed quarterly, and revised as necessary.
- 4) Written evidence of quarterly evaluation by a licensed nurse shall be in the clinical record.
- 5) There shall be written evidence that staff carrying out the programs have been trained in techniques that promote resident involvement in the activity.
- 6) There shall be written evidence that techniques are carried out or supervised by members of the nursing staff.
- 7) Sometimes under licensed nurse supervision, other staff and volunteers will be assigned to work with specific residents. If a volunteer is assigned to a specific resident, there shall be written evidence of specific training in techniques that ~~promote~~~~promotes~~ that resident's involvement in the restorative program.
- 8) Restorative programs shall be ongoing, unless there is written justification in the clinical record that supports the need to discontinue the program.
- 9) The number of minutes per day spent in a restorative program shall be documented for each resident and for each restorative program during the look back period.
- 10) The medical record shall also include documentation that restorative nursing services were administered as planned.

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- 11) An assessment designed by the Department shall be required quarterly to assess the resident's endurance and ability to benefit from two or more restorative programs.
 - 12) A splint or brace is defined as an appliance for the fixation, union or protection of an injured part of the body.
 - 13) A check and change program will not be scored as a toileting program.
 - 14) All restorative programs provided per criteria of the RAI manual shall be coded on the MDS.
- j) **Discharge Planning**
Social services shall document monthly on the resident's potential for discharge, specific steps being taken toward discharge, and the progress being made. Social Service documentation shall demonstrate realistic evaluation, planning, and follow-through. Discharge plans shall address the current functional status of the resident, medical nursing needs, and the availability of family and/or community resources to meet the needs of the resident.
- k) **Psychosocial Adaptation Services**
Behavioral symptoms shall be assessed and tracked during the look back period. They shall be addressed in the care plan with individualized goals and interventions.
- l) **Skills Training**
Skills training is specific methods for assisting residents who need and can benefit from this training to address identified deficits and reach personal and clinical goals. To qualify for reimbursement, the provision of skills training shall meet all of the following criteria:
- 1) Skills and capabilities shall be assessed with the use of a standardized skills assessment, a cognitive assessment and an assessment of motivational potential. The assessment of motivational potential will assist in determining the type and size of the group in which a resident is capable of learning.
 - 2) Addresses identified skill deficits related to goals noted in the treatment plan.

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- 3) Skills training shall be provided by facility staff, trained in leading skills groups, who are paid by the facility.
- 4) Training shall be provided in a private room with no other programs or activities going on at the same time. The environment shall be conducive to learning in terms of comfort, noise, and other distractions.
- 5) Training shall be provided in groups no larger than ten, with reduced group size for residents requiring special attention due to cognitive, motivational or clinical issues, as determined by the skills assessment, cognition and motivational potential. Individual sessions can be provided as appropriate and shall be identified in the care plan.
- 6) Training shall utilize a well-developed, structured curriculum and specific written content developed in advance to guide each of the sessions. (Published skills modules developed for the severe mentally ill (SMI) and Mental Illness/Substance Abuse (MISA) populations are available for use and as models).
- 7) The curriculum shall address discrete sets of skill competencies, breaking skills down into smaller components or steps in relation to residents' learning needs.
- 8) The specific written content shall provide the ~~rational~~rational for learning, connecting skill acquisition to resident goals.
- 9) Training shall employ skill demonstration/modeling, auditory and visual presentation methods, role-playing and skill practice, immediate positive and corrective feedback, frequent repetition of new material, practice assignments between training sessions (homework), and brief review of material from each previous session.
- 10) There shall be opportunities for cued skill practice and generalization outside session as identified in the care plan and at least weekly documentation relative to skill acquisition.
- 11) Each training session shall be provided and attended in increments of a minimum of 30 minutes each (not counting time to assemble and settle) at

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least three times per week. Occasional absences are allowable, with individual coverage of missed material as necessary.

- m) Close and Constant Observations
Coding of this item is intended only for interventions applied in response to the specific current significant need of an individual resident. This item should not be coded for observation conducted as standard facility policy for all residents, such as for all new admissions, or as part of routine facility procedures, such as for all returns from hospital or conducted as a part of periodic resident headcounts.
- n) Ancillary Provider Services
 - 1) Ancillary provider services are services that are provided by direct non-facility psychiatric service providers in order to meet 77 Ill. Adm. Code [300](#), Subpart S requirements.
 - 2) Psychiatric rehabilitation services that are provided by non-facility providers or an outside entity shall meet the needs of the SMI resident as determined by the resident's individual treatment plan (ITP).
 - 3) Facilities must ensure compliance with 77 Ill. Adm. Code, ~~Subpart S,~~ [Section 300.4050](#) when utilizing non-facility or outside ancillary providers.
- o) Psychotropic Medication Monitoring
Facilities are to follow documentation guidelines as directed by 42 CFR 483.25(1) (State Operations Manual tags F329, F330, F331).
- p) Dementia Care Unit
 - 1) If the resident has a CPS score of five, care planning shall address the resident's participation in the unit's activities.
 - 2) If a particular resident does not participate in at least an average of four activities per day over a one-week period, the unit director shall evaluate the resident's participation and have the available activities modified and/or consult with the interdisciplinary team.
 - 3) Documentation shall support staff's efforts to involve the resident.

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- q) Exceptional Care Services
- 1) Extensive Respiratory Services
 - A) A respiratory therapist shall evaluate the status of the resident at least monthly if the resident has a tracheostomy.
 - B) Documentation of respiratory therapy being provided 15 minutes a day shall be present in the clinical record for the look back period.
 - C) Respiratory therapy requires documentation in the record of the treatment and the times given by a qualified professional (respiratory therapist or trained nurse) as defined in the RAI manual.
 - 2) Documentation shall be in place to support weaning from the ventilator.
 - 3) Ventilator Care
 - A) If the facility has residents receiving ventilator care, the facility shall have a respiratory therapist available at the facility or on call 24 hours a day.
 - B) A respiratory therapist shall evaluate and document the status of the resident at least weekly.
 - 4) Morbid Obesity
 - A) A ~~dietician's~~ **Dietician's** evaluation shall be completed with evidence of on-going consultation.
 - B) On-going monitoring of weight shall be evident.
 - C) The psychosocial needs related to weight issues shall be identified and addressed.
 - 5) Wound Care Services

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Facilities are to follow documentation guidelines as directed by 42 CFR 483.25(c) (State Operations Manual tag F314).

- 6) Traumatic Brain Injury (TBI)
 - A) Documentation shall support that psychological therapy is being delivered by licensed mental health ~~professionals~~professional, as described in the RAI manual.
 - B) Documentation shall support a Special Symptom Evaluation program as an ongoing, comprehensive, interdisciplinary evaluation of behavioral symptoms as described in the RAI manual.
 - C) Documentation shall support evaluation by a licensed mental health specialist in the last 90 days. This shall include an assessment of a mood, behavior disorder, or other mental health problems by a qualified clinical professional as described in the RAI manual.
 - D) The care plan shall address the behaviors of the resident and the interventions used.
- r) Clarification and additional documentation requirements are as follows:
 - 1) Defined actions such as further assessment or documentation, described in the RAI Manual as "good clinical practice" are required by the Department as supporting documentation. Clinical documentation that contributes to identification and communication of a resident's problems, needs and strengths, that monitors his or her condition on an on-going basis, and that records treatments and response to treatment is a matter of good clinical practice and is an expectation of trained and licensed health care professionals (RAI page 1-23).
 - 2) The facility shall have in place policies and procedures to address specific care needs of the residents, written evidence of ongoing in-services for staff related to residents' specific care needs and all necessary durable medical equipment to sustain life and carry out the plan of care as

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designed by the physician. In the absence of the above, a referral will be made to the Illinois Department of Public Health.

- 3) No specific types of documentation or specific forms are mandated, but documentation shall be sufficient to support the codes recorded on the MDS. Treatments and services ordered and coded shall be documented as delivered in the clinical record.
- 4) When completing a significant change assessment, the guidelines provided in the RAI Manual shall be followed. This includes documenting "the initial identification of a significant change in terms of the resident's clinical status in the progress notes" as described in RAI page 2-7.

