

# 2009

# ILLINOIS

# REGISTER

RULES  
OF GOVERNMENTAL  
AGENCIES



Volume 33, Issue 36  
September 4, 2009  
Pages 12299-12420

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

**TABLE OF CONTENTS**

**September 4, 2009 Volume 33, Issue 36**

**PROPOSED RULES**

**BOARD OF HIGHER EDUCATION**

Approval of Noninstructional Capital Projects  
23 Ill. Adm. Code 1040.....12299

Tuition and Fee Waiver Guidelines  
23 Ill. Adm. Code 1075.....12306

**CAPITAL DEVELOPMENT BOARD**

Illinois Energy Conservation Code  
71 Ill. Adm. Code 600.....12311

**HUMAN RIGHTS, DEPARTMENT OF**

Procedures of the Department of Human Rights  
56 Ill. Adm. Code 2520.....12314

**PUBLIC HEALTH, DEPARTMENT OF**

Rules of Practice and Procedure in Administrative Hearings  
77 Ill. Adm. Code 100.....12321

Hospital Licensing Requirements  
77 Ill. Adm. Code 250.....12347

Children's Community-Based Health Care Center Program Code  
77 Ill. Adm. Code 260.....12362

**SECRETARY OF STATE**

Business Corporation Act  
14 Ill. Adm. Code 150.....12375

**STATE UNIVERSITIES RETIREMENT SYSTEM**

Universities Retirement  
80 Ill. Adm. Code 1600.....12381

**ADOPTED RULES**

**BOARD OF HIGHER EDUCATION**

Program Review (Private Colleges and Universities)  
23 Ill. Adm. Code 1030.....12397

**EMERGENCY RULES**

**CAPITAL DEVELOPMENT BOARD**

Illinois Energy Conservation Code  
71 Ill. Adm. Code 600.....12407

**JOINT COMMITTEE ON ADMINISTRATIVE RULES STATEMENT OF  
RECOMMENDATION TO EMERGENCY RULEMAKING**

**TRANSPORTATION, DEPARTMENT OF**

Selection of Architect-Engineer Consultant Firms  
44 Ill. Adm. Code 625.....12418

**JOINT COMMITTEE ON ADMINISTRATIVE RULES STATEMENT OF  
OBJECTION TO PROPOSED RULEMAKING**

**PUBLIC HEALTH, DEPARTMENT OF**

Community Health Center Expansion	
77 Ill. Adm. Code 975.....	12419
<b>SECOND NOTICES RECEIVED</b>	
JOINT COMMITTEE ON ADMINISTRATIVE RULES	
Second Notices Received.....	12420

## 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 preemptory 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.].

### ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2009

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 22, 2008	January 2, 2009
2	December 29, 2008	January 9, 2009
3	January 5, 2009	January 16, 2009
4	January 12, 2009	January 23, 2009
5	January 20, 2009	January 30, 2009
6	January 26, 2009	February 6, 2009
7	February 2, 2009	February 13, 2009
8	February 9, 2009	February 20, 2009
9	February 17, 2009	February 27, 2009
10	February 23, 2009	March 6, 2009
11	March 2, 2009	March 13, 2009
12	March 9, 2009	March 20, 2009
13	March 16, 2009	March 27, 2009
14	March 23, 2009	April 3, 2009
15	March 30, 2009	April 10, 2009
16	April 6, 2009	April 17, 2009
17	April 13, 2009	April 24, 2009
18	April 20, 2009	May 1, 2009
19	April 27, 2009	May 8, 2009
20	May 4, 2009	May 15, 2009
21	May 11, 2009	May 22, 2009
22	May 18, 2009	May 29, 2009
23	May 26, 2009	June 5, 2009

<b><u>Issue #</u></b>	<b><u>Rules Due Date</u></b>	<b><u>Date of Issue</u></b>
24	June 1, 2009	June 12, 2009
25	June 8, 2009	June 19, 2009
26	June 15, 2009	June 26, 2009
27	June 22, 2009	July 6, 2009
28	June 29, 2009	July 10, 2009
29	July 6, 2009	July 17, 2009
30	July 13, 2009	July 24, 2009
31	July 20, 2009	July 31, 2009
32	July 27, 2009	August 7, 2009
33	August 3, 2009	August 14, 2009
34	August 10, 2009	August 21, 2009
35	August 17, 2009	August 28, 2009
36	August 24, 2009	September 4, 2009
37	August 31, 2009	September 11, 2009
38	September 8, 2009	September 18, 2009
39	September 14, 2009	September 25, 2009
40	September 21, 2009	October 2, 2009
41	September 28, 2009	October 9, 2009
42	October 5, 2009	October 16, 2009
43	October 13, 2009	October 23, 2009
44	October 19, 2009	October 30, 2009
45	October 26, 2009	November 6, 2009
46	November 2, 2009	November 13, 2009
47	November 9, 2009	November 20, 2009
48	November 16, 2009	November 30, 2009
49	November 23, 2009	December 4, 2009
50	November 30, 2009	December 11, 2009
51	December 7, 2009	December 18, 2009
52	December 14, 2009	December 28, 2009

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Approval of Noninstructional Capital Projects
- 2) Code Citation: 23 Ill. Adm. Code 1040
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1040.21	New
1040.22	Amendment
- 4) Statutory Authority: Implementing Sections 8 and 9.11 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/8, 9.05 and 9.11]
- 5) A Complete Description of the Subjects and Issues Involved: These proposed amendments will ensure the Board is provided advance notice of noninstructional capital projects that will ultimately require Board approval. Currently, institutions submit requests for Board approval as a last step in the project approval process, after final institutional governing board approval is given to proceed with the project. With these amendments, institutions will file notices of intent to undertake noninstructional capital projects whenever a governing board takes official action to authorize the planning or financing of a noninstructional capital project. A notice of intent will include basic information including description, purpose, estimated cost, fund sources, and plans to pay for operation and maintenance of the capital project. The notice of intent will precede the normal process by which institutions request Board approval.
- 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 Objectives: The proposed amendments do not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Karen Helland, Administrative Rules Coordinator  
Illinois Board of Higher Education  
431 East Adams Street, 2<sup>nd</sup> Floor  
Springfield, Illinois 62701

217/557-7358  
Fax No. 217/782-8548  
helland@ibhe.org

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - 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: July 2009

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

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 23: EDUCATION AND CULTURAL RESOURCES

## SUBTITLE A: EDUCATION

## CHAPTER II: BOARD OF HIGHER EDUCATION

## PART 1040

## APPROVAL OF NONINSTRUCTIONAL CAPITAL PROJECTS

## Section

1040.10	Purpose
1040.20	Definition of Terms
<a href="#">1040.21</a>	<a href="#">Notice of Intent</a>
1040.22	Required Documentation
1040.25	Criteria for Approval
1040.27	Submission Process
1040.30	Noninstructional Capital Improvements and Community College Locally-Funded Capital Projects (Repealed)

AUTHORITY: Implementing Sections 8 and 9.11 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/8, 9.05 and 9.11].

SOURCE: Amended and effective April 15, 1976; rules repealed and new rules adopted and codified at 8 Ill. Reg. 16899, effective September 4, 1984; amended at 30 Ill. Reg. 19510, effective December 5, 2006; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1040.21 Notice of Intent**

Immediately after the Governing Board of any State-supported institution takes official action to authorize the planning or financing of a noninstructional capital project, the institution shall make this action known to the Board by completing a notice of intent on a form provided by the Board. The notice of intent shall, to the extent possible, include a description of the project, its purpose, the anticipated cost, the anticipated source of funds for purchase and construction, and the anticipated source of funds for operation and maintenance. The notice of intent is distinct from and precedes a request for approval of the noninstructional capital project.

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1040.22 Required Documentation**

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

All requests for approval of new or revised noninstructional capital projects shall contain the following [in a format prescribed by the Board](#):

- a) Project Scope
  - 1) Provide a narrative description of the requested project using the following descriptors: buildings, additions, structures, land, equipment, utilities, remodeling, renovation, site improvements, and planning. Include the name and location of all facilities and properties.
  - 2) Provide quantified information. For acquisitions, include the size of parcels of property and the size of facilities (gross square feet). For remodeling, include the assignable square feet to be remodeled by room use classifications. Comply with guidelines for measuring gross and assignable areas identified in the "Postsecondary Education Facilities Inventory and Classification Manual (FICM): 2006 Edition" published by the U.S. Department of Education (NCES 2006-160), no further editions or amendments are included. Other information could include seating capacity, parking capacity, age of facilities, number of rooms, length of utility tunnels (linear feet), and roof size (square feet).
  - 3) For remodeling and renovation projects, distinguish between upgrades to and replacement of existing components and systems.
  - 4) Describe activities, functions, or entities the completed project will house or accommodate.
  - 5) Describe the allocation of completed space, by type, using classifications identified in the FICM.
  - 6) Provide the appraised value of any property or existing structures proposed for acquisition. Include the date and source of the appraisal.
  - 7) Explain how existing space will be reused after it is vacated. Briefly describe any projects, including a cost estimate and project timeline, that must be completed before the space can be reused for a new purpose.
  - 8) Identify any dependent relationship between the requested project and other on-going or anticipated capital projects.

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 9) Provide a project schedule, including dates for design start, beginning construction, project bids and final completion.
- b) Project Rationale
- 1) State how the project will meet the noninstructional objectives of the institution. What is its relationship to the institution's mission and master plan? How does the project advance statewide goals?
  - 2) If a project upgrades or otherwise alters the use of existing space, describe the current condition of the existing space.
  - 3) Describe the capacity and utilization of space currently available to the institution to meet the noninstructional objectives of the proposed project. Describe by space type (room use code) and function.
  - 4) If a project adds assignable space to the institution (via new construction or adaptation of existing space for a new purpose), describe the factors or conditions (e.g., enrollment growth, change in enrollment mix, insufficient or inadequate space of a certain type, etc.) that justify the request. Explain why the proposed project must be undertaken.
- c) Project Financing
- 1) Provide the total project cost allocated by major component, including land acquisition, building, remodeling, renovation, planning and design, utilities, equipment purchases, and financing. What is the estimated cost per square foot? If the cost per square foot is greater than the current industry average, what factors are contributing to the increased cost? How much will each factor contribute? Indicate the source and date of cost estimates.
  - 2) Describe how the institution plans to finance the project (by dollar amount for each fund source). A description should be provided for how the institution plans to finance capital costs, as well as any related operating and maintenance costs.

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 3) If a project is supported by an increase in student fees, provide the total annual increase required and the date the new or increased fees will become effective. Indicate if the institution's Board of Trustees has approved fee increases supporting the project. If not, when is approval anticipated? Does the institution foresee [eliminating sunset](#) the relevant fee increase when it has served its original purpose?
  - 4) If the proposed project will generate the need for additional operations and maintenance funding, provide an estimate of the annual costs. Describe how these costs will be financed.
  - 5) Provide a summary of projected annual revenues and expenses for the programs that will be housed in the space completed by the project. Annual revenues should include reallocations, lease payments, fee revenue, and any other revenue received by the institution that is relevant to the application. Expenses should include annual debt service requirements, operations and maintenance, reserve funds, and any other relevant obligations of the institution. Identify interest rate assumptions for proposed revenue bond sales.
  - 6) If a project is funded in whole or part by private donations, indicate if funding has been secured or pledged. What revenues are currently available? Outline the proposed time schedule for the capital campaign.
  - 7) If a project is funded in whole or part by incurring debt, provide a projection of the amount of borrowing and a schedule of interest and principal payments to retire the debt. Indicate the source of funds for paying debt service.
- d) Constituency Input in the [Decision-making](#) ~~Decisionmaking~~ Process
- 1) Provide a brief description of the institution's [decision-making](#) ~~decisionmaking~~ process. If advisory or review committees were created, briefly describe their membership, objectives and activities.
  - 2) Provide a copy of the governing board's resolutions and minutes reflecting approval of the project scope, project financing, including total project cost, and source of funds. Documentation should reflect approval dates.

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 3) If the requested project requires new fees or significant restructuring of an existing fee program, describe the process used to inform and consult students. Has the student fee increase plan for the project been submitted to a student referendum? If so, provide a copy of the resolution presented to the students. Indicate the total number of students eligible to vote, the number voting, the numbers supporting and opposing the plan, and the date the referendum was held. If a student referendum was not held, what plans exist to consult students regarding this proposal?
- 4) Identify any other governmental approvals still required for the proposed project and the status of those approvals. Include environmental, historical preservation, and special permits of any kind. Do not include routine building permits.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Tuition and Fee Waiver Guidelines
- 2) Code Citation: 23 Ill. Adm. Code 1075
- 3) Section Number: 1075.700                      Proposed Action:  
Amendment
- 4) Statutory Authority: Implementing Section 9.29 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/9.29 and 9.05], Section 7g of the University of Illinois Act [110 ILCS 305/7g], Section 8g of the Southern Illinois University Management Act [110 ILCS 520/8g], Section 5-91 of the Chicago State University Law [110 ILCS 660/5-91], Section 10-91 of the Eastern Illinois University Law [110 ILCS 665/10-91], Section 15-91 of the Governors State University Law [110 ILCS 670/15-91], Section 20-91 of the Illinois State University Law [110 ILCS 675/20-91], Section 25-91 of the Northeastern Illinois University Law [110 ILCS 680/25-91], Section 30-91 of the Northern Illinois University Law [110 ILCS 685/30-91] and Section 35-91 of the Western Illinois University Law [110 ILCS 690/35-91]
- 5) A Complete Description of the Subjects and Issues Involved: The Board of Higher Education is authorized by statute [110 ILCS 305/7g] to establish regulations limiting the percentage of undergraduate tuition that public universities may waive unless the waivers are authorized by statute (mandatory waivers). In addition to the mandatory waivers, the Board has excluded certain discretionary waivers from the three percent calculation when the Board has concluded that the benefits accruing to students or the universities outweigh the costs of the waived tuition.

For many years, Illinois has enjoyed one of the most generous and well-funded need-based student aid programs in the country, the Monetary Award Program (MAP). However, the purchasing power of MAP grants has diminished considerably during the past decade. What was a steady decline in purchasing power turned into a sudden drop in the fiscal year 2010 budget, which funded the MAP program at the fiscal year 1994 level (unadjusted for inflation). As a result of the 50 percent reduction in MAP funding, students will not be receiving any MAP awards for the 2010 spring semester.

While not a panacea for the major reduction in need-based student state aid, this proposed change in rules would exempt waivers granted to resident undergraduates on the basis of financial need from the three percent limitation. Student need waivers are used to attract academically talented students who otherwise would be prohibited from attending due to

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENT

cost. Public universities expanding the use of these waivers would not be subject to the budgetary adjustment permitted for institutions that exceed the three percent limit.

- 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 Objectives: The proposed amendment does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Karen Helland, Administrative Rules Coordinator  
Illinois Board of Higher Education  
431 East Adams Street, 2<sup>nd</sup> Floor  
Springfield, Illinois 62701

217/557-7358  
Fax No. 217/782-8548  
helland@ibhe.org

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: None

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENT

- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: it was not anticipated by the Board when the two most recent regulatory agendas were published.

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

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENT

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER II: BOARD OF HIGHER EDUCATIONPART 1075  
TUITION AND FEE WAIVER GUIDELINES

## Section

1075.100	Purpose
1075.200	Definitions
1075.300	Waiver Accounting Classifications
1075.400	Fiscal Year Reporting
1075.500	Standard Tuition and Fee Waiver Chart of Accounts
1075.600	Institutional Requirements
1075.700	Waiver Limits

AUTHORITY: Implementing Section 9.29 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/9.29 and 9.05], Section 7g of the University of Illinois Act [110 ILCS 305/7g], Section 8g of the Southern Illinois University Management Act [110 ILCS 520/8g], Section 5-91 of the Chicago State University Law [110 ILCS 660/5-91], Section 10-91 of the Eastern Illinois University Law [110 ILCS 665/10-91], Section 15-91 of the Governors State University Law [110 ILCS 670/15-91], Section 20-91 of the Illinois State University Law [110 ILCS 675/20-91], Section 25-91 of the Northeastern Illinois University Law [110 ILCS 680/25-91], Section 30-91 of the Northern Illinois University Law [110 ILCS 685/30-91] and Section 35-91 of the Western Illinois University Law [110 ILCS 690/35-91].

SOURCE: Adopted at 31 Ill. Reg. 3134, effective February 7, 2007; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1075.700 Waiver Limits**

- a) The amount of undergraduate tuition revenue that a public university may waive is limited to three percent of total available undergraduate tuition revenue, subject to the exceptions listed in subsection (b). Total available undergraduate tuition revenue is the total of all tuition charged and waived.
- b) Waivers excluded from the three percent limit include:

## ILLINOIS BOARD OF HIGHER EDUCATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Mandatory waivers granted in accordance with Section 1075.500(a) of this Part;
  - 2) Gender Equity in Intercollegiate Athletics waivers;
  - 3) Foreign Exchange Student waivers;
  - 4) Civil Service Staff: University Employee waivers;
  - 5) Civil Service Staff: Interinstitutional and Related Agencies waivers; ~~and~~
  - 6) Waivers offered through Board-approved bilateral or multilateral tuition reciprocity agreements; ~~and~~
  - 7) [Financial aid waivers for Illinois resident students demonstrating financial need.](#)
- c) Waivers expended by a public university above the three percent limit may result in an equal amount being adjusted from the university budget during the next Board budget cycle.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Illinois Energy Conservation Code
- 2) Code Citation: 71 Ill. Adm. Code 600
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
600.100	Amendment
600.110	Amendment
600.120	Amendment
600.200	Amendment
600.300	Amendment
600.330	Amendment
- 4) Statutory Authority: Implementing and authorized by the Capital Development Board Act [20 ILCS 3105] and the Energy Efficient Commercial Building Act [20 ILCS 3125]
- 5) A Complete Description of the Subjects and Issues Involved: Legislation that passed in 2006 changed the definition of the Illinois Energy Conservation Code by removing the reference to the "2000 International Energy Conservation Code and the 2001 supplement" for privately funded commercial buildings and simply states that the latest published version of the International Energy Conservation Code will be required. We have modified our rules to match this change in Section 15 of the Energy Efficient Commercial Building Act [20 ILCS 3125/15]. This modification to the rule will ensure the newest edition of the International Energy Conservation Code is in effect at all times.  
  
The State building section of the rulemaking is updated to reference ANSI/ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (2007) instead of the 2004 version.  
  
Two members are added to the Illinois Energy Conservation Advisory Council to include DCEO and the residential contracting industry.
- 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

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking in writing for a period of 45 days following publication of this Notice. All comments must be in writing and should be addressed to:

Jim Underwood  
Deputy Director of Construction  
Capital Development Board  
401 S. Spring Street  
3<sup>rd</sup> Floor Stratton Building  
Springfield, Illinois 62706

Telephone: 217/782-8527  
E-Mail: jim.underwood@illinois.gov  
Facsimile: 217/524-0565

Comments submitted by small business should be identified as such.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Those that are constructing, renovating or adding to commercial building structures or issuing building permit applications
- B) Reporting, bookkeeping or other procedures required for compliance: Those necessary for regulatory compliance
- C) Types of professional skills necessary for compliance: Licensed Design Professionals
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because: the matter that is the subject of

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF PROPOSED AMENDMENTS

this rulemaking was not known at the time the agendas were submitted. CDB believes we need to maximize funds with the federal stimulus package.

