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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2012

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 27, 2011	January 6, 2012
2	January 3, 2012	January 13, 2012
3	January 9, 2012	January 20, 2012
4	January 17, 2012	January 27, 2012
5	January 23, 2012	February 3, 2012
6	January 30, 2012	February 10, 2012
7	February 6, 2012	February 17, 2012
8	February 14, 2012	February 24, 2012
9	February 21, 2012	March 2, 2012
10	February 27, 2012	March 9, 2012
11	March 5, 2012	March 16, 2012
12	March 12, 2012	March 23, 2012
13	March 19, 2012	March 30, 2012
14	March 26, 2012	April 6, 2012
15	April 2, 2012	April 13, 2012
16	April 9, 2012	April 20, 2012
17	April 16, 2012	April 27, 2012
18	April 23, 2012	May 4, 2012
19	April 30, 2012	May 11, 2012

20	May 7, 2012	May 18, 2012
21	May 14, 2012	May 25, 2012
22	May 21, 2012	June 1, 2012
23	May 29, 2012	June 8, 2012
24	June 4, 2012	June 15, 2012
25	June 11, 2012	June 22, 2012
26	June 18, 2012	June 29, 2012
27	June 25, 2012	July 6, 2012
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29	July 9, 2012	July 20, 2012
30	July 16, 2012	July 27, 2012
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32	July 30, 2012	August 10, 2012
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38	September 10, 2012	September 21, 2012
39	September 17, 2012	September 28, 2012
40	September 24, 2012	October 5, 2012
41	October 1, 2012	October 12, 2012
42	October 9, 2012	October 19, 2012
43	October 15, 2012	October 26, 2012
44	October 22, 2012	November 2, 2012
45	October 29, 2012	November 9, 2012
46	November 5, 2012	November 16, 2012
47	November 13, 2012	November 26, 2012
48	November 19, 2012	November 30, 2012
49	November 26, 2012	December 7, 2012
50	December 3, 2012	December 14, 2012
51	December 10, 2012	December 21, 2012
52	December 17, 2012	December 28, 2012

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Video Gaming (General)
- 2) Code Citation: 11 Ill. Adm. Code 1800
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1800.110	Amendment
1800.270	Amendment
1800.930	Amendment
- 4) Statutory Authority: Authorized by the Video Gaming Act [230 ILCS 40], specifically Section 78 (a) (3) of that Act [230 ILCS 40/78 (a) (3)]
- 5) A Complete Description of the Subjects and Issues Involved: One-year redemption period for tickets dispensed by video gaming terminals: Under the proposed rulemaking, the holder of a winning video game ticket shall have one year from the date of issuance to redeem the ticket. Specifically, Section 1800.110, Definitions, is amended to add a new definition of "expiration date" as "the one-year period, starting on the date of issuance, during which a ticket dispensed by a video gaming terminal may be redeemed for cash." Additionally, Section 1800.270, Duties of Licensed Video Gaming Locations, is amended to make it a duty for these locations to "redeem for cash a ticket dispensed by a video gaming terminal which is within its expiration period".

Board registration is not required for lenders who are licensees: The proposed rulemaking amends Section 1800.930, Prior Registration, by providing that a lender who is also a licensee has no duty to register with the Board. Currently, Section 1800.930 requires Board registration of all lenders, licensed or not, who provide financing for video gaming terminals (VGTs) secured by VGTs as collateral.
- 6) Published studies and reports, and underlying sources of 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

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<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
1800.820	New Section	36 Ill. Reg. 9377; June 29, 2012
1800.230	Amendment	36 Ill. Reg. 9863; July 13, 2012
1800.250	Amendment	36 Ill. Reg. 9863; July 13, 2012
1800.260	Amendment	36 Ill. Reg. 9863; July 13, 2012
1800.310	Amendment	36 Ill. Reg. 9863; July 13, 2012
1800.520	Amendment	36 Ill. Reg. 9863; July 13, 2012
1800.830	New Section	36 Ill. Reg. 9863; July 13, 2012
1800.1310	New Section	36 Ill. Reg. 9863; July 13, 2012
1800.110	Amendment	36 Ill. Reg. 10578; July 20, 2012
1800.1410	New Section	36 Ill. Reg. 10578; July 20, 2012
1800.810	Amendment	36 Ill. Reg. 12949; August 17, 2012
1800.250	Amendment	36 Ill. Reg. 12699; August 16, 2012

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate under 30 ILCS 805.
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments in writing concerning this proposed rulemaking not later than 45 days after publication of this Notice in the *Illinois Register* to:

Lynn J. Carter
Chief Counsel
Illinois Gaming Board
160 North LaSalle Street
Chicago, Illinois 60601

312/814-7137
Fax No. 312/814-4143
lynn.carter@igb.illinois.gov

- 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

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- C) Types of Professional skills necessary for compliance: The proposed rulemaking will impose no additional requirements.
- 14) Regulatory agenda on which this rulemaking was summarized: This rulemaking was not summarized in a regulatory agenda.

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

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TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE D: VIDEO GAMING
CHAPTER I: ILLINOIS GAMING BOARD

PART 1800
VIDEO GAMING (GENERAL)

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1800.110	Definitions
1800.115	Gender
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1800.210	General Duties of All Video Gaming Licensees
1800.220	Continuing Duty to Report Violations
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1800.240	Duties of Licensed Distributors
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1800.270	Duties of Licensed Video Gaming Locations

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1800.320	Minimum Standards for Use Agreements
1800.330	Economic Disassociation

SUBPART D: LICENSING QUALIFICATIONS

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- 1800.510 Coverage of Subpart
- 1800.520 Applications
- 1800.530 Submission of Application
- 1800.540 Application Fees
- 1800.550 Consideration of Applications by the Board
- 1800.555 Withdrawal of Applications
- 1800.560 Issuance of License
- 1800.570 Renewal of License
- 1800.580 Renewal Fees and Dates

SUBPART F: DENIALS OF APPLICATIONS FOR LICENSURE

Section

- 1800.610 Coverage of Subpart
- 1800.615 Requests for Hearing
- 1800.620 Appearances
- 1800.625 Appointment of Administrative Law Judge
- 1800.630 Discovery
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- 1800.670 Prohibition on Ex Parte Communication
- 1800.680 Sanctions and Penalties
- 1800.690 Transmittal of Record and Recommendation to the Board
- 1800.695 Status of Applicant for Licensure Upon Filing Request for Hearing

SUBPART G: DISCIPLINARY ACTIONS AGAINST LICENSEES

Section

- 1800.710 Coverage of Subpart
- 1800.715 Notice of Proposed Disciplinary Action Against Licensees
- 1800.720 Hearings in Disciplinary Actions
- 1800.725 Appearances
- 1800.730 Appointment of Administrative Law Judge
- 1800.735 Discovery

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1800.740	Subpoenas
1800.745	Motions for Summary Judgment
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1800.780	Sanctions and Penalties
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SUBPART H: LOCATION OF VIDEO GAMING TERMINALS IN
LICENSED VIDEO GAMING LOCATIONS

Section	
1800.810	Location and Placement of Video Gaming Terminals

SUBPART I: SECURITY INTERESTS

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1800.910	Approvals Required, Applicability, Scope of Approval
1800.920	Notice of Enforcement of a Security Interest
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SUBPART J: TRANSPORTATION, REGISTRATION,
AND DISTRIBUTION OF VIDEO GAMING TERMINALS

Section	
1800.1010	Restriction on Sale, Distribution, Transfer, Supply and Operation of Video Gaming Terminals
1800.1020	Transportation of Video Gaming Terminals into the State
1800.1030	Receipt of Video Gaming Terminals in the State
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1800.1110	State-Local Relations

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SUBPART L: FINGERPRINTING OF APPLICANTS

Section

1800.1210	Definitions
1800.1220	Entities Authorized to Perform Fingerprinting
1800.1230	Qualification as a Livescan Vendor
1800.1240	Fingerprinting Requirements
1800.1250	Fees for Fingerprinting
1800.1260	Grounds for Revocation, Suspension and Denial of Contract

AUTHORITY: Implementing and authorized by the Video Gaming Act [230 ILCS 40].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 14793, effective October 19, 2009, for a maximum of 150 days; adopted at 34 Ill. Reg. 2893, effective February 22, 2010; emergency amendment at 34 Ill. Reg. 8589, effective June 15, 2010, for a maximum of 150 days; emergency expired November 11, 2010; amended at 35 Ill. Reg. 1369, effective January 5, 2011; emergency amendment at 35 Ill. Reg. 13949, effective July 29, 2011, for a maximum of 150 days; emergency expired December 25, 2011; amended at 36 Ill. Reg. 840, effective January 6, 2012; emergency amendment at 36 Ill. Reg. 4150, effective February 29, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 5455, effective March 21, 2012; amended at 36 Ill. Reg. 10029, effective June 28, 2012; emergency amendment at 36 Ill. Reg. 11492, effective July 6, 2012, for a maximum of 150 days; emergency amendment at 36 Ill. Reg. 12895, effective July 24, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 13178, effective July 30, 2012; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 1800.110 Definitions

For purposes of this Part the following terms shall have the following meanings:

"Act": The Video Gaming Act [230 ILCS 40].

"Administrator": The chief executive officer responsible for day-to-day operations of the Illinois Gaming Board.

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"Affiliate": An "affiliate of", or person "affiliated with", a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

"Affiliated entity": An "affiliated entity" of a person is any business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person.

"Applicant": A person applying for any license under the Video Gaming Act.

"Application": All material submitted, including the instructions, definitions, forms and other documents issued by the Illinois Gaming Board, comprising the video gaming license application submitted to the Illinois Gaming Board.

"Associated video gaming equipment": Ticket payout systems and validation procedures; wireless, promotional and bonusing systems; kiosks; gaming-related peripherals; hardware, software and systems; and other gaming devices and equipment for compliance with:

Illinois laws, regulations, and requirements as codified or otherwise set forth; and

Board-approved video gaming industry standards.

"Attributed interest": A direct or indirect interest in an enterprise deemed to be held by an individual not through the individual's actual holdings but either through the holdings of the individual's relatives or through a third party or parties on behalf of the individual pursuant to a plan, arrangement, agreement or contract.

"Board": The Illinois Gaming Board.

"Business entity" or "Business": A partnership, incorporated or unincorporated association or group, firm, corporation, limited liability company, partnership for shares, trust, sole proprietorship or other business enterprise.

"Chi-square test": A statistical test used to determine if a relationship between variables exists by comparing expected and observed cell frequencies. Specifically, a chi-square test examines the observed frequencies in a category

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and compares them to what would be expected by chance or would be expected if there was no relationship between variables.

"Control": The possession, direct or indirect, of power to direct or cause the direction of the management and policies of an applicant or licensee through the ownership of voting securities, by contract or otherwise.

"Convenience store": A retail store that is open long hours and sells motor fuel and a limited selection of snacks and general goods.

"Credit": One, five, 10 or 25 cents.

"Distributor": An individual, partnership, corporation or limited liability company licensed under the Act to buy, sell, lease or distribute video gaming terminals or major components or parts of video gaming terminals to or from terminal operators.

"Enforce a security interest": To transfer possession of ownership or title pursuant to a security interest.

"EPROM": An acronym for Erasable, Programmable, Read Only Memory, which is a microprocessor component that stores memory and affects payout percentage and/or contains a random number generator that selects the outcome of a game on a video gaming terminal.

"Expiration period": The one-year period, starting on the date of issuance, during which a ticket dispensed by a video gaming terminal may be redeemed for cash.

"Fraternal organization": An organization or institution organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of the operation and that is exempt from federal income taxation under section 501(c)(8) or (c)(10) of the Internal Revenue Code.

"Game": A gambling activity that is played for money, property or anything of value, including without limitation those played with cards, chips, tokens, vouchers, dice, implements, or electronic, electrical or mechanical devices or machines.

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"Gaming": The dealing, operating, carrying on, conducting, maintaining or exposing for play of any game.

"Gaming operation": The conducting of gaming or the providing or servicing of gaming equipment.

"Gaming property collateral": Video gaming equipment subject to a security interest.

"Illinois resident":

With respect to an individual, an individual who is either:

domiciled in Illinois or maintains a bona fide place of abode in Illinois; or

is required to file an Illinois tax return during the taxable year.

With respect to a corporation, any corporation organized under the laws of this State and any foreign corporation with a certificate of authority to transact business in Illinois. A foreign corporation not authorized to transact business in this State is a nonresident of this State.

With respect to a partnership, a partnership in which any partner is an Illinois resident, or where the partnership has an office and is doing business in Illinois.

With respect to an irrevocable trust, a trust where the grantor was an Illinois resident individual at the time the trust became irrevocable.

"Institutional investor":

A retirement fund administered by a public agency for the exclusive benefit of federal, state or local public employees;

An investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8);

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A collective investment trust organized by a bank under Part 9 of the Rules of the Comptroller of the Currency (12 CFR 9.18);

A closed end investment trust registered with the United States Securities and Exchange Commission;

A chartered or licensed life insurance company or property and casualty insurance company;

A federal or state bank;

An investment advisor registered under the Investment Advisors Act of 1940 (15 USC 80b-1 through 80b-21); or

Such other person as the Illinois Gaming Board may determine for reasons consistent with the Act and this Part.

"License": Authorization granted by the Board permitting a licensee to engage in the defined activities of video gaming.

"Licensed establishment": Any retail establishment licensed under the Act where alcoholic liquor is drawn, poured, mixed, or otherwise served for consumption on the premises. Licensed establishment does not include a facility operated by an organization licensee, an intertrack wagering licensee, or an intertrack wagering location licensee licensed under the Illinois Horse Racing Act of 1975 or a riverboat licensed under the Riverboat Gambling Act.

"Licensed fraternal establishment": The location licensed under the Act where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

"Licensed technician": An individual who is licensed under the Act to repair, service and maintain video gaming terminals. A licensed technician is not licensed under the Act to possess or control a video gaming terminal or have access to the inner workings of a video gaming terminal (i.e., the logic area maintained in a separately locked cabinet of the video gaming terminal which houses electronic components that have the potential to significantly influence the operation of the video gaming terminal).

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"Licensed terminal handler": A person, including but not limited to an employee or independent contractor working for a manufacturer, distributor, supplier, technician or terminal operator, who is licensed under the Act to possess or control a video gaming terminal or to have access to the inner workings of a video gaming terminal (i.e., the logic area maintained in a separately locked cabinet of the video gaming terminal which houses electronic components that have the potential to significantly influence the operation of the video gaming terminal). A licensed terminal handler does not include an individual, partnership, corporation or limited liability company defined as a manufacturer, distributor, supplier, technician or terminal operator under Section 5 of the Video Gaming Act.

"Licensed truck stop establishment": A facility licensed under the Act that is at least a 3-acre facility with a convenience store, that has separate diesel islands for fueling commercial motor vehicles, that sells at retail more than 10,000 gallons of diesel or biodiesel fuel per month, and that has parking spaces for commercial motor vehicles. "Commercial motor vehicles" has the same meaning as defined in Section 18b-101 of the Illinois Vehicle Code [625 ILCS 5/18b-101]. The 10,000 gallon requirement may be met by showing that estimated future sales or past sales average at least 10,000 gallons per month.

"Licensed veterans establishment": The location licensed under the Act where a qualified veterans organization that derives its charter from a national veterans organization regularly meets.