(Source: Old Section repealed at 27 Ill. Reg. 18680, effective November 26, 2003; new Section added at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006)

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Section 147. TABLE A Staff Time (in Minutes) and Allocation by Need Level

- a) Effective July 1, 2003, each Medicare and Medicaid certified nursing facility shall complete, and transmit quarterly to the Department, a full Minimum Data Set (MDS) for each resident who resides in a certified bed, regardless of payment source. A description of the MDS items referenced in the tables found following subsection (e) of this Table A are contained in the Long Term Care Resident Assessment Instrument User's Manual available from the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 (December 2002).
- b) Table A identifies 51 MDS items that shall be used to calculate a profile on each Medicaid-eligible resident within each facility.
- c) The profile for each Medicaid-eligible resident shall then be blended to determine the nursing component of the nursing facility's Medicaid rate.
- d) Each MDS item in Table A includes a description of the item and the variable time referred to in Section 147.150(c)(1). The variable time assigned to each level represents the type of staff that should be delivering the service (unlicensed, licensed, social worker and activity) and the number of minutes allotted to that service item.
- e) Following is a listing of the 51 reimbursable MDS items found in Table A.
 - 1) Base Social Work and Activity
 - 2) Activities of Daily Living (ADL)
 - 3) Restorative Programs

PROM

AROM

Splint/Brace

Bed Mobility

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Mobility/Transfer

Walking

Dressing/Grooming

Eating

Prosthetic Care

Communication

Other Restorative

Scheduled Toileting

4) Medical Services

Continence Care

Catheter Care

Bladder Retraining

Pressure Ulcer Prevention

Moderate Skin Care Services

Intensive Skin Care Services

Ostomy Care

IV Therapy

Injections

Oxygen Therapy

Chemotherapy

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Dialysis

Blood Glucose Monitoring

End Stage Care

Infectious Disease

Acute Medical Conditions

Pain Management

Discharge Planning

Nutrition

Hydration

5) Mental Health (MH) Services

Psychosocial Adaptation

Psychotropic Medication Monitoring

Psychiatric Services (Section S)

Skills Training

Close or Constant Observation

6) Dementia Services

Cognitive Impairment/Memory Assistance

Dementia Care Unit

7) Exceptional Care Services

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Extensive Respiratory Services

Ventilator Care

Total Weaning From Ventilator

Morbid Obesity

Complex Wound Care

Traumatic Brain Injury (TBI)

8) Special Patient Need Factors:

Communication: add 1% of staff time accrued for ADLs through Exceptional Care Services

Vision Problems: add 2% of staff time accrued for ADLs through Exceptional Care Services

Accident/Fall Prevention: add 3% of staff time accrued for ADLs through Exceptional Care Services

Restraint Free Care: add 2% of staff time accrued for ADLs through Exceptional Care Services

Activities: add 2% of staff time accrued for ADLs through Exceptional Care Services

MDS ITEMS AND ASSOCIATED STAFF TIMES

Throughout Table A, where multiple levels are identified, only the highest level shall be scored.

1) Base Social Work and Activity

Level		Unlicensed	Licensed	Social Worker	Activity
I	All Clients	0	0	5	10

2) Activities of Daily Living

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Level	Composite Scores	Unlicensed	Licensed	Social Worker	Activity
I	Composite 7-8	50	7.5 RN 7.5 LPN		
II	Composite 9-11	62	9.5 RN 9.5 LPN		
III	Composite 12-14	69	10.5 RN 10.5 LPN		
IV	Composite 15-29	85	12.5 RN 12.5 LPN		

ADL Scoring Chart for the above Composite Levels

MDS values equal to "-" denote missing data.

ADL	MDS items	Description	Score
Bed Mobility	G1aA = - or G1aA = 0 or G1aA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1aA = 2.	Self-Performance = limited assistance	3
	G1aA = 3 or G1aA = 4 or G1aA = 8 AND G1aB = - or G1aB = 0 or G1aB = 1 or G1aB = 2.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur Support = missing Support = no set up or physical help Support = set up help only Support = 1 person assist	4
	G1aB = 3 or G1aB = 8.	Support = 2+ person physical assist Support = activity did not occur	5
Transfer	G1bA = - or G1bA = 0 or G1bA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1bA = 2.	Self-Performance = limited assistance	3

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	G1bA = 3 or G1bA = 4 or G1bA = 8 AND G1bB = - or G1bB = 0 or G1bB = 1 or G1bB = 2.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur Support = missing Support = no set up or physical help Support = set up help only Support = 1 person assist	4
	G1bB = 3 or G1bB = 8.	Support = 2+ person physical assist Support = activity did not occur	5
Locomotion	G1eA = - or G1eA = 0 or G1eA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1eA = 2.	Self-Performance = limited assistance	3
	G1eA = 3 or G1eA = 4 or G1eA = 8 AND G1eB = - or G1eB = 0 or G1eB = 1 or G1eB = 2.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur Support = missing Support = no set up or physical help Support = set up help only Support = 1 person assist	4
	G1eB = 3 or G1eB = 8.	Support = 2+ person physical assist Support = activity did not occur	5
Toilet	G1iA = - or G1iA = 0 or G1iA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1iA = 2.	Self-Performance = limited assistance	3

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	G1iA = 3 or G1iA = 4 or G1iA = 8 AND G1iB = - or G1iB = 0 or G1iB = 1 or G1iB = 2.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur Support = missing Support = no set up or physical help Support = set up help only Support = 1 person assist	4
	G1iB = 3 or G1iB = 8.	Support = 2+ person physical assist Support = activity did not occur	5
Dressing	G1gA = - or G1gA = 0 or G1gA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1gA = 2.	Self-Performance = limited assistance	2
	G1gA = 3 or G1gA = 4 or G1gA = 8.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur	3
Hygiene	G1jA = - or G1jA = 0 or G1jA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1jA = 2.	Self-Performance = limited assistance	2
	G1jA = 3 or G1jA = 4 or G1jA = 8.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur	3
Eating	G1hA = - or G1hA = 0 or G1hA = 1.	Self-Performance = missing Self-Performance = independent Self-Performance = supervision	1
	G1hA = 2.	Self-Performance = limited assistance	2

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	G1hA = 3 or G1hA = 4 or G1hA = 8 Or K5a = 1 or K5b = 1 and Intake = 1 Where Intake = 1 if K6a = 3 or K6a = 4 Or Intake = 1 if K6a = 2 and K6b = 2 or K6b = 3 or K6b = 4 or K6b = 5.	Self-Performance = extensive assistance Self-Performance = total dependence Self-Performance = activity did not occur Parenteral/IV in last 7 days Tube feeding in last 7 days See below Parenteral/enteral intake 51-75% of total calories Parenteral/enteral intake 76-100% of total calories Parenteral/enteral intake 26-50% of total calories Average fluid intake by IV or tube is 501-1000 cc/day Average fluid intake by IV or tube is 1001-1500 cc/day Average fluid intake by IV or tube is 1501-2000 cc/day Average fluid intake by IV or tube is 2001 or more cc/day	3
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3) Restorative Programs

With the exception of amputation/prosthesis care and splint or brace assistance restoratives, the total number of restorative programs eligible for reimbursement shall be limited to five, with no more than three being a Level II restorative. Scheduled toileting shall be included in this limit. Splint or brace assistance and amputation/prosthesis care shall be reimbursed independently. A resident coded in I1t (CVA/stroke) on the MDS and also coded as B4≤2 (cognitive skills for decision making) shall be limited to a total of six restoratives with no more than four being a Level II restorative. A Department

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designed assessment shall be required quarterly to assess the resident's endurance and the resident's ability to benefit from two or more restorative programs.

When the number of restoratives coded on the MDS exceeds the allowable limits for reimbursement, the following order shall be used.