The full text of these Proposed Amendments are identical to the text of the Emergency Amendments that can be found in this issue of *Illinois Register* on page 12407:

## DEPARTMENT OF HUMAN RIGHTS

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedures of the Department of Human Rights
- 2) Code Citation: 56 Ill. Adm. Code 2520
- 3) 

<u>Section Numbers</u> :	<u>Proposed Action</u> :
2520.810	New Section
2520.820	New Section
- 4) Statutory Authority: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(a) and 7-105(a)]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments describe the procedures for institutions of higher education to post sexual harassment laws and their policies and the consequences for their failure to post them.
- 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 Objectives: The proposed amendments will not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:

David T. Rothal  
Staff Attorney  
Illinois Department of Human Rights – Legal Division  
100 W. Randolph St., Ste. 10-100

DEPARTMENT OF HUMAN RIGHTS

NOTICE OF PROPOSED AMENDMENTS

Chicago, IL 60601

312/814-6262 or 312/263-1579 (TTY)

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments will affect institutions of higher educations.
  - 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: This rulemaking was not anticipated.

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

## DEPARTMENT OF HUMAN RIGHTS

## NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT  
CHAPTER II: DEPARTMENT OF HUMAN RIGHTS

## PART 2520

## PROCEDURES OF THE DEPARTMENT OF HUMAN RIGHTS

## SUBPART A: INTERPRETATIONS

Section	
2520.10	Definition of Terms
2520.20	Computation of Time
2520.30	Service of Documents
2520.40	Filing with the Department
2520.50	Separability
2520.110	Preservation of Records by Employers, Labor Organizations, Employment Agencies and Respondents

## SUBPART B: CHARGE

Section	
2520.310	Time of Filing (Repealed)
2520.320	Form (Repealed)
2520.330	Contents
2520.340	Requirements for Charge (Repealed)
2520.350	Unperfected Charge
2520.360	Amendment
2520.370	Substitution and Addition of Parties (Repealed)
2520.380	Withdrawal of Charge

## SUBPART C: PROCEDURE UPON CHARGE

Section	
2520.405	Verified Response to Charge
2520.410	Docketing and Service of Charge (Repealed)
2520.420	Maintenance of Records (Repealed)
2520.430	Investigation
2520.440	Fact-Finding Conference
2520.450	Administrative Closure (Repealed)
2520.460	Determination After Investigation (Repealed)

DEPARTMENT OF HUMAN RIGHTS

NOTICE OF PROPOSED AMENDMENTS

- 2520.470 Conciliation (Repealed)
- 2520.480 Complaint (Repealed)

SUBPART D: SETTLEMENTS

- Section
- 2520.510 Settlement
- 2520.520 Non-Disclosure (Repealed)
- 2520.530 Dismissal for Refusal to Accept Settlement Offer (Repealed)
- 2520.540 Non-Compliance with Settlement Terms (Repealed)

SUBPART E: ADMINISTRATIVE CLOSURE, DISMISSAL AND DEFAULT

- Section
- 2520.550 Administrative Closure
- 2520.560 Dismissal
- 2520.570 Default

SUBPART F: REQUESTS FOR REVIEW

- Section
- 2520.573 Filing with Chief Legal Counsel
- 2520.575 Contents of Request for Review
- 2520.577 Notice by the Chief Legal Counsel
- 2520.580 Extensions of Time
- 2520.583 Reply to Request for Review and Surreply
- 2520.585 Additional Investigation
- 2520.587 Decision

SUBPART G: RELATIONS WITH LOCAL HUMAN RIGHTS AGENCIES

- Section
- 2520.610 Scope and Purpose (Repealed)
- 2520.620 Definitions (Repealed)
- 2520.630 Cooperative Agreements
- 2520.640 Nature of Cooperative Agreements
- 2520.650 Training and Technical Assistance
- 2520.660 Promotion of Communication and Goodwill

## DEPARTMENT OF HUMAN RIGHTS

## NOTICE OF PROPOSED AMENDMENTS

SUBPART H: EQUAL EMPLOYMENT OPPORTUNITY AND  
AFFIRMATIVE ACTION BY STATE EXECUTIVE AGENCIES

Section	
2520.700	Definitions
2520.710	Scope and Purpose
2520.720	Affirmative Action Groups
2520.730	Consideration of Additional Groups
2520.740	Definitions (Renumbered)
2520.750	Nondiscrimination (Repealed)
2520.760	Plans
2520.770	Reporting and Record-Keeping
2520.780	Equal Employment Opportunity Officers
2520.790	Complaint Process
2520.795	EEO/AA Performance Reviews
2520.797	Sanctions for Noncompliance

[SUBPART I: SEXUAL HARASSMENT IN HIGHER EDUCATION POLICIES](#)

<u><a href="#">Section</a></u>	
<u><a href="#">2520.810</a></u>	<u><a href="#">Posting of Sexual Harassment Policies</a></u>
<u><a href="#">2520.820</a></u>	<u><a href="#">Notice to Show Cause</a></u>

2520.APPENDIX A	Contents of Affirmative Action Plans
2520.APPENDIX B	Value Weight Assignment Chart
2520.APPENDIX C	Contents of Layoff Reports
2520.APPENDIX D	Illinois Counties by Region

AUTHORITY: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)].

SOURCE: Adopted November 20, 1972 by the Fair Employment Practices Commission; transferred to the Department of Human Rights by P.A. 81-1216, effective July 1, 1980; emergency amendments at 4 Ill. Reg. 39, p. 335, effective September 17, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 1627, effective February 9, 1981; amended at 6 Ill. Reg. 2125, effective February 8, 1982; amended at 6 Ill. Reg. 3076, effective March 15, 1982; amended at 6 Ill. Reg. 8090, effective July 1, 1982; codified at 8 Ill. Reg. 17884; amended at 17

## DEPARTMENT OF HUMAN RIGHTS

## NOTICE OF PROPOSED AMENDMENTS

Ill. Reg. 15556, effective September 13, 1993; amended at 18 Ill. Reg. 16829, effective November 4, 1994; emergency amendment at 20 Ill. Reg. 445, effective January 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 5084, effective March 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6291, effective April 18, 1996; amended at 20 Ill. Reg. 10631, effective July 24, 1996; amended at 21 Ill. Reg. 14081, effective October 10, 1997; amended at 26 Ill. Reg. 17217, effective November 18, 2002; amended at 29 Ill. Reg. 804, effective December 28, 2004; amended at 30 Ill. Reg. 1343, effective January 13, 2006; amended at 30 Ill. Reg. 13403, effective July 31, 2006; amended at 30 Ill. Reg. 18715, effective November 20, 2006; amended at 31 Ill. Reg. 12319, effective August 8, 2007; amended at 31 Ill. Reg. 14815, effective October 19, 2007; amended at 32 Ill. Reg. 13482, effective August 1, 2008; amended at 33 Ill. Reg. 11311, effective July 20, 2009; amended at 33 Ill. Reg. \_\_\_\_\_, effective

SUBPART I: SEXUAL HARASSMENT IN HIGHER EDUCATION POLICIES

Section 2520.810 Posting of Sexual Harassment Policies

- a) Section 5A-101.1 of the Act requires institution of higher education to post, in a prominent and accessible location, a poster stating sexual harassment laws and policies. The institution is given three posting options. The posting documents are to be provided by the Department on its website. Initial posting must be in place by October 30, 2009.
- 1) If an institution of higher education chooses option (i) as specified in the Act, the institution must post in accessible common areas its sexual harassment policies and ensure the posting continues to be prominent and accessible to students.
  - 2) If an institution of higher education chooses option (ii) as specified in the Act, the institution must prominently post its sexual harassment policies and send an electronic copy to each student each time registration materials are sent.
  - 3) If an institution of higher education chooses option (iii) as specified in the Act, the institution must send each student an electronic copy of sexual harassment policies and require each student to acknowledge review prior to the completion of online registration for each academic term.

## DEPARTMENT OF HUMAN RIGHTS

## NOTICE OF PROPOSED AMENDMENTS

- b) Any person may notify the Department that an institution of higher education allegedly has failed to comply with posting requirements of Section 5A-101.1 of the Act by writing to Director, Department of Human Rights, 100 West Randolph Street, Suite 10-100, Chicago, Illinois, 60601, along with a description of how the institution allegedly failed to comply with the Act. The name, address and telephone number of the person making the allegation must be included. The written notice must also state that the person making the allegation is available to testify as a witness to the alleged incident.

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 2520.820 Notice to Show Cause**

- a) If the Department receives allegations that an institution of higher education has failed to comply with Section 5A-101.1 of the Act and the Department's preliminary investigation pursuant to Section 5A-101.1(C) of the Act reveals that the institution failed to post its sexual harassment policy in accordance with the Act, the Department may issue to the institution a Notice to Show Cause. The Notice to Show Cause shall specify the provisions of the Act with which the institution fails to comply and shall state what steps the institution must take to comply with the Act.
- b) The institution shall have 30 days to respond to the Notice to Show Cause. In its response, the institution shall describe the modifications to policies and practices it will take to conform to the provisions of the Act and/or to dispute the Department's determination that it has failed to comply with the Act.
- c) If, upon review of the institution's response to the Notice to Show Cause, the Department determines that the institution has not corrected its failure to post, the Department may file a charge of civil rights violation against the institution.

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Rules of Practice and Procedure in Administrative Hearings
- 2) Code Citation: 77 Ill. Adm. Code 100
- 3) 

<u>Section Numbers</u> :	<u>Proposed Action</u> :
100.1	Amend
100.2	Amend
100.3	Amend
100.4	Amend
100.5	Amend
100.6	Amend
100.7	Amend
100.8	Amend
100.10	Amend
100.11	Amend
100.12	Amend
100.13	Amend
100.14	Amend
100.16	Amend
100.17	Amend
100.18	Amend
100.19	Amend
100.20	New
- 4) Statutory Authority: Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100/5-10(a)(i) and Section 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63]
- 5) A Complete Description of the Subjects and Issues Involved: The Department's hearing rules are being amended to update hearing procedures and referenced materials, to more accurately reflect statutory language, and to add provisions that simplify and streamline procedures for hearings conducted in regard to violations of the Smoke Free Illinois Act [410 ILCS 82]. Public Act 95-1029 amended the Smoke Free Illinois Act to provide for the issuance of citations and to provide an opportunity for a violator to contest the citation in accordance with the Illinois Administrative Procedure Act. Hearings are to be conducted in accordance with the Department's rules established for conducting hearings under the Illinois Administrative Procedure Act. The Public Act also requires the hearings to be conducted at the nearest regional office of the Department, or in a location contracted by the Department in the county where the citation was issued. Parties to the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

hearing are the enforcing agency (either the Department, a local health department, or a local law enforcement agency) and the violator.

- 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 or expand a State Mandate.
- 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., 5<sup>th</sup> floor  
Springfield, Illinois 62761

217/782-2043  
e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: Local law enforcement agencies, Certified Local Health Departments, liquor licensees and restaurants
  - B) Reporting, bookkeeping or other procedures required for compliance: Section 100.18 sets forth requirements for Records of Proceedings.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: The need for the rulemaking was not apparent when the Regulatory Agendas were prepared.

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 a: GENERAL RULES

## PART 100

~~RULES OF PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS~~

## Section

100.1	Authority <a href="#">and</a> Applicability <del>of these Rules</del>
100.2	Definitions
100.3	Parties to Hearings
100.4	Appearance – Right to Counsel
100.5	Emergency Action
100.6	Hearings Requested by Complainants
100.7	Initiation of a Contested Case
100.8	Motions
100.9	Form of Papers
100.10	Service
100.11	Prehearing Conferences
100.12	Discovery
100.13	Hearings
100.14	Subpoenas
100.15	Administrative Law Judge's Report and Recommendations
100.16	Proposal for Decision
100.17	Final Orders
100.18	Records of Proceedings
100.19	Miscellaneous
<a href="#">100.20</a>	<a href="#">Referenced Materials</a>

AUTHORITY: Implementing and authorized by Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100/5-10(a)(i)] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63].

SOURCE: Adopted at 2 Ill. Reg. 38, p. 91, effective September 23, 1978; amended and codified at 4 Ill. Reg. 43, p. 127, effective October 14, 1980; amended at 5 Ill. Reg. 14167, effective December 9, 1981; amended at 6 Ill. Reg. 2235, effective February 2, 1982; amended at 11 Ill. Reg. 1937, effective January 9, 1987; amended at 18 Ill. Reg. 5980, effective April 1, 1994; amended at 21 Ill. Reg. 3208, effective March 3, 1997; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 100.1 Authority and Applicability ~~of these Rules~~**

- a) This Part governing~~of~~ practice and procedure for administrative hearings is promulgated pursuant to Section 5-10(a)(i) of the Illinois Administrative Procedure Act (IAPA) ~~[5 ILCS 100/5-10(a)(i)]~~.
- b) This Part shall govern all contested cases in the Department of Public Health, State of Illinois, except as noted in subsections (d) and (e) of this Section. If~~Where~~ a licensing statute prescribes certain procedures or requirements for licensure hearings, those procedures or requirements will be followed as though they were set forth in this Part~~these rules~~. If~~In the event~~ there is a conflict between the licensing statute and this Part, the licensing statute shall prevail.
- c) This Part does~~shall~~ also apply to contested cases resulting from the Department's administration of any program on behalf of the United States government. If~~In the event~~ there is a conflict between federal regulations and this Part~~these rules~~, federal regulations shall prevail.
- d) This Part does~~shall~~ not govern ~~the various~~ informal administrative procedures established by the Department to resolve licensing issues or conflicts prior to initiating any action requiring a formal hearing.
- e) This Part does~~shall~~ not govern contested cases conducted pursuant to 77 Ill. Adm. Code 1130 (Health Facilities Planning Procedural Rules)~~1180 (Practice and Procedure in Administrative Hearings)~~ (Health Facilities Planning Board).

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2 Definitions**

"Administrative Law Judge" shall mean any attorney licensed to practice law in Illinois, appointed by the Director to preside at an administrative hearing. For the purpose of hearings conducted pursuant to Sections 2-100(d) and 3-410 of the Nursing Home Care Act (NHCA), the Department's Regional Health Officer in the region in which the facility is located shall act as administrative law judge~~Administrative Law Judge~~.

"Alleged Violator" shall mean a person issued a citation under the Smoke Free

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Illinois Act.

"Citation" shall mean a document alleging a violation of the Smoke Free Illinois Act.

"Contested ~~Case~~ease" shall have the meaning ascribed to it in Section 1-30 of the IAPA and shall include hearings pursuant to the Smoke Free Illinois Act.

"Department" shall mean the Illinois Department of Public Health, ~~State of Illinois.~~

"Director" shall mean the Director or the designee of the Director of the Department of Public Health, ~~State of Illinois.~~

"Enforcing Agency" shall be as described in Section 40 of the Smoke Free Illinois Act.

~~"IAPA" shall mean the Illinois Administrative Procedure Act [5 ILCS 100].~~

"License" shall have the meaning ascribed to it in Section 1-35 of the IAPA.

"Licensing" shall have the meaning ascribed to it in Section 1-40 of the IAPA.

~~"NHCA" shall mean the Nursing Home Care Act [210 ILCS 45].~~

"Person" shall have the meaning ascribed to it in Section 1-60 of the IAPA.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.3 Parties to Hearings**

- a) Except for hearings conducted pursuant to the NHCA and the Smoke Free Illinois Act, ~~Nursing Home Care Act and the WIC Vendor Management Act~~, the parties to an administrative hearing before the Department are the Department (as Complainant) and the Respondent.
- b) For hearings conducted pursuant to the NHCA:
  - 1) In a Complainant's hearing (Section 3-702(g) of the NHCA), the parties

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

are the Department and the Complainant. The facility ~~that~~which was investigated may participate as a third party (see Section 100.6 of this Part).

- 2) In a denial of access hearing (Section 2-110(d) of the NHCA), the parties are the person who requested a hearing based on denial of access to a facility and the facility.
- 3) In an involuntary transfer/discharge hearing, the parties are the resident who is to be transferred/discharged and the facility.
- 4) In all other NHCA hearings, the parties are the Department (as Complainant) and facility (as Respondent). If the action resulted from a complaint filed with the Department, the person who filed the complaint may participate as a third party.
- 5) A third party ~~shall~~must file an appearance with the ~~Administrative Law Judge~~administrative law judge on or before the date of the prehearing conference, if one is scheduled, or prior to the hearing date if no prehearing conference was scheduled.

~~c) For hearings conducted pursuant to the Smoke Free Illinois Act, the parties to the hearing shall be the enforcing agency and the alleged violator, unless the Department issues the citation, in which case the Department shall be a party. (Section 40(d) of the Smoke Free Illinois Act)~~

~~e) For hearings conducted pursuant to the WIC Vendor Management Act [410 ILCS 255]:~~

- ~~1) In denial of application cases, the parties are the entity whose application is being denied (as Applicant) and the Department (as Respondent).~~
- ~~2) In all other cases, the parties are the Department (as Complainant) and the authorized or unauthorized vendor (as Respondent).~~

d) A Respondent or alleged violator is a person or entity against whom a complaint or petition is filed or to whom a citation or notice of an opportunity for hearing is directed.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.4 Appearance – Right to Counsel**

- a) Any party to a proceeding may appear and be represented by an attorney authorized to practice law in the State of Illinois. Any individual party may waive this right and ~~either~~ represent himself or herself. For hearings conducted pursuant to Sections 2-100(d) and 3-410 of the NHCA, a visitor or resident shall have the option of being represented by a non-attorney of his or her choosing. A corporation, partnership or association shall appear and be represented only by an attorney authorized to practice law in the State of Illinois. A shareholder, corporate officer, employee, or member of the board of directors may not appear or represent a corporation or association unless that individual is authorized to practice law in the State of Illinois.
- b) All persons appearing in proceedings before the Department, including a visitor's or resident's non-attorney representative, shall conform to the standards of ethical conduct required of attorneys before the courts of Illinois. If any person or attorney does not conform to ~~thosesueh~~ standards, the administrative law judge may decline to permit ~~thatsueh~~ person to appear in any proceeding.
- c) Any attorney or other person appearing before the Department as a representative of a visitor or resident shall file an Appearance form containing: the name of the party represented; the name, address and telephone number of the attorney or representative; an affirmative statement that the attorney is or is not duly licensed in the State of Illinois; and the written signature of the attorney or representative.
- d) Special appearances are not recognized. The initial appearance, regardless of form, is deemed a general appearance.
- e) An attorney may withdraw his or her appearance and/or representation only upon motion and appropriate ruling by the administrative law judge. However, attorneys may be substituted without motion upon notice to all parties and the administrative law judge if the substitution will not delay the proceedings, a statement to that effect is contained in the notice, and a substitute Appearance form is filed concurrently with the notice~~Notice~~.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 100.5 Emergency Action**

If the Director finds that the public interest, safety or welfare imperatively requires emergency action, and if the Director incorporates a finding to that effect in an order, summary suspension of a license or [summary suspension of](#) authorization to conduct a particular activity may be ordered, pending proceedings for revocation, termination or other [action](#). ~~Those actions, which~~ proceedings shall be promptly instituted and determined. (Section 10-65 of the IAPA)

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.6 Hearings Requested by Complainants**

Pursuant to Section 3-702(g) of the NHCA, a complainant who is dissatisfied with the determination or investigation [of his or her complaint](#) by the Department ~~of his or her complaint~~ may request a hearing. [\(Section 3-702\(g\) of the NHCA\) Any complainant requesting a hearing shall be deemed to have consented in writing to disclosure of his or her name.](#)

- a) The parties to administrative hearing pursuant to this Section are the Department and the Complainant. *The facility shall be given notice of any such hearing and may participate in the hearing as a third party* (Section 3-702(g) of the NHCA). A request to participate as a third party must be filed in accordance with Section 100.3(b)(5) of this Part.
- b) For the purposes of this Section, a Complainant is an individual who has filed a complaint pursuant to the NHCA. If the individual filing the complaint indicates that she or he is acting as the agent of an organization or another individual, and so requests, [thesaid](#) organization or other individual will be the Complainant for the purposes of this Section. In that case, the individual who acted as agent for the organization or other individual will be a "referring agent". Unless objected to by the Complainant, the referring agent shall be entitled to receive Notice of Complaint Determination and any request for hearing made pursuant to this Part.
- c) In accordance with Sections 3-703 through 3-712 of the NHCA, the Director shall designate an administrative law judge to conduct hearings requested by dissatisfied Complainants. All hearings shall be conducted pursuant to the provisions of this Part.
- d) Dissatisfied Complainants pursuant to this Section shall have the opportunity to contest the adequacy of the Department's investigation and its determination as to

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

whether the complaint was valid, invalid, or undetermined and also the Department's determination as to whether to issue any violation as a result of ~~the said~~ determination. Whenever "determination" is used in this Section, it shall include any investigation resulting in ~~the said~~ determination.