"Licensed video gaming location": A licensed establishment, licensed fraternal establishment, licensed veterans establishment, or licensed truck stop establishment, all as defined in Section 5 of the Video Gaming Act and this Part.

"Liquor license": A license issued by a governmental body authorizing the holder to sell and offer for sale at retail alcoholic liquor for use or consumption.

"Major components or parts": Components or parts that comprise the inner workings and peripherals of a video gaming terminal, including but not limited to the device's hardware, software, human interface devices, interface ports, power supply, ticket payout system, bill validator, printer and any component that affects or could affect the result of a game played on the device.

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"Manufacturer": An individual, partnership, corporation or limited liability company that is licensed under the Act and that manufactures or assembles video gaming terminals.

"Net terminal income": Money put into a video gaming terminal minus credits paid out to players.

"Nominee": Any individual or business entity that holds as owner of record the legal title to tangible or intangible personal or real property, including without limitation any stock, bond, debenture, note, investment contract or real estate on behalf of another individual or business entity, and as such is designated and authorized to act on his, her or its behalf with respect to the property.

"Ownership interest": Includes, but is not limited to, direct, indirect, beneficial or attributed interest, or holder of stock options, convertible debt, warrants or stock appreciation rights, or holder of any beneficial ownership or leasehold interest in a business entity.

"Person": Includes both individuals and business entities.

"Person with significant interest or control": Any of the following:

Each person in whose name the liquor license is maintained for each licensed video gaming location;

Each person who, in the opinion of the Administrator, has the ability to influence or control the activities of the applicant or licensee, or elect a majority of its board of directors, other than a bank or licensed lending institution that holds a mortgage or other lien, or any other source of funds, acquired in the ordinary course of business;

Persons having the power to exercise significant influence or control over decisions concerning any part of the applicant's or licensee's video gaming operation.

"Secured party": A person who is a lender, seller or other person who holds a valid security interest.

"Security": An ownership right or creditor relationship.

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"Security agreement": An agreement that creates or provides a security interest, including but not limited to a use agreement.

"Security interest": An interest in property that secures the payment or performance of an obligation or judgment.

"Sole proprietor": An individual who in his or her own name owns 100% of the assets and who is solely liable for the debts of a business.

"Substantial interest": With respect to a partnership, a corporation, an organization, an association, a business or a limited liability company means:

When, with respect to a sole proprietorship, an individual or his or her spouse owns, operates, manages, or conducts, directly or indirectly, the organization, association or business, or any part thereof; or

When, with respect to a partnership, the individual or his or her spouse shares in any of the profits, or potential profits, of the partnership activities; or

When, with respect to a corporation, an individual or his or her spouse is an officer or director or the individual or his or her spouse is a holder, directly or beneficially, of 5% or more of any class of stock of the corporation; or

When, with respect to a limited liability company, an individual or his or her spouse is a member, or the individual or his or her spouse is a holder, directly or beneficially, of 5% or more of the membership interest of the limited liability company; or

When, with respect to any other organization not covered in the preceding four paragraphs, an individual or his or her spouse is an officer or manages the business affairs, or the individual or his or her spouse is the owner of, or otherwise controls, 10% or more of the assets of the organization; or

When an individual or his or her spouse furnishes 5% or more of the capital, whether in cash, goods or services, for the operation of any business, association or organization during any calendar year.

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For purposes of this definition, "individual" includes all individuals or their spouses whose combined interest would qualify as a substantial interest under this definition and whose activities with respect to an organization, association, or business are so closely aligned or coordinated as to constitute the activities of a single entity.

"Supplier": An individual, partnership, corporation or limited liability company that is licensed under the Act to supply major components or parts to video gaming terminals to licensed terminal operators.

"Terminal operator": An individual, partnership, corporation or limited liability company that is licensed under the Act that owns, services, and maintains video gaming terminals for placement in licensed establishments, licensed truck stop establishments, licensed fraternal establishments or licensed veterans establishments.

"Use agreement": A contractual agreement between a licensed terminal operator and a licensed video gaming location establishing terms and conditions for placement and operation of video gaming terminals by the licensed terminal operator within the premises of the licensed video gaming location.

"Veterans organization": An organization or institution organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of the operation and that is exempt from federal income taxation under section 501(c)(19) of the Internal Revenue Code (26 USC 501(c)(19)).

"Video gaming equipment": Video gaming terminals, associated video gaming equipment and major components or parts.

"Video gaming operation": As the context requires, the conducting of video gaming and all related activities.

"Video gaming terminal": Any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up and blackjack, as authorized by the Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not

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include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: DUTIES OF LICENSEES

Section 1800.270 Duties of Licensed Video Gaming Locations

In addition to all other duties and obligations required by the Act and this Part, each licensed video gaming location has an ongoing duty to comply with the following:

- a) Provide a secure premise for the placement, operation and play of video gaming terminals;
- b) Permit no one to tamper with or interfere with the approved operation of any video gaming terminal;
- c) Ensure that all connections with the central communications system and associated video gaming equipment are at all times maintained and prevent any person from tampering or interfering with the approved, continuing operation of the central communications system;
- d) Accept nothing of value from any video terminal operator or any agent or representative of any video terminal operator as an incentive or inducement to locate, keep or maintain video gaming terminals at the licensed video gaming location;
- e) Conduct advertising and promotional activities in accordance with this Part and in a manner that does not reflect adversely on or that would discredit or tend to discredit the Illinois gaming industry or the State of Illinois;
- f) Immediately remove all video gaming terminals from the restricted area of play:
 - 1) upon order of the Board or an agent of the Board; or
 - 2) that have been out of service or otherwise inoperable for more than 72 hours;

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- g) Enter written use agreements with licensed video terminal operators that comply with this Part;
- h) Ensure that video gaming terminals are placed and remain in a designated, approved location;
- i) Prevent access to or play of video gaming terminals by persons who are under the age of 21 years or who are visibly intoxicated;
- j) Commit no violations of the laws of this State concerning the sale, dispensing or consumption on premises of alcoholic beverages that results in suspension or revocation of any liquor license held by or associated with a licensed video gaming location;
- k) Maintain at all times an approved method of payout for valid receipt tickets and pay all valid receipt tickets;
- l) Extend no form of deferred payment for video gaming terminal play in which an individual receives something of value now and agrees to repay the lender in the future for the purpose of wagering at a video gaming terminal;
- m) Promptly report all malfunctions of video gaming terminals and all out-of-service terminals to the video terminal operator and promptly notify the Board of a terminal operator's failure to provide service and repair of terminals and associated equipment within 24 hours after notice to the terminal operator;
- n) Install, post and display signs as required by the Board;
- o) Promptly notify the Board of any unauthorized or illegal video gaming terminals or any video gaming device that is in violation of Section 35 of the Video Gaming Act;
- p) Exercise control over the licensed video gaming location;
- q) Promptly notify the Board of any action taken on or related to any liquor license held; ~~and~~

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- r) Allow maintenance and/or service of video gaming terminals and associated video gaming equipment only by licensed technicians and licensed terminal handlers possessing valid identification issued by the Board; ~~and-~~
- s) Redeem for cash a ticket, dispensed by a video gaming terminal, that is within its expiration period.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART I: SECURITY INTERESTS

Section 1800.930 Prior Registration

- a) Video gaming terminals may only be secured as collateral by a person who is licensed under the Act or who has registered with the Board on forms provided by the Board.
- b) Prior registration or licensure under the Act of the secured party seeking to enforce a security interest is required. The Board will not approve the enforcement of any security interest in gaming property collateral unless all persons have been either registered or licensed, as applicable.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: State Housing Appeals Board
- 2) Code Citation: 47 Ill. Adm. Code 395
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
395.101	New Section
395.102	New Section
395.103	New Section
395.104	New Section
395.105	New Section
395.106	New Section
395.107	New Section
395.108	New Section
395.109	New Section
395.110	New Section
395.201	New Section
395.202	New Section
395.203	New Section
395.204	New Section
395.301	New Section
395.302	New Section
395.303	New Section
395.304	New Section
395.305	New Section
395.306	New Section
395.307	New Section
395.308	New Section
395.309	New Section
395.310	New Section
395.311	New Section
395.312	New Section
395.313	New Section
395.314	New Section
395.315	New Section
395.316	New Section
395.317	New Section
395.318	New Section
395.319	New Section
395.401	New Section

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- 4) Statutory Authority: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 60 of the Affordable Housing Planning and Appeal Act [310 ILCS 67/60]
- 5) A Complete Description of the Subjects and Issues Involved: This Part establishes the State Housing Appeal Board's responsibilities under the Affordable Housing Planning and Appeal Act and provides direction to local governments and affordable housing developers.
- 6) Published studies or reports, and sources of underlying data, used to compose the 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 any incorporations by reference? No
- 10) Are there any proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand any State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to:

Kristi S. Poskus
Deputy General Counsel
Illinois Housing Development Authority
401 N. Michigan Avenue, Suite 700
Chicago, Illinois 60611

312/836-7416

- 13) Initial Regulatory Flexibility Analysis:

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- A) Types of small businesses, small municipalities and not for profit corporations affected: Affordable housing developers and local governments throughout Illinois.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: No new professional skills required.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2012

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

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NOTICE OF PROPOSED RULES

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITYPART 395
STATE HOUSING APPEALS BOARD

SUBPART A: GENERAL RULES

Section	
395.101	Authority
395.102	Purpose and Objectives
395.103	Definitions
395.104	Compliance with Federal and State Law
395.105	Forms and Procedures for the Program
395.106	Fees and Charges
395.107	Amendment
395.108	Severability
395.109	Gender and Number
395.110	Titles and Captions

SUBPART B: ORGANIZATION

Section	
395.201	Jurisdiction
395.202	Organization of the Board
395.203	Meetings of the Members
395.204	Conduct of the Board

SUBPART C: APPEALS TO THE BOARD BY
AFFORDABLE HOUSING DEVELOPERS

Section	
395.301	Service of Documents
395.302	Computation of Time
395.303	Parties
395.304	Consolidation, Severance and Joinder
395.305	Initial Pleadings by Affordable Housing Developers
395.306	Notice of Appeal
395.307	Dismissal before Hearing

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395.308	Reply to the Initial Pleading by Approving Authority
395.309	Prehearing Conferences, Settlement Conferences, Subpoenas and Depositions
395.310	Conduct of Hearings
395.311	Motions
395.312	Postponement or Continuance of Hearing
395.313	Evidence
395.314	Affordable Housing Developer's Burden of Proof
395.315	Standard of Proof
395.316	Decision
395.317	Enforcement
395.318	Motions to Reconsider the Board's Decision
395.319	Appeals of the Board's Decision

SUBPART D: APPEALS OF LOCAL GOVERNMENT EXEMPT STATUS

Section

395.401 Appeals of IHDA's Determination of a Local Government's Exempt Status

AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 60 of the Affordable Housing Planning and Appeal Act [310 ILCS 67/60].

SOURCE: Adopted at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL RULES

Section 395.101 Authority

IHDA is designated as the agency responsible for adopting rules and regulations needed to carry out the Board's responsibilities under the Act. This Part is authorized by Section 60 of the Act and Section 7.19 of the IHDA Act.

Section 395.102 Purpose and Objectives

The purpose of the Act and this Part is to carry out the Board's responsibilities under the Act and to provide direction to Local Governments and Affordable Housing Developers.

Section 395.103 Definitions

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The following terms used in this Part shall have the following definitions:

"Act": The Affordable Housing Planning and Appeal Act [310 ILCS 67].

"Affordable Housing": Housing that has a sales price or rental amount that is within the means of a household that may occupy Moderate-Income Housing or Low-Income Housing.

In the case of Dwelling Units for sale, Affordable Housing means housing in which mortgage, amortization, taxes, insurance and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the Dwelling Unit.

In the case of Dwelling Units for rent, Affordable Housing means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the Dwelling Unit.

"Affordable Housing Developer": A nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an Affordable Housing Development.

"Affordable Housing Development": Any housing that is subsidized by the federal or State government, or any housing in which at least 20% of the Dwelling Units are subject to covenants and restrictions that require the Dwelling Units to be sold or rented at prices that preserve them as Affordable Housing for a period of at least 15 years, in the case of housing for sale, and at least 30 years, in the case of rental housing.

"Affordable Housing Plan": The Affordable Housing Plan to be approved by all Non-Exempt Local Governments as set forth in Section 25 of the Act.

"Approving Authority": The governing body of the Local Government.

"Area Median Household Income": The median household income adjusted for family size for applicable income limit areas as determined annually by HUD under Section 8 of the United States Housing Act of 1937 (42 USC 1437).

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"Board": The State Housing Appeals Board.

"Chairman": The chairman of the Board.

"Days": Calendar days. Due dates under this Part falling on a Saturday, Sunday or a legal State or federal holiday shall be deemed to fall on the next calendar day that is not a Saturday, Sunday or a legal State or federal holiday.

"Development": Any building, construction, renovation or excavation, or any material change in any structure or land, or change in the use of a structure or land, that results in a net increase in the number of Dwelling Units in a structure or on a parcel of land by more than one Dwelling Unit.

"Dwelling Unit": Real property located within the State upon which there is located a structure or structures that are a single family home, a condominium or a multi-unit residential structure that is the principal residence of the Household that resides in the unit.

"Exempt Local Government": Any Local Government in which at least 10% of its total year-round housing units are Affordable Housing, as determined by the Authority pursuant to Section 20 of the Act, or any municipality whose population is less than 1,000.

"Household": The person or persons occupying a Dwelling Unit.

"HUD": The United States Department of Housing and Urban Development.

"IHDA": The Illinois Housing Development Authority.

"IHDA Act": The Illinois Housing Development Act [20 ILCS 3805].

"IHDA Chairman": The chairman of IHDA.

"Initial Pleading": The Initial Pleading submitted by an Affordable Housing Developer as set forth in Section 395.306.

"Local Government": A county or a municipality, including home rule units and counties and municipalities other than home rule units, as described in Article VII of the Constitution of the State of Illinois.

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"Low-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental and that is occupied, reserved or marketed for occupancy by Households with a gross household income that does not exceed 50% of the Area Median Household Income.

"Member": A member of the State Housing Appeals Board.

"Moderate-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental, and that is occupied, reserved or marketed for occupancy by Households with a gross household income that is greater than 50%, but does not exceed 80%, of the Area Median Income.

"Non-Appealable Local Government Requirements": All essential requirements that protect the public health and safety, including any local building, electrical, fire or plumbing code requirements or those requirements that are critical to the protection or preservation of the environment. Zoning, density and bulk restrictions shall not be considered as Non-Appealable Local Government Requirements.

"Non-Exempt Local Governments": All Local Governments that are not Exempt Local Governments.

"Notice of Appeal": The Notice of Appeal sent to an Approving Authority by the Board as set forth in Section 395.307.

"Offices of IHDA": 401 North Michigan Avenue, Suite 700, Chicago, Illinois 60611.

"Public Building": Any building or portion thereof owned or leased by a Public Body.

"Public Body": All legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees or commissions of the State, and any subsidiary bodies of any of the foregoing, including, but not limited to, committees and subcommittees supported in whole or in part by tax revenue, or that expend tax revenue, except the General Assembly and committees or commissions of the General Assembly.

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"Reply": The Reply sent by the Approving Authority in response to an Initial Pleading.

"State": The State of Illinois.

"Vice-Chairman": The Vice-Chairman of the State Housing Appeals Board.