- A) Eating Restorative
- B) Scheduled Toileting
- C) Walking Restorative
- D) Transfer Restorative
- E) PROM
- F) Bed Mobility Restorative
- G) Communication Restorative
- H) Dressing/Grooming Restorative
- I) Other Restorative
- J) AROM

Passive Range of Motion

Lev	MDS items	Description	Unl	Lic	SW	Act
	G4aA > 0 or	Any function limits in ROM of neck				
	G4bA > 0 or	Any function limits in ROM of arm				
	G4cA > 0 or	Any function limits in ROM of hand				
	G4dA > 0 or	Any function limits in ROM of leg				

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	G4eA > 0 or G4fA > 0 or G4aB > 0 or G4bB > 0 or G4cB > 0 or G4dB > 0 or G4eB > 0 or G4fB > 0	Any function limits in ROM of foot Any function limits in ROM of other limitation or loss Any function limits in voluntary movement of neck Any function limits in voluntary movement of arm Any function limits in voluntary movement of hand Any function limits in voluntary movement of leg Any function limits in voluntary movement of foot Any function limits in voluntary movement of other limitation or loss				
	AND					
I	3 = P3a = 5	3 to 5 days of PROM rehab	10	3 RN 3 LPN		
II	6 = P3a = 7	6 to 7 days of PROM rehab	15	3 RN 3 LPN		

Active Range of Motion

Lev	MDS items	Description	Unl	Lic	SW	Act
	<u>G4aA > 0</u> G4aA 0 or G4bA > 0 or	Any function limits in ROM of neck Any function limits in ROM of arm				

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	G4cA > 0 or G4dA > 0 or G4eA > 0 or G4fA > 0 or	Any function limits in ROM of hand Any function limits in ROM of leg Any function limits in ROM of foot Any function limits in ROM of other limitation or loss				
	G4aB > 0 or G4bB > 0 or G4cB > 0 or G4dB > 0 or G4eB > 0 or G4fB > 0	Any function limits in voluntary movement of neck Any function limits in voluntary movement of arm Any function limits in voluntary movement of hand Any function limits in voluntary movement of leg Any function limits in voluntary movement of foot Any function limits in voluntary movement of other limitation or loss				
	AND					
I	3 = P3b = 5	3 to 5 days of AROM rehab	8	2 RN 2 LPN		
II	6 = P3b = 7	6 to 7 days of AROM rehab	12	2 RN 2 LPN		

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Splint/Brace Assistance

Lev	MDS items	Description	Unl	Lic	SW	Act
I	3 = P3c = 5	3 to 5 days of assistance	8	2 RN 2 LPN		
II	6 = P3c = 7	6 to 7 days of assistance	12	2 RN 2 LPN		

Bed Mobility Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
	0 < G1aA < 8 AND G7 = 1	Need assistance in bed mobility Some or all ADL tasks broken into subtasks				
	AND					
I	3 = P3d = 5	3 to 5 days of rehab or restorative techniques	10	3 RN 3 LPN		
II	6 = P3d = 7	6 to 7 days of rehab or restorative techniques	15	3 RN 3 LPN		

Mobility (Transfer) Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
	0 < G1bA < 8 AND	Need assistance in transfer				

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	G7 = 1	Some or all ADL tasks broken into subtasks				
AND						
I	3 = P3e = 5	3 to 5 days of rehab or restorative techniques	10	3 RN 3 LPN		
II	6 = P3e = 7	6 to 7 days of rehab or restorative techniques	15	3 RN 3 LPN		

Walking Restorative

Lev	MDS items	Description	Unl	Lic	S W	Act
	0 < G1cA < 8 or 0 < G1dA < 8 or 0 < G1eA < 8 or 0 < G1fA < 8 or AND G7 = 1	Need assistance in walking in room Need assistance in walking in corridor Need assistance in locomotion on unit Need assistance in locomotion off unit Some or all ADL tasks broken into subtasks				
AND						
I	3 = P3f = 5	3 to 5 days of rehab or restorative techniques	10	3 RN 3 LPN		
II	6 = P3f = 7	6 to 7 days of rehab or restorative techniques	15	3 RN 3 LPN		

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Dressing or Grooming Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
	0 < G1gA < 8 or 0 < G1jA < 8 AND G7 = 1 AND	Need assistance in dressing Need assistance in personal hygiene Some or all ADL tasks broken into subtasks				
	B4 ≤ 2	Cognitive skills for decision making				
	AND					
	S1 = 0 AND	Does not meet IDPH Subpart S Criteria				
I	3 = P3g = 5	3 to 5 days of rehab or restorative techniques	10	3 RN 3 LPN		
II	6 = P3g = 7	6 to 7 days of rehab or restorative techniques	15	3 RN 3 LPN		

Eating Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
	0 < G1hA < 8 or K1b = 1 AND G7 = 1	Need assistance in eating Has swallowing problem Some or all ADL tasks broken into subtasks				
	AND					

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I	3 = P3h = 5	3 to 5 days of rehab or restorative techniques	15	3 RN 3 LPN		
II	6 = P3h = 7	6 to 7 days of rehab or restorative techniques	20	3 RN 3 LPN		

Amputation/Prosthetic Care

Lev	MDS items	Description	Unl	Lic	SW	Act
I	3 = P3i = 5	3 to 5 days of assistance	10	3 RN 3 LPN		
II	6 = P3i = 7	6 to 7 days of assistance	15	3 RN 3 LPN		

Communication Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
	C4 > 0	Deficit in making self understood				
	AND					
I	3 = P3j = 5	3 to 5 days of rehab or restorative techniques	10	3 RN 3 LPN		
II	6 = P3j = 7	6 to 7 days of rehab or restorative techniques	15	3 RN 3 LPN		

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Other Restorative

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P3k=3 or greater AND Q2 < 2 AND B2a = 0 AND B4 = 0 or 1 AND C6 = 0 or 1 AND S1 = 0	Other Restorative Improved or no change in care needs Short term memory okay Cognitive skills for decision making Ability to understand others Does not meet IDPH Subpart S criteria	6	5 RN 5 LPN		
II	P3k = 3 or greater AND Q1c = 1 or 2 AND Q2 < 2 AND P1ar = 1 AND B2a = 0 AND B4 = 0 or 1 AND	Other restorative Stay projected to be of a short duration – discharge expected to be within 90 days Improved or no change in care needs Provide training to return to the community Short-term memory Cognitive skills for decision making	6	7.5 RN 7.5 LPN		

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C6 = 0 or 1 AND S1 = 0	Ability to understand others Does not meet IDPH Subpart S criteria				
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Other Restorative shall only be reimbursed for a total of two quarters regardless of the level.

Scheduled Toileting

Lev	MDS items	Description	Unl	Lic	SW	Act
I	H3a = 1 AND H3b = 0 AND H3d = 0 AND H1b > 1 or GliA > 1 and <8	Any scheduled toileting plan No bladder retraining program No indwelling catheter Incontinent at least 2 or more times a week Self-performance = limited to total assistance	22	1.5 RN 1.5 LPN		

4) Medical Services**Continence Care**

Lev	MDS items	Description	Unl	Lic	SW	Act
I	Catheter Care		12	.5 RN .5 LPN		

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	H3d = 1 AND H3a = 0	Indwelling catheter present No scheduled toileting plan				
II	Bladder Retraining H3b = 1 AND H3a = 0 AND H1b > 1 AND B4 = 0 or 1 OR H3b = 1 AND H3a = 0 AND H1b = 1 AND H4 = 1 AND B4 = 0 or 1	Bladder retraining program No scheduled toileting plan Incontinent at least 2 or more times a week Cognitive skills for decision making Bladder retraining program No scheduled toileting plan Bladder continence Change in continence Cognitive skills in decision making	32	5 RN 5 LPN		

Bladder scanners cannot be the sole content of the program. Contenance Care – Level II (Bladder Retraining) shall only be reimbursed for two quarters.

Pressure Ulcer Prevention

Lev	MDS items	Description	Unl	Lic	SW	Act
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I	M3 = 1 or Any two of: M5a M5b M5c M5d M5i	History of resolved ulcers in last 90 days Pressure relieving devices for chair Pressure relieving devices for bed Turning or repositioning program Nutrition or hydration intervention for skin Other prevention for skin (other than feet)	15	4 RN 4 LPN		
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Moderate Skin Care/Intensive Skin Care

Lev	MDS items	Description	Unl	Lic	SW	Act
I	M1a > 0 or M1b > 0 or Any of: M4a = 1 M4b = 1 M4c = 1 M4d = 1 M4e = 1	Moderate Skin Care Services Stage 1 ulcers Stage 2 ulcers Other Skin Problems (below): Abrasions, bruises Burns Open lesions other than ulcers Rashes Skin desensitized to pain or pressure	5	5 RN 5 LPN		

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	M4f = 1	Skin tears or cuts (other than surgery)				
	M4g = 1	Surgical wounds				
	AND					
	4 of the following:	Skin Treatments (below):				
	M5a = 1	Pressure relieving devices for chair				
	M5b = 1	Pressure relieving devices for bed				
	M5c = 1	Turning or repositioning program				
	M5d = 1	Nutrition or hydration intervention for skin				
	M5e = 1	Ulcer care				
	M5f = 1	Surgical wound care				
	M5g = 1	Application of dressings (other than feet)				
	M5h = 1	Application of ointments (other than feet)				
	M5i = 1	Other prevention for skin (other than feet)				
	OR					
	(M6b = 1 or	Infection of the foot				
	M6c = 1)	Open lesion of the foot				
	AND					
	M6f = 1	And application of a dressing				
II		Intensive Skin Care Services				
	M1c > 0 or	Stage 3 ulcers	5	15 RN 15 LPN		