- e) Dissatisfied Complainants pursuant to this Section do not have the opportunity to contest any other determinations or decisions of the Department.
- f) Nothing contained ~~in this Section~~ ~~herein~~ shall be deemed to entitle a dissatisfied Complainant to additional hearings or to a rehearing of a case ~~that which~~ has already been the subject of a formal administrative hearing or a Final Order.
- g) Complainants pursuant to this Section shall carry the burden to prove, by a preponderance of the evidence, that the aforesaid determinations of the Department were improper.
- h) At the conclusion of the hearing, the administrative law judge shall prepare a report in accordance with Section 100.15, and make a recommendation to the Director specifying whether the complaint should be reinvestigated and/or any invalid or undetermined finding should be changed to a valid finding or the Department should reconsider the failure to cite a facility with any violation.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.7 Initiation of a Contested Case**

- a) In contested cases, except those held pursuant to Section 100.6, the Department shall serve on the Respondent a Notice of Opportunity for an Administrative Hearing, which shall contain:
  - 1) *a statement of the time, place and nature of the action;*
  - 2) *a statement of the legal authority and jurisdiction under which the hearing is to be held~~action is being initiated~~;*
  - 3) *a reference to the particular Sections of the substantive and procedural statutes and rules involved;*
  - 4) *allegations of noncompliance;*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) a statement of the procedure for requesting an administrative hearing (see Section 10-25 of the IAPA), including a date by which the request must be received by the Department, which must be set at least 10ten days after the Notice is mailed or personally served;
  - 6) ~~unless~~Unless the case is brought pursuant to the Smoke Free Illinois Act, Title XVIII (health insurance for the aged and disabled) or XIX (medical assistance) of the Social Security Act, or the NHCA ~~or the WIC Vendor Management Act~~, a statement setting forth the requirement of an Answer, pursuant to subsection (d) of this Section; and
  - 7) *except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or reference number.* (Section 10-25 of the IAPA)
- b) A person who receives a Notice of an Opportunity for an Administrative Hearing must submit a written request for a hearing to the Department. The request is to be sent to the Department at the address stated in the Notice and must be received by the date set forth in the Notice. Failure to comply with this Section shall constitute a waiver of the person's right to an administrative hearing. A person receiving a Citation pursuant to the Smoke Free Illinois Act shall submit a request for hearing to the enforcing agency or its designee as written in the citation, which shall promptly forward the request to the Department for scheduling. Failure to request a hearing within 10 calendar days after service of the citation (or failure to attend a hearing when scheduled) or failure to pay the total amount of the fine, without objection, within 28 calendar days after service of the citation will result in a final decision and order being entered against the alleged violator.
- c) Upon receipt of a timely request for hearing, the Department shall issue a Notice of Hearing or Prehearing Conference. ~~The Notice~~notice of Hearing~~hearing or Prehearing Conference~~prehearing conference shall contain:
- 1) *a statement of the time, place, and nature of the hearing;*
  - 2) ~~a statement of the time and place that the hearing or Prehearing Conference will be held;~~

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

~~2)3)~~ *a statement of the legal authority and jurisdiction under which the hearing is to be held; and*

~~3)4)~~ *the names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing, unless otherwise confidential by law. (Section 10-25 of the IAPA)*

- d) Unless the case is brought pursuant to [the Smoke Free Illinois Act](#), Title XVIII or XIX of the Social Security Act, [or the NHCA](#), ~~or the WIC Vendor Management Act~~, a written Answer to the Allegations of Noncompliance shall be filed by a Respondent. The Answer must be served on all parties within 20 days after receipt of the notice alleging noncompliance. If a Respondent fails to file an Answer, each alleged violation of a statute or Department rule by the Respondent shall be deemed to have been admitted. If the Respondent has insufficient knowledge of the facts to form a belief as to the truth of the allegation, the Respondent may so state with an affidavit of insufficient knowledge. If the Respondent wishes to raise defenses ~~thatwhich~~ are affirmative in nature or would be likely to take the Department by surprise, the Respondent must do so in the Answer. If Affirmative Defenses are filed within an Answer, the Department shall reply to ~~thesueh~~ Affirmative Defenses within 20 days after receipt of the Answer.
- e) Amendments to the Allegations of Noncompliance and Answers may be allowed upon proper motion at any time during the pendency of the proceedings on such terms as shall be just and reasonable.
- f) All written documents provided for under this Section shall be liberally construed with a view toward doing substantial justice between the parties.
- g) Venue shall be the location designated in the Notice of Administrative Hearing. Venue may be moved to another location upon stipulation by all parties or upon a showing to and a finding by the administrative law judge that exceptional circumstances [exist](#), including, but not limited to, age, infirmity or inability to travel, ~~that-exist thatwhich~~ make it desirable, in the interest of justice, to allow a change of venue.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 100.8 Motions**

- a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by a specific statute, motions may seek any relief or order recognized in the ~~Illinois~~ Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of ~~the such~~ Code or Rules. Motions based on a matter ~~that which~~ does not appear of record shall be supported by affidavit.
- b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. ~~The Such~~ title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.
- c) Motions to the pleadings if not raised at the earliest opportunity shall be deemed waived. Motions to the pleadings shall not be granted if the pleadings ~~conform to are in conformity with~~ Section 100.7.
- d) The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an Order or Notice issued by the Director, but may make a recommendation to the Director ~~at~~ any time that circumstances merit such a recommendation.
- e) Motions for a continuance shall be granted only for good cause shown. Motions for a continuance shall be in writing and filed at least ~~five~~ working days prior to the hearing. Motions for a continuance shall be made immediately when the party learns that a continuance is needed. ~~Statements and statements~~ as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:
- 1) a hearing on the issue of whether ~~or not~~ to grant the continuance has been held and the administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance;
- or

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 2) there is an emergency;<sup>5</sup> or
- 3) all parties so stipulate.
- f) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.
- g) If there is an unforeseen emergency, motions for a continuance may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within ~~three~~ business days by the filing of a written motion.
- h) Responses shall be in writing unless made at a prehearing conference or a hearing.
- i) On motion made by any party, the administrative law judge who is the subject of ~~thesueh~~ motion shall determine whether he or she should be disqualified on the basis of bias or conflict of interest, and shall remove himself or herself if a determination is made that bias or a conflict of interest exists. If the motion is granted, the Director shall appoint a new administrative law judge. *An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.* (Section 10-30 of the IAPA)
- j) Demands for a Bill of Particulars shall not be allowed.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.10 Service**

- a) Notices under Section 100.7(a) shall be served either personally or by certified mail upon all parties (including complainants under the NHCA, ~~whenwhere~~ applicable) or their agents appointed to receive service of process unless the applicable licensing statute requires a different form of service, in which case service shall conform to the statute.
- b) Service to the last official address of a party or agent provided to the Department by a party shall be considered in compliance with this Section. Notices ~~and citations~~ sent by certified mail ~~thatwhich~~ have been returned to the Department, or to the enforcing agency in Smoke Free Illinois Act cases, as unclaimed or refused

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

by the addressee shall be considered served. For purposes of this Section, the "last official address" shall be: the address listed on the most recent application submitted to the Department, unless the Department has been subsequently notified in writing of a change of address. For certified nursing assistants and habilitation aides, the "most recent application" shall be the information submitted by the training program or testing entity ~~that~~<sup>which</sup> qualified the individual to be entered on the registry. Notice in Smoke Free Illinois Act cases shall be sufficient if served personally or if sent by certified mail to the alleged violator's address as it appears on the citation or as maintained with the Illinois Secretary of State as of the date of service.

- c) Service of pleadings or motions under this Section, unless otherwise provided for in this Section, shall be made by delivering in person or by depositing in the United States Mail, properly addressed with postage prepaid, one copy to each party to the proceedings. When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon ~~the~~<sup>such</sup> party or parties. All pleading or motions under this Section shall also be served upon the administrative law judge.
- d) Proof of service under subsection (b) of this Section shall be by certificate of attorney, affidavit or acknowledgment.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.11 Prehearing Conferences**

- a) A telephonic prehearing conference may be scheduled by the administrative law judge or Department ~~at their discretion~~ or as a result of a request pursuant to subsection (b) of this Section. This conference shall be held prior to the date of hearing and shall be for the purpose of considering:
- 1) the simplification of the issues;
  - 2) amendments to the pleadings;
  - 3) the possibility of obtaining admissions of fact and of documents ~~that~~<sup>which</sup> will avoid unnecessary proof;
  - 4) the limitation of the number of expert ~~witnesses~~<sup>witness</sup>; and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) any other matters ~~that~~which may aid in the disposition of the hearing.
- b) In any proceedings under this Section in which the Department has not scheduled a prehearing conference, any party to the proceedings may request the scheduling of a prehearing conference. ~~The~~Such request ~~shall~~must be made in writing and received by the administrative law judge at least ~~five~~5 days prior to the scheduled date of hearing. The requesting party shall serve all other parties to the proceedings with a copy of the request.
- c) Upon the receipt of a request for a prehearing conference in accordance with subsection (b) of this Section, the administrative law judge shall schedule the prehearing conference and notify all parties of the date, time and place of the conference.
- d) After a prehearing conference, the administrative law judge shall make a report ~~that~~which recites any action taken by the administrative law judge and any agreements made by the parties as to any of the matters considered.
- e) Any party may request additional prehearing conferences. The administrative law judge, in his or her discretion, may deny or grant such a request, based on the nature of the motion.
- f) A certified stenographic reporter (court reporter) will not be present at a prehearing conference unless one of the parties to the proceeding requests the Department to make arrangements for a court reporter to be present. ~~The~~Such request ~~shall~~must be received by the Department at least two working days in advance of the scheduled prehearing conference. The party requesting the presence of the court report shall be billed directly for the attendance fee of the reporter.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.12 Discovery**

- a) Prior to or at the prehearing conference, the Department shall provide all parties with a copy of all of the Department's inspection or investigative reports relating to the Allegations of Noncompliance. If no pre-hearing conference is held, the Department shall provide copies of the investigative reports prior to the hearing.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- b) Except for cases prosecuted under the Smoke Free Illinois Act, at least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that which it may intend to offer into evidence. This subsection shall not require any party to again provide copies of those documents already provided by the Department under subsection (a) ~~above~~.
- c) Except for cases prosecuted under the Smoke Free Illinois Act, at least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.
- d) All parties shall be entitled to any exculpatory evidence in the Department's possession that which tends to support the Respondent's position or that which might impeach the credibility of a Department witness.
- e) Upon a written request by the Department, at any time after a notice or hearing request is filed, or at any stage of the hearing, the Respondent shall be required to produce within seven 7 days documents, books, records, or other evidence that ~~relates~~ which relate directly to conduct of the business entity or other subject of the administrative hearing.
- f) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.
- g) There shall be no depositions for discovery purposes or interrogatories allowed in any proceedings brought pursuant to this Part, except as agreed to by the parties.
- h) Except for cases brought against an individual under the Smoke Free Illinois Act, requests Requests to Admit Facts and Genuineness of Documents shall be allowed in accordance with Supreme Court Rule 216.
- i) Nothing contained in this Section herein shall preclude the parties from agreeing to the voluntary exchange of more information than is required.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.13 Hearings**

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- a) All hearings conducted in any proceedings shall be open to the public.
- b) Hearings will be conducted by the Director or by an administrative law judge appointed by the Director. If the Director conducts the hearings, any reference in this Section to the administrative law judge shall be read to refer to the Director.
- c) The administrative law judge shall conduct hearings; administer oaths; issue subpoenas; hold informal conferences for the settlement, ~~simplifications~~simplification, or definition of issues; dispose of procedural requests, motions, and similar matters; continue the hearing from time to time when necessary; examine witnesses; and rule upon the admissibility of evidence.
- d) The administrative law judge shall direct all parties to enter their appearances on the record.
- e) Written opening arguments and written closing arguments shall not be permitted unless all parties so stipulate.
- f) Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or ~~by~~ motion.
- g) At any stage of the hearing or after all parties have completed the presentation of their evidence, the administrative law judge may call for further testimony, subject to cross-examination by the parties.
- h) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. ~~Evidence~~However, evidence not admissible under ~~those~~such rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent ~~persons~~persons in the conduct of their affairs. Immaterial, irrelevant or unduly repetitious material shall be excluded~~Immaterial, irrelevant, or unduly repetitious material shall be excluded~~. A copy of the whole or any part of an admissible book, record, paper, or memorandum of the Department ~~that~~which is made by photostatic or other method of accurate and permanent reproduction ~~shall~~may be admitted in evidence at the hearing without further proof of the accuracy of ~~the~~such copy. *Objections to evidentiary offers may be made and shall be noted in**

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

*the record.* (Section 10-40(a) of the IAPA)

- i) Official notice may be taken of matters of which *the* circuit courts of this State may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the ~~Department's~~ Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The ~~Department's~~ Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence. (Section 10-40(c) of the IAPA)
- j) A party may offer into evidence any of the following documents without foundation or other proof, provided that a copy of the document has been timely provided to all other parties in accordance with Section 100.12(b):
  - 1) records and reports of health care facilities, doctors, nurses, physical therapists; or other health care providers; however, ~~thesesuch~~ records and reports shall not include affidavits or other documents specifically prepared for litigation;:-
  - 2) investigation reports from ~~governmental~~government law enforcement agencies;:-
  - 3) official police investigative reports and narratives, prepared by sworn Illinois police officers, Sheriff's Deputies and officers of the Illinois State and Secretary of State Police, prepared in the course of official duty, in cases brought under the Smoke Free Illinois Act;
  - 4) the enforcing agency's inspection or investigative reports produced pursuant to Section 100.12(a);
  - 5) copies of any official records maintained by a governmental agency.
- k) For good cause shown, including, but not limited to, age, infirmity, or inability to travel, evidentiary depositions shall be allowed.
- l) Absent a showing of good cause, no document shall be offered into evidence ~~thatwhich~~ was not disclosed in accordance with the requirements ~~ofin~~ Section

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

100.12(b), and no witness shall testify whose name was not provided pursuant to Section 100.12(c). For purposes of this subsection, a showing of good cause shall mean that a party, through no fault of its own, did not have knowledge of a document to be offered into evidence or the name of a witness within the timeframe necessary for compliance with Section 100.12(b) and (c).

- m) Except for cases brought under the Smoke Free Illinois Act, the The Department will arrange for a certified stenographic reporter (court reporter) to make a stenographic record of the hearing in all administrative hearings under this Part~~these rules~~. Any person may make arrangements to obtain a copy of the stenographic record from the reporter. The Department reserves the right to employ a certified stenographic reporter. A copy of any stenographic record made by a Department employee may be purchased from the Department at a cost of half the actual cost to the Department~~one dollar per page~~. There shall be no audio or video taping apart from any made by the certified stenographic reporter employed for those purposes by the Department without the express consent of the administrative law judge and all parties to the hearing. In cases brought under the Smoke Free Illinois Act for which no court reporter is present, the administrative law judge shall make an audio recording of the proceedings and shall maintain the recording until 90 days after the Director has entered a final order, unless a timely notice of civil administrative review is filed, in which case the administrative law judge shall cause the audio recordings to be transcribed by a certified stenographic reporter and shall cause the transcript to become part of the official record.
- n) Corrections to the transcript of the record may be made by the Director or administrative law judge.
- o) If a party, or any person at the instance of or in collusion with a party, violates any ruling of the administrative law judge, the administrative law judge, on motion, may enter such orders as are just, including, among others, the following:
- 1) that further proceedings be stayed until the order or rule is complied with;
  - 2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;
  - 3) that the offending party~~he or she~~ be barred from maintaining any particular claim or defense relating to that issue;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 4) that a witness be barred from testifying concerning that issue;
- 5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that his or her pleading be dismissed without prejudice; or
- 6) that any portion of ~~the offending party's~~~~his or her~~ pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.
- p) At any time, the administrative law judge may order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or otherwise engaging in conduct ~~that~~~~which~~ disrupts the hearing.
- q) At the request of any party, the administrative law judge may exclude all ~~witnesses~~~~witness~~ from the hearing room, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.
- r) In cases brought under the Smoke Free Illinois Act, the failure of an alleged violator to appear, after receiving proper notice under this Part, shall result in a default judgment being entered by the administrative law judge. A default judgment entered against a violator after a failure to appear may be vacated by the Director within 15 days after entry in cases in which the alleged violator can demonstrate good cause, as that term is construed under Illinois law, for the failure to appear. In cases in which an enforcing agency fails to have any witness appear, after proper notice under this Part, the administrative law judge shall dismiss the case against the alleged violator. An alleged violator's failure to appear or an enforcing agency's failure to have a witness appear in one particular case shall not have any effect on any other case.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.14 Subpoenas**

- a) Subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda, may be issued by the Director or the administrative law judge upon his or her own motion or upon the written request of any party upon a showing of

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

the relevancy of the request to the issues in the hearing. For good cause shown, the Director or the administrative law judge may deny or modify the request for subpoenas.