Section 395.104 Compliance with Federal and State Law

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable federal and State law.

Section 395.105 Forms and Procedures for the Program

IHDA may prepare, use, supplement and amend forms, agreements and other documents and procedures as may be necessary to implement the duties of the Board, all as may be prescribed by IHDA.

Section 395.106 Fees and Charges

The Authority shall not charge the Board any fees or other charges for services it provides to the Board. The Members shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of their official duties. In the making of reimbursements to the Members, the State may use funds from the Illinois Affordable Housing Trust Fund, pursuant to the Illinois Affordable Housing Act [310 ILCS 65], or such other fund as the State may determine.

Section 395.107 Amendment

This Part may be supplemented, amended or repealed by IHDA from time to time and in a manner consistent with the Illinois Administrative Procedure Act [5 ILCS 100], this Part, the Act and other applicable laws. This Part shall not constitute or create any contractual rights.

Section 395.108 Severability

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate

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the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart to which the judgment is rendered.

Section 395.109 Gender and Number

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

Section 395.110 Titles and Captions

Titles and captions of Subparts, Sections and subsections are used for convenience and reference and are not a part of the text.

SUBPART B: ORGANIZATION

Section 395.201 Jurisdiction

The Board shall have jurisdiction to hear and render decisions regarding appeals filed by Affordable Housing Developers in connection with applications for Affordable Housing Developments when Approving Authorities have either denied the applications or approved the applications with conditions that, in the opinion of the Affordable Housing Developer, may render the Affordable Housing Developments infeasible. In connection with appeals filed by Affordable Housing Developers, the Board shall also have jurisdiction to hear and render decisions affecting the exempt or non-exempt status of Local Governments under the Act.

Section 395.202 Organization of the Board

The duties of the Board are governed by the Act and this Part. The Board shall consist of 7 Members, appointed by the Governor with the advice and consent of the Senate.

- a) Chairman: A retired Illinois circuit judge or retired Illinois appellate judge who is a Member and who is designated from time to time by the Governor is the chairperson of the Board.
- b) Vice Chairman: The Board shall annually elect from its Members a Vice-Chairman. In the absence of the Chairman or in the event of his or her inability or refusal to act, the Vice-Chairman shall perform the duties of the Chairman. In the event of the absence of the Chairman or the Vice-Chairman from a meeting of the Board, or in the event of their inability or refusal to act, the Chairman shall

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designate some Member to act in his or her place and stead, and that designated Member shall have the powers of and be subject to all the restrictions upon the Chairman.

- c) Other Members: Other Members, who are designated from time to time by the Governor, are as follows:
 - 1) a zoning board of appeals member;
 - 2) a planning board member;
 - 3) a mayor or municipal council or board member;
 - 4) a county board member;
 - 5) an affordable housing developer;
 - 6) a housing advocate.
- d) Ex Officio Member: The IHDA Chairman, ex officio, shall serve as a nonvoting Member.
- e) No more than 4 of the appointed Members shall be from the same political party. Appointments under subsections (c)(2), (c)(3), and (c)(4) shall be from Non-Exempt Local Governments.
- f) Initial terms of 4 Members designated by the Governor shall be for 2 years. Initial terms of 3 Members designated by the Governor shall be for one year. Thereafter, Members shall be appointed for 2 years.
- g) A Member shall receive no compensation for his or her services; however, Members shall be reimbursed by the State for all reasonable travel and administrative expenses actually and necessarily incurred in the performance of their official duties.
- h) The Board shall hear all petitions for review filed under the Act and shall conduct hearings in accordance with this Part.

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- i) The principal office of the Board shall be the Offices of IHDA with office hours that are coterminous with the office hours of IHDA. IHDA shall provide space, clerical assistance and other assistance that the Board may require.

Section 395.203 Meetings of the Members

- a) Compliance with Open Meetings Act: All meetings of the Board shall be in compliance with the Illinois Open Meetings Act [5 ILCS 120].
- b) Regular Meetings: The regular meetings of the Board shall be held at the Offices of IHDA, at least quarterly, with the specific dates for the quarterly meetings to be set no later than January 1 of each calendar year. The Board may hold a regular meeting simultaneously at the Office of IHDA and one or more other locations in a Public Building through an interactive video conference if public notice and public access are provided for all meeting locations. Members physically present in those locations shall count towards determining a quorum.
- c) Rescheduled Meetings: A regular meeting of the Board may be rescheduled as determined by the Chairman, in which event notice of the rescheduled meeting shall be given by publication in a newspaper of general circulation in the area in which the Board functions at least 10 days prior to the rescheduled meeting. Notice of the change shall also be posted at the Offices of IHDA and on IHDA's website.
- d) Special Meetings: Special meetings of the Board may be called at any time by the Chairman or upon request of any 2 Members of the Board. Public notice of the special meeting, except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting described in subsection (c), shall be given at least 48 hours before the meeting. Notice of the special meeting shall be posted at the Offices of IHDA and on IHDA's website.
- e) Emergency Meetings: Emergency meetings of the Board may be called at any time by the Chairman or upon request of any two (2) Members of the Board. Public notice of the emergency meeting shall be given as soon as practicable, but in any event, prior to the holding of the meeting.
- f) Notice of Meetings: The Board, through IHDA, shall publish a schedule of its regular meetings by January 1 of each calendar year listing the dates, times and places of the meetings. The schedule shall be posted at the Offices of IHDA and

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on IHDA's website. No notice of regular meetings, as provided for in subsection (b) need be given to any Member. Notice in writing of all special, emergency and rescheduled meetings shall be delivered personally or via electronic mail, or shall be mailed to each Member at his or her business or home address. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the Member, with postage prepaid. Any Member may waive notice of a special, emergency or rescheduled meeting and attendance at the meeting shall constitute a waiver of notice of the meeting except when a Member attends for the express purpose of objecting to the meeting because the meeting was not lawfully called or convened. Neither the business to be transacted, nor the purpose of any regular, rescheduled, special or emergency meeting, need be specified in any notice or waiver of notice of the meeting.

- g) Quorum: A majority of the appointed Members of the Board shall constitute a quorum. A quorum must be physically present at any meeting of the Board. A Member attending a meeting via video conference as provided for in subsection (b) will be considered physically present for the purposes of determining a quorum and voting. The affirmative vote of a majority of the appointed Members shall be necessary for any action taken by or in the name of the Board at any meeting. If less than a quorum is present at a meeting, a majority of the Members present may adjourn the meeting from time to time. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.
- h) Attendance By Means Other Than Physical Presence:
- 1) If a quorum is physically present at a meeting of the Board, a Member may attend the meeting via audio or video conference only if the Member cannot attend because of:
 - A) personal illness or disability;
 - B) employment purposes or other business of the Board;
 - C) a family or other emergency; or
 - D) any other justifiable reason.

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- 2) The Member must notify the Chairman of his or her intention to attend the meeting via audio or video conference at least 48 hours before the meeting unless impracticable. A Member cannot attend more than one regularly scheduled meeting of the Board for that calendar year via audio or video conference unless the Member presents a document from his or her physician attesting to the Member's inability to physically attend a meeting or meetings. If one or more Members attend via audio or video conference, the Board, through IHDA, shall issue a written notice at the meeting stating the names of the Members present by audio or video conference, the electronic means that the Members will use to attend the meeting, and the location of the speakerphone or monitor receiving and transmitting the communications from the Members present by audio or video conference. The Member must then identify himself or herself by name and be recognized by the Chairman or other presiding officer before communicating. The minutes of the meeting shall reflect which Members were physically present and which Members were present via video or audio conference.
- i) Records: A full and complete record shall be kept of all Board proceedings. IHDA shall be the official custodian of the records. Oral proceedings shall be recorded electronically, stenographically or by other means that will adequately ensure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party to a case. Transcription costs, if any, shall be borne by the party requesting the transcript. Other records shall consist of the following:
 - 1) all pleadings, including all notices and responses to those pleadings;
 - 2) a transcript of the hearing, if any;
 - 3) all evidence received;
 - 4) a statement of matters officially noted;
 - 5) any offers of proof, objections and rulings on that proof;
 - 6) any proposed findings;
 - 7) any decision, opinion or report of the Board; and

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- 8) all staff memoranda or data submitted to the Board by IHDA in connection with the consideration of a case before the Board.

Section 395.204 Conduct of the Board

- a) Authority: The Board shall have all the powers necessary and appropriate to conduct a full, fair and impartial hearing, including, but not limited to, the following:
 - 1) to administer oaths and affirmations;
 - 2) to rule upon offers of proof and receive relevant evidence;
 - 3) to issue subpoenas;
 - 4) to provide for discovery and to determine its scope;
 - 5) to regulate the course of the hearing and the conduct of the parties and their counsel;
 - 6) to consider and rule upon procedural requests;
 - 7) to require or hold conferences for the settlement or simplification of the issues;
 - 8) to examine witnesses, direct witnesses to testify, limit the number of times a witness may testify, limit repetitive or cumulative testimony, and set reasonable limits on the amount of time a witness may testify;
 - 9) to ensure that the hearing is conducted in a full, fair and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the hearing;
 - 10) to dismiss appeals in accordance with the Act; and
 - 11) to affirm, reverse or modify the conditions of or add conditions to a decision of an Approving Authority.

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- b) Disqualification of Members of the Board: No person who is a Member of the Board shall engage in practice before the Board in any respect. No person who has been a Member of the Board shall, for one year after termination of membership on the Board, engage in practice before the Board in any respect. No person who has been a Member of the Board shall engage in any practice before the Board in connection with any case or proceeding that was pending during that person's membership with the Board.
- c) Ex Parte Communications:
- 1) Except in the disposition of matters that the Board is authorized to entertain or dispose of on an ex parte basis under the Illinois Administrative Procedure Act [5 ILCS 100], the Board and IHDA staff shall not, with respect to any pending or contested appeal, communicate directly or indirectly in connection with any issue of fact before the Board, with any party or the representative of any party, except upon notice and an opportunity for all parties to participate.
 - 2) An ex parte communication received by any member of the Board or any employee or member of IHDA pertaining to a pending appeal shall be made a part of the record of the pending appeal, 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 for whom the ex parte communication was received.
 - 3) Ex Parte communications prohibited by the Illinois Administrative Procedure Act shall not form the basis of any decision of the Board.
 - 4) Communications regarding matters of practice and procedure, such as the status of appeals, filing requirements, form letters, scheduling of hearings, administrative review, and the like are not considered ex parte communications under this Part.
- d) Contumacious Conduct: Contumacious conduct at any hearing before the Board shall be grounds for exclusion from the hearing. If a witness or a party fails to appear or refuses to answer a question after being directed to do so or refuses to obey an order to provide or permit discovery, the Board may issue orders with regard to the failure to appear or the refusal as are just and appropriate, including,

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but not limited to, excluding the testimony of witnesses, entering an order of default, entering an order that certain facts are deemed admitted for purposes of the proceeding, or entering an order denying the application or complaint of a party.

SUBPART C: APPEALS TO THE BOARD BY
AFFORDABLE HOUSING DEVELOPERS**Section 395.301 Service of Documents**

All Initial Pleadings and all documents in connection with any hearing before the Board under this Subpart shall be served by the party filing the document on the Board and all other parties to the proceedings. Service of any document upon any party may be made personally, by certified or registered mail with return receipt signed by the person or their registered agent, or by private delivery service. If service is made by United States mail, service shall be presumed complete 3 days after mailing, if proof of service shows the document was properly addressed. This presumption may be overcome by the addressee with evidence establishing that the document was not delivered or delivered at a later date. A party's failure to accept or claim a document served by mail shall not be grounds for overcoming the presumption. Proof of service shall be made by affidavit of the person making personal service that includes the name and address of the party served and the date and manner of service, or by a properly executed registered or certified mail receipt.

Section 395.302 Computation of Time

All petitions, evidence, motions and other written correspondence sent by United States mail to the Board shall be considered filed with the Board as of the postmark date in accordance with the Illinois Statute on Statutes [5 ILCS 70/1.25]. Petitions, evidence, motions and all other written correspondence sent to the Board by a delivery service other than the United States mail shall be considered as filed with the Board on the date sent as indicated on the tracking label.

Section 395.303 Parties

- a) Substitution of the Parties: The Board may, on motion, at any time in the course of any proceeding, permit a substitution of parties as justice or convenience may require.
- b) Intervention: The Board may allow any person or persons showing that they may be substantially and specifically affected by the proceedings to intervene as a

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party in the whole or in any portion of the proceedings. The Board may allow any other interested person to participate by presentation of argument orally or in writing or for any other limited purpose, as the Board may order. The Board shall not allow a person to intervene if his or her interests are substantially similar to those of any party and no showing is made that one or more of the parties will not diligently represent those interests. Being a resident, land owner or taxpayer of a city or town, with no other showing of an issue that is not being adequately addressed by one of the parties, shall not be sufficient to sustain intervention.

Section 395.304 Consolidation, Severance and Joinder

Any person entitled to participate in proceedings subject to the Board's jurisdiction may appear as follows:

- a) A natural person may appear on his or her own behalf or by an attorney who is licensed and registered to practice in the State.
- b) A corporation may appear through any officer, employee or representative or by an attorney who is licensed and registered to practice in the State.
- c) Any other person, including Local Governments, Approving Authorities, the State and all of its political subdivisions, may appear through any officer, employee or representative, or by an attorney who is licensed and registered to practice in the State.
 - 1) Attorneys not licensed and registered to practice in the State may request to appear on a particular matter by filing a motion with the Board.
 - 2) An attorney appearing in a representative capacity shall file a separate written notice of appearance with the Board, together with proof of service and notice of filing on all parties.
 - 3) An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Board, together with proof of service and notice of filing on all parties.

Section 395.305 Initial Pleadings by Affordable Housing Developers

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On or after the effective date of this Part, Affordable Housing Developers must submit written Initial Pleadings to the Board and must serve written Initial Pleadings on all other parties within 45 Days after the final action or decision of an Approving Authority to deny an application for an Affordable Housing Development. In the case of Local Governments that are determined by IHDA to be a Non-Exempt Local Government for the first time after 2010, no Affordable Housing Developer shall appeal to the Board until 60 months after the Local Government has been notified of its non-exempt status. An Initial Pleading may be submitted in paper form or on compact disc. An Initial Pleading shall contain 3 copies of the following:

- a) a clear and concise statement of the prior proceedings before all Approving Authorities, including the date of notice of the decision the Affordable Housing Developer is appealing;
- b) a clear and concise statement of the Affordable Housing Developer's objections to the Approving Authority's decision, indicating why the Affordable Housing Developer believes the application to develop Affordable Housing was unfairly denied, which may include an appeal of IHDA's determination of the exempt status of the Local Government as set forth in Section 395.401, or what conditions, if any, were imposed that the Affordable Housing Developer believes were unreasonable;
- c) a clear and concise statement setting forth the relief sought;
- d) the complete name and address of the Affordable Housing Developer for the purpose of service of papers in connection with the appeal;
- e) the name and address of the attorney or attorneys representing the Affordable Housing Developer, if any; and
- f) a complete copy of the application for the Affordable Housing Development, as it was submitted to the Approving Authority, including sufficient information to determine whether the proposal that is the subject of the appeal is Affordable Housing.

