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May 30, 2014 Volume 38, Issue 22

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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 2014

Issue#	Rules Due Date	Date of Issue
1	December 23, 2013	January 3, 2014
2	December 30, 2013	January 10, 2013
3	January 6, 2014	January 17, 2014
4	January 13, 2014	January 24, 2014
5	January 21, 2014	January 31, 2014
6	January 27, 2014	February 7, 2014
7	February 3, 2014	February 14, 2014
8	February 10, 2014	February 21, 2014
9	February 18, 2014	February 28, 2014
10	February 24, 2014	March 7, 2014
11	March 3, 2014	March 14, 2014
12	March 10, 2014	March 21, 2014
13	March 17, 2014	March 28, 2014
14	March 24, 2014	April 4, 2014
15	March 31, 2014	April 11, 2014
16	April 7, 2014	April 18, 2014
17	April 14, 2014	April 25, 2014
18	April 21, 2014	May 2, 2014

19	April 28, 2014	May 9, 2014
20	May 5, 2014	May 16, 2014
21	May 12, 2014	May 23, 2014
22	May 19, 2014	May 30, 2014
23	May 27, 2014	June 6, 2014
24	June 2, 2014	June 13, 2014
25	June 9, 2014	June 20, 2014
26	June 16, 2014	June 27, 2014
27	June 23, 2014	July 7, 2014
28	June 30, 2014	July 11, 2014
29	July 7, 2014	July 18, 2014
30	July 14, 2014	July 25, 2014
31	July 21, 2014	August 1, 2014
32	July 28, 2014	August 8, 2014
33	August 4, 2014	August 15, 2014
34	August 11, 2014	August 22, 2014
35	August 18, 2014	August 29, 2014
36	August 25, 2014	September 5, 2014
37	September 2, 2014	September 12, 2014
38	September 8, 2014	September 19, 2014
39	September 15, 2014	September 26, 2014
40	September 22, 2014	October 3, 2014
41	September 29, 2014	October 10, 2014
42	October 6, 2014	October 17, 2014
43	October 14, 2014	October 24, 2014
44	October 20, 2014	October 31, 2014
45	October 27, 2014	November 7, 2014
46	November 3, 2014	November 14, 2014
47	November 10, 2014	November 21, 2014
48	November 17, 2014	December 1, 2014
49	November 24, 2014	December 5, 2014
50	December 1, 2014	December 12, 2014
51	December 8, 2014	December 19, 2014
52	December 15, 2014	December 26, 2014

Editor's Note: The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from May 1, 2014 until July 1, 2014.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Electronic Prescription Monitoring Program
- 2) Code Citation: 77 Ill. Adm. Code 2080
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
2080.20	Amendment
2080.50	Amendment
2080.70	Amendment
2080.100	Amendment
2080.190	Amendment
2080.210	Amendment
2080.220	New Section
2080.230	New Section
2080.240	New Section
2080.250	New Section
- 4) Statutory Authority: Implementing and authorized by Sections 316, 317, 318, 319, 320 and 321 of Article III of the Illinois Controlled Substances Act [720 ILCS 570/316, 317, 318, 319 320 and 321]
- 5) A Complete Description of the Subjects and Issues involved: This rulemaking is necessary to make several updates that will comply with the provisions of State and federal Controlled Substance Acts, PA 97-0334, PA 96-1372 and 21 CFR Parts 1300, 1301, 1304, 1306 and 1311, 1312, 1313 and 305 ILCS 5/5-2.12 (DPH).
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Pharmacies
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory agenda on which this rulemaking was summarized: July, 2013

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH

CHAPTER X: DEPARTMENT OF HUMAN SERVICES

SUBCHAPTER e: CONTROLLED SUBSTANCES ACTIVITIES

PART 2080

ELECTRONIC PRESCRIPTION MONITORING PROGRAM

Section

2080.10	Authority
2080.20	Incorporation by Reference and Definitions
2080.30	General Description
2080.40	Official Triplicate Prescription Blanks (Repealed)
2080.50	Authorized Prescribers
2080.60	Application (Repealed)
2080.70	Schedule II, III, IV and V Drug Prescription Requirements
2080.80	Prohibited use of the Official Triplicate Prescription Blank (Repealed)
2080.90	Dispensing a Schedule II, III, IV or V Drug
2080.100	Dispenser Responsibility
2080.110	Partial filling of prescriptions (Repealed)
2080.120	Emergency situations (Repealed)
2080.130	Prescriptions from out-of-state prescribers and exempt Federal practitioners (Repealed)
2080.140	Exemptions for prescribers in hospitals and institutions (Repealed)
2080.150	Exemptions for long term care and home infusion services (Repealed)
2080.160	Exemptions for narcotic treatment programs (Repealed)
2080.170	Exemptions for research (Repealed)
2080.180	Investigatory and regulatory referrals (Repealed)
2080.190	Reports
2080.200	Prescriber and Dispenser Inquiry System
2080.210	Access to the Prescription Information Library (PIL)
2080.211	Other State Prescription Monitoring Authority Access
2080.220	Error Reporting
2080.230	Designated Controlled Substances
2080.240	Mid-Level Practitioners Prescriptive Authority Reporting
2080.250	Mailing of Controlled Substances

AUTHORITY: Implementing and authorized by Sections 316, 317, 318, 319, 320 and 321 of Article III of the Illinois Controlled Substances Act [720 ILCS 570/316, 317, 318, 319, 320 and 321].

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SOURCE: Adopted at 10 Ill. Reg. 4497, effective March 3, 1986; amended at 17 Ill. Reg. 11424, effective July 6, 1993; amended at 20 Ill. Reg. 3107, effective February 2, 1996; recodified from the Department of Alcoholism and Substance Abuse to the Department of Human Services at 21 Ill. Reg. 9319; amended at 26 Ill. Reg. 3975, effective March 4, 2002; amended at 33 Ill. Reg. 17333, effective December 9, 2009; amended at 38 Ill. Reg. _____, effective _____.

Section 2080.20 Incorporation by Reference and Definitions

No incorporations by reference in this Part include any later amendments or editions. The definitions that apply to this Part are those found in the Act.

"Act" means the Illinois Controlled Substances Act [720 ILCS 570].

"Account Custodian" means the licensed healthcare professional whose registration may be used by other members of the healthcare group for access to the PIL.

"Birth Date" means medication recipient's birth date.

"Central Repository" means a place designated by the Department where Schedule II, III, IV and V drug data is stored or housed.

"Clinical Director" means a Department of Human Services administrative employee licensed to either prescribe or dispense controlled substances who shall run the clinical aspects of the Department of Human Services Prescription Monitoring Program and its Prescription Information Library [720 ILCS 570/102 (d-5)].

"Controlled Substance" means:

a drug, substance, or immediate precursor in the Schedules of Article II of the Illinois Controlled Substances Act [720 ILCS 570/102(f)]; or

a drug or other substance, or immediate precursor, designated as a controlled substance by the Department through administrative rule. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in the Liquor Control Act [235 ILCS 5]

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and the Tobacco Products Tax Act [35 ILCS 143].

"DEA Number" means the United States Drug Enforcement Agency prescriber or dispenser registration number.

"Department" or "DHS" means the Illinois Department of Human Services, or its successor agency.

"DFPR" means the Illinois Department of Financial and Professional Regulation.

"Dispenser" means any practitioner that dispenses a controlled substance to an alternative user or research subject by or pursuant to the lawful order of a prescriber [720 ILCS 570/102(p) and (q)].

"DPH" means the Illinois Department of Public Health.

"Electronic Device" means using a computer system to transmit prescriptions from a prescriber directly to a dispenser.

"Exempt Prescribers in Hospitals and Institutions" means prescribers in hospitals or institutions licensed under the Hospital Licensing Act [210 ILCS 85] who authorize the administration or dispensing of Schedule II drugs within the hospital or institution, for consumption within the hospital or institution.

"Facsimile Equipment" means any device capable of sending or receiving ~~facsimiles~~faesimile of documents through connection with a telecommunications network.

"Freestanding Clinic" means Urgent Care operations or outpatient surgery centers and similar operations that do not provide overnight in-house stays.

"Illinois Controlled Substances License Number" means the State license number issued by DFPR~~the Department of Financial and Professional Regulation~~ permitting prescribers to possess, prescribe or dispense, and permitting dispensers to possess and dispense, controlled substances in Illinois pursuant to the Controlled Substances Act (see 77 Ill. Adm. Code 3100).

"Illinois Healthcare License Number" means the license assigned by DPH to facilities designated to provide specific types or levels of healthcare.

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"Licensed Healthcare Entity" means those operations that are licensed to provide health services by either DPH or DFPR.

"Licensed Healthcare Provider" means any individual who meets the professional licensing requirements and follows the standards set forth by DFPR and is authorized to prescribe or dispense controlled substances within Illinois.

"Licensed Professional Administrator" means the clinical director of the Prescription Monitoring Program, who must be licensed to either prescribe or dispense controlled substances.

"Medication Shopping" means the conduct prohibited under Section 314.5(a) of the Act.

"Mid-level Practitioner" means:

a physician assistant who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to practice medicine in all of its branches, in accordance with Section 7.5 of the Physician Assistant Practice Act of 1987 [225 ILCS 95];

an advanced practice nurse who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to practice medicine in all of its branches or by a podiatrist, in accordance with Section 65-40 of the Nurse Practice Act [225 ILCS 65]; or

an animal euthanasia agency.

"National Drug Code Identification Number" or "NDC Identification Number" means the number used to provide uniform product identification for all substances recognized as drugs in the United States Pharmacopoeia National Formulary, USP31-NF26 (US Pharmacopoeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852 (2008)).

"Patient ID" means the identification of the individual receiving the medication or the responsible individual obtaining the medication on behalf of the recipient or the owner of the animal. The standards for establishing ~~patient~~Patient ID for the purpose of proper filling of a prescription are established by Section 2080.70(d).

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"Patient Location Code" means the location of the patient when receiving pharmacy services.

"Pharmacist-In-Charge" means the licensed pharmacist whose name appears on the pharmacy license and who is responsible for all aspects of the operation related to the practice of pharmacy.

"Pharmacy Shopping" means the conduct prohibited under Section 314.5(b) of the Act.