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M1d > 0 AND 4 of the following: M5a = 1 M5b = 1 M5c = 1 M5d = 1 M5e = 1 M5f = 1 M5g = 1 M5h = 1 M5i = 1	Stage 4 ulcers Skin Treatments (below): Pressure relieving devices for chair Pressure relieving devices for bed Turning or repositioning program Nutrition or hydration intervention for skin Ulcer care Surgical wound care Application of dressings (other than feet) Application of ointments (other than feet) Other prevention for skin (other than feet)				
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Ostomy Services

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1af = 1	Ostomy care performed	5	2.5 RN 2.5 LPN		

IV Therapy

Lev	MDS items	Description	Unl	Lic	SW	Act
I	Plac = 1 or	IV medication	1	15 RN 15 LPN		

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K5a = 1 AND P1ae = 1	Parenteral/IV nutrition Monitoring acute medical condition				
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Injections

Lev	MDS items	Description	Unl	Lic	SW	Act
I	<u>O3 = 2O3</u> >2	Number of injections in last 7 days		3 RN 3 LPN		

Oxygen Therapy

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1ag = 1	Oxygen therapy administered in last 14 days	9	7.5 RN 7.5 LPN		

Chemotherapy

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1aa = 1	Chemotherapy given	1	5 RN 5 LPN		

Dialysis

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1ab = 1	Dialysis given	1	5 RN 5	2	

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				LPN		
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Blood Glucose Monitoring

Lev	MDS items	Description	Unl	Lic	SW	Act
I	I1a = 1 AND K5e = 1 or K5f = 1 or O3 = 7	Diabetes mellitus Therapeutic diet Dietary supplement Injections daily		1 RN 1 LPN		

End Stage Care

Lev	MDS items	Description	Unl	Lic	SW	Act
I	J5c = 1	End stage disease, 6 or fewer months to live Restoratives including scheduled toileting and bladder retraining sets to level '0' except AROM, PROM, splint/brace. Limit of 4 quarters	10	6 RN 6 LPN	8	

If End Stage Care has been scored, Discharge Planning shall be set to zero.

Infectious Disease

Lev	MDS items	Description	Unl	Lic	SW	Act
I	I2a = 1 or I2b = 1 or	Antibiotic resistant infection Clostridium Difficile	18	8.5 RN 8.5 LPN	1	

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12e = 1 or	Pneumonia				
12g = 1 or	Septicemia				
I2i = 1 or	TB				
12j = 1 or	Urinary Tract infection present				
I2k = 1 or	Viral hepatitis				
12l = 1 or	Wound infection				
I3 = ICD9 code 041.01,133.0	Streptococcus Group A, scabies				

Acute Medical Conditions

Lev	MDS items	Description	Unl	Lic	SW	Act
I	J5b = 1 AND P1ae = 1 AND P1ao = 0 OR (J5a = 1 AND P1ao = 0 AND P1ae = 1) OR (B5a = 2 or B5b = 2 or	Acute episode or flare-up of chronic condition Monitoring acute medical condition Not hospice care Condition makes resident's cognitive, ADL, mood or behavior patterns unstable Not hospice care Monitoring acute medical condition Easily distracted over last 7 days Periods of altered perceptions or awareness of surroundings over last 7 days	1	11.5 RN 11.5 LPN	1	

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B5c = 2 or	Episodes of disorganized speech over last 7 days				
B5d = 2 or	Periods of restlessness over last 7 days				
B5e = 2 or	Periods of lethargy over last 7 days				
B5f = 2) AND	Mental function varies over course of day in last 7 days				
P1ae = 1 AND	Monitoring acute medical condition				
P1ao = 0	Not hospice care				

Pain Management

Lev	MDS items	Description	Unl	Lic	SW	Act
I	J2a > 0 AND	Demonstrate or complain of pain	4	4 RN 4 LPN	1	1
	J2b > 0	Mild to excruciating intensity				

Discharge Planning

Lev	MDS items	Description	Unl	Lic	SW	Act
I	Q1c = 1 or 2 AND	Stay projected to be of short duration – discharge expected to be within 90 days		8 RN 8 LPN	16	
	Q2 < 2 AND	Improved or no change in care needs				

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P1ar = 1 AND SI=0	Provide training to return to community Does not meet IDPH Subpart S criteria				
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Discharge Planning shall only be reimbursed for two quarters. If End Care has been scored, Discharge Planning shall be set at zero. Discharge Planning shall not be scored if End Stage Care has been scored.

Nutrition

Lev	MDS items	Description	Unl	Lic	SW	Act
I	K5h = 1 OR K5f = 1	On a planned weight change program Dietary supplement given between meals	4	1.5 RN 1.5 LPN	1	
II	K5b =1 and Intake = 1 Intake = 1 if K6a = 3 or K6a = 4 Or Intake = 1 if K6a = 2 and K6b = 2 or K6b = 3 or	Tube feeding in last 7 days See below Parenteral/ enteral intake 51-75% of total calories Parenteral/enteral intake 76-100% of total calories Parenteral/enteral intake 26-50% of total calories Average fluid intake by IV or tube is 501-1000 cc/day Average fluid intake by IV or tube	0	11 RN 11 LPN	1	

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		is 1001-1500 cc/day				
	K6b = 4 or	Average fluid intake by IV or tube is 1501-2000 cc/day				
	K6b = 5	Average fluid intake by IV or tube is 2001 or more cc/day				

Hydration

Lev	MDS items	Description	Unl	Lic	SW	Act
I	H2b = 1 or	Constipation	15	3.5 RN 3.5 LPN		1
	ICD9 = 564.00 or 564.7 AND	Constipation				
	K5a = 0 AND	No parenteral/IV				
	K5b = 0 OR	No feeding tube				
	Any two of the following separate conditions:					
	1 = O4e = 7 or	Received a diuretic medication in last 7 days				
	J1o = 1 or	Vomiting				
	I3 a,b,c,d,e = 276.5 or	Volume depletion				
	276.50 or	Volume depletion, unspecified				
	276.51 or	Dehydration				
	276.52 or	Hypovolemia				

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I2j = 1 or	Urinary tract infection in last 30 days				
J1c = 1 or	Dehydrated				
J1d = 1 or	Did not consume most fluids provided (3 days)				
J1h = 1 or	Fever				
J1j = 1	Internal bleeding				
AND					
K5a = 0	Not have parenteral/IV				
AND					
K5b = 0	No feeding tube				

5) **Mental Health Services****Psychosocial Adaptation**

Lev	MDS items	Description	Unl	Lic	SW	Act
I	(P2a = 1 or	Behavior symptom evaluation	12	3 RN	8	2
	P2b = 1 or	Evaluation by licensed MH specialist within last 90 days		3 LPN		
	P2c = 1 or	Group therapy				
	P2d = 1) AND	Resident specific changes to environment				
	Any E1a-p > 0	Indicators of depression				
	or					
	F1g = 1 or	No indicators of psychosocial well-being				
	Any F2a-g = 1 or	Any unsettled relationships				
	Any F3a-c = 1 or	Issues with past roles				
	E4aA > 0 or	Wandering in last 7 days				

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

E4bA > 0 or	Verbally abusive in last 7 days				
E4cA > 0 or	Physically abusive in last 7 days				
E4dA > 0 or	Inappropriate or disruptive behavior in last 7 days				
E4eA > 0 or	Resisted care in last 7 days				
J1e = 1 or	Delusions				
J1i = 1	Hallucinations				

Psychotropic Medication Monitoring

Lev	MDS items	Description	Unl	Lic	SW	Act
I	O4a = 7 or	Antipsychotic meds	5	2.5 RN 2.5 LPN		
	O4b = 7 or	Antianxiety meds				
	O4c = 7 or	Antidepressant meds				
	O4d = 7	Hypnotic meds				

Psychiatric Services (Section S)

Lev	MDS items	Description	Unl	Lic	SW	Act
I	S1 = 1 AND	Meets IDPH Subpart S criteria	6	1.5 RN 1.5 LPN	10	
	ADL Index = 4 AND	Activities of Daily Living Composite Score = 15-29				

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	<p>One or more of the following are coded M1c or M1d >0 or</p> <p>K5b = 1 or K5a = 1 or Plab = 1 or J5c = 1 or Plaa = 1 or Plaj = 1 or Plal = 1 AND Psychiatric Services Level II, Level III, Level IV skills training, close and constant observation, dressing/grooming and other restorative, cognitive performance, dementia care unit and discharge planning reset to zero</p>	<p>Stage 3 or stage 4 ulcers</p> <p>Feeding tube</p> <p>Parenteral/IV</p> <p>Dialysis</p> <p>End Stage Disease</p> <p>Chemotherapy</p> <p>Tracheostomy Care provided</p> <p>Ventilator</p>				
<p>II</p>	<p>Sl = 1 AND</p>	<p>Meets IDPH Subpart S criteria</p>	<p>13</p>	<p>2.5 RN 2.5</p>	<p>20</p>	