Section 395.306 Notice of Appeal

- a) Within 5 Days after the Board has received the Initial Pleading filed by the Affordable Housing Developer, the Board shall send a Notice of Appeal and a courtesy copy of the Initial Pleading to the Approving Authority identified in the

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Initial Pleading. If the Board fails or neglects to send the Notice of Appeal and the courtesy copy of the Initial Pleading to the Approving Authority, the appeal shall proceed and shall not be impaired.

- b) Upon receipt, the Approving Authority shall post the Notice of Appeal in the city or town hall where the Approving Authority is located and on the Approving Authority's website. The Approving Authority shall continue to post the Notice of Appeal for a period of not less than 10 Days. If the Approving Authority fails or neglects to post the Notice of Appeal in the city or town hall where the Approving Authority is located or on the Approving Authority's website, the appeal shall proceed and shall not be impaired.
- c) A Notice of Appeal shall include the following:
 - 1) the time, place and nature of the appeal;
 - 2) the legal authority and jurisdiction under which the hearing is to be held; and
 - 3) a reference to the particular Section of the Act involved.

Section 395.307 Dismissal before Hearing

- a) Within 10 Days after receipt of the Notice of Appeal from the Board, or, if no Notice of Appeal is received by the Approving Authority, within 15 Days after receipt of the Initial Pleading, the Approving Authority may file a motion to dismiss the appeal under the following circumstances:
 - 1) pursuant to Section 20(c) of the Act, the Local Government was determined to be exempt pursuant to Section 20 of the Act in the year in which the appeal was filed. If applicable, the Local Government shall address any allegations by the Affordable Housing Developer, pursuant to Section 395.401, that the determination the Local Government is exempt from the Act is incorrect; or
 - 2) pursuant to Section 30(d) of the Act, the Local Government has adopted an Affordable Housing Plan, has submitted that plan to IHDA within the required time frame, and has submitted documentation to IHDA that evidences the Local Government has met its goal pursuant to Section

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25(b)(iv) of the Act, subject to the written approval of IHDA in its discretion; or

- 3) pursuant to Section 30(e) of the Act, the denial is based upon Non-Appealable Local Government Requirements that are critical to the protection or preservation of the environment.
- b) A motion to dismiss before a hearing shall include the following:
 - 1) a statement explaining why the appeal should be dismissed; and
 - 2) if appropriate, any documents or material supporting the claim.
- c) On the same day that the Approving Authority files a motion to dismiss with the Board, the Approving Authority shall serve a complete copy of the motion to dismiss on the other parties at the address or addresses specified in the Initial Pleading.
- d) If the Approving Authority files a motion to dismiss prior to the hearing, the Affordable Housing Developer may file a rebuttal within 10 Days after the filing of the motion to dismiss, rebutting any of the claims made in the Approving Authority's motion to dismiss.
- e) The Board shall decide the Affordable Housing Developer's rebuttal on the merits. If the Board determines that the Affordable Housing Developer has successfully rebutted the claims made in the Approving Authority's motion to dismiss, the Board shall deny the motion to dismiss and the issues raised in the motion to dismiss and the response shall be questions of fact to be resolved as part of the appeals process; otherwise, the Board may dismiss the appeal and, if dismissed, the Approving Authority shall not be required to file a reply.

Section 395.308 Reply to the Initial Pleading by Approving Authority

- a) If an appeal is not dismissed before the hearing pursuant to Section 395.307, within 15 Days after the Board's decision to deny the motion to dismiss, the Approving Authority shall file a Reply to the Initial Pleading with the Board and shall provide a copy of the Reply to the Initial Pleading to all other parties. If no motion to dismiss is filed, the Approving Authority shall file a Reply to the Initial Pleading with the Board and shall provide a copy of the Reply to the Initial

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Pleading to all other parties within 15 Days after the Notice of Appeal, or, if no Notice of Appeal is received by the Approving Authority, within 20 Days after the Initial Pleading.

- b) The Reply to the Initial Pleading shall include the following:
 - 1) a statement explaining why the application that is the subject of the appeal was denied or conditions were applied, which may include an appeal of IHDA's determination of the non-exempt status of the Local Government under the Act as set forth in Section 395.401. If the Approving Authority denied an application or imposed conditions because it concluded that the Affordable Housing Developer did not comply with all Non-Appealable Local Government Requirements, the Reply to the Initial Pleading must specify the requirements that justify the denial or the imposition of changes; and
 - 2) a record of the vote on the Affordable Housing Developer's application that is the subject of the appeal; and
 - 3) any findings of fact.
- c) The failure to file a Reply to the Initial Pleading shall be deemed a general denial of matters asserted in the Initial Pleading and a waiver of all affirmative defenses.
- d) A party may participate in the hearing without forfeiting any jurisdictional objection, if the objection is made within 15 Days after receipt of the Notice of Appeal, or, if no Notice of Appeal is received by the Approving Authority, within 20 Days after the Initial Pleading. Any party may file a response to the objection within 15 Days after service.

Section 395.309 Prehearing Conferences, Settlement Conferences, Subpoenas and Depositions

- a) Pre-hearing Conferences: The Board may, on its own motion or on motion of any other party to the appeal, set a pre-hearing conference. The Board's decision whether to conduct a pre-hearing conference will be based on the complexity of the appeal, the issues in controversy and the potential for settlement. The Board shall issue a pre-hearing conference order setting forth the matters agreed to and rulings as to disputed matters. The order shall be served concurrently upon all

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parties and the Board shall control the subsequent course of the proceedings. The purpose of the pre-hearing conference shall be to:

- 1) ascertain the positions of the parties;
 - 2) promote the narrowing of witnesses;
 - 3) allow for the admissions of fact and stipulation of evidence;
 - 4) exchange witness lists;
 - 5) aid in the simplification of the evidence and disposition of the proceedings; or
 - 6) reach a compromise settlement agreeable to the parties.
- b) **Settlement Conferences:** At any stage of the appeal and at its direction, the Board may order a settlement conference and require the participation of the parties. Within 15 Days after the beginning of a settlement conference, the parties shall inform the Board in writing whether a settlement was reached. Settlement conferences need not be recorded.
- c) **Subpoenas:** At any stage of the appeal and at its direction, the Board may issue subpoenas requiring the attendance and the giving of testimony by witnesses, or the production of books, papers, records, accounts, memoranda or other materials relevant to the appeal. Subpoenas may be issued either upon the Board's own motion or upon the written request of any party with a showing of the relevancy of the request to the issues in the hearing. In cases in which the Board receives a request for a subpoena, the Board shall grant or deny the request, either in writing or on the record. If any party fails or neglects to appear or testify or produce books, papers and records pursuant to the issuance of a subpoena by the Board, the Board may request the assistance of the Attorney General to invoke the aid of the circuit court within the jurisdiction in which the hearing is being held to request that the party be ordered to appear before the Board to testify or produce the requested evidence.
- 1) **Service:** The movant shall serve the subpoena on the other party or witness if the movant's request for a subpoena is granted. Service of a subpoena must be completed 10 Days before the date of the required appearance or

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production. The movant shall be responsible for payment of the witness fees for attendance, subsistence and mileage at the time the subpoena is served. Witnesses appearing at a hearing pursuant to subpoena are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State, pursuant to Section 4.3 of the Circuit Court Act [705 ILCS 35/4.3]. The movant must tender all fees with the subpoena. A witness appearing at the request of the Board shall submit the subpoena with a voucher when claiming reimbursement.

- 2) Modification: The Board, upon motion made before the time initially specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, oppressive or irrelevant. The Board shall rule upon motions to quash or modify material requested in the subpoena, or denying, limiting or conditioning the production of information when necessary to prevent undue delay, undue expense, harassment or oppression, or to protect materials from disclosure. If the request for a subpoena is denied or modified, the Board shall proceed to conduct the hearing and the reasons for denying or modifying the request shall be made part of the record.
- d) Depositions: Discovery depositions and evidence depositions may be taken of a witness or a party only upon order of the Board, either at its own initiative or upon motion of a party. The Board shall rule on such motions at its discretion. In taking such a deposition, the procedures in Illinois Supreme Court Rules (S.Ct. Rules 201 through 230) shall be followed, except as modified by order of the Board. Discovery depositions shall not be allowed into evidence in any matter before the Board.
- e) Stipulations: At the discretion of the Board, the parties may, by stipulation in writing filed with the Board at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Board need not be bound to any such stipulation.

Section 395.310 Conduct of Hearings

- a) Hearings may begin within 45 Days after the Initial Pleading is filed, unless the Board determines that a settlement conference is underway and is likely to resolve the matters in dispute to the satisfaction of both parties.

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- b) The Affordable Housing Developer shall present its case first, followed by questions from the Board.
- c) The Approving Authority shall present its case second, followed by questions from the Board.
- d) In the event that a Local Government's exempt or non-exempt status under the Act is appealed and the issue has not been disposed of by motion of either of the parties, then, pursuant to Section 395.401, IHDA shall produce all written guidance and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review.
- e) If the Approving Authority has provided evidence that the Affordable Housing Developer's application did not sufficiently address Non-Appealable Local Government Requirements, the Affordable Housing Developer shall be permitted to demonstrate that it proposed preventative or corrective measures that would mitigate the Non-Appealable Local Government Requirements.
- f) If the Affordable Housing Developer has argued that it proposed preventative or corrective measures that would mitigate the Non-Appealable Local Government Requirements, the Approving Authority shall be permitted to present evidence that those measures are inadequate to mitigate the Non-Appealable Local Government Requirements.
- g) Both parties shall be permitted to cross-examine witnesses; however, the scope of any such cross-examination shall be limited to the scope of the direct examination.
- h) Both parties shall be permitted to make closing statements; closing statements shall not include facts not previously introduced.
- i) The Board, upon motion of any Member or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing or to include uncharged allegations supported by the evidence at any time prior to the issuance of the Board's decision and order.

Section 395.311 Motions

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- a) Motions shall be made in writing, unless made during the hearing, at which time the motions may be made orally, on the record. All motions shall set forth the relief or order sought and the legal authority for the action requested. If made in writing, at least 2 copies of all motions shall be filed with the Board, and at least one copy shall be served on each additional party to the hearing.
- b) Within 10 Days, or other period as the Board may require, after service of a written motion or other document, a party may file a response to the motion. The response may include affidavits or other evidence.
- c) A written brief may be filed with a motion or a response to a motion, stating the arguments and authorities relied upon. The brief shall be no longer than 15 pages in length unless, prior to the filing date, leave is granted by the Board to file a brief greater than 15 pages in length.
- d) The Board may allow oral arguments to be heard on a motion.
- e) The Board shall rule upon all motions, except that it shall have no authority to dismiss or decide an appeal on the merits without granting all parties to the proceeding a right to be heard and to establish a record.
- f) The Board will dispose of motions by written order and on notice to all parties.
- g) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.
- h) A party has a right to file an emergency motion setting forth why an emergency exists and the Board may deny the emergency motion solely on the basis that the motion did not demonstrate that an emergency exists or the Board may grant or deny the motion on other grounds.

Section 395.312 Postponement or Continuance of Hearing

Postponement or continuances of hearings shall be granted by order of the Board for good cause shown in writing. Good cause shall be the inability to attend the hearing at the date and time set by the Board for a cause beyond the control of the party, such as the unavoidable absence of a party, his or her attorney or material witness, or the serious illness or death of a witness or party. The Board shall re-set the hearing for a continued case unless the parties request that the Board decide the appeal based on the evidence in the record without a formal hearing.

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Section 395.313 Evidence

- a) A party shall be entitled to present its case by testimonial or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of facts. Testimonial evidence shall be taken only on oath or affirmation. Any cross-examination shall be limited to the scope of the direct examination.
- b) With respect to submissions of evidence, hearings before the Board shall be informal and the technical rules of evidence applied in civil cases in the courts of the State shall not apply; however, those rules may be used as a guide as far as practicable. The lack of application of the rules of evidence shall not impair the competency of evidence.
- c) The Chairman shall have the discretion to determine whether evidence being offered is reliable and whether the evidence should be admitted. The Chairman may exclude evidence that is irrelevant, immaterial or unduly repetitious.
- d) Subject to the requirements of this Subpart, when a hearing will be expedited and the interest of the parties will not be prejudiced, the Chairman may allow evidence to be received in written form.
- e) If a party objects to the admission or rejection of any evidence or to the limitation to the scope of any examination or cross-examination, or to the failure to limit that scope, that party shall state briefly the grounds for the objection. Rulings on all objections shall appear in the record.
- f) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of the fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed, including any memoranda or data prepared by IHDA staff, and the parties shall be afforded an opportunity to contest the facts noticed. The expertise, technical competence and specialized knowledge of the Board and IHDA may be utilized in the evaluation of the evidence.

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- g) Types of Evidence: The Board shall hear evidence only as to matters actually in dispute. Factual areas in which evidence may be heard if it is relevant to issues in dispute include, but are not limited to, the following:
- 1) health, safety and the environment
 - A) structural soundness of the proposed buildings;
 - B) adequacy of sewage arrangements;
 - C) adequacy of water drainage arrangements;
 - D) adequacy of fire protection;
 - E) adequacy of the Affordable Housing Developer's proposed arrangements for dealing with traffic circulation within the site, and feasibility of arrangements that could be made by the city or town for dealing with traffic generated by the proposed housing on adjacent streets;
 - F) proximity of the proposed site to airports, industrial activities or other activities that may affect the health and safety of the occupants of the proposed housing;
 - 2) site and building design
 - A) height, bulk and placement of the proposed housing;
 - B) physical characteristics of the proposed housing;
 - C) height, bulk and placement of surrounding structures and improvements;
 - D) physical characteristics of the surrounding land;
 - E) adequacy of parking arrangements;
 - F) adequacy of open areas, including outdoor recreational areas, proposed within the building site;

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- 3) open space
 - A) availability of existing open spaces in the city or town;
 - B) current and projected utilization of existing open spaces and consequent need, if any, for additional open spaces, by the city or town's population, including occupants of the proposed housing;
 - C) relationship of the proposed site to any city or town open space or outdoor recreation plan officially adopted by the applicable local planning board, and to any official actions to preserve open spaces taken with respect to the proposed site by the town meeting or city council prior to the date of the Affordable Housing Developer's initial submission; the inclusion of the proposed site in the open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the Affordable Housing Developer produces evidence to the contrary;
 - D) relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency;
 - E) current use of the proposed site and of land adjacent to the proposed site;
 - F) inventory of site suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, in the city or town, provided that the Board shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board;
- 4) municipal planning
 - A) a city's or town's master plan, comprehensive plan or community development plan; and
 - B) the results of the city's or town's efforts to implement those plans.

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- 5) The uniform application, or lack thereof, of any impact fees, building permit fees and any other local fees.