"Prescribed" means ordered by a prescriber ~~either~~ verbally, electronically or in writing.

"Prescriber" means the healthcare professional that is authorized to prescribe medications as set forth in the various professional practices of the State of Illinois.

"Prescription Information Library" or "PIL" means an electronic library a ~~database~~ containing 12~~six~~ months of controlled substance, retail, prescription information that is accessible only by prescribers and dispensers for patient treatment usage [720 ILCS 570/102(nn-5)].

"Prescription Monitoring Program" or "PMP" means the entity that collects, tracks, and stores reported data on controlled substances and select drugs [720 ILCS 570/102(nn-10)].

"Prescription Monitoring Program Advisory Committee" or "PMPAC" means a committee consisting of licensed healthcare providers representing all professions that are licensed to prescribe or dispense controlled substances. The committee serves in a consultant context regarding longitudinal evaluations of compliance with evidence based clinical practice and controlled substances. The committee makes recommendations regarding scheduling of controlled substances and recommendations concerning continuing education designed to improve the health and safety of the citizens of Illinois regarding pharmacotherapies of controlled substances.

"Push Reports" means the electronic exchange of patient specific health care information contained in electronic medical records from the PMP, without the

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requirement of the individual clinician having to "sign" into the PMP and request the patient information.

"Quantities of a Controlled Substance Dispensed" means the total of an NDC product dispensed whether it is in a solid unit such as a tablet or capsule, in a liquid unit such as milliliters, or in another unit as specified within the product identification.

"Recipient's Name" means the given or common name of a person who is the intended user of a dispensed medication. It may also mean the species or common name or common given name of an animal that is the intended user of a dispensed medication. If an animal's name is entered, the owner's name is required also.

"Sample Trend Analysis" means the summary reports that look at utilization rates for specific classes of medications over time.

"Schedule Drug" means any substances listed in the federal Controlled Substances Act (21 USC 812) or the Illinois Controlled Substances Act [720 ILCS 570] or by the Department pursuant to its authority under Section 202 of the Illinois Controlled Substances Act [720 ILCS 570/202]. Schedule I, II, III, IV and V substances are listed in section 812 of the federal Controlled Substances Act (21 USC 812(b)(2), (b)(3), (b)(4), (b)(5) and (c)) and Sections 204, 206, 208, 210 and 212 of the Illinois Controlled Substances Act [720 ILCS 570/204, 206, 208, 210 and 212].

"Schedule II, III, IV or V Drug" means any drug listed as a federal Schedule II, III, IV or V drug (21 USC 812(b)(2), (b)(3), (b)(4), (b)(5) and (c)) or listed as an Illinois Schedule II, III, IV or V drug by statute [720 ILCS 570/206, 208, 210 and 212] or rule.

"Sex" means the medication recipient's gender, ~~sex~~ if the recipient is a human.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.50 Authorized Prescribers

A prescription for a Schedule II, III, IV or V drug shall be issued only by a prescriber who:

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- a) Possesses a valid professional license issued by ~~the Illinois Department of Financial and Professional Regulation (DFPR)~~ as a physician licensed to practice medicine in all of its branches, dentist, optometrist, podiatrist, veterinarian, nurse practitioner with delegated prescriptive authority, physician assistant with delegated prescriptive authority or other licensed prescriber of another state or jurisdiction; ~~and~~
- b) Is licensed to prescribe Schedule II, III, IV and V drugs by the State of Illinois or any state; ~~and~~
- c) Must be registered by the United States Drug Enforcement Administration (DEA) to prescribe Schedule II, III, IV and V drugs; ~~and-~~
- d) Complies with all requirements under 21 CFR 1306.08 and 21 CFR 1311.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.70 Schedule II, III, IV and V Drug Prescription Requirements

- a) A dispenser may fill a prescription for a Schedule II, III, IV or V drug upon receipt of a written, electronic, facsimile or verbal order of a physician unless otherwise specifically exempted or allowed by federal or State law.
- b) A prescription for a Schedule II, III, IV or V drug shall:
 - 1) ~~Be If written, be~~ dated as of and signed on the day when issued;
 - 2) Bear the full name and address of the patient, or in the case of veterinary treatment, the full name and address of the animal owner, as well as the species or common name of the animal being treated;
 - 3) Bear the full name and address of the prescriber;
 - 4) Bear the DEA Registration number of the prescriber;
 - 5) Have affixed to the face of the prescription the prescriber's electronic or handwritten signature, initials, thumbprint or other biometric or electronic identification process approved by DFPR pursuant to Section 3 of the Pharmacy Practice Act [225 ILCS 85];

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- 5) ~~If written, be signed by the prescriber in the same manner as the prescriber would sign a check or legal document;~~
 - 6) If written, be written in ink with a pen, typewriter or computer printer or with an indelible pencil;
 - 7) Specify the drug name, strength, dosage and form;
 - 8) Specify the quantity of drug to be dispensed, both written and numeric;
 - 9) Not allow a Schedule II prescription to be filled more than ~~90~~seven days after the date of issue;
 - 10) ~~Not allow more than a 30 day supply of a Schedule II drug on any one prescription;~~
 - 11) ~~Not allow for any refills of Schedule II drugs;~~
 - 12)10) Contain only one Schedule II drug prescription order per prescription blank;
 - 13)11) Limit the maximum time allowed for a Schedule III, IV or V prescription to be filled at six months with a maximum of five refills; ~~and~~
 - 14)12) Allow more than one prescription order per prescription blank for a Schedule III, IV or V drug;-
 - 15) ~~Allow electronic prescriptions in accordance with federal rules set forth in 21 CFR 1300, 1304, 1306, 1311 [720 ILCS 570/311.5]; and~~
 - 16) ~~Allow an individual physician the authority to prescribe multiple prescriptions (3 sequential 30-day supplies) for the same Schedule II controlled substance, authorizing up to a 90-day supply [720 ILCS 570/312(a-5)].~~
- c) In the case of an emergency, a prescriber may issue a lawful oral prescription, ~~when~~where failure to issue might result in loss of life or intense suffering. The oral prescription shall include a statement concerning the circumstances

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constituting the emergency for which the oral prescription was used. Within 7 days after issuing an emergency prescription, the prescriber shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. The prescription shall comply with all [requirements of Section aspects enumerated in 720 ILCS 570/309 of the Act](#).

d) Patient ID for Proper Filling:

- 1) The sex field is a verifying element of a patient ID. [The patient's gender shall](#)~~It needs to~~ be entered in the sex field.
- 2) The birth date is a verifying element of a patient ID and needs to be entered in the birth date field [\(yyyy,mm,dd\)](#).
- 3) The final verifying element of a patient ID for an animal or individual is not a set standard. Each pharmacy or chain [may](#)~~will~~ adopt its own standard. The concern is that if a standard is too rigid, the enterprise's business activity will suffer. Any of the following may be used. If the primary choice is not available, another choice may be used:-
 - A) Driver's license or equivalent, state issued ID;
 - B) Telephone number of the patient's residence (include area code);
 - C) An internal pharmacy ID system;
 - D) Employer ID;
 - E) Student ID;
 - F) Insurance ID; or
 - G) Social Security number. There is a privacy issue with this ID, and it is not recommended for use.
- 4) If a child's or other person's prescription is delivered to or accepted by a person other than the intended user, an ID should verify the name of the individual accepting the prescription.

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.100 Dispenser Responsibility

- a) Each time a Schedule II, III, IV or V drug or other selected drugs, as described in Section 2080.230, is dispensed, the dispenser must transmit, not more than 7 days after dispensing, to the central repository the following data, or any other data deemed necessary by the PMPAC~~information~~:
- 1a) Dispenser DEA number.
- 2) Dispenser full name and address.
- 3)b) Recipient's (or animal and owner's) name and address.
- 4)e) ~~National drug code (NDC)~~ identification number of the Schedule II, III, IV or V drug dispensed.
- 5)d) Quantity of the Schedule II, III, IV or V drug dispensed.
- 6)e) Date prescription filled.
- 7)f) Date prescription written.
- 8)g) Prescriber DEA number.
- 9) Prescriber full name and address.
- 10)h) Patient ID.
- 11)i) Patient sex (1 for male, 2 for female or 3 for animal).
- 12)j) Patient birth date (yyyymmdd – year, month, day).
- 13) Date dispensed.
- 14) Payment type (i.e., Medicaid, cash, third-party insurance).
- 15) Patient location code (i.e., home, nursing home, outpatient, etc.).

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- b) For hospitals licensed under the Hospital Licensing Act [210 ILCS 85], any discharge or outpatient prescription exceeding a 72 hour quantity must be reported to the PMP central repository within 7 days after dispensing (may be reported more frequently). The report shall contain the following data or any other data deemed necessary by the PMPAC:
- 1) Dispenser DEA number.
 - 2) Dispenser name and address.
 - 3) Recipient's (or animal and owner's) name and address.
 - 4) NDC identification number of the Schedule II, III, IV or V drug dispensed.
 - 5) Quantity of the Schedule II, III, IV or V drug dispensed.
 - 6) Date prescription filled.
 - 7) Date prescription written.
 - 8) Prescriber DEA number.
 - 9) Prescriber name and address.
 - 10) Patient ID.
 - 11) Patient sex (1 for male, 2 for female or 3 for animal).
 - 12) Patient birth (yyyyymmdd – year, month, day).
 - 13) Date dispensed.
 - 14) Payment type (i.e., Medicaid, cash, third-party insurance).
 - 15) Patient location code (i.e., home, nursing home, outpatient, etc.).