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NOTICE OF EXPEDITED CORRECTION

				LPN		
	S8 = 1 AND Dressing/grooming and other restorative, cognitive performance, and dementia care unit and discharge planning reset to zero	Ancillary provider services delivered by non-facility providers				
III	SI = 1 AND ADL Index=3 or 4 AND (AA3-A3a)(AA3-a3A) /365.25 > 65 AND	Meets IDPH Subpart S criteria ADL composite score between 12-29 Resident is 65 years of age or older at time of the assessment reference date	13	4.5 RN 4.5 LPN	20	
	Dressing/grooming and other restorative, cognitive performance, and dementia care unit and discharge planning reset to zero					
IV	SI = 1 AND S8 = 0 AND Dressing/grooming and other restorative,	Meets IDPH Subpart S criteria Ancillary provider services delivered by facility providers	16	5 RN 5 LPN	25	

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

cognitive performance, and dementia care unit and discharge planning reset to zero						
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Skills Training – Section S

Lev	MDS items	Description	Unl	Lic	SW	Act
I	S5 = 1 AND S1 = 1	Skills training provided Meets IDPH Subpart S criteria	6	6 RN 6 LPN	8	6

Close or Constant Observation - Section S

Lev	MDS items	Description	Unl	Lic	SW	Act
I	S5a-e = 1 AND S1 = 1	Close or constant observation Meets IDPH Subpart S criteria	6	2 RN 2 LPN	5	

6) Dementia Services**Cognitive Impairment/Memory Assistance Services**

Lev	CPS items	Description	Unl	Lic	SW	Act
I	CPS = 2 AND S1 = 0	Cognitive performance scale of 2 Does not meet IDPH Subpart S criteria	6			4
II	CPS = 3 or 4 AND	Cognitive performance scale is 3 or 4	16	3 RN 3 LPN	11	10

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	S1 = 0	Does not meet IDPH Subpart S criteria				
III	CPS = 5 or 6 AND S1 = 0	Cognitive performance scale is 5 or 6 Does not meet IDPH Subpart S criteria	21	5.5 RN 5.5 LPN	16	15

Cognitive Performance Scale Codes

Scale	Description
0	Intact
1	Borderline Intact
2	Mild Impairment
3	Moderate Impairment
4	Moderate Severe Impairment
5	Severe Impairment
6	Very Severe Impairment

Impairment Count for the Cognitive Performance Scale

I code	MDS items	Description
		Note: None of B2a, B4, or C4 can be missing
IC 1	B2a = 1	Memory problem
IC 2	B4 = 1 or 2	Some dependence in cognitive skills
IC 3	1 = C4 = 3	Usually understood to rarely or never understood

Severe Impairment Count for the Cognitive Performance Scale

I code	MDS items	Description
		Note: None of B2a, B4, or C4 can be missing

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SIC 0	Below not met	
SIC 1	B4 = 2	Moderately impaired in cognitive skills
SIC 2	C4 = 2 or 3	Sometimes understood to rarely or never understood

Cognitive Performance Scale

Scale	MDS items	Description
Coma	N1a = 0 and N1b = 0 and N1c = 0 and B1 = 1 and G1aA = 4 or 8 And G1bA = 4 or 8 And G1hA = 4 or 8 And G1iA = 4 or 8 And	Awake all or most of the time in the morning Awake all or most of the time in the afternoon Awake all or most of the time in the evening Is comatose Bed-Mobility Self-Performance = total dependence or did not occur Transfer Self-Performance = total dependence or did not occur Eating Self-Performance = total dependence or did not occur Toilet Use Self-Performance = total dependence or did not occur
6	Not (B4 = 0,1, 2)	Not have cognitive skills independent to moderately impaired
6	B4 = 3 And G1hA = 4 or 8	Cognitive skills severely impaired Eating Self-Performance = total dependence or did not occur
5	B4 = 3 And G1hA = - or = 3	Cognitive skills severely impaired Eating Self-Performance = missing to extensive assistance
4	If IC code = 2 or 3 And SIC code = 2	Some dependence in cognitive skills Usually understood to rarely or never understood Sometimes understood to rarely or never understood
3	If IC code = 2 or 3 And SIC code = 1 If IC code = 2 or 3	Some dependence in cognitive skills Usually understood to rarely or never understood Moderately impaired in cognitive skills Some dependence in cognitive skills Usually understood to rarely or never understood

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2	And SIC code = 0	Better than moderate cognition skills and usually can be understood
1	If IC code = 1	Memory problem

Dementia Care Unit

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1an = 1 AND I1q = 1 or I1u = 1 AND S1 = 0 AND CPS 2,3,4,5 AND Dementia care unit is IDPH certified	Alzheimer's/Dementia special care unit Alzheimer's Disease Dementia other than Alzheimer's Does not meet IDPH Subpart S criteria CPS score	15	4 RN 4 LPN	10	10

7) Exceptional Care Services**Respiratory Services**

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1ai = 1 or P1aj = 1 or P1bdA = 7	Perform suctioning Administered trach care Respiratory therapy	5	15 RN 15 LPN		

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II	P1ai = 1 AND	Performed suctioning	5	22.5 RN 22.5 LPN		
	P1aj = 1 AND	Administered trach care				
	P1bdA > 0	Respiratory therapy				

A \$50.00 add-on cost will be applied to all residents receiving trach care.

Ventilator Care

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1a1 = 1	Receiving ventilator care	5	35 RN 35 LPN		

A \$150.00 add-on cost shall be applied to all residents receiving ventilator care. The trach add-on cost shall not be included.

Weaning From Ventilator

Lev	MDS items	Description	Unl	Lic	SW	Act
I	P1a1 = 0 on current MDS AND	Resident no longer on ventilator	5	15 RN 15 LPN		
	P1a1 = 1 on previous MDS	Resident previously on ventilator				

Morbid Obesity

Lev	MDS items	Description	Unl	Lic	SW	Act
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I	I3 = 278.01 AND K5e = 1 AND K5h = 1 AND G1aA = 3 and G1aB=3 or G1bA=3 and G1bB=3 or G1cA=3 and G1cB=3 AND P3d=7 or P3e=7 or P3f = 7	ICD9 for morbid obesity is marked On a therapeutic diet On planned weight change program Extensive assist Requires 2+ assist with bed mobility Extensive assist Requires 2+ assist with transfers or Extensive assist Requires 2+ assist with walk in room On bed mobility restorative On transfer restorative On walking restorative	20	7.5 RN 7.5 LPN	5	
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A \$40.00 add-on shall be applied to all residents meeting the Morbid Obesity category.

Complex Wounds

There are no minutes assigned to this area. It is strictly a \$15.00 add-on applied to residents meeting the following criteria.

MDS item	Description
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M1c or M1d = 0 AND M2a = 0 or M2b = 0 AND B1 = 1 or G1Aa = 3 or 4 or G1Ab = 3 or 4 AND any 3 of the follow: ICD 9 codes of (260, 261, 262, 263.0, 263.1, 263.2, 263.8, 263.9) ICD 9 585 I1a = 1 I1qq = 1 I1j = 1 I1x = 1 I1z = 1 I1w = 1 J5c = 1 H1a = 4 H1b = 4 J1c = 1 G6a = 1 J2a = 2 M3 = 1 AND all of the following: M5a = 1 and/or M5b = 1 AND M5c = 1 AND	Presence of stage 3 or 4 PU Type of ulcer, pressure Type of ulcer, stasis Comatose Bed mobility (extensive) Transfer (extensive) ICD 9-Malnutrition ESRD Diabetes Mellitus Renal Failure Peripheral vascular disease Paraplegia Quadriplegia Multiple Sclerosis End stage disease Incontinence of bowel Incontinence of bladder Dehydration Bedfast Pain daily History of resolved ulcers Pressure relieving device/chair Pressure relieving device/bed Turn and position
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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

M5d = 1 AND M5e = 1	Nutrition or hydration Ulcer care
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Traumatic Brain Injury

There are no minutes assigned to this area. It is strictly a \$50.00 add-on applied to residents meeting the following criteria.