Section 395.314 Affordable Housing Developer's Burden of Proof

- a) Denial: Pursuant to Section 30(c) of the Act, in the case of a denial of an Affordable Housing Developer's application, the Affordable Housing Developer bears the burden of demonstrating that the developer is an Affordable Housing Developer and has proposed an Affordable Housing Development. In addition, the Affordable Housing Developer shall demonstrate that:
 - 1) the proposed Affordable Housing Development complies with all Non-Appealable Local Government Requirements and all relevant federal and State statutes and regulations. The Affordable Housing Developer must prove these elements with respect to only those aspects of the project that are in dispute; or
 - 2) Non-Appealable Local Government Requirements or federal or State statutes or regulations have been applied differently to proposals that do not include Affordable Housing; or
 - 3) the Approving Authority has a pattern of denying applications to develop Affordable Housing; or
 - 4) the Approving Authority changed the zoning of an area regarding a specific Affordable Housing Development that, but for the change in zoning, is otherwise able to proceed, or has a pattern of changing zoning of an area in regards to Affordable Housing Developments that, but for the change in zoning, are otherwise able to proceed; or
 - 5) the Approving Authority unreasonably or intentionally delayed its decision regarding a specific Affordable Housing Development that, but for the lack of timely decision by the Approving Authority, is otherwise able to proceed, or has a pattern of unreasonably or intentionally delaying its decisions on applications for Affordable Housing Developments that, but for the lack of timely decisions of the Approving Authority, are otherwise able to proceed; or

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- 6) IHDA's determination that the Local Government is exempt from the Act is incorrect based on the counting protocols set forth in Section 20 of the Act and any written guidance published by IHDA; or
 - 7) any other unreasonable denial of the application for the Affordable Housing Development.
- b) Approval with Conditions: Pursuant to Section 30(c) of the Act, in the case of an approval with conditions, the Affordable Housing Developer bears the burden of demonstrating that the Approving Authority imposed unreasonable conditions on the proposed Affordable Housing Development. To meet this burden, the Affordable Housing Developer must prove the developer is an Affordable Housing Developer that has proposed an Affordable Housing Development. The Affordable Housing Developer must also prove
- 1) the Approving Authority has generally not imposed unreasonable conditions on similar developments; or
 - 2) the conditions are not necessary to further the asserted Approving Authority interest; or
 - 3) less costly conditions can be imposed on the proposed Affordable Housing Development that sufficiently address the asserted Approving Authority's interest.
- c) Notwithstanding the foregoing, if a Non-Exempt Local Government has failed to submit an Affordable Housing Plan as set forth in Section 25 of the Act, the Board shall shift the burden of proof to the Approving Authority and the Approving Authority must demonstrate that it did not unreasonably deny the application for the Affordable Housing Development or that it did not impose unreasonable conditions on the Affordable Housing Development.

Section 395.315 Standard of Proof

The standard of proof for any hearing conducted under this Part shall be the preponderance of the evidence.

Section 395.316 Decision

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- a) The Board shall render a written decision within 120 Days after the Initial Pleading is filed. The written decision shall state the Board's findings of fact and conclusions of law. If the Board cannot reach a final decision within 120 Days after the Initial Pleading is filed, the Board shall continue the matter for a reasonable amount of time that allows the Board to make a final decision, considering the circumstances for the continuation.
- b) The Board shall dismiss the appeal during or after the hearing if, based on all relevant evidence presented, it concludes that:
 - 1) the Local Government was an Exempt Local Government in the year in which the appeal was filed; or
 - 2) the Local Government has adopted an Affordable Housing Plan, has submitted that plan to IHDA within the required time-frame under the Act, and has submitted documentation to IHDA that evidences the Local Government has met its goal to provide Affordable Housing as required by the Act, subject to the written approval of IHDA in its discretion; or
 - 3) the Approving Authority denied the Affordable Housing based upon Non-Appealable Local Government Requirements; or
 - 4) the Approving Authority has met its burden of proof pursuant to Section 395.314(c).
- c) In the case of a denial, if the Board finds that the Affordable Housing Developer has met its burden of proof pursuant to Section 395.314(a), the Board shall vacate the decision of the Approving Authority and shall direct the Approving Authority to issue the appropriate permits to the Affordable Housing Developer.
- d) In the case of conditions imposed by the Approving Authority, if the Board finds that the Affordable Housing Developer has met its burden of proof pursuant to Section 395.314(b):
 - 1) the Board shall direct the Approving Authority to remove any such condition; or
 - 2) if the Board finds that the conditions are unreasonable but can be modified to reasonably protect the health, safety, environmental design, open space,

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and other local concerns, the Board shall direct the Approving Authority to so modify the conditions.

Section 395.317 Enforcement

- a) The Board shall immediately notify the parties of its decision by delivering the decision at the hearing, or by certified or registered mail with return receipt signed by the person or his or her registered agent, or by private delivery service.
- b) In cases in which the Affordable Housing Developer has met its burden of proof as set forth in Section 395.314, the Approving Authority shall carry out the decision and order of the Board within 30 Days after the Board's decision. However, if the Approving Authority can demonstrate that a longer time period is necessary, the Board shall consider a longer time period to carry out the decision of the Board so long as the Approving Authority began to carry out the Board's decision within the initial 30 Day period.
- c) The decision and order of the Board are binding on all parties. The Board shall retain jurisdiction over all Affordable Housing Developments for which it has issued a decision in order to resolve procedural ambiguities and disputes.
- d) The Board may impose penalties on the Local Government or Approving Authority for failure to abide by the Board's decisions within the time limits prescribed in this Part. The penalties include the payment of all costs and attorneys' fees, if any, of the Affordable Housing Developer in connection with the appeal. Notwithstanding the foregoing, the Board may not impose fines, other than the penalties prescribed in this subsection, against the Local Government or Approving Authority for failure to adhere to the Board's decision and order.
- e) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the Board may seek representation by the Attorney General's office, pursuant to the Attorney General Act [15 ILCS 205], and may file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located. If the Board prevails in its complaint, the Approving Authority shall pay all costs and expenses of the Board, including attorneys' fees, in connection with the action.
- f) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the Affordable Housing

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Developer may seek legal representation and file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located. If the Affordable Housing Developer prevails in its complaint, the Approving Authority shall pay all costs and expenses of the Affordable Housing Developer, including attorneys' fees, in connection with the action.

Section 395.318 Motions to Reconsider the Board's Decision

The affected party may file a motion to reconsider with the Board within 14 Days after the Board's decision. The Board shall issue its final decision within 14 Days after the receipt of the motion to reconsider.

Section 395.319 Appeals of the Board's Decision

The final decision and order of the Board, after all motions to reconsider have been exhausted, may be appealed by the party affected by the decision by bringing an action for review in the appellate court for the district in which the Local Government subject to the appeal is located. The appellate court shall use the "clearly erroneous" standard of review in these actions. The action for review shall be filed within 35 days and in all respects shall be in accordance with Section 113 of the Administrative Review Law [735 ILCS 5/3-113].

SUBPART D: APPEALS OF LOCAL GOVERNMENT EXEMPT STATUS

Section 395.401 Appeals of IHDA's Determination of a Local Government's Exempt Status

In connection with an appeal under Subpart C, a Local Government or an Affordable Housing Developer may appeal IHDA's determination of the Local Government's exempt or non-exempt status under the Act to the extent that the appealing party can demonstrate that IHDA's determination was not made in accordance with the counting protocols set forth in Section 20 of the Act and any written guidance published by IHDA. The parties shall introduce evidence to support their positions consistent with the requirements of Subpart C. IHDA shall produce all written guidance and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review. The Board shall review the evidence provided by the parties and by IHDA and shall issue its decision on the matter in connection with the appeal filed under Subpart C. The Board may decide the matter during motion practice before the Board or during the hearing.

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Rules, Definitions
- 2) Code Citation: 92 Ill. Adm. Code 1000
- 3) Section Number: 1000.41 Proposed Action: Amendment
- 4) Statutory Authority: Implementing Section 2-105(c) of the Illinois Vehicle Code [625 ILCS 5/2-105(c)] and authorized by 2-104(b) of the Illinois Vehicle Code [625 ILCS 5/2-104(b)]
- 5) Complete Description of the Subjects and Issues Involved: Implements revisions to 625 ILCS 5/2-105 regarding use of driver service facilities to accept applications for voter registration.
- 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: This rulemaking does not require expenditures by units of local government.
- 12) Time, Place and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Texts of the proposed rulemaking are posted on Secretary of State's web site, www.sos.state.il.us/departments/index/home as part of the *Illinois Register*. Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this Notice to:

Nathan Maddox
Senior Legal Advisor
298 Howlett Building
Springfield, Illinois 62756

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NOTICE OF PROPOSED AMENDMENT

or
nmaddox@ilsos.net
217/785-3094

The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 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: This rulemaking was not included on either of the most recent regulatory agendas because the Department did not anticipate this rulemaking at the time the agendas were filed.

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1000
GENERAL RULES, DEFINITIONS

Section	
1000.10	Definitions
1000.20	Appointment of Subordinates
1000.30	Reciprocity, Prorate and Forced Registration Review Board (Repealed)
1000.40	Offices of the Secretary of State
1000.41	Voter Registration at Driver Services Facilities
1000.50	Forms
1000.60	Certification of Copies of Records
1000.70	Department of Police
1000.80	Enforcement of the Illinois Vehicle Code (Repealed)
1000.90	Hearings (Repealed)
1000.110	Audits and Collections (Repealed)
1000.120	Audit Costs

AUTHORITY: Implementing Section 2-105(c) of the Illinois Vehicle Code [625 ILCS 5/2-105(c)] and authorized by 2-104(b) of the Illinois Vehicle Code [625 ILCS 5/2-104(b)].

SOURCE: Filed and effective December 15, 1970; amended at 6 Ill. Reg. 2239, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 7152, effective May 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11067, effective August 26, 1982; codified at 6 Ill. Reg. 12674; amendment at 6 Ill. Reg. 15040, effective December 1, 1982; amended at 7 Ill. Reg. 13677, effective October 14, 1983; amended at 8 Ill. Reg. 5353, effective April 6, 1984; amended at 9 Ill. Reg. 2326, effective February 1, 1985; amended at 13 Ill. Reg. 5185, effective April 1, 1989; amended at 13 Ill. Reg. 11844, effective July 1, 1989; emergency amendment at 24 Ill. Reg. 1681, effective January 14, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6950, effective April 24, 2000; emergency amendment at 25 Ill. Reg. 9376, effective July 1, 2001, for maximum of 150 days; emergency expired November 27, 2001; amended at 26 Ill. Reg. 12040, effective July 19, 2002; amended at 29 Ill. Reg. 1960, effective January 20, 2005; amended at 34 Ill. Reg. 2755, effective February 2, 2010; amended at 36 Ill. Reg. _____, effective _____.

Section 1000.41 Voter Registration at Driver Services Facilities

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NOTICE OF PROPOSED AMENDMENT

- a) The Secretary of State shall adopt the following definitions for the terms listed as follows:

~~"Compel"—to force, pressure or coerce by physical acts or words or any other means.~~

"Department" – Driver Services Department within the Office of the Secretary of State.

~~"Deputy Registrar"—any person authorized to accept registrations of electors under The Election Code (Ill. Rev. Stat. 1987, ch. 46, par. 1-1 et seq.).~~

"Driver Services Facility" or "Facility" – offices located throughout Illinois for the purpose of issuing driver's licenses and providing to the public other necessary services connected with the Secretary of State's Office.

~~"Harass"—to annoy, threaten or demand.~~

~~"Operational Areas"—write up desk or counter, motor vehicle area, validation area, written exam area, vision screening area, camera area, update area, and other areas designated by the Secretary of State.~~

~~"Partisan Activity"—any behavior which advocates a preference for a particular political party, candidate, or issue.~~

"Secretary of State" – The Secretary of State of Illinois.

- b) Pursuant to Section 1A-25 of the Election Code, the ~~The~~ Department shall make Driver Services Facilities ~~(facilities)~~ available for use as ~~temporary~~ places of accepting applications for voter registration, ~~subject to the availability of space within a facility for such purpose and the non-interference with the operations of the facility if voter registration is allowed, as determined by the Director of the Department. Facilities shall be made available to any person or group that complies with the provisions in subsection (c).~~
- c) Each person applying at a driver services facility for a driver's license or permit, a corrected driver's license or permit, an Illinois identification card or a corrected

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Illinois identification card shall be notified that the person may apply to register to vote at that facility and may also apply to transfer his or her voter registration at the facility to a different address in the State. The notification may be made in writing or verbally, issued by an employee of the Secretary of State.

- e) ~~Groups requesting the use of a facility to register voters shall send a written request along with a civic organization certificate from the Illinois State Board of Elections. Individuals requesting the use of a facility to register voters shall send a written request along with certification from the Illinois State Board of Elections, or other certification from their county clerk or local board of election commissioners certifying their eligibility to register voters. All requests shall be sent to the Secretary of State, Driver Services Department, Field Services Bureau, 2701 South Dirksen Parkway, Springfield, Illinois 62723. The request shall be made at least two (2) weeks prior to the date the person or persons or groups want to use the facility. If competing requests from more than one person or group are received, a rotating schedule shall be established by the Director to provide all such persons or groups an equal opportunity to register voters. Only one person or group will be allowed to register voters on any one day.~~
- d) Facilities shall be available as places of accepting applications for voter registration ~~only during the registration period as determined by the State Election Code, and in no event later than 35 days before each election. Registration shall be allowed~~ during all hours the facility is open for business.
- e) ~~Any persons or groups desiring to register voters in a facility shall provide the following: a sign, at least 12" x 12" in size, posted in front of the registration table, identifying the group and stating that the group is providing a voter registration service that is not affiliated with the Secretary of State, a badge for each Deputy Registrar that includes the Deputy Registrar's name and group affiliation, a table and chairs at which registration is to be conducted, and a signed statement which should be given to the Driver Services Facility Manager prior to setting up the registration tables, relieving the Secretary of State and his employees from any liability which might arise from actions of the Deputy Registrars while the Deputy Registrars are in the facility or on Secretary of State property.~~
- f) ~~Deputy Registrars shall not approach any person for the purpose of voter registration, and shall remain in the immediate vicinity of the registration table when conducting registration activity. Deputy Registrars shall not harass or~~

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~~compel a person to register to vote. Deputy Registrars shall not impede or interfere with the business of the Department.~~

- ~~g) No partisan activity shall be carried out by Deputy Registrars operating at a facility, including advocacy on behalf of any political party, candidate, or issue. No partisan materials shall be distributed by Deputy Registrars, or made available on the facility premises.~~
- ~~h) The location of the registration activity within the facility shall be the decision of the Department to prevent interference with the examination and licensing of applicants. Space constraints shall determine the amount of floor space a Deputy Registrar may use. Deputy Registrars shall not be allowed to enter or conduct activities within "operational areas" of the Driver Services facility. The Facility Manager shall notify the Deputy Registrars which areas within the facility the location of the registration activity must be confined to prior to the Registrar's setting up of the registration tables.~~
- ~~i) Violations of any of the above Sections shall result in the termination of voter registration privileges within Secretary of State Facilities and a denial of future privileges to register voters within Secretary of State Facilities for the person or group responsible for the violation. The decision to deny future privileges shall be made by the Director, Department of Driver Services of the Secretary of State's Office, 2701 South Dirksen Parkway, Springfield, Illinois, 62723.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
300.650	Amend
300.1230	Amend
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: August 30, 2012
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 35 Ill. Reg. 9927; June 24, 2011
- 10) Has JCAR issued a Statement of Objection to this rulemaking? Yes
- 11) Differences between Proposal and Final version: The following changes were made in response to comments received during the 1st Notice or public comment period:
 1. Section 300.687 (Administration of Psychotropic Medications) was removed from, as well as the SUBPART C heading and the listing in the Table of Contents.
 2. In Section 300.1230(k), language concerning waivers from the requirement of 20% registered nurse time was amended and a provision was added stating that counties with a population of 3 million or more were ineligible for waivers. Language concerning waivers for the registered nurse staffing requirement was nullified by PA 97-689, which established a statutory requirement of 10% registered nurse time. The language concerning waivers was removed during the 2nd Notice period.