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- c) Failure to comply with the reporting requirements may result in fines of up to \$100 per day, per patient, per medication.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.190 Reports

- a) For the purpose of intervention to prevent misuse, a prescriber or dispenser may request that reports about his or her patients be sent to them via a secure method if a patient meets the current PMP indications of potential misuse criteria set forth by the PMPAC.
- b) A personal information report of a patient's prescription profile may be obtained if:
- 1) The patient, parent or guardian completes a notarized request; and
 - 2) The patient, parent or guardian submits the notarized request by mail to the PMP at:

Illinois Prescription Monitoring Program
401 North 4th Street, First Floor
Springfield, Illinois 62702
- c) When a person has been identified as having 6 or more prescribers or 6 or more pharmacies, or both, that do not utilize a common electronic file as specified in Section 20 of the Pharmacy Practice Act [225 ILCS 85] for controlled substances within the course of a continuous 30-day period, the PMP may issue an unsolicited report to the prescribers informing them of the potential medication shopping [720 ILCS 570/314.5(d)]. The prescriber has no responsibility or requirement to act upon these reports.
- d) The PMP is authorized to develop operational push reports to entities with compatible electronic medical records [720 ILCS 570/318(n)]. The push report will only include information for patients that are in their system with an electronic medical record. It is the responsibility of the entity to keep the access to this confidential patient information secure. These entities must:
- 1) Meet and maintain the PMP's current security standards;

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- 2) Be a licensed healthcare entity; and
 - 3) Only use this confidential patient information for the treatment of the relevant patient.
- e) Technical~~Other than technical~~, error and administrative function reports needed to determine that the records are received and maintained in good order may be used.
- f) Sample trend analysis reports may be prepared extemporaneously by PMP staff. The disposition of all extemporaneous reports shall be at the discretion of the licensed, professional administrator of the PMP.
- g) Authorized persons listed in this subsection may request information from the PMP.
- 1) Official inquiries must be from one of the following:
 - A) DFPR;
 - B) An investigator from the Illinois Consumer Protection Division of the Office of the Attorney General; or
 - C) A law enforcement officer.
 - 2) Inquiries must be submitted in writing and demonstrate that:
 - A) The applicant has reason to believe that a violation under State or federal law that involves a controlled substance by an individual has occurred; and [720 ILCS 570/318(e)1]
 - B) The requested information is reasonably related to the investigation of the individual, adjudication, or prosecution of the violation. [720 ILCS 570/318(e)2]
 - 3) The Department may impose a fee for the cost of generating and furnishing the requested information.

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- h)** ~~Any, any~~ other reports concerning the information received from dispensers shall only be prepared at the direction of the Manager, Bureau of Pharmacy and Clinical Support Services, or successor administrator who meets the statutory requirements. The information described in subsection (g) may not be released until it has been reviewed by an employee of the Department who is licensed as a prescriber or a dispenser and until that employee has certified that further investigation is warranted [720 ILCS 570/318(g)], in response to official inquiries from officers of the court. Sample trend analysis reports may be prepared extemporaneously by prescription monitoring program staff. The disposition of all extemporaneous reports shall be at the discretion of the licensed, professional administrator of the prescription monitoring program.
- i)** As directed by the PMPAC and the Clinical Director for the PMP, aggregate data that does not indicate any prescriber, practitioner, dispenser, or patient may be used for clinical studies under Article VIII, Part 21 of the Code of Civil Procedure [735 ILCS 5/Art. VIII, Part 21] (Medical Studies).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.210 Access to the Prescription Information Library (PIL)

- a)** ~~Medical~~Only a medical prescribersprescriber or dispensersdispenser may utilize the PIL for patient care after obtaining authorization from the PMP.
- b)** A hospital emergency department or a freestanding healthcare facility providing healthcare to walk-in patients may obtain, for the purpose of improving patient care, a unique identifier for each shift to utilize the PIL system [720 ILCS 570/318(o)]. It is the responsibility of the hospital emergency department or the freestanding clinic to secure access to the system so that only licensed healthcare providers with HIPPA training can view those materials. The security should be both electronic and physical. Misuse by the account (security failures) will be handled as any other case of HIPAA violation (see 42 USC 1320 et seq.).
- c)** A user may only access the PIL for a patient's medical treatment.
- d)e)** Development, modification and maintenance of the PIL is allowed by Department staff.

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- e) PIL users are ultimately responsible for any usage of their authorization credentials.
- f) In order to expedite the approval and oversight of PIL applicants and users, the PIL must be managed by a licensed dispenser.
- g) PIL staff determine if a PIL user applicant may become a PIL user by using the following criteria:
- 1) Applicant's first and last name;
 - 2) Pharmacy, clinic or office street address, city, state and zip code;
 - 3) ~~U.S. Department of Justice, Drug Enforcement Administration (DEA)~~ number;
 - 4) For a pharmacist's application, the pharmacy DEA number;
 - 5) Illinois prescriber or dispenser license number; and
 - 6) Business telephone number.
- h) PIL staff determine if a PIL user applicant may become a PIL group user by applying the following criteria:
- 1) The prescriber or dispenser who will be the account's custodian shall provide the following information:
 - A) First and last name;
 - B) DEA number;
 - C) National Provider Identifier (NPI) number;
 - D) Illinois prescriber or dispenser license number; and
 - E) Business telephone number.

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- 2) Hospital emergency department's or freestanding clinic's street address, city, state and zip code;
- 3) The pharmacist-in-charge (PIC) as the central user, in regards to pharmacy operations; and
- 4) A listing of all users with the following information:
 - A) First and last name; and
 - B) Illinois healthcare license number.

~~i)f~~ The PIL manager will review user applications that are unusual and render a professional decision as to whether access shall be granted.

~~j)g~~ The PIL manager will review the user access log for any unusual or improper activity by a user.

~~k)h~~ The PIL manager will directly monitor the development, modification and/or expansion of the PIL.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 2080.220 Error Reporting

- a) If a prescriber notices an error in his or her prescription information, he or she should report it to the Department by using the built in PMP error reporting system within 7 days after discovery of the error.
- b) A dispenser who notices an error in a prescription he or she has dispensed and transmitted, should retract the incorrect prescription and retransmit the prescription correctly within 7 days after discovery of the error.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 2080.230 Designated Controlled Substances

For tracking purposes, the Department, upon recommendation of the PMPAC, may designate and list drugs, other substances or immediate precursors as:

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- a) A Schedule I if the Department finds a threat that:
- 1) *the substance has high potential for abuse; and*
 - 2) *the substance has no currently accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision [720 ILCS 570/203].*
- b) A Schedule II if the Department finds a threat that:
- 1) *the substance has high potential for abuse;*
 - 2) *the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and*
 - 3) *the abuse of the substance may lead to severe psychological or physiological dependence [720 ILCS 570/205].*
- c) A Schedule III if the Department finds a threat that:
- 1) *the substance has a potential for abuse less than the substances listed in Schedules I and II;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*
 - 3) *abuse of the substance may lead to moderate or low physiological dependence or high psychological dependence [720 ILCS 570/207].*
- d) A Schedule IV if the Department finds a threat that:
- 1) *the substance has a low potential for abuse relative to substances in Schedule III;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*

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- 3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule III [720 ILCS 570/209].*
- e) A Schedule V if the Department finds a threat that:
 - 1) *the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*
 - 3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule IV, or the substance is a targeted methamphetamine precursor as defined in the Methamphetamine Precursor Control Act [720 ILCS 648]. [720 ILCS 570/211]*

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 2080.240 Mid-Level Practitioners Prescriptive Authority Reporting

In order to prevent erroneous association of prescriptions and remain compliant with the PMP, any supervising or collaborating physician who has delegated prescriptive authority to a mid-level practitioner is required to log in and fill out the electronic form on the PMP website (www.ilpmp.org) detailing what prescriptive authority he or she has delegated in compliance with the Act. It is incumbent upon the collaborating or supervising physician to keep this record up to date. The form will require, but is not limited to, the following data fields:

- a) Mid-level practitioner's information necessary for the electronic PMP form:
 - 1) Name (First, MI, Last);
 - 2) DEA number;
 - 3) Profession; and
 - 4) Professional license numbers.

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b) Delegating physician or podiatrist:

- 1) Name (First, MI, Last):
- 2) DEA number:
- 3) Profession; and
- 4) Professional license numbers.

c) List of drugs delegated.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 2080.250 Mailing of Controlled Substances**a) Controlled substances may be mailed if all of the following conditions are met:**

- 1) The controlled substances are not outwardly dangerous and are not likely, of their own force, to cause injury to a person's life or health.
- 2) The inner container of a parcel containing controlled substances must be marked and sealed as required under the Act and be placed in a plain outer container or securely wrapped in plain paper.
- 3) If the controlled substance consists of prescription medicines, the inner container must be labeled to show the name and address of the pharmacy or practitioner dispensing the prescription.
- 4) The outside wrapper or container must be free of markings that would indicate the nature of the contents. [720 ILCS 570/312 (k)(1)]

b) No controlled substance may be mailed outside the United States without the mailer:

- 1) Registering the package with the DEA as an exported product as set forth in 21 CFR 1301 and 1309.

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- 2) Obtaining the necessary permits, or submitting the necessary declarations for export as set forth in 21 CFR 1312 and 1313.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Electronic Prescription Monitoring Program Long Term Care
- 2) Code Citation: 77 Ill. Adm. Code 2081
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
2081.10	New Section
2081.20	New Section
2081.30	New Section
2081.40	New Section
2081.50	New Section
2081.60	New Section
2081.70	New Section
2081.80	New Section
2081.90	New Section
2081.Appendix A	New Section
- 4) Statutory Authority: Implementing and authorized by Sections 316, 317, 318, 319, 320 and 321 of Article III of the Illinois Controlled Substances Act [720 ILCS 570/316, 317, 318, 319 320 and 321]
- 5) A Complete Description of the Subjects and Issues involved: This rulemaking is necessary to comply with the provisions of PA 96-1372 that requires Long Term Care pharmacies to report on selected medications to the Prescription Monitoring Program.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking? No
- 7) Will this proposed rule replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Long Term Care Pharmacies
 - B) Reporting, bookkeeping or other procedures required for compliance: Mandates weekly reporting of medication for patients residing in Long Term Care facilities
 - C) Types of professional skills necessary for compliance: Routine electronic transfer of data files
- 14) Regulatory agenda on which this rulemaking was summarized: July, 2013

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

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TITLE 77: PUBLIC HEALTH
CHAPTER X: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER e: CONTROLLED SUBSTANCES ACTIVITIESPART 2081
ELECTRONIC PRESCRIPTION MONITORING PROGRAM
LONG TERM CARE

Section

2081.10	Authority
2081.20	Incorporation by Reference and Definitions
2081.30	General Description
2081.40	Long Term Care Pharmacies Responsibility
2081.50	Error Reporting
2081.60	Long Term Care Clinical Information
2081.70	Designated Medications
2081.80	Mid-Level Practitioners Prescriptive Authority Reporting
2081.90	Mailing of Controlled Substances
2081.APPENDIX A	Name of Medications for Prescription Monitoring Program – Long Term Care Reporting

AUTHORITY: Implementing and authorized by Sections 316, 317, 318, 319 and 320 of the Illinois Controlled Substances Act [720 ILCS 570].