- b) Subpoenas issued by the Director or the administrative law judge upon the request of a party to the proceeding shall be delivered to the requesting party, who shall be responsible for serving the subpoenas. Subpoenas shall be served personally or by certified mail at least seven days before the date on which appearance is required. [Copies of the subpoenas and any documents obtained by subpoenas duces tecum shall be served on all other parties.](#)
- c) The witness fee for attendance and travel shall be the same as the fee of witnesses before the circuit courts of this State. When a witness is subpoenaed by the Director, or by the administrative law judge upon his or her own motion or upon the request of the Department, the witness fee shall be paid in the same manner as other expenses of the agency.
- d) The appearance at the hearing of a party, or a person who at the time of the hearing is an officer, director, or employee of a party, may be required by serving the party with a notice designating the person who is required to appear at least [seven](#) days before the date on which appearance is required.
- e) Subpoenas shall be enforced in the same manner as subpoenas issued by the circuit courts of this State.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.16 Proposal for Decision**

- a) When the Director has not heard the contested case or read the record and his or her final decision would be adverse to any party other than the Department, a proposal for decision shall be served upon all parties to the proceedings. The proposal for decision shall contain:
  - 1) *A statement of the reasons* for the proposed decision;
  - 2) *A statement of each issue of fact or law necessary to the proposed decision.* (Section 10-45 of the IAPA)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- b) The ~~proposal for proposed~~ decision shall be prepared by the persons who conducted the hearing or one who has read the record. (Section 10-45 of the IAPA)
- c) Any party adversely affected by the proposed decision shall have 20 days from the receipt of the proposal for decision in which to file written exceptions and a brief. Failure to file written exceptions and a brief in the time provided for in the proposal for decision shall be deemed a waiver of the right to file exceptions and a brief. The Department shall have ~~ten (10)~~ days to respond to the exceptions or brief.
- d) The proposal for decision shall be served on all parties personally or by certified mail.
- e) The Director ~~in his or her discretion~~ may provide for oral arguments on the proposal for decision. If oral arguments are allowed, they shall be scheduled as convenient to the Director.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.17 Final Orders**

- a) A written ~~final order~~ ~~Final Order~~ shall be issued in every contested case. *A final order shall include findings of fact and conclusions of law, separately stated. All final orders shall specify whether they are final and subject to the Illinois Administrative Review Law [735 ILCS 5/Art. III]* and any applicable licensing statute. (Section 10-50 of the IAPA)
- b) A final ~~order~~ ~~orders~~ shall be served on *parties or their agents appointed to receive service of process either personally or by registered or certified mail.* (Section 10-50 of the IAPA)
- c) All fines in Smoke Free Illinois Act cases shall be paid in full within 10 calendar days after the final order is entered.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.18 Records of Proceedings**

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- a) A full and complete record shall be kept of all proceedings. *The record shall ~~include~~ consist of the following:*
- 1) *all pleadings (including all notices and responses thereto), motions, and rulings;*
  - 2) *an audio recording or stenographic transcript of the hearing, if any, and all evidence received;*
  - 3) *a statement of matters officially noticed;*
  - 4) *any offers of proof, objections and rulings thereon;*
  - 5) *any proposed findings and exceptions;*
  - 6) *any decision, opinion, or report by the administrative law judge~~Administrative Law Judge~~;*
  - 7) *all staff memoranda or data submitted to the administrative law judge~~Administrative Law Judge~~ or members of the Department in connection with their consideration of the case; and*
  - 8) *any communication prohibited by Section 10-60 of the IAPA~~of the IAPA~~. No such communication shall form the basis for any finding of fact. (Section 10-35 of the IAPA)*
- b) The record shall not contain the following unless a party requests that the document or documents be included in the record:
- 1) Subpoenas;
  - 2) Requests for Subpoenas;
  - 3) Cover letters;
  - 4) Notices of Filing;
  - 5) Certificates of Mailing for regular mail; and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 6) Discovery Requests.
- c) The Department shall be the official custodian of the records of administrative hearings held before the Department.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.19 Miscellaneous**

- a) Ex parte consultation. *Except in the disposition of matters that the Department is authorized by law to entertain or dispose of on an ex parte basis, the administrative law judge or Director shall not, after notice of hearing, communicate directly or indirectly, in connection with any other issue of fact, with any person or party, his or her representative, or any person interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate. However, a Department member may communicate with other members of the Department and ~~and~~ the administrative law judge may have the aid and advice of one or more personal assistants.*
- 1) *An ex parte communication received by the Director, any Department employee, or the administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.*
- 2) *Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section. (Section 10-60 of the IAPA)*
- b) Computation of Time. The time within which any act under this Section is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday as defined or fixed by statute in force in this State, and then it shall also be excluded. If the day succeeding the last day is a Saturday, Sunday or a holiday as defined or fixed by statute in force in this State, that day shall also be excluded.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- c) Construction of Rules. In case of any conflict between this Part and the IAPA or a specific licensing statute, the terms of the latter shall control.
- d) If the hearing is being conducted pursuant to federal law and there is a conflict between this Part and federal procedural or evidentiary requirements, then the federal requirements shall control.
- e) *Waiver. Compliance with any or all provisions concerning contested cases may be waived by written stipulation of all parties. (Section 10-70 of the IAPA)*

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.20 Referenced Materials**

The following federal laws, State laws and rules, and Illinois Supreme Court Rules are referenced in this Part:

- a) [Social Security Act \(42 USC 1395 and 1396\)](#)
- b) [Illinois Administrative Procedure Act \[5 ILCS 100\]](#)
- c) [Nursing Home Care Act \[210 ILCS 45\]](#)
- d) [Smoke Free Illinois Act \[410 ILCS 82\]](#)
- e) [Code of Civil Procedure \[735 ILCS 5\]](#)
- f) [Administrative Review Law \[735 ILCS 5/Art. III\]](#)
- g) [Health Facilities Planning Board: Health Facilities Planning Procedural Rules \(77 Ill. Adm. Code 1130\)](#)
- h) [Supreme Court Rule 216: Admission of Fact or of Genuineness of Documents](#)

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Hospital Licensing Requirements

2) Code Citation: 77 Ill. Adm. Code 250

3) Section Number: 250.1130                      Proposed Action:  
New

4) Statutory Authority: Hospital Licensing Act [210 ILCS 85]

5) A Complete Description of the Subjects and Issues Involved:

The hospital licensing requirements regulate hospital licensure in Illinois, including the minimum standards for nursing services and staffing requirements.

The Illinois General Assembly enacted Public Act 95-401 in 2007, which mandates that nurse staffing levels in acute care settings be based on the "complexity of patients' care needs" and available nursing skills. PA 95-401 also calls for nurses' input in establishing minimum staffing levels.

In this rulemaking, Section 250.1130 (Nurse Staffing by Patient Acuity) is being added to Part 250 to implement the provisions of PA 95-401.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

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? Yes

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

<u>Section:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
250.160	Amend	33 Ill. Reg. 11418; August 7, 2009
250.1100	Amend	33 Ill. Reg. 11418; August 7, 2009

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State Mandate.
- 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 this issue of the *Illinois Register* to:
- Susan Meister  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson St., 5<sup>th</sup> Floor  
Springfield, Illinois 62761
- 217/782-2043  
e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)
- 13) Initial Regulatory Flexibility Analysis:
- A) Type of small businesses, small municipalities and not-for-profit corporations affected: Hospitals
- B) Reporting, bookkeeping or other procedures required for compliance: Meeting minutes
- C) Types of professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2009

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 250

HOSPITAL LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section

- 250.110 Application for and Issuance of Permit to Establish a Hospital
- 250.120 Application for and Issuance of a License to Operate a Hospital
- 250.130 Administration by the Department
- 250.140 Hearings
- 250.150 Definitions
- 250.160 Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION AND PLANNING

Section

- 250.210 The Governing Board
- 250.220 Accounting
- 250.230 Planning
- 250.240 Admission and Discharge
- 250.250 Visiting Rules
- 250.260 Patients' Rights
- 250.265 Language Assistance Services
- 250.270 Manuals of Procedure
- 250.280 Agreement with Designated Organ Procurement Agencies

SUBPART C: THE MEDICAL STAFF

Section

- 250.310 Organization
- 250.315 House Staff Members
- 250.320 Admission and Supervision of Patients
- 250.330 Orders for Medications and Treatments
- 250.340 Availability for Emergencies

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

SUBPART D: PERSONNEL SERVICE

Section	
250.410	Organization
250.420	Personnel Records
250.430	Duty Assignments
250.435	Health Care Worker Background Check
250.440	Education Programs
250.450	Personnel Health Requirements
250.460	Benefits

SUBPART E: LABORATORY

Section	
250.510	Laboratory Services
250.520	Blood and Blood Components
250.525	Designated Blood Donor Program
250.530	Proficiency Survey Program (Repealed)
250.540	Laboratory Personnel (Repealed)
250.550	Western Blot Assay Testing Procedures (Repealed)

SUBPART F: RADIOLOGICAL SERVICES

Section	
250.610	General Diagnostic Procedures and Treatments
250.620	Radioactive Isotopes
250.630	General Policies and Procedures Manual

SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

Section	
250.710	Classification of Emergency Services
250.720	General Requirements
250.725	Notification of Emergency Personnel
250.730	Community or Areawide Planning
250.740	Disaster and Mass Casualty Program
250.750	Emergency Services for Sexual Assault Victims

SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

## Section

250.810	Applicability of Other Parts of These Requirements
250.820	General
250.830	Classifications of Restorative and Rehabilitation Services
250.840	General Requirements for all Classifications
250.850	Specific Requirements for Comprehensive Physical Rehabilitation Services
250.860	Medical Direction
250.870	Nursing Care
250.880	Additional Allied Health Services
250.890	Animal-Assisted Therapy

## SUBPART I: NURSING SERVICE AND ADMINISTRATION

## Section

250.910	Nursing Services
250.920	Organizational Plan
250.930	Role in hospital planning
250.940	Job descriptions
250.950	Nursing committees
250.960	Specialized nursing services
250.970	Nursing Care Plans
250.980	Nursing Records and Reports
250.990	Unusual Incidents
250.1000	Meetings
250.1010	Education Programs
250.1020	Licensure
250.1030	Policies and Procedures
250.1035	Domestic Violence Standards
250.1040	Patient Care Units
250.1050	Equipment for Bedside Care
250.1060	Drug Services on Patient Unit
250.1070	Care of Patients
250.1075	Use of Restraints
250.1080	Admission Procedures Affecting Care
250.1090	Sterilization and Processing of Supplies
250.1100	Infection Control
250.1110	Mandatory Overtime Prohibition
250.1120	Staffing Levels

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

[250.1130](#) [Nurse Staffing by Patient Acuity](#)

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section

- 250.1210 Surgery
- 250.1220 Surgery Staff
- 250.1230 Policies & Procedures
- 250.1240 Surgical Privileges
- 250.1250 Surgical Emergency Care
- 250.1260 Operating Room Register and Records
- 250.1270 Surgical Patients
- 250.1280 Equipment
- 250.1290 Safety
- 250.1300 Operating Room
- 250.1305 Visitors in Operating Room
- 250.1310 Cleaning of Operating Room
- 250.1320 Postoperative Recovery Facilities

SUBPART K: ANESTHESIA SERVICES

Section

- 250.1410 Anesthesia Service

SUBPART L: RECORDS AND REPORTS

Section

- 250.1510 Medical Records
- 250.1520 Reports

SUBPART M: FOOD SERVICE

Section

- 250.1610 Dietary Department Administration
- 250.1620 Facilities
- 250.1630 Menus and Nutritional Adequacy
- 250.1640 Diet Orders
- 250.1650 Frequency of Meals
- 250.1660 Therapeutic (Modified) Diets

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

- 250.1670 Food Preparation and Service
- 250.1680 Sanitation

## SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

## Section

- 250.1710 Housekeeping
- 250.1720 Garbage, Refuse and Solid Waste Handling and Disposal
- 250.1730 Insect and Rodent Control
- 250.1740 Laundry Service
- 250.1750 Soiled Linen
- 250.1760 Clean Linen

## SUBPART O: MATERNITY AND NEONATAL SERVICE

## Section

- 250.1810 Applicability of other Parts of these regulations
- 250.1820 Maternity and Neonatal Service (Perinatal Service)
- 250.1830 General Requirements for All Maternity Departments
- 250.1840 Discharge of Newborn Infants from Hospital
- 250.1850 Rooming-In Care of Mother and Infant
- 250.1860 Special Programs
- 250.1870 Single Room Maternity Care

SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL PLANT, SITE,  
EQUIPMENT, AND SYSTEMS – HEATING, COOLING, ELECTRICAL, VENTILATION,  
PLUMBING, WATER, SEWER, AND SOLID WASTE DISPOSAL

## Section

- 250.1910 Maintenance
- 250.1920 Emergency electric service
- 250.1930 Water Supply
- 250.1940 Ventilation, Heating, Air Conditioning, and Air Changing Systems
- 250.1950 Grounds and Buildings Shall be Maintained
- 250.1960 Sewage, Garbage, Solid Waste Handling and Disposal
- 250.1970 Plumbing
- 250.1980 Fire and Safety

## SUBPART Q: CHRONIC DISEASE HOSPITALS

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

## Section

- 250.2010 Definition
- 250.2020 Requirements

## SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

## Section

- 250.2110 Service Requirements
- 250.2120 Personnel Required
- 250.2130 Facilities for Services
- 250.2140 Pharmacy and Therapeutics Committee

## SUBPART S: PSYCHIATRIC SERVICES

## Section

- 250.2210 Applicability of other Parts of these Regulations
- 250.2220 Establishment of a Psychiatric Service
- 250.2230 The Medical Staff
- 250.2240 Nursing Service
- 250.2250 Allied Health Personnel
- 250.2260 Staff and Personnel Development and Training
- 250.2270 Admission, Transfer and Discharge Procedures
- 250.2280 Care of Patients
- 250.2290 Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care
- 250.2300 Diagnostic, Treatment and Physical Facilities and Services

## SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

## Section

- 250.2410 Applicability of these Standards
- 250.2420 Submission of Plans for New Construction, Alterations or Additions to Existing Facility
- 250.2430 Preparation of Drawings and Specifications – Submission Requirements
- 250.2440 General Hospital Standards
- 250.2442 Fees
- 250.2443 Advisory Committee
- 250.2450 Details

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

250.2460	Finishes
250.2470	Structural
250.2480	Mechanical
250.2490	Plumbing and Other Piping Systems
250.2500	Electrical Requirements

## SUBPART U: CONSTRUCTION STANDARDS FOR EXISTING HOSPITALS

Section	
250.2610	Applicability of these Standards
250.2620	Codes and Standards
250.2630	Existing General Hospital Standards
250.2640	Details
250.2650	Finishes
250.2660	Mechanical
250.2670	Plumbing and Other Piping Systems
250.2680	Electrical Requirements

## SUBPART V: SPECIAL CARE AND/OR SPECIAL SERVICE UNITS

Section	
250.2710	Special Care and/or Special Service Units
250.2720	Day Care for Mildly Ill Children

## SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

Section	
250.2810	Applicability of Other Parts of These Requirements
250.2820	Establishment of an Alcoholism and Intoxication Treatment Service
250.2830	Classification and Definitions of Service and Programs
250.2840	General Requirements for all Hospital Alcoholism Program Classifications
250.2850	The Medical and Professional Staff
250.2860	Medical Records
250.2870	Referral
250.2880	Client Legal and Human Rights

250.APPENDIX A	Codes and Standards (Repealed)
250.EXHIBIT A	Codes (Repealed)
250.EXHIBIT B	Standards (Repealed)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

250.EXHIBIT C	Addresses of Sources (Repealed)
250.ILLUSTRATION A	Seismic Zone Map
250.TABLE A	Measurements Essential for Level I, II, III Hospitals
250.TABLE B	Sound Transmission Limitations in General Hospitals
250.TABLE C	Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)
250.TABLE D	General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)
250.TABLE E	Piping Locations for Oxygen, Vacuum and Medical Compressed Air
250.TABLE F	General Pressure Relationships and Ventilation of Certain Hospital Areas
250.TABLE G	Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17 Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3234, effective February 15,

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 3932, effective February 13, 1998; amended at 22 Ill. Reg. 9342, effective May 20, 1998; amended at 23 Ill. Reg. 1007, effective January 15, 1999; emergency amendment at 23 Ill. Reg. 3508, effective March 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9513, effective August 1, 1999; amended at 23 Ill. Reg. 13913, effective November 15, 1999; amended at 24 Ill. Reg. 6572, effective April 11, 2000; amended at 24 Ill. Reg. 17196, effective November 1, 2000; amended at 25 Ill. Reg. 3241, effective February 15, 2001; amended at 27 Ill. Reg. 1547, effective January 15, 2003; amended at 27 Ill. Reg. 13467, effective July 25, 2003; amended at 28 Ill. Reg. 5880, effective March 29, 2004; amended at 28 Ill. Reg. 6579, effective April 15, 2004; amended at 29 Ill. Reg. 12489, effective July 27, 2005; amended at 31 Ill. Reg. 4245, effective February 20, 2007; amended at 31 Ill. Reg. 14530, effective October 3, 2007; amended at 32 Ill. Reg. 3756, effective February 27, 2008; amended at 32 Ill. Reg. 4213, effective March 10, 2008; amended at 32 Ill. Reg. 7932, effective May 12, 2008; amended at 32 Ill. Reg. 14336, effective August 12, 2008; amended at 33 Ill. Reg. 8306, effective June 2, 2009; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART I: NURSING SERVICE AND ADMINISTRATION

**Section 250.1130 Nurse Staffing by Patient Acuity**a) As used in this Section, the following definitions apply:

*"Acuity Model" – an assessment tool selected and implemented by a hospital, as recommended by a nursing care committee, that assesses the complexity of patient care needs requiring professional nursing care and skills and aligns patient care needs and nursing skills consistent with professional nursing standards.*

*"Direct Patient Care" – care provided by a registered professional nurse with direct responsibility to oversee or carry out medical regimens or nursing care for one or more patients.*

*"Nursing-sensitive Care Performance Measure" – data that examine nursing contributions to inpatient hospital care, including, but not limited to, the data collected and analyzed under the Hospital Report Card Act [210 ILCS 86], the Illinois Adverse Health Care Events Reporting Law of 2005 [410 ILCS 522], and the American Nurses' Association's National Database for Nursing Quality Indicators. The National Database for*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

Nursing Quality Indicators may be accessed at [www.nursingquality.org](http://www.nursingquality.org). Hospitals are not required to subscribe to the database.

"Nursing Care Committee" – an existing or newly created hospital-wide committee or committees of nurses whose functions, in part or in whole, contribute to the development, recommendation, and review of the hospital's nurse staffing plan established pursuant to subsection (b). (Section 10.10(b) of the Act)

"Registered Professional Nurse" – a person licensed as a Registered Nurse under the Nurse Practice Act.