The following changes were made in response to comments and suggestions of JCAR:

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JCAR objected to, and prohibited the filing of, DPH's rulemaking titled Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 35 Ill. Reg. 9927) because, at that time, the rulemaking required clarification to communicate DPH's requirements to the regulated community and affected Illinois residents. Without this clarification, the rulemaking created a serious threat to the public welfare.

The Department submitted a response to JCAR on May 30, 2012. To meet JCAR's request for clarification of the requirements, the Department met with representatives from the regulated community, advocates for nursing home residents, representatives of nursing home employees, and representatives from the Governor's Office and JCAR. The Department had all affected parties in agreement on the language prior to JCAR's August 14 meeting, at which time the Filing Prohibition was lifted.

1. Section 300.650 was added to the rulemaking, and the following language was inserted: Following the main Source Note, the following was inserted:

SUBPART C: POLICIES

Section 300.650 Personnel Policies

- i) This schedule shall contain the employee's name, job title, job duty (identifying the duty or duties listed in Section 300.1230(f)(1) through (10), if applicable), shift assignment, hours of work, and days off. If an employee works in two different job duties during the same week, specifically including those job duties listed in Section 300.1230(f), if applicable, the facility shall separately state the hours of work for each job duty
 - j) Time spent in scheduled breaks and scheduled in-service training when staff are not providing direct care shall be documented.
2. In Section 300.1230(a), definitions of "direct care," "skilled care," and "intermediate care" were inserted.
 3. In Section 300.1230(b), the first sentence was revised to refer to "direct care" staff rather than "nursing care" and the second sentence was stricken.
 4. In Section 300.1230 (c), nursing care was changed to "direct care staff".

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5. In Section 300.1230 (d), new language concerning the number of direct care staff was inserted.
6. Section 300.1230 (d) was stricken.
7. In Section 300.1230 (e), in the first line, "ratios" was changed to "staffing requirements".
8. In Section 300.1230 (f), after "include", new language concerning job duties and employee time schedules was inserted.
9. Section 300.1230(h) was revised to refer to direct care and subsection (h)(2) was stricken.
10. In Section 300.1230 (j), "and Intermediate" was added after "Skilled". "For the purpose of this subsection, "nursing care" and "personal care" mean direct care provided by staff listed in subsection (f)." was added before the stricken text.
11. Section 300.1230 (k) was changed to add statutory language from PA 97-689 concerning the percentage of care time provided by licensed nurses and by registered nurses. Subsections (k)(1) through (4), which were added during the 1st Notice period, were deleted.
12. In the subsection "l)n", delete "l" and delete all the underscored text, and re-letter the remaining subsections accordingly.
13. In Section 300.1230 (l) (previously (m)(o)), subsection (2) and subsections (l)(3) and (4) were amended to reference "direct care".
14. Subsections (l)(4) and (l)(5) were changed to reflect changes from PA 97-689 concerning care time provided by nurses.
15. In subsection (l)(5), after "provide", inserted "direct care and as long as nursing care is provided in accordance with the Nurse Practice Act" and struck the rest.
16. In subsection (l)(6), after "shift.", a new sentence was inserted to clarify calculation of staff time.
17. Subsection (p) was reinstated and relabeled as subsection (m).

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In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.

- 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? No
- 14) Are there any proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
300.670	Amend	36 Ill. Reg. 11894; July 27, 2012
300.690	Amend	36 Ill. Reg. 11894; July 27, 2012
300.610	Amend	36 Ill. Reg. 12209; Aug. 3, 2012

- 15) Summary and Purpose of Rulemaking: The Skilled Nursing and Intermediate Care Facilities Code regulates the staffing requirements for Skilled Nursing facilities and Intermediate Care facilities, including the staff ratios for both licensed and non-licensed direct care staff. Public Act 96-1372, passed by the General Assembly in 2010, overhauled many elements of care in the Nursing Home Care Act [210 ILCS 45]. Among the changes was an updated methodology for computing staff-to-resident ratios, especially direct care staff. The amendments to Section 300.1230 (Staffing), including changing its name to "Direct Care Staffing," implement this portion of PA 96-1372. Due to the passage of PA 97-689 while these amendments were in Second Notice, the Department added statutory requirements that 25% of the direct care staff be licensed nurses and that 10 percent of the direct care staff be registered nurses. Section 300.650 (Personnel Policies) was added and changed to bolster the amendments to 300.1230.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, 5th Floor
Springfield, Illinois 62761

e-mail: dph.rules@illinois.gov
217/782-2043

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
300.277	Administrative Warning
300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties (Repealed)
300.286	Notice of Penalty Assessment; Response by Facility

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300.287	Consideration of Factors for Assessing Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators (Repealed)
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening and Request for Resident Criminal History Record Information
300.620	Admission, Retention and Discharge Policies
300.624	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
300.625	Identified Offenders
300.626	Discharge Planning for Identified Offenders
300.627	Transfer of an Identified Offender
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.651	Whistleblower Protection
300.655	Initial Health Evaluation for Employees
300.660	Nursing Assistants
300.661	Health Care Worker Background Check
300.662	Resident Attendants
300.663	Registry of Certified Nursing Assistants
300.665	Student Interns
300.670	Disaster Preparedness
300.680	Restraints

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300.682	Nonemergency Use of Physical Restraints
300.684	Emergency Use of Physical Restraints
300.686	Unnecessary, Psychotropic, and Antipsychotic Drugs
300.690	Incidents and Accidents
300.695	Contacting Local Law Enforcement
300.696	Infection Control

SUBPART D: PERSONNEL

Section	
300.810	General
300.820	Categories of Personnel
300.830	Consultation Services
300.840	Personnel Policies

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section	
300.1010	Medical Care Policies
300.1020	Communicable Disease Policies
300.1025	Tuberculin Skin Test Procedures
300.1030	Medical Emergencies
300.1035	Life-Sustaining Treatments
300.1040	Care and Treatment of Sexual Assault Survivors
300.1050	Dental Standards
300.1060	Vaccinations

SUBPART F: NURSING AND PERSONAL CARE

Section	
300.1210	General Requirements for Nursing and Personal Care
300.1220	Supervision of Nursing Services
300.1230	<u>Direct Care</u> Staffing
300.1240	Additional Requirements

SUBPART G: RESIDENT CARE SERVICES

Section	
300.1410	Activity Program

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- 300.1420 Specialized Rehabilitation Services
- 300.1430 Work Programs
- 300.1440 Volunteer Program
- 300.1450 Language Assistance Services

SUBPART H: MEDICATIONS

Section

- 300.1610 Medication Policies and Procedures
- 300.1620 Compliance with Licensed Prescriber's Orders
- 300.1630 Administration of Medication
- 300.1640 Labeling and Storage of Medications
- 300.1650 Control of Medications

SUBPART I: RESIDENT AND FACILITY RECORDS

Section

- 300.1810 Resident Record Requirements
- 300.1820 Content of Medical Records
- 300.1830 Records Pertaining to Residents' Property
- 300.1840 Retention and Transfer of Resident Records
- 300.1850 Other Resident Record Requirements
- 300.1860 Staff Responsibility for Medical Records
- 300.1870 Retention of Facility Records
- 300.1880 Other Facility Record Requirements

SUBPART J: FOOD SERVICE

Section

- 300.2010 Director of Food Services
- 300.2020 Dietary Staff in Addition to Director of Food Services
- 300.2030 Hygiene of Dietary Staff
- 300.2040 Diet Orders
- 300.2050 Meal Planning
- 300.2060 Therapeutic Diets (Repealed)
- 300.2070 Scheduling Meals
- 300.2080 Menus and Food Records
- 300.2090 Food Preparation and Service
- 300.2100 Food Handling Sanitation

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300.2110 Kitchen Equipment, Utensils, and Supplies

SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section

300.2210 Maintenance
300.2220 Housekeeping
300.2230 Laundry Services

SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

300.2410 Furnishings
300.2420 Equipment and Supplies
300.2430 Sterilization of Equipment and Supplies

SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

Section

300.2610 Codes
300.2620 Water Supply
300.2630 Sewage Disposal
300.2640 Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section

300.2810 Applicability of these Standards
300.2820 Codes and Standards
300.2830 Preparation of Drawings and Specifications
300.2840 Site
300.2850 Administration and Public Areas
300.2860 Nursing Unit
300.2870 Dining, Living, Activities Rooms
300.2880 Therapy and Personal Care
300.2890 Service Departments
300.2900 General Building Requirements
300.2910 Structural

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- 300.2920 Mechanical Systems
- 300.2930 Plumbing Systems
- 300.2940 Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section

- 300.3010 Applicability
- 300.3020 Codes and Standards
- 300.3030 Preparation of Drawings and Specifications
- 300.3040 Site
- 300.3050 Administration and Public Areas
- 300.3060 Nursing Unit
- 300.3070 Living, Dining, Activities Rooms
- 300.3080 Treatment and Personal Care
- 300.3090 Service Departments
- 300.3100 General Building Requirements
- 300.3110 Structural
- 300.3120 Mechanical Systems
- 300.3130 Plumbing Systems
- 300.3140 Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section

- 300.3210 General
- 300.3220 Medical Care
- 300.3230 Restraints (Repealed)
- 300.3240 Abuse and Neglect
- 300.3250 Communication and Visitation
- 300.3260 Resident's Funds
- 300.3270 Residents' Advisory Council
- 300.3280 Contract With Facility
- 300.3290 Private Right of Action
- 300.3300 Transfer or Discharge
- 300.3310 Complaint Procedures
- 300.3320 Confidentiality
- 300.3330 Facility Implementation

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SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section

300.3410	Application of Other Sections of These Minimum Standards (Repealed)
300.3420	Administrator (Repealed)
300.3430	Policies (Repealed)
300.3440	Personnel (Repealed)
300.3450	Resident Living Services Medical and Dental Care (Repealed)
300.3460	Resident Services Program (Repealed)
300.3470	Psychological Services (Repealed)
300.3480	Social Services (Repealed)
300.3490	Recreational and Activities Services (Repealed)
300.3500	Individual Treatment Plan (Repealed)
300.3510	Health Services (Repealed)
300.3520	Medical Services (Repealed)
300.3530	Dental Services (Repealed)
300.3540	Optometric Services (Repealed)
300.3550	Audiometric Services (Repealed)
300.3560	Podiatric Services (Repealed)
300.3570	Occupational Therapy Services (Repealed)
300.3580	Nursing and Personal Care (Repealed)
300.3590	Resident Care Services (Repealed)
300.3600	Record Keeping (Repealed)
300.3610	Food Service (Repealed)
300.3620	Furnishings, Equipment and Supplies (New and Existing Facilities) (Repealed)
300.3630	Design and Construction Standards (New and Existing Facilities) (Repealed)

SUBPART R: DAYCARE PROGRAMS

Section

300.3710	Day Care in Long-Term Care Facilities
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SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section

300.4000	Applicability of Subpart S
300.4010	Comprehensive Assessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S

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- 300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4030 Individualized Treatment Plan for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4040 General Requirements for Facilities Subject to Subpart S
- 300.4050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart S
- 300.4060 Discharge Plans for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4070 Work Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4080 Community-Based Rehabilitation Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4090 Personnel for Providing Services to Persons with Serious Mental Illness for Facilities Subject to Subpart S

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF
HEALTHCARE AND FAMILY SERVICES'
DEMONSTRATION PROGRAM FOR PROVIDING
SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- 300.6000 Applicability of Subpart T
- 300.6005 Quality Assessment and Improvement for Facilities Subject to Subpart T
- 300.6010 Comprehensive Assessments for Residents of Facilities Subject to Subpart T
- 300.6020 Reassessments for Residents of Facilities Subject to Subpart T
- 300.6030 Individualized Treatment Plan for Residents of Facilities Subject to Subpart T
- 300.6040 General Requirements for Facilities Subject to Subpart T
- 300.6045 Serious Incidents and Accidents in Facilities Subject to Subpart T
- 300.6047 Medical Care Policies for Facilities Subject to Subpart T
- 300.6049 Emergency Use of Restraints for Facilities Subject to Subpart T
- 300.6050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart T
- 300.6060 Discharge Plans for Residents of Facilities Subject to Subpart T
- 300.6070 Work Programs for Residents of Facilities Subject to Subpart T
- 300.6080 Community-Based Rehabilitation Programs for Residents of Facilities Subject to Subpart T
- 300.6090 Personnel for Providing Services to Residents of Facilities Subject to Subpart T
- 300.6095 Training and Continuing Education for Facilities Subject to Subpart T

SUBPART U: ALZHEIMER'S SPECIAL CARE UNIT OR CENTER PROVIDING

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CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIA

Section

300.7000	Applicability
300.7010	Admission Criteria
300.7020	Assessment and Care Planning
300.7030	Ability-Centered Care
300.7040	Activities
300.7050	Staffing
300.7060	Environment
300.7070	Quality Assessment and Improvement
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300.APPENDIX A	Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities (Repealed)
300.APPENDIX B	Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
300.APPENDIX C	Federal Requirements Regarding Patients'/Residents' Rights (Repealed)
300.APPENDIX D	Forms for Day Care in Long-Term Care Facilities
300.APPENDIX E	Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
300.APPENDIX F	Guidelines for the Use of Various Drugs
300.APPENDIX G	Facility Report
300.TABLE A	Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities
300.TABLE B	Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities
300.TABLE C	Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities
300.TABLE D	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective

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December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective

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August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14, 2011; amended at 35 Ill. Reg. 11419, effective June 29, 2011; expedited correction at 35 Ill. Reg. 17468, effective June 29, 2011; amended at 36 Ill. Reg. 14090, effective August 30, 2012.

SUBPART C: POLICIES

Section 300.650 Personnel Policies

- a) Each facility shall develop and maintain written personnel policies that are followed in the operation of the facility. These policies shall include, at a minimum, each of the requirements of this Section.
- b) Employee Records
 - 1) Employment application forms shall be completed for each employee and kept on file in the facility. Completed forms shall be available to Department personnel for review.
 - 2) Individual personnel files for each employee shall contain date of birth; home address; educational background; experience, including types and places of employment; date of employment and position employed to fill in this facility; and (if no longer employed in this facility) last date employed and reasons for leaving.
 - 3) Individual personnel files for each employee shall also contain health records, including the initial health evaluation and the results of the tuberculin skin test required under Section 300.655, and any other

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pertinent health records.

- 4) Individual personnel records for each employee shall also contain records of evaluation of performance.
- c) Prior to employing any individual in a position that requires a State license, the facility shall contact the Illinois Department of Professional Regulation to verify that the individual's license is active. A copy of the license shall be placed in the individual's personnel file.
- d) The facility shall check the status of all applicants with the [Health Care WorkerNurse Aide](#) Registry prior to hiring.
- e) All personnel shall have either training or experience, or both, in the job assigned to them.
- f) Orientation and In-Service Training
 - 1) All new employees, including student interns, shall complete an orientation program covering, at a minimum, the following: general facility and resident orientation; job orientation, emphasizing allowable duties of the new employee; resident safety, including fire and disaster, emergency care and basic resident safety; and understanding and communicating with the type of residents being cared for in the facility. In addition, all new direct care staff, including student interns, shall complete an orientation program covering the facility's policies and procedures for resident care services before being assigned to provide direct care to residents. This orientation program shall include information on the prevention and treatment of decubitus ulcers and the importance of nutrition in general health care.
 - 2) All employees, except student interns shall attend in-service training programs pertaining to their assigned duties at least annually. These in-service training programs shall include the facility's policies, skill training and ongoing education to enable all personnel to perform their duties effectively. The in-service training sessions regarding personal care, nursing and restorative services shall include information on the prevention and treatment of decubitus ulcers. In-service training concerning dietary services shall include information on the effects of diet

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in treatment of various diseases or medical conditions and the importance of laboratory test results in determining therapeutic diets. Written records of program content for each session and of personnel attending each session shall be kept.