MDS item	Description
I1cc = 1 AND B1 = 0 AND S1 = 0 AND E4aA = 3 and E4 a B = 1 or E4bA = 3 and E4bB = 1 or E4cA = 3 and E4cB = 1 or E4dA = 3 and E4dB = 1 or E4eA = 3 and 34eB = 1 AND P1beA = 10 AND P2a = 1 AND P2b = 1	Traumatic brain injury Not comatose Does not meet Subpart S criteria Wandering daily and alterability Verbally abusive behavioral symptoms daily and alterability Physically abusive behavioral symptoms daily and alterability Socially inappropriate/disruptive behavioral symptoms daily and alterability Resists care daily and alterability Psychological therapy Special behavior symptom evaluation Evaluation by a mental health specialist in last 90 days

8) Special Patient Need Factors

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

Communication

Count	MDS items	Description	Staff Minutes
I	C4 > 0 or C6 > 0	Deficit in making self understood Deficit in understanding others	1% of all staff time accrued in all categories from ADLs through Exceptional Care

Vision Problems

Count	MDS items	Description	Staff Minutes
I	D1 > 0 or D2a = 1 or D2b = 1	Vision impaired to Severely impaired Decreased peripheral vision Experience halos around lights, light flashes	2% of all staff time accrued in all categories from ADLs through Exceptional Care

Accident/Fall Prevention

Count	MDS items	Description	Staff Minutes
I	I1aa = 1 or O4a-d = 7 or H1b > 0 or J1f = 1 or J4a = 1 or J4b = 1 or J1n = 1 or	Seizure disorder Medications Incontinent urine Dizziness Fell in past 30 days Fell in past 31-180 days Has unsteady gait	3% of all staff time accrued in all categories from ADLs through Exceptional Care

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EXPEDITED CORRECTION

E4aA > 0	Wandered in last 7 days	
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Restraint Free

Count	MDS items	Description	Staff Minutes
I	P4c > 1 or P4d > 1 or P4e > 1 And P4c = 0 and P4d = 0 and P4e = 0	In last assessment: Used trunk restraint daily in last 7 days Used limb restraint daily in last 7 days Used chair that prevents rising daily in last 7 days And in current assessment: Not used trunk restraint in last 7 days Not used limb restraint in last 7 days Not used chair that prevents rising in last 7 days	2% of all staff time accrued in all categories from ADLs through Exceptional Care

Activities

Count	MDS items	Description	Staff Minutes
I	N2 = 0 or 1 AND Any of the following checked:	Average time involved in activities	2% of all staff time accrued in all categories from ADLs through Exceptional Care

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NOTICE OF EXPEDITED CORRECTION

G6a = 1 or	Bedfast all or most of the time
C4 > 1 or	Sometimes too rarely understood
C6 > 1 or	Sometimes too rarely understands others
E1o > 0 or	Withdrawal from activity
AA3 = 50 or	Age is 50 or younger at assessment reference date
E1p > 0 or	Reduced social interactions
E4a-eA > 0 or	Any behavioral symptoms
G4b-dB > 0 OR	Any limited ROM
N2 = 0 or 1 AND	Average time involved in activities
E2 > 0 AND	Mood persistence
E1a > 0 or	Negative statements

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NOTICE OF EXPEDITED CORRECTION

E1n > 0 or	Repetitive physical movements	
E4eA > 0 or	Resists care	
E1o > 0 or	Withdraws from activity	
E1p > 0 or	Reduced social interaction	
E1j > 0 or	Unpleasant mood in morning	
N1d = 1 or	Not awake all or most of the time	
E1g > 0 or	Statements that something terrible will happen	
K3a = 1 or	Weight loss	
(N1a,b,c = 1 AND	Not awake all or most of the time	
B1 = 0)	Not comatose	

(Source: Amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE ON ADMINISTRATIVE
RULES STATEMENT OF RECOMMENDATION TO PROPOSED RULES

- 1) Heading of the Part: Electronic Commerce Security Act
- 2) Code Citation: 14 Ill. Adm. Code 105
- 3) Section Numbers:
 - 105.10
 - 105.20
 - 105.30
 - 105.40
 - 105.50
 - 105.60
 - 105.200
 - 105.210
 - 105.220
 - 105.230
 - 105.240
- 4) Date Notice of Proposed Amendment Published in the Register: May 12, 2006;
30 Ill. Reg. 8700
- 5) Date JCAR Statement of Recommendation to Proposed Rulemaking Published in the Register: May 4, 2007; 31 Ill. Reg. 6697
- 6) Summary of Action Taken by the Agency: At its meeting on April 18, 2007, JCAR recommended that if the Department of Central Management Services plans for its Policy Authority to exercise any responsibilities on its own, rather than solely acting in an advisory capacity to the Department, it seek legislation modifying the Electronic Commerce Security Act to permit CMS to delegate functions and powers presently reserved in the Act to CMS.

The Department of Central Management Services agrees with the Recommendation and to the extent that a determination is made that the Policy Authority should exercise independent responsibilities, CMS will, prior to such exercise of independent responsibilities, seek legislation modifying the Electronic Commerce Security Act.
- 7) Information and questions regarding this shall be directed to:

Gina Wilson
Illinois Department of Central Management Services

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE ON ADMINISTRATIVE
RULES STATEMENT OF RECOMMENDATION TO PROPOSED RULES

720 Stratton Office Building
Springfield IL 62706

217/785-1793

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE ON ADMINISTRATIVE
RULES STATEMENT OF OBJECTION TO PROPOSED RULES

- 1) Heading of the Part: Electronic Commerce Security Act
- 2) Code Citation: 14 Ill. Adm. Code 105
- 3)

<u>Section Number:</u>	<u>Response:</u>
105.10	Agreement with Objection
105.20	Agreement with Objection
105.30	Agreement with Objection
105.40	Agreement with Objection
105.50	Agreement with Objection
105.60	Agreement with Objection
105.200	Agreement with Objection
105.210	Agreement with Objection
105.220	Agreement with Objection
105.230	Agreement with Objection
105.240	Agreement with Objection
- 6) Date Notice of Proposed Amendment Published in the Register: May 12, 2006;
30 Ill. Reg. 8700
- 7) Date JCAR Statement of Objection Published in the Register: May 4, 2007;
31 Ill. Reg. 6693
- 6) Summary of Action Taken by the Agency: At its meeting on April 18, 2007, JCAR objected to the Department implementing an electronic security certification program, through a "practice statement", prior to adoption of the rulemaking, thereby enforcing policy not in rule. The Department agrees with the Objection. Upon discovery of the "practice statement" and the enforcement of policy not in rule, CMS took steps to initiate the rule changes. Such action should have occurred prior to implementation. In the future, the Department of Central Management Services will seek to prevent the creation and enforcement of policy not in rule.
- 7) Information and questions regarding this shall be directed to:

Gina Wilson
Illinois Department of Central Management Services
720 Stratton Office Building
Springfield IL 62706

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE ON ADMINISTRATIVE
RULES STATEMENT OF OBJECTION TO PROPOSED RULES

217/785-1793

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Pursuant to 35 Ill. Adm. Code 302.595 and 302.669, the following water quality criteria have been derived as listed. This listing updates revisions to existing criteria for the period January 1, 2007 through March 31, 2007.

A cumulative listing of criteria as of July 31, 1993 was published in 17 Ill. Reg. 18904, October 29, 1993. Listings of waterbodies for which water quality criteria were used during subsequent three month periods were published in 18 Ill. Reg. 318, January 7, 1994; 18 Ill. Reg. 4457, March 18, 1994; 18 Ill. Reg. 8734, June 10, 1994; 18 Ill. Reg. 14166, September 9, 1994; 18 Ill. Reg. 17770, December 9, 1994; 19 Ill. Reg. 3563, March 17, 1995; 19 Ill. Reg. 7270, May 26, 1995; 19 Ill. Reg. 12527, September 1, 1995; 20 Ill. Reg. 649, January 5, 1996; 20 Ill. Reg. 4829, March 22, 1996; 20 Ill. Reg. 7549, May 30, 1996; 20 Ill. Reg. 12278, September 6, 1996; 20 Ill. Reg. 15619, December 6, 1996; 21 Ill. Reg. 3761, March 21, 1997; 21 Ill. Reg. 7554, June 13, 1997; 21 Ill. Reg. 12695, September 12, 1997; 21 Ill. Reg. 16193, December 12, 1997; 22 Ill. Reg. 5131, March 13, 1998; 22 Ill. Reg. 10689, June 12, 1998; 22 Ill. Reg. 16376, September 11, 1998; 22 Ill. Reg. 22423, December 28, 1998; 23 Ill. Reg. 3102, March 12, 1999; 23 Ill. Reg. 6979, June 11, 1999; 23 Ill. Reg. 11774, September 24, 1999; 23 Ill. Reg. 14772, December 27, 1999; 24 Ill. Reg. 4251, March 17, 2000; 24 Ill. Reg. 8146, June 9, 2000; 24 Ill. Reg. 14428, September 29, 2000; 25 Ill. Reg. 270, January 5, 2001; 25 Ill. Reg. 4049, March 16, 2001; 25 Ill. Reg. 7367, June 8, 2001; 25 Ill. Reg. 12186, September 21, 2001; 25 Ill. Reg. 16175, December 14, 2001; 26 Ill. Reg. 4974, March 29, 2002; 26 Ill. Reg. 13370, September 6, 2002; 27 Ill. Reg. 1736, January 31, 2003; 27 Ill. Reg. 7350, April 18, 2003; 27 Ill. Reg. 17128, November 7, 2003; 28 Ill. Reg. 5038, March 19, 2004; 28 Ill. Reg. 8363, June 11, 2004; 28 Ill. Reg. 12943, September 17, 2004; 29 Ill. Reg. 1449, January 21, 2005; 29 Ill. Reg. 7239, May 20, 2005; 29 Ill. Reg. 12672, August 12, 2005; 29 Ill. Reg. 18963, November 18, 2005; 30 Ill. Reg. 5458, March 17, 2006; 30 Ill. Reg. 9195, May 12, 2006; 30 Ill. Reg. 14377, September 1, 2006; 30 Ill. Reg. 18257, November 17, 2006 and 31 Ill. Reg. 4941, March 23, 2007.