SOURCE: Adopted at 38 Ill. Reg. ____, effective _____.

Section 2081.10 Authority

This Part is promulgated pursuant to the Illinois Controlled Substances Act that empowers the Department of Human Services to codify the efforts of this State to conform with the regulatory systems of the federal government and other states to establish national coordination of efforts to control the abuse of Schedule II, III, IV and V retail dispensed drugs. It relates to the collection of prescription information listed in Schedule II, III, IV and V within Sections 206, 208, 210 and 212 of the Act, or in the federal Schedule II, III, IV and V and "Amendment of Schedules" list of drugs at 21 USC 812(b)(2), (b)(3), (b)(4), (b)(5) and (c).

Section 2081.20 Incorporation by Reference and Definitions

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No incorporations by reference in this Part include any later amendments or editions. The definitions that apply to this Part are those found in the Act and those in this Section.

"Act" means the Illinois Controlled Substances Act [720 ILCS 570].

"Birth Date" means the medication recipient's birth date.

"Central Repository" means a place designated by the Department where Schedule II, III, IV and V drug data is stored or housed.

"Clinical Director" means a DHS administrative employee licensed to either prescribe or dispense controlled substances who shall run the clinical aspects of the DHS Prescription Monitoring Program and its Prescription Information Library [720 ILCS 570/102(d-5)].

"Controlled Substance" means a drug, substance, or immediate precursor in the Schedules of Article II of the Illinois Controlled Substances Act, or a drug or other substance, or immediate precursor, designated as a controlled substance by the DHS [720 ILCS 570/102(f)].

"DEA Number" means the United States Drug Enforcement Agency prescriber or dispenser registration number.

"Department" or "DHS" means the Illinois Department of Human Services, or its successor agency.

"Dispenser" means any practitioner that dispenses a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a prescriber [720 ILCS 570/102(p) and (q)].

"DPH" means the Illinois Department of Public Health.

"Electronic Device" means using a computer system to transmit prescriptions from a prescriber directly to a dispenser.

"Exempt Prescribers in Hospitals and Institutions" means prescribers in hospitals or institutions licensed under the Hospital Licensing Act [210 ILCS 85] who authorize the administration or dispensing of Schedule II drugs within the hospital or institution, for consumption within the hospital or institution.

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"Facsimile Equipment" means any device capable of sending or receiving facsimiles of documents through connection with a telecommunications network.

"HFS" means the Illinois Department of Healthcare and Family Services.

"Illinois Controlled Substances License Number" means the State license number issued by the Illinois Department of Financial and Professional Regulation (DFPR) permitting prescribers to possess, prescribe or dispense, and permitting dispensers to possess and dispense, controlled substances in Illinois pursuant to the Controlled Substances Act (see 77 Ill. Adm. Code 3100).

"Licensed Healthcare Provider" means any individual who meets the professional licensing requirements and follows the standards set forth by DFPR and are authorized to prescribe or dispense controlled substances within Illinois.

"Long Term Care" or "LTC" means:

any facility defined by Section 1-113 of the Nursing Home Care Act; and

any skilled nursing facility or a nursing facility that meets the requirements of section 1819(a), (b), (c) and (d) or section 1919(a), (b), (c) and (d) of the Social Security Act (42 USC 1395i-3(a), (b), (c) and (d) and 1396r(a), (b), (c) and (d)).

"Long Term Care Pharmacy" or "LTC Pharmacy" means those pharmacies that, either as a primary or secondary focus, provide prescription services to those inpatient institutions licensed as LTC pharmacies by DPH.

"Mid-level Practitioner" means:

a physician assistant who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to practice medicine in all of its branches, in accordance with Section 7.5 of the Physician Assistant Practice Act of 1987 [225 ILCS 95];

an advanced practice nurse who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to

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practice medicine in all of its branches or by a podiatrist, in accordance with Section 65-40 of the Nurse Practice Act [225 ILCS 65]; or

an animal euthanasia agency.

"National Drug Code Identification Number" or "NDC Identification Number" means the number used to provide uniform product identification for all substances recognized as drugs in the United States Pharmacopoeia National Formulary, USP31-NF26 (US Pharmacopoeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852 (2008)).

"Patient ID" means the identification of the individual receiving the medication or the responsible individual obtaining the medication on behalf of the recipient or the owner of the animal. The standards for establishing patient ID for the purpose of proper filling of a prescription are established by 77 Ill. Adm. Code 2080.70(d).

"Patient Location Code" means the portion of a LTC pharmacy's system of electronic files that identifies with which LTC facility, and what classification of care, the individual patient is associated.

"Prescribed" means ordered by a prescriber verbally, electronically or in writing.

"Prescriber" means the healthcare professional that is authorized to prescribe medications as set forth in the various professional practices of the State of Illinois.

"Prescription Information Library" or "PIL" means an electronic library containing 12 months of controlled substance, retail, prescription information that is accessible only by prescribers and dispensers for patient treatment usage [720 ILCS 570/102(nn-5)].

"Prescription Monitoring Program" or "PMP" means the entity that collects, tracks, and stores reported data on controlled substances and select drugs [720 ILCS 570/102(nn-10)].

"Prescription Monitoring Program Advisory Committee" or "PMPAC" means a committee consisting of licensed healthcare providers representing all professions that are licensed to prescribe or dispense controlled substances. The committee

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serves in a consultant context regarding longitudinal evaluations of compliance with evidence based clinical practice and controlled substances. The committee makes recommendations regarding scheduling of controlled substances and recommendations concerning continuing education designed at improving the health and safety of the citizens of Illinois regarding pharmacotherapies of controlled substances.

"Prescription Monitoring Program – Long Term Care Advisory Committee" or "PMP-LTC" Advisory Committee" means a subunit of the Prescription Monitoring Program Advisory Committee that is made up of healthcare professionals associated with clinical care of geriatric populations. This committee also includes university partners who have research arms that perform longitudinal outcome evaluations.

"Prescription Monitoring Program – Long Term Care Clinical Consulting Advisory Group" or "PMP-LTC CCAG" means a jointly appointed committee between DPH and DHS consisting of academic and practicing clinicians specializing in providing medical and pharmaceutical care to geriatric patients. The PMP-LTC CCAG is an advisory committee providing clinical trending reviews to the PMP-LTC initiative of the DPH's LTC Section and DHS' Bureau of Pharmacy and Clinical Support Services.

"Quantities of a Controlled Substance Dispensed" means the total of a National Drug Code product dispensed whether it is in a solid unit such as a tablet or capsule, in a liquid unit such as milliliters, or in another unit as specified within the product identification.

"Recipient's Name" means the given or common name of a person who is the intended user of a dispensed medication. It may also mean the species or common name or common given name of an animal that is the intended user of a dispensed medication. If an animal's name is entered, the owner's name is required also.

"Schedule I, II, III, IV or V Drug" means any drug listed as a federal Schedule I, II, III, IV or V drug (21 USC 812(b)(2), (b)(3), (b)(4), (b)(5) and (c)) or listed as an Illinois Schedule I, II, III, IV or V drug [720 ILCS 570/204, 206, 208, 210 and 212].

"Sex" means the medication recipient's gender if the recipient is a human.

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Section 2081.30 General Description

The PMP monitors all controlled substances for Schedule II, III, IV and V drugs that are dispensed within the State of Illinois, except for those dispensed to hospital inpatients and by drug abuse treatment programs licensed by the Department. The LTC pharmacies transmit patient medication profiles to the PMP. Each time a Schedule II, III, IV or V drug is dispensed, the dispenser must transmit specific information to a central repository designated by the Department.

Section 2081.40 Long Term Care Pharmacies Responsibility

LTC pharmacies shall transmit the patient medication profiles to the PMP weekly [720 ILCS 570/316(c)]. Failure to comply with the reporting requirements may result in fines up to \$100 per day, per patient, per medication.

- a) This information shall include, but not be limited to, all the following data fields to provide the clinical oversight required by Section 5-5.12(f) of the Public Aid Code or as modified by DPH, HFS or DHS:
 - 1) Dispenser DEA number.
 - 2) Name of the medication as listed in Appendix A.
 - 3) Dispenser name and address.
 - 4) Patient information that should be kept up to date at all times:
 - A) Patient's name.
 - B) Patient ID.
 - C) Patient gender (1 for male, 2 for female).
 - D) Patient birth date (yyyymmdd – year, month, day).
 - E) Patient ethnicity (if available).

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- F) Patient location code (LTC facility State provider number and corresponding location at the facility, i.e., unit and room).
 - G) Pre-existing conditions.
 - H) Patient weight, when available electronically.
 - I) Patient height, when available electronically.
- 5) For each prescription dispensed, the following information must be included:
- A) The NDC identification number of the Schedule II, III, IV or V drugs or select drugs as provided by the PMP-LTC Advisory Committee.
 - B) Quantity of the drug dispensed.
 - C) Dosing of the drug dispensed.
 - D) Date when the drug was dispensed.
 - E) Date prescription was written.
 - F) Prescriber DEA number.
 - G) Prescriber name and address.
 - H) Diagnosis.
- 6) For any patient admissions to acute care facilities, the following information should be included:
- A) Date admitted.
 - B) Date discharged, if discharged at time of transmission.
 - C) Reason for admission.

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- D) Any changes to medication therapy.
- b) As directed by the PMP-LTC CCAG and the Clinical Director for PMP, aggregate data and specialized reports may be developed relative to the selected drugs for clinical studies as covered under Art. VIII, Part. 21 of the Code of Civil Procedure [735 ILCS 5] (Medical Studies).

Section 2081.50 Error Reporting

- a) If a prescriber notices an error in his or her prescription information, that prescriber should report it to the Department by using the built-in PMP error reporting system within 7 days after discovery of the error.
- b) A dispenser who notices an error in a prescription he or she has dispensed and transmitted should retract the incorrect prescription and retransmit the prescription correctly within 7 days after discovery of the error.