- g) Employees shall be assigned duties that are directly related to their functions, as identified in their job descriptions. Exceptions ~~Execeptions~~ may be made in emergencies.
- h) Personnel policies shall include a plan to provide personnel coverage for regular staff when they are absent.
- i) Every facility shall have a current, dated weekly employee time schedule posted where employees may refer to it. This schedule shall contain the employee's name, job title, job duty (identifying the duty or duties listed in Section 300.1230(f)(1) through (10), if applicable), shift assignment, hours of work, and days off. If an employee works in two different job duties during the same week, specifically including those job duties listed in Section 300.1230(f), if applicable, the facility shall separately state the hours of work for each job duty. The schedule shall be kept on file in the facility for one year after the week for which the schedule was used.
- j) Time spent in scheduled breaks and scheduled in-service training when staff are not providing direct care shall be documented.

(Source: Amended at 36 Ill. Reg. 14090, effective August 30, 2012)

SUBPART F: NURSING AND PERSONAL CARE

Section 300.1230 Direct Care Staffing

- a) For the purposes of this Section, the following definitions shall apply:
 - 1) Direct care is the provision of nursing care or personal care as defined in Section 300.330, therapies, and care provided by staff listed in subsection (f).
 - 2) Skilled care is skilled nursing care, continuous skilled nursing

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observations, restorative nursing, and other services under professional direction with frequent medical supervision.

- 3) Intermediate care is basic nursing care and other restorative services under periodic medical direction.
- b) The number of staff who provide direct care who are needed at any time in the facility ~~Staffing~~ shall be based on the needs of the residents, and shall be determined by figuring the number of hours of direct care ~~nursing time~~ each resident needs on each shift of the day. ~~This determination shall be made separately for both licensed and nonlicensed nursing personnel. (A, B)~~
- cb) ~~If In a facility whose~~ residents participate in regularly scheduled therapeutic programs outside the facility, such as school or sheltered workshops, the minimum hours per day of direct care staffing in the facility ~~nursing care~~ are reduced for the hours the residents are not in the facility ~~proportionately~~. ~~Exceptions to the shift distribution will be allowed if more than 50% of the residents are regularly scheduled to be out of the facility, but the total required hours must be provided daily. For example: an ICF resident requires 1.75 hours of care per day, but attends a workshop for six hours five days a week. The resident's required minimum hours of care is reduced by 25% in calculating staffing hours required on week days.~~
- de) Each facility shall provide minimum direct care staff by: ~~It is the responsibility of each facility to determine the staffing needed to meet the needs of its residents.~~
- 1) Determining the amount of direct care staffing needed to meet the needs of its residents; and
- 2) Meeting the minimum direct care staffing ratios set forth in this Section.
- d) ~~In determining the level of care a resident needs, the patient evaluation system in Medical Review/Utilization Review program may be used. The facility may use other methods of determining skilled and intermediate level residents, but must make the method of determination used available to the Department. Residents whose care is reimbursed by the State shall be at the level determined by the Medical Review/Utilization Review patient evaluation system.~~
- e) ~~The designations used for shifts in the following tables are used for illustrative~~

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~~purposes only, and are not meant to imply that other shift designations cannot be used by the facility.~~

- e)f) ~~The direct care staffing requirements in this Section~~ The following figures apply to the number ~~numbers~~ of persons actually on duty and not to the number ~~numbers~~ of persons scheduled to be on duty.
- f)g) For the purpose of computing staff to resident ratios, direct care staff shall include the following, as long as the person is assigned to duties consistent with the identified job title and documented in employee time schedules as required by Section 300.650(i): ~~The director of nursing's time shall not be included in staffing ratios.~~
- 1) registered nurses;
 - 2) licensed practical nurses;
 - 3) certified nurse assistants;
 - 4) psychiatric services rehabilitation aides (see Section 300.4090);
 - 5) rehabilitation and therapy aides;
 - 6) psychiatric services rehabilitation coordinators (see Section 300.4090);
 - 7) assistant directors of nursing;
 - 8) 50% of the Director of Nurses' time;
 - 9) 30% of the Social Services Directors' time (Section 3-202.05 of the Act);
and
 - 10) licensed physical, occupational, speech and respiratory therapists.
- g) Facilities subject to Subpart S may utilize specialized clinical staff, as defined in Section 300.4090, to count towards the staffing ratios. (Section 3-202.05(a) of the Act)
- h) ~~Level of Care Determinations~~

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~~1) When differences of~~The following figures are also considered to be minimum requirements, and each facility, except those of 250 or more occupied beds, shall provide at least the amount of staffing indicated. ~~However, it is recognized that there may be occasional differences of~~ opinion occur between facility staff and Department surveyors regarding the ~~level of~~ care an individual resident may require. ~~When such differences occur~~, the surveyor shall determine whether ~~or not~~ the resident is receiving appropriate care. If the resident is receiving appropriate care, the surveyor ~~will~~shall accept the facility's ~~level of care~~ determination ~~of in determining~~ the number of direct care~~nursing~~ hours ~~to be provided by~~ the facility shall provide.

~~2) Facilities of more than 250 occupied beds must meet the staff resident ratio for the 250 residents needing the highest level of care. Additional staff shall be provided to meet resident needs as determined by the facility and verified by the Department. The Department may, based upon the Department's Patient Care Evaluation System review of resident care, require the facility to provide additional nursing hours to meet resident needs.~~

~~i) In computing the number of persons needed in the following examples, any figure less than .25 will be dropped from the computation and any figure of .75 or higher will go to the next higher number. Figures in between .25 and .75 will require at least the amount of coverage indicated: for example, .25 will require two hours of coverage; .3 will require two hours of coverage; .5 will require four hours of coverage; .6 will require five hours of coverage; .74 will require six hours of coverage; .75 or higher will require eight hours of coverage.~~

~~j) These additional hours may be provided by: a part-time person working those hours only on that shift each day; a full-time person working a shift that spans two regular shifts—for example from noon to 8 P.M.; or by an additional full-time person on the shift. However, these figures are minimal staffing requirements, and it is recommended that a full-time person be provided.~~

~~i)k) The facility shall schedule nursing personnel so in such a manner that the nursing needs of all residents are met. ~~At least 40% of the minimum required hours shall be on the day shift, at least 25% of the minimum required hours shall be on the evening shift, and at least 15% of the minimum required hours shall be on the night shift.~~~~

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- ~~j)h~~ **Skilled Nursing and Intermediate Care**
~~For the purpose of this subsection, "nursing care" and "personal care" mean direct care provided by staff listed in subsection (f). Residents needing skilled nursing care may only be cared for in facilities licensed as Skilled Nursing Facilities. Each resident needing skilled care shall be provided at least 2.5 hours of nursing personal care each day, of which 20% must be licensed nurse time. (A, B)~~
- ~~1) *Effective July 1, 2010, for each resident needing skilled care, a minimum staffing ratio of 2.5 hours of nursing and personal care each day must be provided; for each resident needing intermediate care, 1.7 hours of nursing and personal care each day must be provided.*~~
 - ~~2) *Effective January 1, 2011, the minimum staffing ratios shall be increased to 2.7 hours of nursing and personal care each day for a resident needing skilled care and 1.9 hours of nursing and personal care each day for a resident needing intermediate care.*~~
 - ~~3) *Effective January 1, 2012, the minimum staffing ratios shall be increased to 3.0 hours of nursing and personal care each day for a resident needing skilled care and 2.1 hours of nursing and personal care each day for a resident needing intermediate care.*~~
 - ~~4) *Effective January 1, 2013, the minimum staffing ratios shall be increased to 3.4 hours of nursing and personal care each day for a resident needing skilled care and 2.3 hours of nursing and personal care each day for a resident needing intermediate care.*~~
 - ~~5) *Effective January 1, 2014, the minimum staffing ratios shall be increased to 3.8 hours of nursing and personal care each day for a resident needing skilled care and 2.5 hours of nursing and personal care each day for a resident needing intermediate care. (Section 3-202.05(d) of the Act)*~~
- ~~k)m~~ *Effective September 12, 2012, a minimum of 25% of nursing and personal care time shall be provided by licensed nurses, with at least 10% of nursing and personal care time provided by registered nurses. Registered nurses and licensed practical nurses employed by a facility in excess of these requirements may be used to satisfy the remaining 75% of the nursing and personal care time requirements. (Section 3-202.05(e) of the Act)*
~~Intermediate Nursing Care—General~~

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~~Residents needing intermediate care may be cared for in facilities licensed as either Skilled Nursing Facility or Intermediate Care Facility. Each resident needing intermediate care shall be provided at least 1.7 hours of nursing/personal care each day, of which at least 20% must be licensed nurse time. (A, B)~~

- n) ~~Intermediate Nursing Care—Light~~
~~A Long-term care resident needing light intermediate care is one who needs personal care as defined in Section 1-120 of the Act; is mobile; requires some nursing services; needs a program of social services and activities directed toward independence in daily living skills; and needs daily monitoring. Each resident needing light intermediate care shall be provided with at least one hour of nursing/personal care each day, of which at least 20% must be licensed nurse time. (A, B)~~
- l)e) ~~To~~In order to determine the numbers of direct care~~nursing~~ personnel needed to staff any facility, the following procedures shall be used:
- 1) The facility shall determine the number of residents needing skilled or~~general~~ intermediate,~~and light intermediate or sheltered~~ care.
 - 2) The number of residents in each category of the three categories shall be multiplied by the overall hours of direct care coverage~~needed~~ each day for each category.
 - 3) Adding the hours of direct care needed for the residents in each category of the three categories will give the total hours of direct care needed by all residents in the facility.
 - 4) ~~Multiplying the total hours needed each day by the percentages assigned to each shift will give the total minimum hours of care that must be provided on that shift. (Remember that the percentages assigned to each shift must total 100% each day.)~~
 - 4)5) Multiplying the total minimum hours of direct care needed ~~on each shift~~ by 25~~20~~% will give the minimum amount of licensed nurse time that shall~~must~~ be provided during a 24-hour period. Multiplying the total minimum hours of direct care needed by 10% will give the minimum amount of registered nurse time that shall be provided during a 24-hour period.

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5)6) Additional Direct Care Hours Equal to at Least 75% of the Minimum Required

The remaining ~~75~~80% of the minimum required ~~direct care~~nursing hours ~~may of care can~~ be fulfilled by other staff identified in subsection (f) either nursing assistants or licensed nursing personnel as long as it can be documented that they provide direct care and as long as nursing care is provided in accordance with the Nurse Practice Act ~~restorative/ rehabilitative nursing measures, general nursing care, and personal care as defined in Section 300.1210.~~

6)7) The amount of time determined in subsections (l)subsection (45) and (56) is expressed in hours. Dividing the total number of hours needed by the number of hours each person works per shift (usually 7.5 or 8seven and one half or eight hours) will give the number of persons needed to staff each shift. Calculations shall not include time for scheduled breaks or scheduled in-service training. The number of residents used to calculate staff ratios shall be based on the facility's midnight census.

m)p) Example of Staffing Calculations

1) Following is an example of this computation assuming a 100-bed Skilled Nursing Facility that which has 25 residents needing skilled care and 75 residents needing, 50 general intermediate care and 25 light intermediate residents, and assuming that the identified needs of the residents have led the facility to assign assigning 45% of the staff to the day shift; 35% to the evening shift and 20% to the night shift.

2) Under the subsection (j) requirements for January 1, 2014, staffing Staffing would be computed as follows:

A) Total Minimum Hours of Care Needed

Level of Care	# of Residents		Total Hrs. Needed/Day Per Resident	=	Total Hrs. Needed/Day Per Facility
Skilled	25	[times]	<u>3.82.5</u>	=	<u>95.062.5</u>
<u>Intermediate</u>	<u>75</u>	<u>[times]</u>	<u>2.5</u>	<u>≡</u>	<u>187.5</u>

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General ICF	50	[times]	1.7	=	85.0
Light ICF	25	[times]	1.0	=	25.0
Total hours needed					<u>282.5</u> 172.5

B) Minimum Total Hours Needed Per Shift

Shift	Total Hrs. Per Day		Minimum Percent		Total Hrs. Needed
7-3	282.5 <u>172.5</u>	[times]	45%	=	127.125 <u>77.6</u>
3-11	282.5 <u>172.5</u>	[times]	35%	=	98.875 <u>60.4</u>
11-7	282.5 <u>172.5</u>	[times]	20%	=	56.500 <u>34.5</u>
			100%		<u>282.500</u> 172.5

C) Licensed Nurse Time Per Shift Coverage

Shift	Minimum Hrs. Per Shift		Minimum Percent		Minimum <u>Lic.</u> Nurse <u>Hrs.</u> <u>Hours</u> Required
7-3	127.125 <u>77.6</u>	[times]	25 <u>20</u> %	=	31.781 <u>15.5</u>
3-11	98.875 <u>60.4</u>	[times]	25 <u>20</u> %	=	24.719 <u>12.1</u>
11-7	56.500 <u>34.5</u>	[times]	25 <u>20</u> %	=	14.125 <u>6.9</u>

D) Licensed Nurses Required

Shift	Minimum Nurse Hrs. Required		Hrs. Worked Per Shift		# of <u>Lic.</u> <u>Licensed</u> Nurses Needed
<u>7-3</u>	31.781 <u>15.5</u>	[divided by]	8	=	3.973 <u>1.93</u> (-2)
<u>3-11</u>	24.719 <u>12.1</u>	[divided by]	8	=	3.090 <u>1.51</u> (-1.5)
<u>11-7</u>	14.125 <u>6.9</u>	[divided by]	8	=	1.766 <u>0.86</u> (-1)

E) Registered Nurse Time

<u>Shift</u>	<u>Minimum</u> <u>Registered</u>	<u>Minimum</u> <u>Percent</u>	<u>Minimum</u> <u>Registered</u>
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	<u>Nurse Hrs. Per Shift</u>				<u>Nurse Hrs. Required</u>
<u>7-3</u>	<u>127.125</u>	<u>[times]</u>	<u>10%</u>	<u>=</u>	<u>12.712</u>
<u>3-11</u>	<u>98.875</u>	<u>[times]</u>	<u>10%</u>	<u>=</u>	<u>9.887</u>
<u>11-7</u>	<u>56.500</u>	<u>[times]</u>	<u>10%</u>	<u>=</u>	<u>5.650</u>

F) Registered Nurses Required

<u>Shift</u>	<u>Minimum Registered Nurse Hrs. Required</u>		<u>Hrs. Worked Per Shift</u>		<u># of Registered Nurses Needed</u>
<u>7-3</u>	<u>12.712</u>	<u>[divided by]</u>	<u>8</u>	<u>=</u>	<u>1.589</u>
<u>3-11</u>	<u>9.887</u>	<u>[divided by]</u>	<u>8</u>	<u>=</u>	<u>1.236</u>
<u>11-7</u>	<u>5.650</u>	<u>[divided by]</u>	<u>8</u>	<u>=</u>	<u>.706</u>

GE) Additional Direct Care Hours* ~~Nurse Aide/Orderly Coverage~~

<u>Shift</u>	<u>Minimum Total Nurse Hrs. Needed Per Shift Required</u>		<u>Lic. Nurse Time Hrs. Worked Per Shift</u>		<u># of Additional Direct Care Staff Hrs.*Nurses Needed</u>
<u>7-3</u>	<u>127.125</u> 77.6	<u>[minus]</u>	<u>31.781</u> 15.6	<u>=</u>	<u>95.344</u> 62.1
<u>3-11</u>	<u>98.875</u> 60.4	<u>[minus]</u>	<u>24.719</u> 12.1	<u>=</u>	<u>74.156</u> 48.3
<u>11-7</u>	<u>56.500</u> 34.5	<u>[minus]</u>	<u>14.125</u> 6.9	<u>=</u>	<u>42.375</u> 27.6

HF) Additional Direct Care Staff* ~~Nurse Aides/Orderlies~~ Required

<u>Shift</u>	<u>Minimum Additional Direct Care Hrs. Required</u>		<u>Hrs. Worked Per Shift</u>		<u># of Additional Direct Care Staff*Aides Needed</u>
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7-3	<u>95.344</u> 62.1	[divided by]	8	=	<u>11.918</u> 7.76 (8)
3-11	<u>74.156</u> 48.3	[divided by]	8	=	<u>9.270</u> 6.03 (6)
11-7	<u>42.375</u> 27.6	[divided by]	8	=	<u>5.300</u> 3.45 (3.5)

* See subsection (l)(5).