Water quality criteria for General Use and Lake Michigan Basin Waters are listed below.

General Use human health criteria are derived for protection of primary contact waters, criteria derived for waters not supportive of primary contact recreation are specified, where applicable. Lake Michigan Basin criteria apply within waters of the Lake Michigan Basin as designated in 35 Ill. Adm. Code 303.443. Newly derived criteria or criteria used in NPDES permitting this quarter are highlighted in bold print.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

General Use Criteria

Chemical: Acenaphthene	CAS #83-32-9
Acute criterion: 120 ug/l	Chronic criterion: 62 ug/l
Date criteria derived: November 14, 1991; revised February 1999	
Applicable waterbodies: Not used during this period.	
Chemical: Acenaphthylene	CAS # 208-96-8
Acute criterion: 190 ug/L	Chronic criterion: 15 ug/L
Date criteria derived: March 1, 1998	
Applicable waterbodies: Not used during this period.	
Chemical: Acetone	CAS #67-64-1
Acute criterion: 1,500 mg/l	Chronic criterion: 120 mg/l
Date criteria derived: May 25, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: Acetonitrile	CAS #75-05-8
Acute criterion: 380 mg/l	Chronic criterion: 30 mg/l
Human health criterion (HTC): non-primary contact, 20 mg/L	
Date criteria derived: December 7, 1993; January 23, 2007	
Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	
Chemical: Acrylonitrile	CAS #107-13-4
Acute criterion: 910 ug/l	Chronic criterion: 73 ug/l
Human health criterion (HNC): 0.21 ug/l	
Date criteria derived: November 13, 1991	
Applicable waterbodies: Not used during this period.	
Chemical: Anthracene	CAS #120-12-7
Human health criterion (HTC): 35 mg/l	
Date criteria derived: August 18, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: Atrazine	CAS #1912-24-9
Acute criterion: 82 ug/l	Chronic criterion: 9.0 ug/L
Date criteria derived: May 2, 2005	
Applicable waterbodies: Not used during this period.	
Chemical: Benzo(a)anthracene	CAS #56-55-3
Human health criterion (HNC): 0.16 ug/l	
Date criteria derived: August 10, 1993; revised February 1999	

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Applicable waterbodies: Not used during this period.
Chemical: Benzo(a)pyrene CAS #50-32-8 Human health criterion (HNC): 0.016 ug/l Date criteria derived: August 10, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: Benzo(b)fluoranthene CAS # 205-99-2 Human health criterion (HNC): 0.16 ug/l Date criteria derived: August 10, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: Benzo(k)fluoranthene CAS #207-08-9 Human health criterion (HNC): 1.6 ug/l Date criteria derived: August 10, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: Carbon tetrachloride CAS #56-23-5 Acute criterion: 3,500 ug/l Chronic criterion: 280 ug/l Human health criterion (HNC): 1.4 ug/l Date criteria derived: June 18, 1993 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: Chlorobenzene CAS #108-90-7 Acute criterion: 990 ug/l Chronic criterion: 79 ug/l Date criteria derived: December 11, 1991 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: Chloroethane CAS #75-00-3 Acute criterion: 13 mg/l Chronic criterion: 1 mg/l Date criteria derived: December 11, 1991 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: Chloromethane CAS #74-87-3 Acute criterion: 16 mg/l Chronic criterion: 1.3 mg/l Date criteria derived: December 11, 1991 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: Chloroform CAS #67-66-3 Acute criterion: 1,900 ug/l Chronic criterion: 150 ug/l Human health criterion (HNC): 130 ug/l Date criteria derived: October 26, 1992 Applicable waterbodies: Not used during this period.
Chemical: Chrysene CAS #218-01-9

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Human health criterion (HNC): 16 ug/l Date criteria derived: August 10, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: 1,2-dichlorobenzene CAS #95-50-1 Acute criterion: 210 ug/l Chronic criterion: 17 ug/l Date criteria derived: December 1, 1993 Applicable waterbodies: Not used during this period.
Chemical: 1,3-dichlorobenzene CAS #541-73-1 Acute criterion: 500 ug/l Chronic criterion: 200 ug/l Date criteria derived: July 31, 1991 Applicable waterbodies: Not used during this period.
Chemical: 1,1-dichloroethane CAS #75-34-3 Acute criterion: 20 mg/l Chronic criterion: 2 mg/l Date criteria derived: July 31, 1991 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: 1,2-dichloroethane CAS #107-06-2 Acute criterion: 25 mg/l Chronic criterion: 4.5 mg/l Human health criterion (HNC): 23 ug/l Date criteria derived: March 19, 1992 Applicable waterbodies: Not used during this period.
Chemical: 1,1-dichloroethylene CAS #75-35-4 Acute criterion: 3,000 ug/l Chronic criterion: 240 ug/l Human health criterion (HNC): 0.95 ug/l Date criteria derived: March 20, 1992 Applicable waterbodies: Not used during this period.
Chemical: 2,4-dichlorophenol CAS #120-83-2 Acute criterion: 630 ug/l Chronic criterion: 83 ug/l Date criteria derived: November 14, 1991 Applicable waterbodies: Not used during this period.
Chemical: 1,2-dichloropropane CAS #78-87-5 Acute criterion: 4,800 ug/l Chronic criterion: 380 ug/l Date criteria derived: December 7, 1993 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.
Chemical: 1,3-dichloropropylene CAS #542-75-6 Acute criterion: 99 ug/l Chronic criterion: 7.9 ug/l Date criteria derived: November 13, 1991

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Applicable waterbodies: Not used during this period.	
Chemical: 2,4-dimethyl phenol	CAS #105-67-9
Acute criterion: 740 ug/l	Chronic criterion: 220 ug/l
Date criteria derived: October 26, 1992	
Applicable waterbodies: Not used during this period.	
Chemical: 4,6-dinitro-o-cresol = 2-methyl-4,6-dinitrophenol	CAS #534-52-1
Acute criterion: 29 ug/l	Chronic criterion: 2.3 ug/l
Date criteria derived: November 14, 1991	
Applicable waterbodies: Not used during this period.	
Chemical: 2,4-dinitrophenol	CAS #51-28-5
Acute criterion: 85 ug/l	Chronic criterion: 4.1 ug/l
Date criteria derived: December 1, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: 2,6-dinitrotoluene	CAS #606-20-2
Acute criterion: 1,900 ug/l	Chronic criterion: 150 ug/l
Date criteria derived: February 14, 1992	
Applicable waterbodies: Not used during this period.	
Chemical: Diquat	CAS #85-00-7
Acute criterion: 990 ug/l	Chronic criterion: 80 ug/l
Date criteria derived: January 30, 1996	
Applicable waterbodies: Not used during this period.	
Chemical: Ethyl mercaptan (ethanethiol)	CAS #75-08-1
Acute criterion: 17 ug/l	Chronic criterion: 2 ug/l
Date criteria derived: April 8, 2002	
Applicable waterbodies: Not used during this period.	
Chemical: Fluoranthene	CAS #206-44-0
Human health criterion (HTC): 120 ug/l	
Date criteria derived: August 10, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: Formaldehyde	CAS #50-00-0
Acute criterion: 4.9 mg/l	Chronic criterion: 0.39 mg/l
Date criteria derived: January 19, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: Hexachlorobenzene	CAS #118-74-1
Human health criterion (HNC): 0.00025 ug/l	
Date criteria derived: November 15, 1991	