Section 2081.60 Long Term Care Clinical Information

- a) Nothing in the Act or this Part shall be construed as granting access to the patient-specific information to anyone other than to the PMP staff and the PMP-LTC CCAG.
- b) The intent of the PMP-LTC CCAG is to provide continuous clinical quality analysis and research designed to improve the clinical outcomes of the patients.

Section 2081.70 Designated Medications

For tracking purposes, the Department, by recommendation of the PMPAC may designate and list drugs, other substances or immediate precursors as:

- a) A Schedule II, if the Department finds a threat that:
 - 1) *the substance has high potential for abuse;*
 - 2) *the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions;*
and

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- 3) *the abuse of the substance may lead to severe psychological or physiological dependence.* [720 ILCS 570/205]
- b) A Schedule III, if the Department finds a threat that:
- 1) *the substance has a potential for abuse less than the substances listed in Schedule II;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*
 - 3) *abuse of the substance may lead to moderate or low physiological dependence or high psychological dependence.* [720 ILCS 570/207]
- c) A Schedule IV, if the Department finds a threat that:
- 1) *the substance has a low potential for abuse relative to substances in Schedule III;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*
 - 3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule III.* [720 ILCS 570/209]
- d) A Schedule V, if the Department finds a threat that:
- 1) *the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;*
 - 2) *the substance has currently accepted medical use in treatment in the United States; and*
 - 3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule IV, or the substance is a targeted methamphetamine precursor as defined in the Methamphetamine Precursor Control Act [720 ILCS 648].*
[720 ILCS 570/211]

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Section 2081.80 Mid-Level Practitioners Prescriptive Authority Reporting

In order to prevent erroneous association of prescriptions and remain compliant with the PMP, any supervising or collaborating physician who has delegated prescriptive authority to a mid-level practitioner is required to log in and fill out the electronic form on the PMP website (www.ilpmp.org) detailing what prescriptive authority he or she has delegated (see Section 318(k) of the Act). It is incumbent upon the collaborating or supervising physician to keep this record up to date. The form will require, but not be limited to, the following data fields:

- a) Mid-level practitioner's information necessary for the electronic PMP form:
 - 1) Name (First, MI, Last);
 - 2) DEA number;
 - 3) Profession; and
 - 4) Professional license numbers.
- b) Delegating physician or podiatrist:
 - 1) Name (First, MI, Last);
 - 2) DEA number;
 - 3) Profession; and
 - 4) Professional license numbers.
- c) List of drugs delegated.

Section 2081.90 Mailing of Controlled Substances

- a) *Controlled substances may be mailed to the patient's place of residence, as long as it is within the United States, if all of the following conditions are met:*
 - 1) *The controlled substances are not outwardly dangerous and are not likely, of their own force, to cause injury to a person's life or health.*

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- 2) *The inner container of a parcel containing controlled substances must be marked and sealed as required under the Act and be placed in a plain outer container or securely wrapped in plain paper.*
 - 3) *If the controlled substances consist of prescription medicines, the inner container must be labeled to show the name and address of the pharmacy or practitioner dispensing the prescription.*
 - 4) *The outside wrapper or container must be free of markings that would indicate the nature of the contents. [720 ILCS 570/312(k)]*
- b) No controlled substance may be mailed outside the USA without the following:
- 1) Registering the package with the DEA as an exported product as set forth in 21 CFR 1301 and 1309.
 - 2) Has obtained the necessary permits or submitted the necessary declarations for export as set forth in 21 CFR 1312 and 1313.

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Section 2081.APPENDIX A Name of Medications for Prescription Monitoring Program – Long Term Care Reporting**BEHAVIORAL HEALTH MEDICATIONS****Antipsychotics as listed but not limited to:**

Aripiprazole
Asenapine
Chlorpromazine
Clozapine
Droperidol
Fluphenazine
Haloperidol
Iloperidone
Loxapine
Lurasidone
Mesoridazine
Molindone
Olanzapine
Paliperidone
Perphenazine
Prochlorperazine
Quetiapine
Risperidone
Thioridazine
Thiothixene
Trifluoperazine
Ziprasidone

(Additionally, any medication that is added to the most recent publication of the AHFS (American Hospital Formulary Service) Drug Information Publication of the American Society of Health-System Pharmacists Section 28:16.08 Antipsychotics.)

Antidepressants as listed but not limited to:**Selective Serotonin Reuptake Inhibitors (SSRIs)**

Citalopram
Escitalopram
Paroxetine
Fluoxetine
Fluvoxamine

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Sertraline

Serotonin-Norepinephrine Reuptake Inhibitors (SNRIs)

Desvenlafaxine

Duloxetine

Venlafaxine

Serotonin Antagonist and Reuptake Inhibitors (SARIs)

Nefazodone

Trazodone

Tricyclic Antidepressants (TCAs)

Amitriptyline

Clomipramine

Desipramine

Doxepin

Imipramine

Nortriptyline

Protriptyline

Trimipramine

Tetracyclic Antidepressants (TeCAs)

Amoxapine

Maprotiline

Mirtazapine

Monoamine Oxidase Inhibitors (MAOIs)

Isocarboxazid

Phenelzine

Selegiline

Tranlycypamine

Pirlindole

Miscellaneous Agents:

Divalproex

Norepinephrine – Dopamine Inhibitor

Bupropion

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5-HT1A Receptor Agonists

Buspirone
Aripiprazole

5-HT2A Receptor Agonists

Aripiprazole

5-HT2 Receptor Antagonists

Nefazodone

Mood Stabilizers

Carbamazepine
Divalproex
Gabapentin
Lamotrigine
Lithium
Oxcarbazepine
Topiramate
Valproic Acid

(Additionally, any medication that is added to the most recent publication of the AHFS (American Hospital Formulary Service) Drug Information Publication of the American Society of Health-System Pharmacists Section 28:16.04 Antidepressants.)

Anti-anxiety Medications as listed but not limited to:

Alprazolam
Buspirone
Chlordiazepoxide
Clonazepam
Clorazepate
Diazepam
Hydroxyzine
Lorazepam
Oxazepam

(Additionally, any medication that is added to the most recent publication of the AHFS (American Hospital Formulary Service) Drug Information Publication of the American Society of Health-System Pharmacists Section 28:24 Anxiolytics, Sedatives, and Hypnotics.)

ADHD Medications as listed but not limited to:

Amphetamine

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Amphetamine (ER)
Atomoxetine
Dexmethylphenidate
Dexmethylphenidate (ER)
Dextroamphetamine
Guanfacine
Lisdexamfetamine
Methamphetamine
Methylphenidate
Methylphenidate (ER)
Methylphenidate (LA)
Methylphenidate patch
Modafinil
Phentermine
Sibutramine

(Additionally, any medication that is added to the most recent publication of the AHFS (American Hospital Formulary Service) Drug Information Publication of the American Society of Health-System Pharmacists Section 28:20 Anorexigenic Agents and Respiratory and Cerebral Stimulants)]

Antihistamine Medications as listed but not limited to:**First Generation Antihistamines:**

Brompheniramine
Carbinoxamine
Chlorpheniramine
Clemastine
Cyproheptadine
Diphenhydramine
Doxylamine
Promethazine
Triprolidine

Second Generation Antihistamines:

Acrivastine
Cetirizine
Desloratadine
Fexofenadine
Levocetirizine
Loratadine

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Other Antihistamines:

Azelastine
Cimetidine
Dimenhydrinate
Emedastine
Famotidine
Hydroxyzine
Ketotifen
Meclizine
Nizatidine
Olopatadine
Ranitidine

(Additionally, any medication that is added to the most recent publication of the AHFS (American Hospital Formulary Service) Drug Information Publication of the American Society of Health-System Pharmacists Section 4:04 First Generation Antihistamines, 4:08 Second Generation Antihistamines, 4:92 Other Antihistamines.)

ENZYME INDUCER/INHIBITORS

Amiodarone
Amlodipine
Amobarbital
Armodafinil
Bortezomib
Bosentan
Carbamazepine
Celecoxib
Chloroquine
Chlorpromazine
Cimetidine
Cinacalcet
Ciprofloxacin
Clomipramine
Clotrimazole
Clozapine
Cyclosporine
Darifenacin
Delavirdine

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Desipramine
Dexamethasone
Dexlansoprazole
Dexmedetomidine
Diclofenac
Diltiazem
Diphenhydramine
Disulfiram
Doxorubicin
Doxycycline
Duloxetine
Efavirenz³
Erythromycin
Esomeprazole
Felodipine
Fluconazole
Fluoxetine
Flurbiprofen
Fluvastatin
Fluvoxamine
Fosamprenavir (as amprenavir)
Fosaprepitant
Fosphenytoin (as phenytoin)
Fospropofol
Gemfibrozil
Haloperidol
Ibuprofen
Imatinib
Imipramine
Indinavir
Indomethacin
Irbesartan
Isoniazid
Itraconazole
Ketoconazole
Lansoprazole
Letrozole
Lidocaine
Loratadine

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Losartan
Mefenamic acid
Methadone
Methimazole
Methoxsalen
Metronidazole
Mexiletine
Miconazole
Modafinil
Nafcillin
Nefazodone
Nelfinavir
Nevirapine
Nicardipine
Nifedipine
Norfloxacin
Ofloxacin
Omeprazole
Oxcarbazepine
Paroxetine
Pentobarbital
Phenobarbital
Phenytoin
Pioglitazone
Piroxican
Posaconazole
Primaquine
Primidone
Propofol
Pyrimethamine
Quinidine
Quinine
Raberprazole
Ranolazine
Rifampin
Rifapentine
Ritonavir
Rosiglitazone
Saquinavir

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Secobarbital
Sertraline
Sitaxsentan
Sorafenib
Sulfadiazine
Sulfamethoxazole
Sulfisoxazole
Tamoxifen
Telithromycin
Terbinafine
Tetracycline
Thiabendazole
Thioridazine
Thiotepa
Ticlopidine
Tolbutamide
Tranlycypromine
Trazodone
Trimethoprim
Verapamil
Voriconazole
Warfarin
Zafirlukast
Zileuton