(Source: Amended at 36 Ill. Reg. 14090, effective August 30, 2012)

CHIEF PROCUREMENT OFFICER FOR THE
DEPARTMENT OF TRANSPORTATION

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Chief Procurement Officer for the Department of Transportation – Contract Procurement
- 2) Code Citation: 44 Ill. Adm. Code 6
- 3) Illinois Register citation to Notice of Proposed Rules: 35 Ill. Reg. 16052; October 7, 2011
- 4) Illinois Register citation to Notice of Adopted Rules: 36 Ill. Reg. 230; January 6, 2012
- 5) Explanation: When the Request for Expedited Correction was published in the August 31, 2012 *Illinois Register* at 36 Ill. Reg. 13725, the Notice Page under # 3, Section Numbers, listed the Table of Contents, Source Note and Subpart Headers instead of just Section Numbers. These items should have been set out in # 6, Summary and Purpose of the Expedited Correction. Also, Section Source Notes were inadvertently omitted from the text of the Part, the new Subpart K should have been cited as originally adopted as Subpart J, and Subpart Headers that appeared in the text did not include the most recent changes.

JCAR regrets the confusion and these errors.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Register Citation of Emergency Rule: 36 Ill. Reg. 10326; July 13, 2012
- 4) Register Citation of JCAR Objection: 36 Ill. Reg. 13735; Aug. 31, 2012
- 5) Explanation: The Section number cited in the header to the Statement of Objection to Emergency Rule was incorrect. The Objection was to Section 148.190(a)(2) of the emergency rule. JCAR regrets this error.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF THE JOINT COMMITTEE
ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill Adm. Code 120
- 3) Section Number: 120.80(a) Proposed Action:
Modification
- 4) Date Originally Published in the Illinois Register: July 13, 2012; 36 Ill. Reg. 10253
- 5) JCAR Statement of Objection Published in the Illinois Register: August 31, 2012; 36 Ill. Reg. 13733
- 6) Summary of Action Taken by the Agency: At its meeting on August 14, 2012, the Joint Committee on Administrative Rules objected to the Department of Healthcare and Family Services' (Department) SMART (PA 97-689) emergency rule titled Medical Assistance Programs (89 Ill. Adm. Code 120; 36 Ill. Reg. 10253) because it allows the Department to determine outside of rule the approved provider types that may participate in the Department's Recipient Restriction Program.

This rule identifies recipients who overutilize providers and restricts them to certain providers. This rule increases efficiencies and decreases the amount of fraud in Department programs. The Department agrees to modify language to address JCAR's as follows:

- "a) The Recipient Restriction Program (RRP) shall identify recipients who unnecessarily utilize medical services. When the Department determines, on the basis of statistical norms and the medical judgment of individual practitioners and/or pharmacists, or other providers that a Medicaid recipient has received medical services that are not medically necessary based on the recipient's diagnoses and/or medical condition or conditions or in such a manner as to constitute an abuse of medical privileges or Program services, the decision to restrict a recipient to one or more primary provider types will be made. For purposes of this Section, "primary provider type" means ~~a provider type as determined by the Department~~ an individual practitioner in any of the following licensed or certified health care professions: physician, optometrist, chiropractor, pharmacist, dentist, any advanced practice nurse, registered nurse, licensed practical nurse, genetic counselor, physical therapist, speech therapist, psychologist, audiologist, occupational therapist, podiatrist, or physician assistant.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF THE JOINT COMMITTEE
ON ADMINISTRATIVE RULES

A primary provider type also means a business entity, partnership or group practice comprised of or employing any of the individual practitioners listed above. A primary provider type can also mean any of the following: hospice provider, home health agency, transportation provider, community health agency, imaging service, optical company, optician, optometrist, independent laboratory, clinical social worker, Department of Alcohol and Substance Abuse provider, durable medical equipment provider, provider of medical equipment and supplies, psychiatric rehabilitation facility, case management provider, behavioral health professional provider, a provider of services authorized under a federal Medicaid waiver, or any other provider of medical assistance programs authorized under the Illinois Public Aid Code or its administrative rules. The RRP applies to all medical assistance programs administered by the Department with the exception of full risk Managed Care Organizations (MCO)."

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION TO AND SUSPENSION OF
THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill Adm. Code 140
- 3) Section Number: 140.442(e)(4) Proposed Action:
Modification
- 4) Date Originally Published in the Illinois Register: July 20, 2012; 36 Ill. Reg. 11329
- 5) JCAR Statement of Objection and Suspension Published in the Illinois Register: August 31, 2012; 36 Ill. Reg. 13736
- 6) Summary of Action Taken by the Agency: At its meeting on August 14, 2012, the Joint Committee on Administrative Rules (JCAR) voted to object to and suspend Section 140.442(e)(4) of the Department of Healthcare and Family Services' emergency rule titled Medical Payment (89 Ill. Adm. Code 140; 36 Ill. Reg. 11329) because the inclusion of antibiotics in the exemption from prior approval was not required by the SMART Act (PA 97-689) and was contrary to public policy because of SMART Act's extraordinary rulemaking authority.

The rule in its entirety requires prior approval for prescriptions when a recipient has received four prescription drugs in the preceding 30-day period. This rule is designed to promote patient safety, decrease fraud, increase efficiencies and is, thus, sound public policy. The Department included antibiotics as an exempt class because they are mostly inexpensive and are overwhelmingly prescribed for short-term acute conditions in need of immediate treatment. Inclusion in the rule was seen as sound medical policy and consistent with the fiscal underpinnings of the SMART Act provision. Notwithstanding, in this SMART emergency rulemaking, the Department agrees to remove antibiotics from the list of drugs exempted from prior approval. Accordingly, Section 140.442(e) shall read as follows:

- "e) The Department may require prior approval prior to reimbursement for a prescription drug if the patient for whom the drug is prescribed has already received four prescription drugs in the preceding 30-day period. For purposes of subsection (d) of this Section, prescription drugs in the following therapeutic classes shall not count towards the limit of four prescription drugs and shall not be subject to prior approval requirements because a patient has received four prescription drugs in the preceding 30 days:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION TO AND SUSPENSION OF
THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Antiretrovirals;
- 2) Antineoplastics; and
- 3) Anti-Rejection Drugs; and
- 4) Antibiotics."

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF THE JOINT COMMITTEE
ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill Adm. Code 148
- 3) Section Number: 148.190(a)(2) Proposed Action:
Modification
- 4) Date Originally Published in the Illinois Register: July 13, 2012; 36 Ill. Reg. 10326
- 5) JCAR Statement of Objection Published in the Illinois Register: August 31, 2012; 36 Ill. Reg. 13735
- 6) Summary of Action Taken by the Agency: At its meeting on August 14, 2012, the Joint Committee on Administrative Rules (JCAR) objected to the Department of Healthcare and Family Services' (Department) SMART emergency rule titled Hospital Services (89 Ill. Adm. Code 148; 36 Ill. Reg. 10326) because this provision is contrary to Section 5-4.1 of the Public Aid Code that states that no co-payment shall be charged for emergency room encounters for medical emergencies.

The SMART Act (PA 97-689) authorized the Department to implement copayments on services to the maximum extent allowed under federal law. However, copayments for emergency room encounters for medical emergencies were not modified under the SMART Act. In the emergency rules, the Department erroneously inserted a copayment for an Emergency Level II service in an emergency room. The following modification to Section 148.190(a)(2) will correct this error.

- "2) Non-emergency services defined as ~~Emergency Level II and~~ Non-emergency/Screening Level in 148.140 (b) rendered in an emergency room may require a nominal copayment amount as defined in federal regulations at 42 CFR 447.50 et seq., which for federal fiscal year 2012 is \$3.65. Individuals identified in 89 Ill. Adm. Code 140.402 (d)(1) and (d)(2) are subject to this copayment."

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF THE JOINT COMMITTEE
ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill Adm. Code 140
- 3) Section Number: 140.443(h) Proposed Action:
Modification
- 4) Date Originally Published in the Illinois Register: July 20, 2012; 36 Ill. Reg. 11329
- 5) JCAR Statement of Objection Published in the Illinois Register: August 31, 2012; 36 Ill. Reg. 13734
- 6) Summary of Action Taken by the Agency: At its meeting on August 14, 2012, the Joint Committee on Administrative Rules (JCAR) objected to Section 140.443(h) of the Department of Healthcare and Family Services' (Department) SMART emergency rule titled Medical Payment (89 Ill. Adm. Code 140; 36 Ill. Reg. 11329) stating that the rule was adopted using SMART Act's (PA 97-689) unique emergency rulemaking authority, SMART Act limited nursing homes to a 14 day prescription supply limit, but not other long term care facilities, and that inclusion of other long term care facilities was not required by the SMART Act.

This rule is designed to increase efficiencies and reduce waste in alignment with Medicare. There is no statutory or regulatory definition of nursing homes that would prohibit the inclusion of all long term care facilities in this SMART emergency rulemaking. Notwithstanding, the Department agrees to modify language to address JCAR's objection as follows:

- "h) Effective January 1, 2013, brand-name, solid, oral drugs dispensed to clients residing in any facility that provides medical group care services as defined in Section 140.500, except intermediate care facilities for the mentally retarded (ICF/MR), must be dispensed in 14-day supplies. Exceptions: Solid oral doses of antibiotics and drugs that are dispensed in their original container as indicated in the Food and Drug Administration Prescribing Information or are customarily dispensed in their original packaging to assist patients with compliance (for example, oral contraceptives), may be dispensed in days' supplies greater than 14 days."

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF RESPONSE TO AN OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3) Section Number: 300.1230 Proposed Action: Amend
- 4) Date Notice of Proposed Rules Published in the Register: 35 Ill. Reg. 9927; June 24, 2011
- 5) Date JCAR Statement of Objection Published in the Register: 36 Ill. Reg. 4460; March 23, 2012
- 6) Summary of Action Taken by the Agency: The Joint Committee on Administrative Rules objected to, and prohibited the filing of, the Department of Public Health's rulemaking titled Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 35 Ill. Reg. 9927) because, at that time, the rulemaking required clarification to communicate DPH's requirements to the regulated community and affected Illinois residents. Without this clarification, the rulemaking created a serious threat to the public welfare.

The Department submitted a response to JCAR on May 30, 2012. To meet JCAR's request for clarification of the requirements, the Department met with representatives from the regulated community, advocates for nursing home residents, representatives of nursing home employees, and representatives from the Governor's Office and JCAR. The Department had all affected parties in agreement on the language prior to JCAR's August 14 meeting, at which time the filing prohibition was lifted.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PUBLIC INFORMATION

1. Statute requiring agency to publish information concerning proposed changes in methods and standards for establishing medical assistance payment rates for hospital services in the Illinois Register: 5 ILCS 100/5-70(c)
2. Summary of information: The Illinois Department of Healthcare and Family Services HFS, at the request of the Illinois Department of Human Services (DHS), propose changes to the methods and standards by which certain services are reimbursed under the Illinois Medicaid program. These changes are being made in order to assure that reimbursement for services rendered by the class of providers are consistent with the State's fiscal year 2013 budget while maintaining access to necessary medical services. Unless otherwise noted, these changes become effective on or after October 1, 2012.

Home and community-based services. HFS proposes to modify the Community Integrated Living Arrangements (CILA) funding model used to calculate rates for people served in 60D CILAs. Following are the proposed changes:

- Increase the percentage of fringe benefit allowance funded by the CILA Individual Rate Determination Model from twenty to twenty-five percent of wages calculated for Direct Service Personnel (DSP), Qualified Intellectual Disabilities Professionals (QIDP), Supervisor, Registered Nurses (RN) and Licensed Practical Nurses (LPN).
- Add a fringe benefit allowance of twenty-five percent to the DSP calculation for funding of Substitute Staff wages.

It is estimated these changes will result in an increase of annualized State expenditures of \$15.0 million.

3. Name and address of person to contact concerning this information:

Any interested party may submit comments, data, views, or arguments concerning these proposed changes in reimbursement methods and standards. All comments must be in writing and should be addressed to:

Bureau of Program and Reimbursement Analysis
Division of Medical Programs
Healthcare and Family Services
201 South Grand Avenue East
Springfield, Illinois 62763-0001

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PUBLIC INFORMATION

E-mail address: bpra@illinois.gov

Interested persons may review these proposed changes on the Internet at <http://www.hfs@illinois.gov/publicnotice>. Local access to the Internet is available through any local public library. In addition, this material may be viewed at the DHS local offices (except in Cook County). In Cook County, the changes may be reviewed at the Office of the Director, Illinois Department of Healthcare and Family Services, 401 South Clinton Street, Chicago, Illinois. The changes may be reviewed at all offices Monday through Friday from 8:30 a.m. until 5:00 p.m. This Notice is being provided in accordance with federal requirements found at 42 CFR 447.205.

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 28, 2012 through September 4, 2012 and have been scheduled for review by the Committee at its September 11, 2012 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>
10/11/12	<u>Illinois Workers' Compensation Commission,</u> Miscellaneous (50 Ill. Adm. Code 7110)	3/2/12 36 Ill. Reg. 3164	9/11/12
10/11/12	<u>Illinois Worker's Compensation Commission,</u> Alcohol and Drug Sample Collection and Testing (50 Ill. Adm. Code 9140)	6/15/12 36 Ill. Reg. 8626	9/11/12

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 36, Issue 37 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

11 - 1800	14032
47 - 395	14050
92 - 1000	14084

ADOPTED RULES

77 - 300	8/30/2012	14090
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**OTHER INFORMATION REQUIRED BY
LAW TO BE PUBLISHED IN THE
ILLINOIS REGISTER**

89 - 120	14119
89 - 140	14121
89 - 148	14123
89 - 140	14124
77 - 300	14125

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