"Written Staffing Plan for Nursing Care Services" – a written plan for guiding the assignment of patient care nursing staff based on multiple nurse and patient considerations that yield minimum staffing levels for inpatient care units and the adopted acuity model aligning patient care needs with nursing skills required for quality patient care consistent with professional nursing standards. (Section 10.10(b) of the Act)

b) Written Staffing Plan

1) Every hospital shall implement a written hospital-wide staffing plan, recommended by a nursing care committee or committees, that provides for minimum direct care professional registered nurse-to-patient staffing needs for each inpatient care unit. The written hospital-wide staffing plan shall include, but need not be limited to, the following considerations:

A) The complexity of complete care, assessment on patient admission, volume of patient admissions, discharges and transfers, evaluation of the progress of a patient's problems, ongoing physical assessments, planning for a patient's discharge, assessment after a change in patient condition, and assessment of the need for patient referrals;

B) The complexity of clinical professional nursing judgment needed to design and implement a patient's nursing care plan, the need for specialized equipment and technology, the skill mix of other personnel providing or supporting direct patient care, and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

*involvement in quality improvement activities, professional preparation, and experience;*

- C) Patient acuity and the number of patients for whom care is being provided;*
- D) The ongoing assessments of a unit's patient acuity levels and nursing staff needed, routinely made by the unit nurse manager or his or her designee; and*
- E) The identification of additional registered nurses available for direct patient care when patients' unexpected needs exceed the planned workload for direct care staff. (Section 10.10(c) of the Act)*

- 2) A written staffing plan shall consider the time required for nursing staff documentation of patient care.*
- 3) In order to provide staffing flexibility to meet patient needs, every hospital shall identify an acuity model for adjusting the staffing plan for each inpatient care unit.*
- 4) The written staffing plan shall be posted in a conspicuous and accessible location for both patients and direct care staff, as required under the Hospital Report Card Act. (Section 10.10(c) of the Act)*

*c) Nursing Care Committee*

- 1) Every hospital shall have a nursing care committee. A hospital shall appoint members of a committee of which at least 50% of the members are registered professional nurses providing direct patient care. (Section 10.10(d) of the Act)*
  - A) The registered professional nurses on the nursing care committee shall be as broadly representative of the clinical service areas as practically reasonable; e.g., surgery, critical care and pediatrics.*
  - B) When committee or nurse staff volume is not practically reasonable to include representatives from each clinical service*

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

area at any one time, the hospital may schedule for rotating representation of the hospital's clinical service areas over a defined timeframe to achieve input from all clinical service areas every three years.

C) Minutes for the nursing care committee meetings, summarizing key issues, discussions and recommendations, shall be recorded and maintained for five years.

2) A nursing care committee's recommendations must be given significant regard and weight in the hospital's adoption and implementation of a written staffing plan. (Section 10.10(d) of the Act)

A) The process for submitting the committee's recommendations to hospital administration shall be outlined in the written staffing plan.

B) The process for providing feedback to the nursing care committee from the hospital administration regarding unresolved or ongoing issues shall be outlined in the written staffing plan.

3) A nursing care committee or committees shall recommend a written staffing plan for the hospital based on the principles from the staffing components set forth in subsection (b). In particular, a committee or committees shall provide input and feedback on the following:

A) Selection, implementation, and evaluation of minimum staffing levels for inpatient care units.

B) Selection, implementation, and evaluation of an acuity model to provide staffing flexibility that aligns changing patient acuity with nursing skills required.

C) Selection, implementation, and evaluation of a written staffing plan incorporating the items described in subsections (b)(1) and (b)(3) of this Section. (Section 10.10(d) of the Act)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENT

- i) The process for review and evaluation of the written staffing plan shall take into consideration nursing-sensitive care performance measures.
  - ii) The process for review and evaluation of the written staffing plan shall consider the National Quality Forum's Safe Practices for Better Healthcare.
- 4) The committee or committees shall review the following: nurse-to-patient staffing guidelines for all inpatient areas and current acuity tools and measures in use.
- 5) System-related or clinical service area nurse staffing or patient issues identified between meetings shall be shared, reviewed and addressed at the next nurse care committee meeting.
- 6) A nursing care committee must address the items described in this subsection (c)(3) semi-annually. (Section 10.10(d) of the Act)
- d) Nothing in this Section shall be construed to limit, alter, or modify any of the terms, conditions, or provisions of a collective bargaining agreement entered into by the hospital. (Section 10.10(e) of the Act)

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Children's Community-Based Health Care Center Program Code
- 2) Code Citation: 77 Ill. Adm. Code 260
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
260.1000	Amendment
260.1900	Amendment
260.2500	Amendment
- 4) Statutory Authority: Alternative Health Care Delivery Act [210 ILCS 3]
- 5) A Complete Description of the Subjects and Issues Involved: The Children's Community-Based Health Care Center Program Code provides for minimum requirements for Children's Community-Based Health Care Centers, which provide nursing care, clinical support services, and therapy for short stays or long stays, for children in a transitional phase between hospitals and home. Section 260.1000 (Definitions) is being amended to add a definition for "serious injury". Section 260.1900 (Child's Rights) is being amended to require that all staff be trained in the use of restraints, including performing assessments of a child while in restraints. Section 260.2500 (Quality Assessment and Improvements) is being amended to add "medication administration" to the list of categories of care that require ongoing monitoring and evaluations, and to establish a maximum time frame for the reporting of serious incidents and accidents to the Department.

The majority of children who receive services from Children's Community-Based Health Care Centers are on Medicaid. The Department of Healthcare and Family Services contacted the Department, saying that the federal Center for Medicare and Medicaid Services, which audits IHFS, had some concerns regarding the time frame for incidents and specific training that is related to restraints and medication administration. The proposed amendments address these concerns.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 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 Objectives: This rulemaking does not create a State Mandate.
- 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 this issue of the *Illinois Register* to:

Susan Meister  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson St., 5<sup>th</sup> Floor  
Springfield, Illinois 62761

217/782-2043  
e-mail: DPH.RULES@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
  - A) Type of small businesses, small municipalities and not-for-profit corporations affected: Children's community-based health care centers
  - B) Reporting, bookkeeping or other procedures required for compliance: reporting injuries to patients, monitoring medication administration, keeping records of training
  - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2008

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 b: HOSPITALS AND AMBULATORY CARE FACILITIES

## PART 260

## CHILDREN'S COMMUNITY-BASED HEALTH CARE CENTER PROGRAM CODE

## Section

260.1000	Definitions
260.1050	Incorporated and Referenced Materials
260.1100	Demonstration Program Elements
260.1200	Application for and Issuance of a License to Operate a Children's Community-Based Health Care Center Model
260.1300	Obligations and Privileges of Children's Community-Based Health Care Center Models
260.1400	Inspections and Investigations
260.1500	Notice of Violation and Plan of Correction
260.1600	Adverse Licensure Action
260.1700	Policies and Procedures
260.1750	Health Care Worker Background Check
260.1800	Admission and Participation Practices
260.1900	Child's Rights
260.2000	Child Care Services
260.2100	Medication Administration
260.2200	Personnel
260.2300	Food Service
260.2400	Physical Plant
260.2500	Quality Assessment and Improvement

AUTHORITY: Implementing and authorized by the Alternative Health Care Delivery Act [210 ILCS 3].

SOURCE: Adopted at 22 Ill. Reg. 3899, effective February 20, 1998; amended at 24 Ill. Reg. 14016, effective August 31, 2000; amended at 26 Ill. Reg. 11974, effective July 31, 2002; emergency amendment at 27 Ill. Reg. 7937, effective April 30, 2003, for a maximum of 150 days; emergency expired September 26, 2003; amended at 27 Ill. Reg. 18070, effective November 12, 2003; amended at 30 Ill. Reg. 883, effective January 9, 2006; amended at 31 Ill. Reg. 3008, effective February 2, 2007; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 260.1000 Definitions**

The following terms shall have the meanings ascribed to them here whenever the term is used in this Part.

Abuse – any physical or mental injury or sexual assault inflicted on a patient other than by accidental means in a center. Abuse includes:

Physical abuse refers to the infliction of injury on a patient that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

Mental injury arises from the following types of conduct:

Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms to patients or within their hearing or seeing distance, regardless of their age, ability to comprehend or disability.

Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.

Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.

Sexual assault.

Act – the Alternative Health Care Delivery Act [210 ILCS 3].

Affiliate –

With respect to a partnership, each partner thereof;

With respect to a corporation, each officer, director and stockholder thereof;

With respect to a natural person: any person related in the first degree of

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder.

Board – *the State Board of Health.* (Section 10 of the Act)

Charitable Care – the intentional provision of free or discounted services to persons who cannot afford to pay.

Children with Special Health Care Needs – those children who have or are at increased risk for chronic physical ailments and who require health and related services of a type or amount beyond that which children generally require~~required~~by children generally.

Children's Representative – a person authorized by law to act on behalf of the child.

Children's Community-Based Health Care Center or Center – *a designated site that provides nursing care, clinical support services, and therapies for a period of one to 14 days for short-term stays and one to 120 days to facilitate transitions to home or other appropriate settings for medically fragile children, technology dependent children, and children with special health care needs who are deemed clinically stable by a physician and are younger than 22 years of age. This care is to be provided in a home-like environment that serves no more than 12 children at a time.* (Section 35(3) of the Act)

Demonstration Program or Program – *a program to license and study alternative health care models authorized under the Act.* (Section 10 of the Act)

Department – *the Illinois Department of Public Health.* (Section 10 of the Act)

Diagnostic Studies – any analytic tests, including, but not limited to, heart monitoring or sleep tests, used in identifying the nature or cause of an illness, disorder or problem that are typically done in the home and that are conducted in a Children's Community-Based Health Care Center for children with special health care needs.

Dietitian – a person who is a licensed dietitian as provided in the Dietetic and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

Nutrition Services Practice Act [225 ILCS 30].

Director – the *Director of Public Health* or designee. (Section 10 of the Act)

Hospital – a facility licensed pursuant to the Hospital Licensing Act [210 ILCS 85].

Inspection – any survey, evaluation or investigation of the Children's Community-Based Health Care ~~Center's~~~~Center Model's~~ compliance with the Act and this Part by the Department or designee.

Licensee – the person or entity licensed to operate the Children's Community-Based Health Care Center Model.

Medical Day Care – care provided by a Children's Community-Based Health Care Center for children with special health care needs for no more than 12 in 24 hours, in accordance with Section 260.1800(c) of this Part.

Medically Fragile Children – children who are medically stable but require skilled nursing care, specialized therapy, and specialized medical equipment and supplies to enhance or sustain their lives. "Medically fragile children" may include, but is not limited to, children who have neuro-muscular disease, heart disease, cancer, seizure disorder, spina bifida, chronic lung disease, or other medical conditions that threaten the child's ability to thrive and to survive without proper medical care.

Neglect – a failure in a center to provide adequate medical or personal care or maintenance, resulting in physical or mental injury to a patient or in the deterioration of a patient's physical or mental condition. Neglect shall include any situation in which:

failure to provide adequate medical or personal care or maintenance causes injury or deterioration that is ongoing or repetitious; or

failure to provide adequate medical or personal care or maintenance results in a patient requiring medical treatment; or

failure to provide adequate medical or personal care or maintenance causes a noticeable negative impact on a patient's health, behavior or

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

activities for more than 24 hours.

Physician – a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 [225 ILCS 60].

Registered Nurse – a person who is licensed as a registered professional nurse under the ~~Nurse~~Nursing and Advanced Practice Nursing Act of 1987 [225 ILCS 65].

Restraint – any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of the child to move his or her arms, legs, body or head freely; or a drug or medication when it is used as a restriction to manage the child's behavior or restrict the child's freedom of movement and is not a standard treatment or dosage for the child's condition. A restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of the child for the purpose of conducting routine physical examinations or tests, or to protect the child from falling out of the bed, or to permit the child to participate in activities without the risk of physical harm.

Serious Injury – any significant impairment of the physical condition of the child as determined by qualified medical personnel. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hemotoma and injuries to internal organs, whether self-inflicted or inflicted by another person.

Substantial Compliance – meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Section 260.1200.

Technology Dependent Children – medically fragile children who require the constant or regular intermittent use of technology to meet their medical needs. This may include, but is not limited to, devices that assist or support breathing, monitor bodily functions, or provide nutrition.

Weekend Camps – a planned program for medically fragile children, technology dependent children, or children with special health care needs that consists typically of Friday afternoon through Sunday evening.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 260.1900 Child's Rights**

- a) A child shall not be deprived of any rights, benefits, or privileges guaranteed by law based solely on his/her status as a patient of the centerfacility.
- b) A child shall be permitted to retain and use or wear his/her personal property in his/her immediate living quarters unless deemed medically inappropriate or socially disruptive by a physician and so documented in the patient's record.
- c) The centerfacility shall make reasonable efforts to prevent loss and theft of children's property. The centerfacility shall develop procedures for investigating complaints concerning theft of children's property and shall promptly investigate all such complaints.
- d) Children under 16 years of age who are related to employees or volunteers of a centerfacility, and who are not themselves employees/volunteers of the centerfacility, shall be restricted to quarters reserved for family or employee use, except during times when thesesuch children are part of a group visiting the centerfacility as part of a planned program, or similar activity.
- e) A child shall be permitted the free exercise of religion. Upon the child's request, and if necessary at his/her expense, the centerfacility management shall make arrangements for a child's attendance at religious services of the child's choice. However, no religious beliefs or practices, or attendance at religious services, may be imposed upon any child.
- f) The centerfacility shall notify the child's parent or child's representative whenever the child suffers from a sudden illness or accident, or if and when unexplained absences occur.
- g) A child may not be transferred, discharged, evicted, harassed, dismissed or retaliated against for filing a complaint or providing information concerning a complaint against the centerfacility.
- h) A child shall be permitted to retain the services of his/her own personal physician at his/her own expense, under an individual or group plan of health insurance, or under any public or private assistance program providing such coverage.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- i) No child shall be subjected to experimental research or treatment without first obtaining his/her parent's, or his/her representative's, informed written consent. The experimental research/treatment shall be part of the child's service plan.
- j) Every child's representative shall be permitted to refuse medical treatment for the child and to know the consequences of such action.
- k) Every child or child's representative shall be permitted to inspect and copy all of the child's clinical and other records concerning the child's care and maintenance kept by the [center/facility](#) or by the child's physician.
- l) All children shall be permitted respect and privacy in their medical and personal care program. Every child's case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly. Those persons not directly involved in the child's care must have the permission of the child's representative to be present.
- m) Neither physical restraints nor confinements shall be employed for the purpose of punishment or for the convenience of any [center/facility](#) personnel or volunteer. High chairs, playpens, cribs or youth beds are not restraints for children less than 4 years old.
- n) Restraints shall be used only for the safety and security of the child upon written order of the attending physician and with the informed consent of the child's representative. The physician's written authorization shall specify the precise time periods and conditions in which any restraints or confinements shall be employed. The reasons for ordering and using restraints shall be recorded in the child's service plan. [Staff shall be trained and be able to demonstrate, at least annually, competency in the application of restraints and in the monitoring, assessment and provision of care for the client in restraints. The training shall include techniques to identify client behaviors and events that may trigger circumstances that require the use of restraints and the safe application and use of all types of restraints, including:](#)
  - 1) [Training in how to recognize and respond to signs of physical and psychological distress; and](#)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

2) The clinical identification of specific behavioral or medical changes that indicate the restraint is no longer necessary.

- o) The centerfacility management shall ensure that children may have private visits at any reasonable hour unless thosesueh visits are not medically advisable for the child or are contrary to the directions of the child's representative as documented in the child's service plan. The centerfacility shall allow daily visiting. Visiting hours shall be posted in plain view of visitors. The centerfacility management shall ensure that space for visits is available and that centerfacility personnel knock, except in an emergency, before entering any child's room.
- p) No visitor shall enter the immediate living area of any child without first identifying himself/herself and then receiving permission from the child to enter. The rights of other children present in the room shall be respected. CenterFacility staff may terminate visits or provide other accommodations for the visit if they are so requested by the child, or the visitor is involved in behavior violating other children's rights.
- q) A child shall be voluntarily discharged from a centerfacility after the child's representative gives centerfacility management, a physician, or a nurse of the centerfacility written notice of the desire to be discharged. A child shall be discharged upon written consent of the child's representative unless there is a court order to the contrary. In such cases, upon the child's discharge, the centerfacility is relieved of any responsibility for the child's care, safety or well-being.
- r) The centerfacility shall establish involuntary discharge procedures in accordance with subsection (s) of this Section, which shall include at least the following:
- 1) Child's behavior that may result in involuntary discharge;
  - 2) Child's decline or improvement in medical condition that may result in involuntary discharge;
  - 3) Child, parent, and child's representative counseling that may be provided to avoid involuntary discharge;
  - 4) Notification of child's~~Child's~~ parent and child's representative ~~notification~~ concerning involuntary discharge; and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 5) Time frames between counseling, notice, and involuntary discharge.
- s) A [centerfacility](#) may involuntarily transfer or discharge a child only for one or more of the following reasons:
  - 1) The child's medical condition;
  - 2) The child's physical safety; and
  - 3) The child's action that directly impinges on the physical safety of other children, the [centerfacility](#) staff or [centerfacility](#) visitors.
- t) A licensee, [centerfacility](#) manager, employee, volunteer or agent of a [centerfacility](#) shall not abuse or neglect a child.
- u) A [centerfacility](#) employee, agent or volunteer who becomes aware of abuse or neglect of a child shall immediately report the matter to the [centerfacility](#) manager or designee.
- v) Upon becoming aware of abuse or neglect, the [centerfacility](#) manager or designee shall immediately report the matter by telephone and in writing to the child's representative and the Department.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 260.2500 Quality Assessment and Improvement**

- a) The licensee shall develop and implement a quality assessment and improvement program designed to meet at least the following goals:
  - 1) Ongoing monitoring and evaluation of the quality and accessibility of care and services provided at the [centerfacility](#) or under contract, including but not limited to:
    - A) Admission of children appropriate to the capabilities of the [centerfacility](#);
    - B) Client satisfaction;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- C) Costs for delivery of services; ~~and~~
  - D) Infection control and safety; ~~and~~
  - E) Medication administration.
- 2) Identification and analysis of problems.
  - 3) Identification and implementation of corrective action or changes in response to problems.
- b) The program shall operate pursuant to a written plan, which shall include, but not be limited to:
- 1) A detailed statement of its goals;
  - 2) The methodology and criteria that will be used to meet each stated goal;
  - 3) The action plans for addressing problems;
  - 4) Procedures for evaluating the effectiveness of action plans and revising action plans to prevent reoccurrence of problems;
  - 5) Procedures for documenting the activities of the program; and
  - 6) Identification of the persons responsible for administering the program.
- c) The center shall report to the Department, no later than 5 p.m. the next business day, any serious incident or accident involving a child. The report shall include the name of the child, a description of the incident or accident, and the date and time of the incident or accident. Incidents or accidents include, but are not limited to:
- 1) A serious injury to a child, including while in a restraint;
  - 2) A child's death while he or she is a resident in the center; or

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

3) [A serious medication error resulting in medical intervention and/or hospitalization.](#)

[de](#)) The licensee shall afford the Department and the Board access to any materials or documents generated pursuant to the [center's facility's](#) quality assessment and improvement program or that otherwise relate to client demand, utilization and satisfaction; cost effectiveness; financial viability of the [center facility](#); and access to services. [This](#) ~~Such~~ information shall be used by the Department and the Board to evaluate and assess the [center facility](#) in relation to the Demonstration Program.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SECRETARY OF STATE