MEDICATIONS WITH ANTICHOLINERGIC EFFECTS**Level # 1: Potential ACH activity by receptor binding activity:**

Drug Class / Generic Name

Antipsychotics:

Fluphenazine
Olanzapine
Perphenazine
Prochlorperazine
Trifluoperazine

Anxiolytic:

Alprazolam
Chlordiazepoxide

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Clonazepam
Clorazepate
Diazepam
Flurazepam
Lorazepam
Oxazepam
Temazepam
Triazolam

Antidepressant:

Fluoxetine
Paroxetine
Sertraline
Fluvoxamine
Phenelzine

Antibiotics/Antivirals:

Amantadine
Ampicillin
Clindamycin
Gentamicin
Vancomycin

Analgesics:

Codeine
Fentanyl
Morphine
Oxycodone
Tramadol

Cardiovascular:

Captopril
Chlorthalidone
Digoxin
Diltiazem
Dipyridamole
Furosemide
Hydralazine
Isosorbide

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Nifedipine
Triamterene
Warfarin

Corticosteroids:

Dexamethasone
Methylprednisolone
Prednisone
Triamcinolone

H2 Antagonist:

Famotidine
Nizatidine

Anticonvulsants:

Divalproex
Valproic Acid

Level # 2: ACH adverse events, dose related:

Antipsychotics:

Chlorpromazine
Loxapine
Molindone
Pimozide

Antihistamine:

Cyproheptadine

Cardiovascular:

Disopyramide

Muscle Relaxants:

Cyclobenzaprine

H2 Antagonist:

Cimetidine
Ranitidine

Anticonvulsants:

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Carbamazepine
Oxcarbazepine

Level # 3: Markedly Anticholinergic:

Antipsychotics:

Clozapine
Mesoridazine
Thioridazine

Antidepressants:

Amitriptyline
Desipramine
Doxepin
Imipramine
Nortriptyline
Protriptyline
Trimipramine

Antihistamines:

Bropheniramine
Carbinoxamine
Chlorpheniramine
Clemastine
Diphenhydramine
Hydroxazine
Promethazine

Muscle Relaxants:

Orphenidrine

Vertigo Agents:

Dimenhydrinate
Meclizine
Scopolamine

GI Antispasmodics:

Dicyclomine
Hyoscyamine
Propantheline

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Parkinson Disease:

Procyclidine

Benztropine

Trihexphenidyl

Urinary Antispasmodics:

Oxybutynin

Tolterodine

Flavoxate

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- 1) Heading of the Part: Transitional Bilingual Education
- 2) Code Citation: 23 Ill. Adm. Code 228
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
228.10	Amend
228.15	Amend
228.30	Amend
228.35	Amend
- 4) Statutory Authority: 105 ILCS 5/Art. 14C
- 5) A Complete Description of the Subjects and Issues Involved: Proposed modifications in Part 228 affect various Sections of the Part to:
 - Incorporate English development standards for English learners in preschool programs;
 - Allow flexibility for school districts to choose the prescribed screening instrument for English learners who are in the second semester of grade 1 or in grades 2 through 12;
 - Require that transitional programs of instruction include instruction in English as a second language; and
 - Extend the deadline for teachers in bilingual education programs to meet the requirements necessary to be fully qualified to provide home language or English as a second language instruction.

English Development Standards. Since 2006, the rules governing bilingual education programs have relied on English language development standards of the World-class International Design and Assessment Consortium (WIDA) at University of Wisconsin at Madison as the basis of the English proficiency test and starting in 2010, for English as a second language instruction. Originally, the standards addressed all students, prekindergarten through grade 12. In 2012, the standards were modified to apply only to students in kindergarten through grade 12. WIDA has now completed English language development standards for prekindergarten (i.e., ages 2½ through 5½) and these also are being incorporated into the rules. Both sets of standards are now defined in Section 228.10, and references to them in the body of the rules will direct the reader to Section 228.10 for the standards applicable to the ages/grade levels of the students being served.

Screening Instrument. Section 228.10 currently requires the use of the WIDA ACCESS Placement Test (W-APT™) as a screening instrument for use with students in the second

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semester of grade 1 through grade 12. Students in kindergarten or in the first semester of grade 1, however, must be screened using a different screener, WIDA's Measure of Developing English Language, or MODEL™. The distinction between the two screening instruments was added in 2010. MODEL is a more nuanced, student-specific screening instrument that enables school district staff to make better placement decisions for students just starting school (i.e., kindergarten or beginning of grade 1). Either test would be appropriate for students in the second semester of grade 1 and grades 2 through 12, and the proposed rule would provide flexibility to school districts to choose which screening instrument to use for these students.

English as a Second Language (ESL) Instruction. The two components of a transitional program of instruction (TPI) are instruction or support in the student's native language and ESL instruction. ESL is necessary to ensure that students who enter schools with little or no knowledge of English acquire the necessary skills to understand and produce academic English. The purpose of ESL is to provide direct instruction in the acquisition of the English language. Under Article 14C of the School Code [105 ILCS 5/Art. 14C], school districts are required to provide programs that will help English learners learn English. Therefore, the changes proposed in Section 228.30(d) do not create a new mandate. Rather, the changes clarify the existing rule to make clear that ESL instruction is not an optional component for TPI programs.

Staff Qualifications. Starting July 1, 2014, instruction provided to English learners in early childhood classrooms must be provided by an individual who holds a professional educator license endorsed for both early childhood and for specific the type of bilingual instruction that is being provided (i.e., either instruction conducted in the student's home language or English as a second language instruction). This requirement was placed in Section 228.35(c) in 2010 in response to modifications to Article 14C of the School Code requiring the provision of bilingual education services by school districts to English learners served in preschool programs.

As the July 1 deadline has been approaching, school districts and early childhood advocates have indicated to agency staff that they are anticipating staff shortages for the 2014-15 school year. Therefore, agency staff's enforcement of the current rule could result in potential penalties for school districts with preschool programs and may jeopardize services for English learners in these settings. For these reasons, the proposed amendment would delay until July 1, 2016, the requirement for school districts to have fully qualified early childhood staff for their preschool programs. The proposed modification also will require school districts that are unable to meet the staffing requirements between now and July 1, 2016, to submit to the agency an annual staffing

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plan that includes a description of how the needs of English learners will be met. In this way, the proposed amendment balances the need for English learners to have fully qualified staff with the difficulty some school districts are experiencing in recruiting and employing fully credentialed preschool personnel.

Finally, a slight technical modification is being made in Section 228.30(c)(3)(B)(v), which addresses placement of certain English learners in part-time transitional bilingual education (TBE) programs. The provision was added in August 2013 and modified in response to public comment received. Its intent is to communicate that under certain circumstances (i.e., when the native language has no written component or is one for which written instructional materials are not available), English learners may receive limited native language instruction. Since the first sentence of the subsection does not make this clear, the modifier "limited" will be restored to the rule.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes; see Sections 228.10 and 228.30.
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a state mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street, S-493
Springfield, Illinois 62777-0001

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rules@isbe.net

- 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: January 2014

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONSPART 228
TRANSITIONAL BILINGUAL EDUCATION

Section

228.5	Purpose and Applicability
228.10	Definitions
228.15	Identification of Eligible Students
228.20	Student Language Classification Data
228.25	Program Options, Placement, and Assessment
228.27	Language Acquisition Services for Certain Students Exiting the Program
228.30	Establishment of Programs
228.35	Personnel Qualifications; Professional Development
228.40	Students' Participation; Records
228.50	Program Plan Approval and Reimbursement Procedures
228.60	Evaluation

AUTHORITY: Implementing Article 14C and authorized by Section 2-3.39(1) of the School Code [105 ILCS 5/Art. 14C and 2-3.39(1)].

SOURCE: Adopted May 28, 1976; codified at 8 Ill. Reg. 5176; Part repealed, new Part adopted at 11 Ill. Reg. 5969, effective March 23, 1987; amended at 17 Ill. Reg. 104, effective December 18, 1992; amended at 26 Ill. Reg. 898, effective January 15, 2002; amended at 27 Ill. Reg. 9996, effective June 20, 2003; amended at 30 Ill. Reg. 17434, effective October 23, 2006; amended at 34 Ill. Reg. 11581, effective July 26, 2010; amended at 35 Ill. Reg. 3735, effective February 17, 2011; amended at 35 Ill. Reg. 16870, effective September 29, 2011; amended at 37 Ill. Reg. 16803, effective October 2, 2013; amended at 38 Ill. Reg. _____, effective _____.

Section 228.10 Definitions

"English as a Second Language" or "ESL" means specialized instruction designed to assist students whose home language is other than English in attaining English language proficiency. ESL instruction includes skills development in listening, speaking, reading, and writing. (ESL is not to be confused with English language arts as taught to students whose home language is English.)

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"English Language Development Standards" means either the:

"2012 Amplification of English Language Development Standards Kindergarten-Grade 12" (2012) for students in kindergarten and grades 1 through 12 published by the Board of Regents of the University of Wisconsin System on behalf of the World-class Instructional Design and Assessment (WIDA) Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 and posted at <http://wida.us/standards/eld.aspx> (no later amendments to or editions of these standards are incorporated); or

"Early English Language Development Standards Ages 2.5-5.5 2013 Edition" (2013) for students in preschool education programs published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 and posted at <http://www.wida.us/standards/eeld.aspx> (no later amendments to or editions of these standards are incorporated).

"English Language Proficiency Assessment" means the ACCESS for ELLs[®] (~~WIDA World-class Instructional Design and Assessment~~ Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 (2006)).

"English Learners" means any student in preschool, kindergarten or any of grades 1 through 12, whose home language background is a language other than English and whose proficiency in speaking, reading, writing, or understanding English is not yet sufficient to provide the student with:

the ability to meet the State's proficient level of achievement on State assessments;

the ability to successfully achieve in classrooms where the language of instruction is English; or

the opportunity to participate fully in the school setting.

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For the purposes of this Part, the terms "limited English proficient student" and "students with limited English proficiency", as used in Article 14C of the School Code, are understood to be "English learners".

"Home Language" means that language normally used in the home by the student and/or by the student's parents or legal guardians.