ENVIRONMENTAL PROTECTION AGENCY

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LISTING OF DERIVED WATER QUALITY CRITERIA

Applicable waterbodies: Not used during this period.	
Chemical: Hexachlorobutadiene	CAS #87-68-3
Acute criterion: 35 ug/l	Chronic criterion: 2.8 ug/l
Date criteria derived: March 23, 1992	
Applicable waterbodies: Not used during this period.	
Chemical: Hexachloroethane	CAS #67-72-1
Acute criterion: 380 ug/l	Chronic criterion: 31 ug/l
Human health criterion (HNC): 2.9 ug/l	
Date criteria derived: November 15, 1991	
Applicable waterbodies: Not used during this period.	
Chemical: n-Hexane	CAS #110-54-3
Acute criterion: 250 ug/l	Chronic criterion: 20 ug/l
Date criteria derived: April 8, 2002	
Applicable waterbodies: Not used during this period.	
Chemical: Isobutyl alcohol = 2-methyl-1-propanol	CAS #78-83-1
Acute criterion: 430 mg/l	Chronic criterion: 35 mg/l
Date criteria derived: December 1, 1993	
Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	
Chemical: Methylene chloride	CAS #75-09-2
Acute criterion: 17 mg/l	Chronic criterion: 1.4 mg/l
Human health criterion (HNC): 340 ug/l	
Date criteria derived: January 21, 1992	
Applicable waterbodies: Not used during this period.	
Chemical: Methyl ethyl ketone	CAS #78-93-3
Acute criterion: 320 mg/l	Chronic criterion: 26 mg/l
Date criteria derived: July 1, 1992	
Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	
Chemical: 4-methyl-2-pentanone	CAS #108-10-1
Acute criterion: 46 mg/l	Chronic criterion: 1.4 mg/l
Date criteria derived: January 13, 1992	
Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	
Chemical: 2-methyl phenol	CAS #95-48-7
Acute criterion: 4.7 mg/l	Chronic criterion: 0.37 mg/l
Date criteria derived: November 8, 1993	
Applicable waterbodies: Not used during this period.	
Chemical: 4-methyl phenol	CAS #106-44-5

ENVIRONMENTAL PROTECTION AGENCY

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LISTING OF DERIVED WATER QUALITY CRITERIA

Acute criterion: 670 ug/l Date criteria derived: January 13, 1992 Applicable waterbodies: Not used during this period.	Chronic criterion: 120 ug/l
Chemical: Methyl tert-butyl ether (MTBE) Acute criterion: 67 mg/l Date criteria derived: September 18, 1997 Applicable waterbodies: Segment GBE-01 of Lily Cache Creek.	CAS #134-04-4 Chronic criterion: 6.7 mg/l
Chemical: Naphthalene Acute criterion: 510 ug/l Date criteria derived: November 7, 1991; revised February 1999 Applicable waterbodies: Not used during this period.	CAS #91-20-3 Chronic criterion: 68 ug/l
Chemical: 4-nitroaniline Acute criterion: 1.5 mg/l Date criteria derived: May 5, 1996 Applicable waterbodies: Not used during this period.	CAS #100-01-6 Chronic criterion: 0.12 mg/l
Chemical: Nitrobenzene Acute criterion: 15 mg/l Human health criterion (HTC): 0.52 mg/l Date criteria derived: February 14, 1992; revised February 1999 Applicable waterbodies: Not used during this period.	CAS #98-95-3 Chronic criterion: 8.0 mg/l
Chemical: Pentachlorophenol Acute criterion: 20 ug/l Date criteria derived: national criterion at pH of 7.8, September 1986 Applicable waterbodies: Not used during this period.	Chronic criterion: 13 ug/l
Chemical: Phenanthrene Acute criterion: 46 ug/l Date criteria derived: October 26, 1992 Applicable waterbodies: Not used during this period.	CAS #85-01-8 Chronic criterion: 3.7 ug/l
Chemical: Propylene Acute criterion: 4.0 mg/l Date criteria derived: April 8, 2002 Applicable waterbodies: Not used during this period.	CAS #115-07-1 Chronic criterion 0.40 mg/l
Chemical: Pyrene Human health criterion (HTC): 3.5 mg/l Date criteria derived: December 22, 1992 Applicable waterbodies: Not used during this period.	CAS #120-00-0

ENVIRONMENTAL PROTECTION AGENCY

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Chemical: Tetrachloroethylene Acute criterion: 1,200 ug/l Date criteria derived: March 23, 1992 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	CAS #127-18-4 Chronic criterion: 150 ug/l
Chemical: Tetrahydrofuran Acute criterion: 220 mg/l Date criteria derived: March 16, 1992 Applicable waterbodies: Not used during this period.	CAS #109-99-9 Chronic criterion: 17 mg/l
Chemical: 1,2,4-trichlorobenzene Acute criterion: 370 ug/l Date criteria derived: December 14, 1993; revised February 1999 Applicable waterbodies: Not used during this period.	CAS #120-82-1 Chronic criterion: 72 ug/l
Chemical: 1,1,1-trichloroethane Acute criterion: 4,900 ug/l Date criteria derived: October 26, 1992 Applicable waterbodies: Not used during this period.	CAS #71-55-6 Chronic criterion: 390 ug/l
Chemical: 1,1,2-trichloroethane Acute criterion: 19 mg/l Human health criterion (HNC): 12 ug/l Date criteria derived: December 13, 1993; revised February 1999 Applicable waterbodies: Not used during this period.	CAS #79-00-5 Chronic criterion: 4.4 mg/l
Chemical: Trichloroethylene Acute criterion: 12,000 ug/l Human health criterion (HNC): 25 ug/l Date criteria derived: October 23, 1992 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	CAS #79-01-6 Chronic criterion: 940 ug/l
Chemical: Vinyl chloride Acute criterion: 40 mg/l Human health criterion (HNC): non-primary contact, 164 ug/l Date criteria derived: October 23, 1992; January 23, 2007 Applicable waterbodies: Unnamed tributary to Segment PBJAA of Lawson Creek.	CAS #75-01-4 Chronic criterion: 4 mg/l

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Lake Michigan Basin Criteria

Chemical: Bis(2-ethylhexyl)phthalate <u>Aquatic Life Criteria:</u> Acute criterion: 76 ug/l <u>Human Health Non-threshold Criteria:</u> Drinking water: 2.8 ug/l Date criteria derived: June 20, 2006 Applicable waterbodies: Not used during this period.	CAS #117-81-7 Chronic criterion: 17 ug/l Non-drinking water: 3.2 ug/l
Chemical: Methylene Chloride <u>Aquatic Life Criteria:</u> Acute criterion: 10,803 ug/l <u>Human Health Non-threshold Criteria:</u> Drinking water: 47 ug/l Date criteria derived: June 20, 2006 Applicable waterbodies: Not used during this period.	CAS #75-09-2 Chronic criterion: 1,200 ug/l Non-drinking water: 2,600 ug/l
Chemical: Vinyl Chloride <u>Aquatic Life Criteria:</u> Acute criterion: 8,380 ug/l <u>Human Health Non-threshold Criteria:</u> Drinking water: 0.25 ug/l Date criteria derived: June 20, 2006 Applicable waterbodies: Not used during this period.	CAS #75-01-4 Chronic criterion: 931 ug/l Non-drinking water: 14.4 ug/l

For additional information concerning these criteria or the derivation process used in generating them, please contact:

Brian Koch
 Illinois Environmental Protection Agency
 Division of Water Pollution Control
 1021 North Grand Avenue East
 Post Office Box 19276
 Springfield, Illinois 62794-9276
 217-558-2012

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of May 8, 2007 through May 14, 2007 and have been scheduled for review by the Committee at its June 12, 2007 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
6/23/07	<u>Department of Natural Resources</u> , Revocation Procedures for Conservation Offenses (17 Ill. Adm. Code 2530)	3/23/07 31 Ill. Reg. 4671	6/12/07
6/23/07	<u>Department of Natural Resources</u> , Open Space Lands Acquisition and Development Grant Program (17 Ill. Adm. Code 3025)	3/23/07 31 Ill. Reg. 4680	6/12/07
6/23/07	<u>Department of Natural Resources</u> , Boat Access Area Development Program (17 Ill. Adm. Code 3035)	3/23/07 31 Ill. Reg. 4693	6/12/07

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Rules acted upon in Volume 31, Issue 21 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquires about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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