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Business Corporation Act
- 2) Code Citation: 14 Ill. Adm. Code 150
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
150.241	New Section
150.632	New Section
150.635	New Section
- 4) Statutory Authority: Implemented and authorized Section 1.05 of the Business Corporation Act [805 ILCS 5/1.05]
- 5) A Complete Description of the Subjects and Issues Involved: New Section 150.241 satisfies a demand from the public for this information. New Section 150.632 will put into the Administrative Code a policy in effect in the Secretary of State's office since March 11, 1935. New Section 150.635 will put into the Administrative Code the decision of the Illinois Appellate Court in *E & E Hauling Inc. v Ryan*, 306 Ill.App.3d 131 (Ill.1<sup>st</sup> Dist. 1999).
- 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 affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking:

Robert Durchholz  
Illinois Secretary of State  
Dept. of Business Services  
Howlett Building, Room 330

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

501 S. 2<sup>nd</sup> Street  
Springfield, Illinois 62756

217/782-4909

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: Corporations
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which these rulemakings were summarized: July 2009

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

TITLE 14: COMMERCE  
SUBTITLE A: REGULATION OF BUSINESS  
CHAPTER I: SECRETARY OF STATE

PART 150  
BUSINESS CORPORATION ACT

SUBPART A: HEARING PROCEDURES

Section

- 150.10 Applicability
- 150.20 Definitions
- 150.30 Right to Counsel
- 150.40 Appearance of Attorney
- 150.50 Special Appearance
- 150.60 Substitution of Parties or Attorneys
- 150.70 Commencement of Action; Notice of Hearing
- 150.80 Motions
- 150.90 Form of Papers
- 150.100 Conduct of Hearings
- 150.110 Orders
- 150.120 Record of Hearings
- 150.130 Invalidity

SUBPART B: SALE AND RELEASE OF INFORMATION

Section

- 150.200 Annual List of Corporations
- 150.210 Monthly List of Corporations
- 150.220 Daily List of Corporations
- 150.230 Computer Access to Information
- 150.240 Abstracts of Corporate Record
- | [150.241 Search by Name of Registered Agent, President and Secretary](#)
- 150.250 Invalidity

SUBPART C: ERRORS, REFUNDS, CORRECTIONS, ADJUSTMENTS,  
OBJECTIONS, AND OTHER RELIEF

Section

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

- 150.300 Errors or Defects
- 150.305 Financial Data as Support Documentation
- 150.310 Invalidity

SUBPART D: NAMES

- Section
- 150.400 Preliminary Determination of Availability
- 150.405 Final Determination of Availability
- 150.410 Response as to Basis of Unavailability
- 150.415 Reconsideration Procedure
- 150.420 Effect of Final Determination
- 150.425 Applicability
- 150.430 Availability of Names: Statutory Requirements
- 150.435 Standards – Conflicting Names
- 150.440 Distinguishable – Defined
- 150.445 Matters Not Considered
- 150.450 Differences
- 150.455 Surnames
- 150.460 Alphabet Names
- 150.465 Government Affiliation
- 150.470 Restricted and Professional Words
- 150.475 Acceptable Characters of Print
- 150.480 Invalidity
- 150.485 Improper Names

SUBPART E: SERVICE OF PROCESS ON THE SECRETARY OF STATE

- Section
- 150.500 Preamble
- 150.510 Manner of Service
- 150.520 Place of Service
- 150.530 Payment of Fees
- 150.540 Invalidity

SUBPART F: FEES, FRANCHISE TAX AND LICENSE FEES: ANNUAL REPORT

- Section
- 150.600 Payment of Fees, Franchise Tax and License Fee

## SECRETARY OF STATE

## NOTICE OF PROPOSED AMENDMENTS

150.610	Definitions
150.620	Annual Report
150.621	Confidentiality of Annual Report Financial Data
150.630	Shares Having a Par Value
150.631	Amended Annual Report
<a href="#">150.632</a>	<a href="#">Business Transacted and Property Located in Illinois</a>
<a href="#">150.635</a>	<a href="#">Amounts Transferred to Paid-in Capital</a>
150.640	Invalidity

## SUBPART G: INTERPRETIVE COMMENTS AND GENERAL PROVISIONS

Section	
150.700	Interpretive Comments Applicable Generally
150.705	Paid-In Capital
150.710	Advice to the Public
150.720	Incorporating Licensed Professionals
150.725	Corporation Acting as an Incorporator
150.730	Business Hours
150.735	Electronic Filing

AUTHORITY: Implementing and authorized by the Business Corporation Act of 1983 [805 ILCS 5].

SOURCE: Adopted at 9 Ill. Reg. 1433, effective February 1, 1985; amended at 10 Ill. Reg. 5146, effective March 21, 1986; amended at 11 Ill. Reg. 10302, effective June 1, 1987; amended at 17 Ill. Reg. 11571, effective July 15, 1993; amended at 18 Ill. Reg. 7783, effective May 15, 1994; amended at 20 Ill. Reg. 7026, effective May 8, 1996; amended at 21 Ill. Reg. 16173, effective December 1, 1997; amended at 27 Ill. Reg. 550, effective December 27, 2002; amended at 28 Ill. Reg. 3504, effective February 3, 2004; amended at 29 Ill. Reg. 14047, effective September 1, 2005; amended at 30 Ill. Reg. 12961, effective July 11, 2006; amended at 31 Ill. Reg. 9469, effective July 16, 2007; amended at 32 Ill. Reg. 12039, effective July 16, 2008; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: SALE AND RELEASE OF INFORMATION

[Section 150.241 Search by Name of Registered Agent, President and Secretary](#)

[The fee for a request for a search by the name of a corporation's registered agent, president and secretary shall be \\$25 per name.](#)

## SECRETARY OF STATE

## NOTICE OF PROPOSED AMENDMENTS

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: FEES, FRANCHISE TAX AND LICENSE FEES: ANNUAL REPORT

**Section 150.632 Business Transacted and Property Located in Illinois**

When a corporation having its principal office in Illinois has invested part of its earned surplus in corporate stocks and other securities through the principal office in Illinois, the stocks and securities should be considered property located in Illinois, and the income from them should be regarded as part of the business transacted by the corporation at or from places of business within Illinois.

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 150.635 Amounts Transferred to Paid-in Capital**

All amounts transferred from a corporation's retained earnings or from any other entry in its stockholders' equity to its paid-in capital are subject to all franchise taxes imposed by the Business Corporation Act.

(Source: Added at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Universities Retirement
- 2) Code Citation: 80 Ill. Adm. Code 1600
- 3) Section Number: 1600.500                      Proposed Action: Amendment
- 4) Statutory Authority: 40 ILCS 5/15-177
- 5) A Complete Description of the Subjects and Issues Involved: Amendment to the Rules of Practice – Nature and Requirements of Formal Hearings. The amendment changes some internal organizational chart nomenclature, the structure and status of the claims panel, and the effect of panel decisions. The amendment also makes some process changes and clarifies the options and responsibilities of the parties. The structure and status changes to the claims panel are required for compliance with Public Act 96-6 [40 ILCS 5/1-113.16(c)] that requires a majority of any committee established by the retirement system board to be board members. The panel hearing contested administrative claims had been improperly denominated a "committee" in the board bylaws and the amended rule, but had no committee function. The board bylaws have been changed to reflect the proper structure and status of the claims panel.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Kelly A. Jenkins, General Counsel  
State Universities Retirement System

STATE UNIVERSITIES RETIREMENT SYSTEM

NOTICE OF PROPOSED AMENDMENT

1901 Fox Drive  
Champaign, IL 61820

217/378-8825

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of Professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: None

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

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE D: RETIREMENT SYSTEMS  
CHAPTER II: STATE UNIVERSITIES RETIREMENT SYSTEMPART 1600  
UNIVERSITIES RETIREMENT

## SUBPART A: GENERAL

## Section

- 1600.100 Definitions
- 1600.110 Freedom of Information Act
- 1600.120 Open Meetings Act
- 1600.130 Procurement

## SUBPART B: CONTRIBUTIONS AND SERVICE CREDIT

## Section

- 1600.202 Return to Employment
- 1600.203 Independent Contractors
- 1600.205 Compensation Subject to Withholding
- 1600.210 Crediting Interest on Participant Contributions and Other Reserves
- 1600.220 Election to Make Contributions Covering Leave of Absence at Less Than 50% Pay
- 1600.230 Election to Pay Contributions Based upon Employment that Preceded Certification as a Participant
- 1600.240 Election to Make Contributions Covering Periods of Military Leave Protected under USERRA
- 1600.250 Sick Leave Accrual Schedule
- 1600.260 Part-time/Concurrent Service Adjustment
- 1600.270 Employer Contributions for Benefit Increases Resulting from Earnings Increases Exceeding 6%

## SUBPART C: CLAIMS PROCEDURE AND EVIDENTIARY REQUIREMENTS

## Section

- 1600.300 Effective Beneficiary Designations
- 1600.305 Full-Time Student Survivors Insurance Beneficiaries
- 1600.310 Dependency of Beneficiaries
- 1600.320 Procedures to be Followed in Medical Evaluation of Disability Claims

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

## SUBPART D: BENEFIT CALCULATION AND PAYMENT

## Section

1600.400	Determination of Final Rate of Earnings Period
1600.410	Twenty Percent Limitation on Final Rate of Earnings Increases
1600.420	Making Preliminary Estimated Payments
1600.430	Excess Benefit Arrangement
1600.431	Indirect Payments to Minors and Legally Disabled Persons
1600.432	Indirect Payments to Child Survivors Through the Surviving Spouse
1600.440	Voluntary Deductions from Annuity Payments
1600.450	Overpayment Recovery

## SUBPART E: ADMINISTRATIVE REVIEW

## Section

1600.500	Rules of Practice – Nature and Requirements of Formal Hearings
----------	--

## SUBPART F: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

## Section

1600.600	Definitions
1600.605	Requirements for a Valid Qualified Illinois Domestic Relations Order
1600.610	Invalid Orders
1600.615	Filing a QILDRO with the System
1600.620	Modified QILDROs
1600.625	Benefits Affected by a QILDRO
1600.630	Effect of a Valid QILDRO
1600.635	QILDROs Against Persons Who Became Members Prior to July 1, 1999
1600.640	Alternate Payee's Address
1600.645	Electing Form of Payment
1600.650	Automatic Annual Increases
1600.655	Expiration of a QILDRO
1600.660	Reciprocal Systems QILDRO Policy Statement
1600.665	Providing Benefit Information for Divorce Purposes

AUTHORITY: Implementing and authorized by Section 15-177 of the Illinois Pension Code [40 ILCS 5/15-177].

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

SOURCE: Amended September 2, 1977; amended at 2 Ill. Reg. 31, p.53, effective July 30, 1978; amended at 7 Ill. Reg. 8139, effective June 29, 1983; codified at 8 Ill. Reg. 19683; amended at 11 Ill. Reg. 15656, effective September 9, 1987; amended at 13 Ill. Reg. 18939, effective November 21, 1989; amended at 14 Ill. Reg. 6789, effective April 20, 1990; emergency amendment at 21 Ill. Reg. 4864, effective March 26, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 6095, effective May 2, 1997; amended at 21 Ill. Reg. 11962, effective August 13, 1997; amended at 21 Ill. Reg. 12653, effective August 28, 1997; amended at 22 Ill. Reg. 4116, effective February 9, 1998; amended at 23 Ill. Reg. 13667, effective November 1, 1999; amended at 25 Ill. Reg. 10206, effective July 30, 2001; amended at 28 Ill. Reg. 2292, effective January 23, 2004; expedited correction at 28 Ill. Reg. 7575, effective January 23, 2004; amended at 29 Ill. Reg. 2729, effective March 1, 2005; amended at 29 Ill. Reg. 11819, effective July 12, 2005; amended at 29 Ill. Reg. 14060, effective September 1, 2005; amended at 29 Ill. Reg. 14351, effective September 6, 2005; amended at 30 Ill. Reg. 6170, effective March 21, 2006; amended at 30 Ill. Reg. 7778, effective April 5, 2006; amended at 30 Ill. Reg. 9911, effective May 9, 2006; amended at 30 Ill. Reg. 17509, effective October 19, 2006; amended at 31 Ill. Reg. 4267, effective February 22, 2007; amended at 31 Ill. Reg. 4927, effective March 12, 2007; recodified at 31 Ill. Reg. 10194; amended at 32 Ill. Reg. 16515, effective September 25, 2008; emergency amendment at 33 Ill. Reg. 6525, effective April 27, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 10757, effective July 1, 2009; amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART E: ADMINISTRATIVE REVIEW

**Section 1600.500 Rules of Practice – Nature and Requirements of Formal Hearings**

- a) Administrative Determination  
The SURS administrative staff shall be responsible for the daily claims-processing function of SURS, including processing of all claims for benefits or service credit or any other claims against or relating to SURS.
- b) Review by ~~Deputy~~ Director of Member Services  
Any participant, annuitant, or beneficiary adversely affected by the disposition of a claim by the administrative staff may file a written request for review by the ~~SURS appropriate Deputy~~ Director of Member Services SURS. A request for review by the ~~Deputy~~ Director of Member Services must be submitted within 30 days after the decision from which review is sought. The Director of Member Services ~~Deputy Director's~~ review will be based upon all materials contained in the file, as well as any additional materials the claimant attaches to the written request for review filed with the ~~Deputy~~ Director of Member Services pertaining

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

to the claim. All filings or submissions, whether optional or required under this Section, shall be considered timely if date stamped by SURS within the time prescribed.

## c) Hearing

- 1) Petition. Any participant, annuitant, or beneficiary adversely affected by the disposition of a claim by the ~~Deputy~~ Director of Member Services may request, in writing, a hearing before the Claims ~~Panel~~ Committee. A request for a hearing must be submitted to the General Counsel of SURS or his or her designee within 30 days after the decision from which review is sought.
- 2) Statement of Claim. Upon filing a request for a hearing, the claimant shall be informed that he or she is required to file a Statement of Claim no later than 30 days in advance of hearing. The Statement of Claim, which shall include: the claimant's name, social security number, and address; the name and address of the claimant's authorized representative, if any; a statement of the facts forming the basis for the appeal; any documents or other materials the claimant wishes to be considered in conjunction with the appeal; a list of witnesses, if any, the claimant intends to present; and an explanation of the relief sought.
- 3) Notification. Upon scheduling of a hearing before the Claims ~~Panel~~ Committee, a claimant shall be *provided with written notice of: the date, time and place of the hearing; the subject matter of the hearing; and relevant procedural and substantive statutory and regulatory provisions [5 ILCS 100/10-25].* Notice of the hearing shall also inform the claimant that he or she will be afforded the opportunity to provide a statement of his or her position, present oral evidence, and conduct ~~such~~ examination and cross-examination of witnesses as ~~is~~ necessary for full and true disclosure of the facts. Notice shall be given to the claimant that he or she is required to provide written confirmation, at least three days prior to the scheduled date of the hearing, of his or her intent to appear at the hearing, whether in person or by telephone conference call. The claimant is not required to appear at the hearing. The claimant may appear at the hearing by telephone conference call. In the absence of the claimant, the Claims ~~Panel~~ Committee will consider the claimant's Statement of Claim and such other matters as may be properly brought before it at the hearing.

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

- 4) Pre-hearing Conference. Upon request of the General Counsel or upon the decision of the Hearing Officer, a pre-hearing conference shall be held for the purpose of simplification or definition of issues or procedures at the hearing.
  - 5) Representation. The claimant and SURS may be represented by counsel or a designated spokesperson at the hearing.
  - 6) Burden of Proof. It shall be the burden of the claimant to establish a right to the benefit claimed, or the right to the continuation of the benefit claimed in cases of revocation of the benefit by SURS, by establishing that right by a preponderance of the evidence.
- d) Discovery. All discovery is at the discretion of the Hearing Officer. Requests to take discovery must be made in writing to the Hearing Officer with notice to the other party. Discovery may be taken with the prior permission of the Hearing Officer only upon good cause shown, that is, if the evidence sought is material and cannot be obtained in any other way. Failure to comply with orders of the Hearing Officer may be sanctioned by the Hearing Officer, by means including, but not limited to, dismissal of a claim.
- e) Depositions
- 1) The Hearing Officer may order the taking of evidence depositions of a person, specifying the subject matter to be covered, ~~of a person~~ under oral examination or written questions, for use as evidence at the hearing, provided:
    - A) The Hearing Officer has determined upon request that there is a need to preserve a person's testimony;
    - B) The request is made on motion by a party who gives notice of the motion to the other party; and
    - C) The Hearing Officer has determined that an evidence deposition containing oral testimony will be necessary to the Claims Panel Committee in determining the merits of the claim.

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

- 2) The taking of depositions shall be in accordance with the provisions for taking depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents, or tangible objects that are not privileged shall be produced at the same time and place.
  - 3) Any party to the hearing shall, during any deposition process, have the right to confront and cross-examine any witness whose deposition testimony is to be presented to the Claims ~~Panel~~ Committee.
  - 4) Depositions shall be taken in the county of residence or employment of the witness, unless the witness waives that right in writing.
  - 5) Depositions shall be taken at the cost of the party requesting the deposition.
- f) Subpoenas
- 1) The Hearing Officer may request the Secretary of the Board to issue a subpoena to compel the attendance of a witness at an evidence deposition or the production of documents when the witness has, or such documents contain, relevant evidence. A party may also request the Hearing Officer to request the Secretary of the Board to issue a subpoena to compel the attendance of a witness at an evidence deposition or the production of documents. The request shall either be in writing or on the record and shall:
    - A) Identify the witness or document sought; and
    - B) State the facts that will be proven by each witness or document sought.
  - 2) The Hearing Officer shall grant or deny the request, either in writing or on the record. If the request for subpoena is granted, the Hearing Officer shall, if necessary, reschedule the hearing to a specific date. The request for subpoena shall be denied if the Hearing Officer finds that the evidence sought is immaterial, irrelevant, or cumulative. If the request for subpoena is denied, the specific reasons for denial of the request shall be made part of the record on appeal.

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

- 3) If a witness fails to obey a subpoena, the party seeking enforcement of the subpoena shall prepare an application to the circuit court of the county in which the subpoenaed witness resides requesting enforcement of the subpoena, and shall present the application to the Hearing Officer, at the same time serving a copy of the application upon the other party. If satisfied that the subpoena was properly served and that the application is in proper form, the Hearing Officer shall sign a subpoena to be submitted with the application and the party seeking the subpoena may then file and prosecute the application ~~into~~ the circuit court, in the name of the Board. The petitioner in the application shall be styled as "Name of Petitioner ex rel. Board of Trustees of the State Universities Retirement System of Illinois" unless the petitioner is SURS, in which case the petition shall be brought in the name of the Board. In the event of an application being filed with the circuit court, the matter shall be continued pending the outcome of the application to enforce the subpoena.
  - 4) The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State and shall be paid by the party seeking the subpoena.
- g) Conduct of the Hearing
- 1) Hearing Officer. The hearing shall be conducted by the Hearing Officer. Other members of the Claims ~~Panel~~Committee may, but are not required to, attend the hearing.
    - A) The Hearing Officer shall have full power to conduct the hearing and the presence of any other members of the Claims ~~Panel~~Committee is not required. The Hearing Officer shall be one of the members of the Claims ~~Panel~~Committee chosen by ~~the Panel~~them to be the Hearing Officer.
    - B) The Claims Panel shall consist of:
      - i) the Executive Director of SURS;
      - ii) an attorney licensed to practice law in the State of Illinois approved by the Board; and



## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

*however, evidence inadmissible under those rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Any part of the evidence may be received in written form, provided that the interests of the parties will not be prejudiced. Notice may be taken of generally recognized technical facts within SURS' specialized knowledge and SURS' experience, technical competence and specialized knowledge may be used in evaluation of the evidence. [5 ILCS 100/10-40]*

- E) The Hearing Officer, and any member of the Claims PanelCommittee attending the hearing, may ask questions necessary for better understanding of the facts or law.
  - F) The Hearing Officer shall have the authority to impose reasonable time limits for each party to present its case and shall, in general, have the power to manage and control the hearing process.
  - G) The hearing shall be open to the public unless the Hearing Officer, for good cause shown, determines otherwise.
- 3) Record of Proceedings. Two records of proceedings shall be kept that shall be in the form of:
- A) a non-verbatim "bystander's report"; and
  - B) either a stenographic transcription or a tape recording. The claimant may obtain a stenographic transcription or a copy of a tape recording of the hearing by making a timely request and paying the actual cost entailed.
- 4) Disqualification; Ex Parte Communications
- A) Disqualification-

    - i) *A Hearing Officer or other member of the Claims PanelCommittee may be disqualified on grounds of bias or conflict of interest. A motion to disqualify a Hearing Officer or other member of the Claims PanelCommittee for*

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

bias or conflict of interest should be made to the Hearing Officer by any party to the hearing at least one week prior to the commencement of the hearing, with a copy of the motion to be simultaneously submitted to the General Counsel. The motion shall be heard, considered and ruled upon by the Hearing Officer at or prior to the commencement of the hearing. The movant shall have the burden of proof with respect to the motion to disqualify. Either an *adverse ruling* or the fact that a Hearing Officer or other member of the Claims [PanelCommittee](#) is an employee of SURS or has a contract with SURS, standing alone, *shall not constitute bias or conflict of interest.* [5 ILCS 100/10-30]

[ii\)](#) The Executive Director may not be called as a witness unless it is demonstrated that the Executive Director has relevant noncumulative personal knowledge of facts bearing upon the claim. The Executive Director may not be disqualified as a member of the Claims [PanelCommittee](#) on the basis that the Executive Director is responsible for the overall administration of SURS.

[iii\)](#) In the event that a Hearing Officer or other member of the Claims [PanelCommittee](#) is disqualified or is otherwise unable to serve, the Board President may appoint another person to the Claims [PanelCommittee](#) and shall appoint another person if the Claims [PanelCommittee](#) is reduced to fewer than two members, or the Claims [PanelCommittee](#) shall appoint another Hearing Officer from among its members, as the case may be.

B) *Ex Parte Communications Prohibited. Except in the disposition of matters that SURS is authorized by law to entertain or dispose of on an ex parte basis, the members of the Claims [PanelCommittee](#) shall not, after receiving notice of a hearing in a contested matter, communicate, directly or indirectly, in connection with any issue of fact, with any party, or in connection with any other issue with any party, or the representative of any party, except upon notice and opportunity for all parties to participate. However, an employee of*

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

*SURS may communicate with other employees of SURS and an employee of SURS or member of the Claims ~~Panel~~Committee may have the aid and advice of one or more assistants. An ex parte communication received by any member of the Claims ~~Panel~~Committee shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received. Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. [5 ILCS 100/10-60]*

- 5) ~~Recommendations and~~ Decisions of the Claims Panel and Executive Committee
- A) Claims ~~Panel Decisions~~Committee Recommendation.
- i) The record of proceedings shall be completed upon conclusion of the hearing by the Hearing Officer, unless the Hearing Officer determines to re-open the proceedings. Upon conclusion of all evidence and arguments, the Claims ~~Panel~~Committee shall privately deliberate and make a ~~Decision~~recommendation as to the disposition of the claim based on the evidence of record. ~~The record of proceedings shall be completed upon conclusion of the hearing by the Hearing Officer, unless the Hearing Officer determines to re-open the proceedings.~~If a Statement of Exceptions to the Decision is not filed pursuant to this subsection (g)(5)(A), the Decision is final for all purposes and not subject to administrative or judicial review. If a Statement of Exceptions to the Decision is filed or if two members of the Panel are unable to agree on a Decision, then the claim shall be presented to the Executive Committee for a final administrative decision.~~The Claims Committee shall make one of the following recommendations: affirmance of the administrative action, reversal of the administrative action, or remand of the case to the administrative staff for further~~

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

~~consideration. The recommendation of the Claims Committee shall be made to the Executive Committee of the Board.~~

- ii) If a Statement of Exceptions is filed, it shall be filed, with a brief in support, with SURS within 20 days after the date of the Claims Panel Decision. Any responsive brief shall be filed within 15 days after the filing of the Statement of Exceptions. Any reply brief shall be filed within 10 days after the filing of the responsive brief. The filing of any responsive or reply brief is optional. The Executive Committee will make a final administrative decision based on the Claims Panel Decision, any dissenting opinion, any Statement of Exceptions and briefs properly filed.
- iii) If the claim is presented to the Executive Committee because two members of the Claims Panel are unable to agree on a Decision, the Executive Committee shall make a final administrative decision based on any opinions of the Claims Panel members, the record and any briefs properly filed by the claimant or SURS. The filing of any opening, responsive or reply brief in response to the decision is optional. Any opening brief shall be filed with SURS within 20 days after receiving notification from the Hearing Officer that the Claims Panel was unable to agree on a Decision. Any responsive brief shall be filed within 15 days after the filing of any opening brief. Any reply brief shall be filed within 10 days after the filing of any responsive brief.
- iv) All filings shall be served upon the opposing party and shall contain a certificate of service. Filing deadlines in this subsection (g)(5)(A) may be continued to a date certain by the Hearing Officer for good cause shown on written application filed with SURS prior to the expiration of the deadline sought to be continued. ~~The claimant may file a statement of exceptions to the findings of the Claims Committee and may file a brief in support of its statement of exceptions. The statement of exceptions and brief must~~

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

~~be submitted to the General Counsel not less than 30 days prior to the date that the Executive Committee is scheduled to hear this claim, as set forth in written notice to the claimant. The notice shall be given not less than 60 days prior to the meeting of the Executive Committee. SURS may file a reply brief not less than 7 days prior to the date that the Executive Committee is scheduled to hear this claim. The recommended decision of the Claims Committee is a non-final decision, subject to the ultimate decision of the Executive Committee of the Board.~~

## B) Executive Committee Decision:

i) ~~When necessary pursuant to subsection (g)(5)(A), the~~ The Executive Committee of the Board shall make a decision on the claim ~~following receipt of a recommended decision from the Claims Committee, any statement of exceptions or brief filed by the claimant, and any reply brief filed by SURS.~~ No oral argument shall be permitted before the Executive Committee unless otherwise determined by the Executive Committee. ~~The Executive Committee shall consider the recommendation of the Claims Committee, any statement of exceptions or brief filed by the claimant, any reply brief of SURS, and any permitted oral argument in making a decision for SURS as to the disposition of the claim.~~

ii) The Executive Committee shall render one of the following decisions with respect to the claim: affirmance of the administrative action, reversal of the administrative action, or remand of the case to the administrative staff for further consideration. Remand of the case to the administrative staff shall not be considered a final decision of the Executive Committee. A decision by the Executive Committee either reversing or affirming the decision of the administrative staff shall constitute a final decision for the purpose of review under the Administrative Review Law [735 ILCS 5/Art. III]. *A final decision of the Executive Committee shall be in writing or stated in the record. A*

## STATE UNIVERSITIES RETIREMENT SYSTEM

## NOTICE OF PROPOSED AMENDMENT

*final decision of the Executive Committee shall include findings of fact and conclusions of law, separately stated.*

- | [iii\)](#) The Executive Committee may adopt, as its own, the findings of fact and conclusions of law of the Claims [Panel Committee](#). *Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.*
- | [iv\)](#) *All decisions of the Executive Committee shall specify whether they are final and subject to the Administrative Review Law. [5 ILCS 100/10-50]*
- | [v\)](#) Parties or their agents shall be notified either personally or by registered or certified mail of any decision of the Executive Committee. Upon request, a copy of the decision shall be delivered or mailed to each party and to his or her attorney of record.

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Program Review (Private Colleges and Universities)
- 2) Code Citation: 23 Ill. Adm. Code 1030
- 3) 

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1030.20	Amendment
1030.90	New
- 4) Statutory Authority: Implementing and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/9.05], by Sections 14.5 and 14.10 of the Private College Act (P.A. 95-1046, effective March 27, 2009), and by Sections 10.5 and 10.10 of the Academic Degree Act (P.A. 95-1046, effective March 27, 2009)
- 5) Effective Date of Amendments: August 21, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? The rulemaking does not include incorporations by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act.
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Board of Higher Education's office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: April 24, 2009; 33 Ill. Reg. 5986
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:
  - a) Section 1030.20: the fees to discontinue a program are removed from the definition of "Change Request" to encourage institutional reporting.
  - b) Section 1030.20: the definition of "Change Request" is clarified by providing additional detail.
  - c) Section 1030.20: the definition of "Institution Size" has a technical correction to the calculation;

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

- d) Section 1030.90: the proposed process to update fees in the future was removed.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The amendments were promulgated in response to the passage of Public Act 95-1046, which provided the Board with new tools to create and collect an academic application processing fee for the purpose of funding academic affairs staff activities.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Karen Helland  
Illinois Board of Higher Education  
431 East Adams Street, Second Floor  
Springfield, Illinois 62701-1404

217/557-7358  
Fax No. 217/782-8548  
helland@ibhe.org

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

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 23: EDUCATION AND CULTURAL RESOURCES

## SUBTITLE A: EDUCATION

## CHAPTER II: BOARD OF HIGHER EDUCATION

## PART 1030

## PROGRAM REVIEW (PRIVATE COLLEGES AND UNIVERSITIES)

## Section

1030.10	Institutions Required to Receive Approval
1030.20	Definitions
1030.30	Institutional Approval
1030.40	Institutional Approval under the 1945 Act Only
1030.50	Institutional Authorization under the 1961 Act Only
1030.60	Degree Authorization under the 1961 Act
1030.70	Maintenance of Approval under the 1945 Act
1030.80	Maintenance of Authorization to Operate and/or Grant Degrees under the 1961 Act
<a href="#">1030.90</a>	<a href="#">Academic Application Processing Fees</a>
1030.ILLUSTRATION A	Map of Regions

**AUTHORITY:** Implementing and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/9.05], Sections 14.5 and 14.10 of the Private College Act [110 ILCS 1005/14.5 and 14.10] and Sections 10.5 and 10.10 of the Academic Degree Act [110 ILCS 1010/10.5 and 10.10].

**SOURCE:** Amended and effective August 9, 1977; emergency rules adopted at 3 Ill. Reg. 26, p. 297, effective June 13, 1979, for a maximum of 150 days; adopted at 3 Ill. Reg. 38, p. 222, effective September 22, 1979; amended at 4 Ill. Reg. 48, p. 200, effective November 19, 1980; codified at 8 Ill. Reg. 1454; amended at 33 Ill. Reg. 49, effective December 23, 2008; emergency amendment at 33 Ill. Reg. 6099, effective April 9, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 12397, effective August 21, 2009.

**Section 1030.20 Definitions**

Unless otherwise stated, all definitions apply to all terms used in this Part in conjunction with both the 1945 Act and the 1961 Act.

"The 1945 Act" means the Private College Act [110 ILCS 1005].

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

"The 1961 Act" means the Academic Degree Act [110 ILCS 1010].

"Asynchronous" means instruction in which the teacher and students do not meet at the same time. On-line instruction is more likely to be asynchronous, allowing students to access and participate in the course when they choose to do so.

"Authorization to Grant Degrees" means the letter from the Board giving an institution authorization to grant specific degrees under the 1961 Act.

"Authorization to Operate" means the letter from the Board authorizing an institution to operate under the 1961 Act.

"Board" means the Board of Higher Education. In those cases in which the term is used to refer to prior approval or lack of prior approval for either an institution or a degree program, the term "Board" shall mean either the Board of Higher Education or one of the two previous administrative agencies that administered higher education in Illinois (the Board of Education or the Superintendent of Public Instruction), as appropriate.

"Certificate of Approval" means the letter from the Board giving an institution approval to operate under the 1945 Act.

"Change Request" means a written proposal to modify an approved degree program. A modification is a change to any of the following: degrees offered; degree title; reclassification of instructional programs code (CIP code); and the admission, retention, or graduation requirements of the approved program.

"Degree" means any designation, appellation, series of letters or words, or other symbol that signifies or purports to signify that the recipient has satisfactorily completed an organized academic program of study beyond the secondary school level. For the purposes of this Part, an "organized academic program of study beyond the secondary school level" shall be defined as:

Any academic program, regardless of duration, that offers any designation, appellation, series of letters or words or other symbol known as or labeled as an associate degree, a bachelor's degree, a master's degree, a doctor's degree, a professional degree or a certificate of advanced study; or

Any academic program of more than 12 months in duration, except for a

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

program that is devoted entirely to religion or theology, or a program offered by any institution operating under the authority of the Private Business and Vocational Schools Act [105 ILCS 425].

"Degree program" means the standard required course of study, or its equivalent, leading to a degree.

"Home campus" is also known as "in-region". Both "home campus" and "in-region" are defined as the approval region within which an institution's original operating authority was granted.

"Illinois Proprietary Institution" means an institution described in Section 1030.10(a) and (b) that is not otherwise exempted in Section 1030.10(c) and meets the following criteria:

Private corporation, limited liability company, or other entity that is initially incorporated or organized in this State, if required by law; and

Maintains a place of business within the State; and

Holds a current certificate of good standing from the Secretary of State, if required by law to file with the State; and

Is investor-owned and/or organized for profit.

Illinois proprietary institutions do not include public institutions authorized under the domestic laws of this State, private not-for-profit institutions permitted to be exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code (26 USC 501(c)(3)), or religious institutions that have not applied for recognition of tax-exempt status but have filed as a not-for-profit entity with the Illinois Secretary of State.

"Institution Size" is determined by applying the formula for the calculation of FTE students (using fall student headcounts) developed by the Integrated Postsecondary Education Data System (IPEDS) to the data reported by the institution to IPEDS, which is the U.S. Department of Education postsecondary data collection program.

"Letter of Intent" means the Notice of Intent form provided by the Board and

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

[completed by the institution that is seeking operating authority, as provided in Section 1030.30\(b\).](#)

"New degree program" means one or more of the following:

A degree program offered at a different educational level from a degree program already approved at a given institution.

A degree program in a different six-digit CIP (Classification of Instructional Programs taxonomy developed by the National Center for Educational Statistics and used in the Integrated Postsecondary Education Data System) code from that already authorized.

A new professional or specialist degree or certificate.

"New geographic location" is also known as "out-of-region". Both "new geographic location" and "out-of-region" are those sites located outside of the region within which an institution's original operating authority was granted.

["Notice of Intent" means the form provided by the Board and completed by the institution that is seeking authority to award one or more degrees as provided in Section 1030.60\(b\).](#)

["Out of State Institution" means an institution described in Section 1030.10\(a\) or \(b\) that is not otherwise exempted in Section 1030.10\(c\) and meets one of the following:](#)

[Public institution authorized under domestic laws other than the laws of this State; or](#)

[Private corporation, limited liability company, or other entity that is initially incorporated or organized under domestic laws other than the laws of this State, if required, and initially operated outside the State; or](#)

[Not-for-profit corporation, limited liability company, or other entity that maintains its primary place of business or home office outside this State.](#)

"Region" refers to a geographical area within which an institution may operate a unit of instruction and is not limited to the site within the region where the

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

institution initially applied. A region consists of one or more coterminous community college districts. The community college districts are also property taxing districts established as provided in 110 ILCS 805/Art. III. The ten regions, described by community college district and community college district numbers, are as follows (see also Illustration A):

"North Suburban Region (1)" consists of the Lake County (532), Oakton (535), and William R. Harper (512) community college districts;

"Fox Valley Region (2)" consists of the Elgin (509), Kishwaukee (523), McHenry (528), Rock Valley (511), and Waubensee (516) community college districts;

"West Suburban Region (3)" consists of the DuPage (502), Morton (527), and Triton (504) community college districts;

"Western Region (4)" consists of the Black Hawk (503), Carl Sandburg (518), Highland (519), John Wood (539), Sauk Valley (506), and Spoon River (534) community college districts;

"Central Region (5)" consists of the Heartland (540), Illinois Central District (514), Illinois Valley (513), and Lincoln Land (526) community college districts;

"South Metro Region (6)" consists of the Joliet (525), Kankakee (520), Moraine Valley (524), Prairie State (515), and South Suburban (510) community college districts;

"Prairie Region (7)" consists of the Danville (507), Lake Land (517), Parkland (505), and Richland (537) community college districts;

"Southwestern Region (8)" consists of the Illinois Eastern (529), Kaskaskia (501), Lewis and Clark (536), and Southwestern Illinois (522) community college districts;

"Southern Region (9)" consists of the John A. Logan (530), Rend Lake (521), Shawnee (531), and Southeastern (533) community college districts; and

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

"Chicago Region (10)" consists of the City Colleges of Chicago (508) community college district.

"Synchronous" means instruction in which the teacher and students are required to meet at the same time or the students are required to meet at the same time. In face to face instruction, this means that everyone is in the same room at the same time. In on-line instruction, synchronous instruction occurs through the use of technologies such as chat, two-way video conferencing or audio conferencing.

(Source: Amended at 33 Ill. Reg. 12397, effective August 21, 2009)

**Section 1030.90 Academic Application Processing Fees****a) Fees**

Fees are assessed in connection with applications for certificates of approval under the 1945 Act and applications for authorization to operate and authorization to grant degrees under the 1961 Act, including filing letters of intent and notices of intent and submitting change requests. These fees apply beginning on April 9, 2009.

**1) Application Fees**

**A) Certificate of approval or authorization to operate, \$5,000. Only one fee of \$5,000 shall be charged if both are sought in the same application. This is a one-time fee that does not apply to entities that have been previously approved or authorized by the Board.**

**B) Letter of Intent or Notice of Intent, \$250. One fee shall be submitted with each filing.**

**C) Authorization to grant degrees**

**i) The fee is based on the type of institution, institution size, and degree level as outlined in subsection (a)(2).**

**ii) This fee applies to each request for authorization to grant a new degree or an additional degree in a region.**

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

D) Change request, \$250. The fee shall be charged for each request within a region. One submission with 10 requests shall be assessed for 10 change requests (\$2,500).

2) Schedule of Fees

A) Illinois Proprietary Institutions

	<u>Institution Size</u>		
	<u>&lt; 200 Students</u>	<u>200-500 Students</u>	<u>&gt; 500 Students</u>
<u>Certificate of Approval or Authorization to Operate</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>
<u>Associate Degree per Region</u>	<u>750</u>	<u>950</u>	<u>1,250</u>
<u>Bachelor Degree per Region</u>	<u>1,450</u>	<u>1,650</u>	<u>1,950</u>
<u>Masters Degree per Region</u>	<u>2,250</u>	<u>2,550</u>	<u>2,950</u>
<u>Doctoral/First Professional per Region</u>	<u>3,500</u>	<u>3,750</u>	<u>4,000</u>
<u>Letter or Notice of Intent</u>	<u>250</u>	<u>250</u>	<u>250</u>
<u>Change Request per Region</u>	<u>250</u>	<u>250</u>	<u>250</u>

B) Out-of-State Institutions

	<u>Institution Size</u>		
	<u>&lt; 200 Students</u>	<u>200-500 Students</u>	<u>&gt; 500 Students</u>
<u>Certificate of Approval or Authorization to Operate</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>
<u>Associate Degree per Region</u>	<u>1,750</u>	<u>1,950</u>	<u>2,250</u>
<u>Bachelor Degree per Region</u>	<u>2,450</u>	<u>2,650</u>	<u>2,950</u>
<u>Masters Degree per Region</u>	<u>3,250</u>	<u>3,550</u>	<u>3,950</u>

## BOARD OF HIGHER EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

<u>Doctoral/First Professional per Region</u>	<u>4,500</u>	<u>4,750</u>	<u>5,000</u>
<u>Letter or Notice of Intent</u>	<u>250</u>	<u>250</u>	<u>250</u>
<u>Change Request per Region</u>	<u>250</u>	<u>250</u>	<u>250</u>

b) Remittance

- 1) Fees shall be submitted as check, certified check, cashier's check, or money order payable to the Illinois Board of Higher Education.
- 2) The Board shall return fees if, after further investigation, the Board determines that the institution's request does not require Board approval or authorization, minus a fee of \$250 for processing.
- 3) Fees shall be submitted to:

Illinois Board of Higher Education  
Academic Affairs Fee Remittance  
431 East Adams, Second Floor  
Springfield, Illinois 62701-1404

c) Processing

- 1) Applications, notices, and change requests submitted to the Board with insufficient fees shall be considered incomplete. The Board will notify the institution of the amount due. No further action shall be taken by the Board until the full amount due is submitted.
- 2) The Board will not accept applications from institutions that have not provided the information necessary for the Board to process a previously submitted application.

(Source: Added at 33 Ill. Reg. 12397, effective August 21, 2009)

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Illinois Energy Conservation Code
- 2) Code Citation: 71 Ill. Adm. Code 600
- 3) 

<u>Section Numbers</u> :	<u>Emergency Action</u> :
600.100	Amendment
600.110	Amendment
600.120	Amendment
600.200	Amendment
600.300	Amendment
600.330	Amendment
- 4) Statutory Authority: Implementing and authorized by the Capital Development Board Act [20 ILCS 3105] and the Energy Efficient Commercial Building Act [20 ILCS 3125]
- 5) Effective Date of Rulemaking: August 18, 2009
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This rulemaking has no earlier expiration date specified.
- 7) Date filed with the Index Department: August 18, 2009
- 8) A copy of the emergency rulemaking, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: In February 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) was signed into Public Law 111-5; Section 410 [Page 123 STAT. 147].

The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

- (A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.
- (B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings.

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

This law provides, among other things, State Energy Grants for states that adopt the latest edition of the above referenced codes.

States adopting the 2009 IECC will also be in compliance with the federal Energy Policy Act. A recent U.S. Department of Energy (DOE) ruling regarding the ANSI/ASHRAE/IESNA 90.1 Standard paves the way for the 2009 IECC to act as a "safe harbor" equivalent, given that the IECC incorporates the 90.1 standard by reference. The federal Energy Policy Act requires all states to certify that their commercial building energy code meets the requirements in Standard 90.1-2004 or in equivalent language such as the 2009 IECC.

- 10) A Complete Description of the Subjects and Issues Involved: Legislation that passed in 2006 changed the definition of the Illinois Energy Conservation Code by removing the reference to the "2000 International Energy Conservation Code and the 2001 supplement" for privately funded commercial buildings and simply states that the latest published version of the International Energy Conservation Code will be required. We have modified our rules to match this change in Section 15 of the Energy Efficient Commercial Building Act [20 ILCS 3125/15]. This modification to the rule will ensure the newest edition of the International Energy Conservation Code is in effect at all times.

The State building section of the rules is updated to reference ANSI/ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (2007) instead of the 2004 version.

Two members are added to the Illinois Energy Conservation Advisory Council to include DCEO and the residential contracting industry.

- 11) Are there any proposed rulemakings pending to this Part? No
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding these emergency amendments shall be directed to:

Jim Underwood, Deputy Director of Construction  
Capital Development Board  
401 S. Spring Street  
3<sup>rd</sup> Floor William G. Stratton Bldg.

CAPITAL DEVELOPMENT BOARD

NOTICE OF EMERGENCY AMENDMENTS

Springfield, IL 62706

217/782-8527

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

CAPITAL DEVELOPMENT BOARD

NOTICE OF EMERGENCY AMENDMENTS

TITLE 71: PUBLIC BUILDINGS, FACILITIES, AND REAL PROPERTY  
CHAPTER I: CAPITAL DEVELOPMENT BOARD  
SUBCHAPTER d: ENERGY CODES

PART 600  
ILLINOIS ENERGY CONSERVATION CODE

SUBPART A: GENERAL

Section

- 600.100 Definitions  
[EMERGENCY](#)
- 600.110 Adoption and Modification of the Code  
[EMERGENCY](#)
- 600.120 Illinois Energy Conservation Advisory Council  
[EMERGENCY](#)
- 600.130 Revisions to the Code

SUBPART B: STATE FUNDED FACILITIES

Section

- 600.200 Standards for State Funded Facilities  
[EMERGENCY](#)
- 600.210 Request for Variance
- 600.220 Compliance

SUBPART C: PRIVATELY FUNDED COMMERCIAL FACILITIES

Section

- 600.300 Standards for Privately Funded Commercial Facilities  
[EMERGENCY](#)
- 600.310 Exemptions
- 600.320 Local Jurisdiction
- 600.330 Compliance  
[EMERGENCY](#)
- 600.340 Application to Home Rule Units

AUTHORITY: Implementing and authorized by the Capital Development Board Act [20 ILCS 3105] and the Energy Efficient Commercial Building Act [20 ILCS 3125].

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 11355, effective July 26, 2004, for a maximum of 150 days; emergency rules expired December 22, 2004; adopted at 29 Ill. Reg. 777, effective January 1, 2005; new Part adopted by emergency rulemaking at 29 Ill. Reg. 5736, effective April 8, 2005, for a maximum of 150 days; emergency expired September 4, 2005; emergency rulemaking repealed at 29 Ill. Reg. 6093, effective April 18, 2005, for a maximum of 150 days; emergency expired September 14, 2005; old Part repealed at 29 Ill. Reg. 16414 and new Part adopted at 29 Ill. Reg. 14790, effective April 8, 2006; amended at 31 Ill. Reg. 14422, effective October 9, 2007; emergency amendment at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days.

## SUBPART A: GENERAL

**Section 600.100 Definitions****EMERGENCY**

Definitions of terms in the International Energy Conservation Code, incorporated by reference in Subpart C of this Part, apply, as do the following definitions:

"Act" means the Capital Development Board Act [20 ILCS 3105].

"Authority Having Jurisdiction" or "AHJ" means the organization, office or individual responsible for approving equipment, materials, an installation or procedure.

"CDB" means the Illinois Capital Development Board.

*"Commercial Facility" means any building except a building that is classified as a residential building. [20 ILCS 3125/10]*

"Council" means the Illinois Energy Conservation Advisory Council appointed under Subpart B of this Part.

"EECB Act" means the Energy Efficient Commercial Building Act [20 ILCS 3125].

"Professional Services Agreement" means the contract for services entered into by CDB and design professionals.

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

"Using Agency" means the State agency using facilities described in Section 4.01 of the Act.

"Illinois Energy Conservation Code" or "Code" means:

With respect to the State facilities covered by Subpart B:

This Part, all additional requirements incorporated within Subpart B (including ASHRAE 90.1 Standards), and any statutorily authorized adaptations to the incorporated standards adopted by CDB; and

With respect to the privately funded commercial facilities covered by Subpart C:

This Part, all additional requirements incorporated within Subpart C (including the ~~2009~~[2006](#) International Energy Conservation Code, excluding published supplements, which encompasses ASHRAE 90.1), and any statutorily authorized adaptations to the incorporated standards adopted by CDB.

"IECC" means the International Energy Conservation Code.

*"Municipality" means any city, village or incorporated town. [20 ILCS 3125/10]*

*"Residential Building" means a detached one-family or 2-family dwelling or any building three stories or less above grade level that contains multiple dwelling units, in which the occupants reside on a primarily permanent basis (i.e., townhouse, row house, apartment house, convent, monastery, rectory, fraternity or sorority house, dormitory or rooming house). [20 ILCS 3125/10]*

"State Funded Building" means and includes buildings under the jurisdiction of each officer, department, board, commission, institution and body politic and corporate of the State, including the Illinois Building Authority, school districts, and any other person expending or encumbering State or federal funds by virtue of an appropriation or other authorization by the General Assembly or federal authorization or grant. This includes State funded *housing, hospitals, penitentiaries, laboratories, educational facilities, administrative facilities,*

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

*recreational facilities, environmental equipment and parking facilities* [20 ILCS 3105/4.01].

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

**Section 600.110 Adoption and Modification of the Code**  
**EMERGENCY**

- a) The purpose of the Illinois Energy Conservation Code is to implement Section 10.09-5 of the Capital Development Board Act [20 ILCS 3105/10.09-5], which requires CDB to adopt rules implementing a statewide Energy Code. Additionally, Section 15 of the Energy Efficient Commercial Building Act [20 ILCS 3125/15] requires CDB to officially adopt, as a minimum requirement, the ~~2009~~2006 International Energy Conservation Code, excluding any published supplements, to apply that Code to all commercial structures in Illinois, and to assist local code officials with enforcing the requirements of the Code.
- b) This Code as described in Subpart B (State facilities) is effective July 26, 2004. This Code as described in Subpart C (privately-funded commercial facilities) is effective April 8, 2007.
- c) Application of the Code
  - 1) State Facilities. The Code as described in Subpart B of this Part applies to all State facilities for which money has been appropriated or authorized by the General Assembly.
  - 2) Privately Funded Commercial Facilities. The Code as described in Subpart C of this Part applies *to any commercial building or structure in this State for which a building permit application is received by a municipality or county. In the case of any addition, alteration, renovation or repair to any existing commercial structure, the Code applies only to the portions of that structure that are being added, altered, renovated or repaired.* [20 ILCS 3125/20]
- d) This Code, together with the standards incorporated by reference in this Part, has the force of a building code and is administrative law applicable in the State of Illinois.

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

**Section 600.120 Illinois Energy Conservation Advisory Council****EMERGENCY**

- a) The Executive Director of the Capital Development Board shall appoint an Advisory Council. The Council shall be composed of the Executive Director or his or her authorized representative, who shall serve as Chairman ex-officio, and 108 additional members appointed by the Executive Director. The appointed members shall consist of 1 person representing the Department of Commerce and Economic Opportunity; 1 person representing the residential construction contracting industry; 2 licensed architects; 1 licensed mechanical engineer; 1 licensed electrical engineer; 2 persons representing local code officials; and 2 persons representing the construction contracting industry. Members of the Council shall be appointed for 4 year terms. The members appointed by the Executive Director shall serve for the term of their appointments and may be reappointed upon expiration of the term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.
- b) The Council shall meet as frequently as the Chairman deems necessary, but at least once each year. Additional meetings may be called by the Chairman or by 3 members of the Council upon delivery of 10 days' written notice to the mailing address of each member of the Council. SixFive members of the Council shall constitute a quorum.
- c) The purpose of the Council shall be to recommend modifications to the Illinois Energy Conservation Code.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

## SUBPART B: STATE FUNDED FACILITIES

**Section 600.200 Standards for State Funded Facilities****EMERGENCY**

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

- a) ANSI/ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (~~2007~~2004), available from ASHRAE at 1791 Tullie Circle, N.E., Atlanta GA 30329, is hereby incorporated into the Illinois Energy Conservation Code, as described in this Subpart as applicable to State funded facilities, with the modifications outlined in subsection (c).
- b) All incorporations by reference in this Section are of the cited standards as they existed on the date specified. These incorporations include no later editions or amendments.
- c) Modifications to ASHRAE 90.1  
ASHRAE 90.1 is incorporated by this Section, but with the following modifications:

- 1) ASHRAE 90.1 Section 3.2

The terms "adopting authority" and "authority having jurisdiction" shall both be read to mean the Capital Development Board.

- 2) Replace Exception to 9.4.1.2 with the following:

Exceptions to 9.4.1.2:

- A) Remote location shall be permitted for reasons of safety or security when the remote control device has an indicator pilot light as part of or next to the control device and it shall be clearly labeled to identify the controlled lighting.
- B) Spaces not subject to partial occupancy, such as gymnasiums, cafeterias, lecture halls, etc., shall not be required to have more than one control device.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

## SUBPART C: PRIVATELY FUNDED COMMERCIAL FACILITIES

**Section 600.300 Standards for Privately Funded Commercial Facilities**  
**EMERGENCY**

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

- a) The ~~2009~~2006 International Energy Conservation Code (IECC), excluding published supplements, available from the International Code Council at 500 New Jersey Avenue NW, 6<sup>th</sup> Floor, Washington DC 20001, phone: 1-888-ICC-SAFE (422-7233), is hereby incorporated into the Illinois Energy Conservation Code, as described in this Subpart as applicable to privately funded commercial facilities, with the modifications outlined in subsection (c).
- b) All incorporations by reference in this Section are of the cited standards as they existed on the date specified. These incorporations include no later editions or amendments.
- c) Modifications to IECC  
Under Section 15 of the EECB Act, when applying the Code to privately funded commercial facilities, CDB may modify the incorporated standards to respond to the unique economy, population distribution, geography and climate of Illinois, as long as the objectives of the Act are maintained pursuant to that statutory authority.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

**Section 600.330 Compliance****EMERGENCY**

- a) Compliance with the Illinois Energy Conservation Code as described by this Subpart C (applicable to commercial facilities) shall be determined by the local authority having jurisdiction (AHJ).
- b) Minimum compliance shall be demonstrated by submission of:
  - 1) the compliance forms published in the ASHRAE 90.1 User's Manual; or
  - 2) Compliance Certificates generated by the U.S. Department of Energy's COMcheck-~~EZ~~ code compliance tool (~~version 3.4.2~~); or
  - 3) other comparable compliance materials that meet or exceed, as determined by the authority having jurisdiction, the compliance forms published in the

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF EMERGENCY AMENDMENTS

ASHRAE 90.1 User's Manual or the U.S. Department of Energy's COMcheck-~~EZ~~ code compliance tool (~~version 3.4.2~~); or

- 4) the seal of the Architect/Engineer as required by Section 14 of the Illinois Architecture Practice Act [225 ILCS 305], Section 12 of the Structural Engineering Licensing Act [225 ILCS 340] and Section 14 of the Illinois Professional Engineering Practice Act [225 ILCS 325].

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 12407, effective August 18, 2009, for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION  
TO EMERGENCY RULEMAKING

DEPARTMENT OF TRANSPORTATION

Heading of the Part: Selection of Architect-Engineer Consultant Firms

Code Citation: 44 Ill. Adm. Code 625

Section Numbers: 625.20  
625.90

Date Originally Published in the Illinois Register: 7/24/09  
33 Ill. Reg. 11127

At its meeting on August 18, 2009, the Joint Committee on Administrative Rules considered the above-cited rulemaking and recommended that, in the future, DOT be more timely in updating its rules. Statute created the \$25,000 small contract threshold for professional service contracts in 1992. DOT is now reflecting that statute through amendments to Selection of Architect-Engineer Consultant Firms.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.



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 August 18, 2009 through August 24, 2009 and have been scheduled for review by the Committee at its September 15, 2009 meeting. 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>
10/1/09	<u>Illinois Emergency Management Agency,</u> Licensing of Radon Detection and Mitigation Services (32 Ill. Adm. Code 422)	5/22/09 33 Ill. Reg. 6786	9/15/09
10/3/09	<u>Department of Public Health,</u> Sexual Assault Survivors Emergency Treatment Code (77 Ill. Adm. Code 545)	3/6/09 33 Ill. Reg. 3904	9/15/09
10/4/09	<u>Department of Human Services,</u> Autism Research Fund Scientific Review Committee (59 Ill. Adm. Code 270)	5/29/09 33 Ill. Reg. 7054	9/15/09

**ILLINOIS ADMINISTRATIVE CODE**  
**Issue Index - With Effective Dates**

Rules acted upon in Volume 33, Issue 36 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

**PROPOSED RULES**

23 - 1040	.....	12299
23 - 1075	.....	12306
71 - 600	.....	12311
56 - 2520	.....	12314
77 - 100	.....	12321
77 - 250	.....	12347
77 - 260	.....	12362
14 - 150	.....	12375
80 - 1600	.....	12381

**ADOPTED RULES**

23 - 1030	8/21/2009 .....	12397
-----------	-----------------	-------

**EMERGENCY RULES**

71 - 600	8/18/2009 .....	12407
----------	-----------------	-------

**JOINT COMMITTEE ON  
ADMINISTRATIVE RULES  
STATEMENTS OF RECOMMENDATION**

44 - 625	.....	12418
----------	-------	-------

**JOINT COMMITTEE ON  
ADMINISTRATIVE RULES  
STATEMENTS OF OBJECTION**

77 - 975	.....	12419
----------	-------	-------

## ORDER FORM

<input type="checkbox"/> Subscription to the Illinois Register (52 Issues) <input type="checkbox"/> New <input type="checkbox"/> Renewal	\$290.00 (annually)
<input type="checkbox"/> Electronic Version of the Illinois Register (E-mail Address Required) <input type="checkbox"/> New <input type="checkbox"/> Renewal	\$290.00 (annually)
<input type="checkbox"/> Back Issues of the Illinois Register (Current Year Only) Volume # _____ Issue# _____ Date _____	\$ 10.00 (each)
<input type="checkbox"/> Microfiche sets of the Illinois Register 1977 – 2003 Specify Year(s) _____	\$ 200.00 (per set)
<input type="checkbox"/> Cumulative/Sections Affected Indices 1990 - 2006 Specify Year(s) _____	\$ 5.00 (per set)
(Processing fee for credit cards purchases, if applicable.)	\$ 2.00
<b>TOTAL AMOUNT OF ORDER</b> \$ _____	

Check    Make Checks Payable To: **Secretary of State**

VISA     Master Card     Discover    (There is a \$2.00 processing fee for credit card purchases.)

Card #: \_\_\_\_\_    Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Send Payment To:** Secretary of State  
 Department of Index  
 Administrative Code Division  
 111 E. Monroe  
 Springfield, IL 62756

**Fax Order To:** (217) 557-8919

Name:	Attention:	ID #:
Address:		
City:	State:	Zip Code:
Phone:	Fax:	E-Mail:

Published by **JESSE WHITE** • Secretary of State  
[www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)