"Language Background other than English" means that the home language of a student in preschool, kindergarten or any of grades 1 through 12, whether born in the United States or born elsewhere, is other than English or that the student comes from a home where a language other than English is spoken by the student, or by his or her parents or legal guardians, or by anyone who resides in the student's household.

"Preschool Program" means instruction provided to children who are ages 3 up to but not including those of kindergarten enrollment age as defined in Section 10-20.12 of the School Code [105 ILCS 5/10-20.12] in any program administered by a school district, regardless of whether the program is provided in an attendance center or a non-school-based facility.

"Prescribed Screening Instrument" means the:

WIDA ACCESS Placement Test (W-APT™) (~~20132006 or 2007~~) for students ~~entering or~~ in the second semester of grade 1 or in grades 2 through 12 (~~WIDA World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706~~) and accessible at <http://www.wida.us/assessment/W-APT/>; or

Measure of Developing English Language (MODEL™) (2008) for students ~~in~~entering kindergarten ~~through~~ the first semester of grade 1 (~~WIDA World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706~~); this instrument also may be used for students in the second semester of grade 1 through grade 12.

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"Prescribed Screening Procedures" means the procedures that a school district determines to be appropriate to assess a preschool student's level of English language proficiency (minimally in the domains of speaking and listening), in order to determine whether the student is eligible to receive bilingual education services. The procedures may include, without limitation, established screening instruments or other procedures provided that they are research-based. Further, screening procedures shall at least:

Be age and developmentally appropriate;

Be culturally and linguistically appropriate for the children being screened;

Include one or more observations using culturally and linguistically appropriate tools;

Use multiple measures and methods (e.g., home language assessments; verbal and nonverbal procedures; various activities, settings, and personal interactions);

Involve family by seeking information and insight to help guide the screening process without involving them in the formal assessment or interpretation of results; and

Involve staff who are knowledgeable about preschool education, child development, and first and second language acquisition.

"Sheltered Content Instruction" means instruction that is generally intended for English learners who demonstrate intermediate or advanced English proficiency and consists of adapting the language used in the particular subject to the student's English proficiency level to assist the student in understanding the content of the subject area and acquiring the knowledge and skills presented.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 228.15 Identification of Eligible Students

- a) Each school district shall administer a home language survey with respect to each student in preschool, kindergarten or any of grades 1 through 12 who is entering

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the district's schools or any of the district's preschool programs for the first time, for the purpose of identifying students who have a language background other than English. The survey should be administered as part of the enrollment process or, for preschool programs, by the first day the student commences participation in the program. The survey shall include at least the following questions, and the student shall be identified as having a language background other than English if the answer to either question is yes:

- 1) Whether a language other than English is spoken in the student's home and, if so, which language; and
 - 2) Whether the student speaks a language other than English and, if so, which language.
- b) The home language survey shall be administered in English and, if feasible, in the student's home language.
 - c) The home language survey form shall provide spaces for the date and the signature of the student's parent or legal guardian.
 - d) The completed home language survey form shall be placed into the student's temporary record as defined in 23 Ill. Adm. Code 375 (Student Records).
 - e) The district shall screen the English language proficiency of each student identified through the home language survey as having a language background other than English by using the prescribed screening instrument applicable to the student's grade level (i.e., kindergarten or any of grades 1 through 12), [as set forth in Section 228.10](#), or the prescribed screening procedures identified by the preschool program. This screening shall take place within 30 days either after the student's enrollment in the district or, for preschool programs, after the student commences participation in the program, for the purpose of determining the student's eligibility for bilingual education services and, if eligible, the appropriate placement for the student. For kindergarten, all students identified through the home language survey, including students previously screened when enrolled in preschool, must be screened using the prescribed screening instrument for kindergarten.
 - 1) The prescribed screening instrument does not need to be administered to a student who, in his or her previous school district:

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- A) has been screened and identified as English language proficient as required in this subsection (e); or
- B) has met the State exit requirements as described in Section 228.25(b)(2) ~~of this Part~~; or
- C) has met all of the following criteria:
- i) resides in a home where a language other than English is spoken, and
 - ii) has not been screened or identified as an English learner, and
 - iii) has been enrolled in the general program of instruction in the school he or she has previously attended, and
 - iv) has been performing at or above grade level as evidenced by having met or exceeded the Illinois Learning Standards in reading and math on the student's most recent State assessment administered pursuant to Section 2-3.64 of the School Code [105 ILCS 5/2-3.64] or, for students for whom State assessment scores are not available, a nationally normed standardized test, provided that either assessment was not administered with accommodations for English learners. This provision applies only to a student who had been enrolled in any of the grades in which the State assessment is required to be administered in accordance with Section 2-3.64 of the School Code.
- 2) For purposes of eligibility and placement, a district must rely upon a student's score attained on the English language proficiency assessment prescribed under Section 228.25(b) ~~of this Part~~, if available from another school district or another state, provided that the score was achieved no sooner than the school year previous to the student's enrollment in the district.

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- 3) If results are not available pursuant to subsection (e)(2) ~~of this Section~~, then a district must rely upon a student's score on the prescribed screening instrument if available from another school district or another state for the purposes of eligibility and placement for students entering any of grades 1 through 12, if the student's score on the prescribed screening instrument was achieved no more than 12 months prior to the district's need to assess the student's proficiency in English.
- 4) Each student whose score on the prescribed screening instrument or procedures, as applicable, is identified as not "proficient" as defined by the State Superintendent of Education shall be considered to be an English learner and therefore to be eligible for, and shall be placed into a program of, bilingual education services.
- A) For preschool programs using a screening procedure other than an established assessment tool where "proficiency" is defined as part of the instrument, "proficiency" is the point at which performance identifies a child as proficient in English, as set forth in the program's proposed screening process.
- B) For any preschool student who scores at the "proficient" level, the school district may consider additional indicators such as teachers' evaluations of performance, samples of a student's work, or information received from family members and school personnel in order to determine whether the student's proficiency in English is limited and the student is eligible for services.
- f) Each district shall ensure that any accommodations called for in the Individualized Education Programs of students with disabilities are afforded to those students in the administration of the screening instrument or procedures, as applicable, discussed in this Section and the English language proficiency assessment prescribed under Section 228.25(b) ~~of this Part~~.
- g) The parent or guardian of any child resident in a school district who has not been identified as an English learner may request the district to determine whether the child should be considered for placement in a bilingual education program, and the school district shall make that determination upon request, using the process described in this Section.

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 228.30 Establishment of Programs

a) Administrative Provisions

- 1) Program Facilities – Other than for preschool education programs, TBE and TPI programs *shall be located in regular public school facilities rather than in separate facilities.* (Section 14C-6 of the School Code [105 ILCS 5/14C-6]) If such a location is not feasible, the substitute location shall be comparable to those made available to a majority of the district's students with respect to space and equipment. If housed in a facility other than a public school (including a charter school), the school district shall provide a written explanation in its annual application to the State Superintendent of Education as to why the use of a public school building is not feasible.
- 2) Course Credit – Students enrolled in approved programs shall receive full credit for courses taken in these programs, which shall count toward promotion and fulfillment of district graduation requirements. Courses in ESL shall count toward English requirements for graduation. Students who change attendance centers or school districts shall do so without loss of credit for coursework completed in the program.
- 3) *Extracurricular Activities – Each district shall ensure that students enrolled in programs shall have the opportunity to participate fully in the extracurricular activities of the public schools in the district.* (Section 14C-7 of the School Code [105 ILCS 5/14C-7])
- 4) Inclusion of Students Whose First or Home Language is English – Students whose first or home language is English may be included in a program under this Part provided that all English learners are served.
- 5) Joint Programs – A school district may join with one or more other school districts to provide joint programs or services in accordance with the provisions of Section 10-22.31a of the School Code [105 ILCS 5/10-22.31a]. The designated administrative agent shall adhere to the procedures contained in 23 Ill. Adm. Code 100 (Requirements for

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Accounting, Budgeting, Financial Reporting, and Auditing) as they pertain to cooperative agreements.

- 6) *Preschool and Summer School – A school district may establish preschool and summer school programs for English learners or join with other school districts in establishing these programs. Summer school programs shall not replace programs required during the regular school year. (Section 14C-11 of the School Code [105 ILCS 5/14C-11]) A school district that offers a summer school program or preschool program shall provide transitional bilingual education programs or transitional programs of instruction for English learners in accordance with Article 14C and this Part.*

b) Instructional Specifications

- 1) *Student-Teacher Ratio – The student-teacher ratio in the ESL and home language components of programs serving students in kindergarten or any of grades 1 through 12 as of September 30 of each school year shall not exceed 90% of the average student-teacher ratio in general education classes for the same grades in that attendance center. Decreases in the ratio for general education during the course of a school year due to students' mobility shall not require corresponding adjustments within the bilingual program. Further, additional students may be placed into bilingual classes during the course of a school year, provided that no bilingual classroom may exhibit a student-teacher ratio that is greater than the average for general education classes in that grade and attendance center as a result of these placements. Preschool programs established pursuant to Section 2-3.71 of the School Code [105 ILCS 5/2-3.71] that provide bilingual education services shall meet the requirements of 23 Ill. Adm. Code 235.30 (Early Childhood Block Grant) rather than the requirements of this subsection (b)(1).*
- 2) *Grade-Level Placement – Students enrolled in a program of transitional bilingual education shall be placed in classes with students of approximately the same age or grade level, except as provided in subsection (b)(3) ~~of this Section~~. (Section 14C-6 of the School Code)*
- 3) *Multilevel Grouping – If students of different age groups or educational levels are combined in the same class, the school district shall ensure that*

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the instruction given each student is appropriate to his/her age or grade level. (Section 14C-6 of the School Code) Evidence of compliance with this requirement shall be:

- A) individualized instructional programs; or
 - B) grouping of students for instruction according to grade level.
- 4) Beginning with the 2012-13 school year, instruction in Spanish language arts, where provided under subsection (c) or (d) of this Section, shall be aligned to the standards that are appropriate to the ages or grade levels of the students served, which are set forth in the document titled "World-Class Instructional Design and Assessment: Spanish Language Arts Standards" (2005), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium, University of Wisconsin-Madison, 1025 West Johnson Street, MD #23, Madison WI 53706, and posted at <http://wida.us/standards/sla.aspx>. No later amendments to or editions of these standards are incorporated by this Section.
- 5) Language Grouping – School districts may place English learners who have different home languages in the same class, provided that, in classes taught in the home language:
- A) instructional personnel or assistants representing each of the languages in the class are used; and
 - B) the instructional materials are appropriate for the languages of instruction.
- 6) Program Integration – *In courses of subjects in which language is not essential to an understanding of the subject matter, including, but not necessarily limited to, art, music, and physical education, English learners shall participate fully with their English-speaking classmates.* (Section 14C-7 of the School Code)
- c) Specific Requirements for Transitional Bilingual Education (TBE) Programs
- 1) Each full-time TBE program shall consist of at least the following

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components (Section 14C-2 of the School Code):

- A) *Instruction in subjects which are either required by law (see 23 Ill. Adm. Code 1) or by the student's school district, to be given in the student's home language and in English; core subjects such as math, science and social studies must be offered in the student's home language, except as otherwise provided in subsection (c)(3) of this Section;*
 - B) *Instruction in the language arts in the student's home language;*
 - C) *Instruction in English as a second language, which must align to the [applicable English language development standards set forth in Section 228.102012 Amplification of the English Language Development Standards Kindergarten-Grade 12 \(2012\)](#), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium, University of Wisconsin-Madison, 1025 West Johnson Street, MD #23, Madison WI 53706, and posted at <http://wida.us/standards/eld.aspx>. ~~No later amendments to or editions of these standards are incorporated by this Section;~~ and*
 - D) *Instruction in the history and culture of the country, territory, or geographic area which is the native land of the students or of their parents and in the history and culture of the United States.*
- 2) Programs may also include other services, modifications, or activities such as counseling, tutorial assistance, learning settings, or special instructional resources that will assist English learners in meeting the Illinois Learning Standards (see 23 Ill. Adm. Code 1, Appendix D) and for preschool programs established pursuant to Section 2-3.71 of the School Code, the Illinois Early Learning and Development Standards – Children Age 3 to Kindergarten Enrollment Age (see 23 Ill. Adm. Code 235, Appendix A).
 - 3) Beginning September 1, 2013, students may be placed into a part-time program, or students previously placed in a full-time program may be placed in a part-time program in accordance with the requirements of this subsection (c)(3).

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- A) If an assessment of the student's English language skills has been performed in accordance with the provisions of either Section 228.15(e) or Section 228.25(b) ~~of this Part~~ and the assessment results indicate that the student has sufficient proficiency in English to benefit from a part-time program.
- i) Evidence of sufficient proficiency shall be achievement of the minimum score to be used for this purpose set by the State Superintendent either on the prescribed screening instrument required in Section 228.15(e) ~~of this Part~~ or the English language proficiency assessment required in Section 228.25(b). The State Superintendent shall inform districts of the minimum score to be used for the prescribed screening instrument or the English language proficiency assessment, and post the minimum score on the State Board's website. Should the minimum score be modified, the State Superintendent shall inform school districts no later than July 1 of the scores to be used and modify the State Board's website accordingly.
 - ii) Preschool programs shall use as evidence of sufficient proficiency either a minimum score for an established screening instrument or a minimum level of performance documented through established screening procedures.
- B) If the student's score either on the prescribed screening instrument required in Section 228.15(e) ~~of this Part~~ or the English language proficiency assessment required in Section 228.25(b) is below the minimum identified pursuant to subsection (c)(3)(A) ~~of this Section~~, the student may be placed in a part-time program only if one of the following conditions is met.
- i) **Native Language Proficiency**
A native language proficiency test documents that the student has minimal or no proficiency in the home language and a parent provides written confirmation that English is the primary language spoken in the home.
 - ii) **Academic Performance in Subjects Taught in English**

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Any student whose student grades, teacher recommendations and State or local assessment results in the previous school year indicate that the student has performed at or above grade level in one or more core subject areas (i.e., reading, English language arts, mathematics, physical sciences, social sciences) that were taught exclusively in English.

- iii) **Academic Performance**
Any student in a departmentalized setting whose student grades, teacher recommendations and State or local assessment results in the previous school year indicate that the student has performed at or above grade level in at least two core subject areas that were taught in a U.S. school in the student's native language or via sheltered instruction in English.
 - iv) **Students with Disabilities**
Any student with a disability whose Individualized Education Program developed in accordance with 23 Ill. Adm. Code 226.Subpart C identifies a part-time transitional bilingual education program as the least restrictive environment for the student.
 - v) **Limited Native Language Instruction**
The [limited](#) use of native language instruction is permissible for a student whose native language has no written component or one for which written instructional materials are not available. Oral native language instruction or support should be provided based on the student's needs.
- C) A part-time program shall consist of components of a full-time program that are selected for a particular student based upon an assessment of the student's educational needs. Each student's part-time program shall provide daily instruction in English and in the student's home language as determined by the student's needs.
- 4) *Parent and Community Participation – Each district or cooperative shall establish a parent advisory committee consisting of parents, legal*

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guardians, transitional bilingual education teachers, counselors, and community leaders. This committee shall participate in the planning, operation, and evaluation of programs. The majority of committee members shall be parents or legal guardians of students enrolled in these programs. Membership on this committee shall be representative of the languages served in programs to the extent possible. (Section 14C-10 of the School Code [105 ILCS 5/14C-10])

- A) The committee shall:
- i) meet at least four times per year;
 - ii) maintain on file with the school district minutes of these meetings;
 - iii) review the district's annual program application to the State Superintendent of Education; and
 - iv) *autonomously carry out their affairs, including the election of officers and the establishment of internal rules, guidelines, and procedures.* (Section 14C-10 of the School Code)
- B) Each district or cooperative shall ensure that training is provided annually to the members of its parent advisory committee. This training shall be conducted in language that the parent members can understand and shall encompass, but need not be limited to, information related to instructional approaches and methods in bilingual education; the provisions of State and federal law related to students' participation and parents' rights; and accountability measures relevant to students in bilingual programs.
- d) Specific Requirements for Transitional Program of Instruction (TPI)
- 1) Program Structure – The level of a student's proficiency in English, as determined by an individual assessment of the student's language skills on the basis of either the prescribed screening instrument or procedures, as applicable, required in Section 228.15(e) ~~of this Part~~ or the English language proficiency assessment required in Section 228.25(b) ~~of this Part~~

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in conjunction with other information available to the district regarding the student's level of literacy in his or her home language, will determine the structure of the student's instructional program.

- 2) Program Components – A transitional program of instruction must include instruction or native language support~~other assistance~~ in the student's home language to the extent necessary, as determined by the district on the basis of the prescribed screening instrument or procedures, as applicable required in Section 228.15(e)~~of this Part~~ or the English language proficiency assessment required in Section 228.25(b)~~of this Part~~, to enable the student to keep pace with his/her age or grade peers in achievement in the core academic content areas. A transitional program of instruction shall may include,~~but is not limited to, the following components:~~A) instruction in ESL, which must align to the applicable English language development standards set forth in Section 228.10. A transitional program of instruction also may include, but is not limited to: 2012 Amplification of the English Language Development Standards Kindergarten-Grade 12 (2012), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium, University of Wisconsin-Madison, 1025 West Johnson Street, MD #23, Madison WI 53706, and posted at <http://wida.us/standards/eld.aspx>. No later amendments to or editions of these standards are incorporated by this Section;
- AB) language arts in the students' home language; and
- BC) instruction in the history and culture of the country, territory, or geographic area that is the native land of the students or of their parents and in the history and culture of the United States.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 228.35 Personnel Qualifications; Professional Development

- a) Each individual assigned to provide instruction in a student's home language shall meet the requirements for bilingual education teachers set forth in 23 Ill. Adm. Code 25 (Educator Licensure) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision), as applicable.

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- b) Each individual assigned to provide instruction in ESL shall meet the requirements for ESL or English as a New Language teachers set forth in 23 Ill. Adm. Code 25 and 23 Ill. Adm. Code 1, as applicable.
- c) **Preschool Programs**
- 1) Each individual assigned to provide instruction to students in a preschool program shall meet the requirements of 23 Ill. Adm. 235.20(c) (Application Procedure and Content for New or Expanding Programs).
 - 2) By July 1, ~~2016~~2014, each individual assigned to provide instruction to students in a preschool program also shall meet the applicable requirements of subsection (a) or (b) ~~of this Section~~, depending on the assignment, except as provided in subsection (c)(3).
 - 3) During school years 2014-15 and 2015-16, any school district unable to meet the requirements of subsection (c)(2) shall submit a plan to the State Superintendent of Education by September 15 of each year that demonstrates how the program is actively working toward recruiting and hiring fully qualified staff and serves preschool-age English learners. The plan shall be developed jointly by school administrators responsible for the preschool program and the bilingual education program. Using a format prescribed by the State Superintendent of Education, the plan shall include, but is not limited to:
 - A) Past and current efforts undertaken by the district to recruit and hire fully qualified staff;
 - B) Reasons why individuals meeting the requirements of subsection (a) or (b) were not hired, if applicable;
 - C) Professional development activities focused on the needs of preschool-age English learners; and
 - D) How the educational program for English learners will meet the needs of those students without fully qualified staff, to include information relative to the components set forth in Section 228.27(b) through (f).

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[43](#)) Staff who are employed to assist in instruction in a preschool program but do not hold a professional educator license shall meet the requirements of 23 Ill. Adm. 235.20(c).

d) Administrators

Beginning July 1, 2014, each individual assigned to administer a program under this Part shall meet the applicable requirements of this subsection (d).

- 1) Except as provided in subsections (d)(2) and (3) ~~of this Section~~, any person designated to administer either a TBE or a TPI program must hold a valid administrative or a supervisory endorsement issued on a professional educator license by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 (Educator Licensure) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision) and must meet the requirements of 23 Ill. Adm. Code 1.783 (Requirements for Administrators of Bilingual Education Programs), as applicable.
- 2) A person designated to administer a TBE or TPI program in a district with fewer than 200 TBE/TPI students shall be exempt from all but the requirement for an administrative or a supervisory endorsement issued on a professional educator license, provided that he or she annually completes a minimum of eight hours of professional development. An assurance that this requirement has been met shall be provided annually in a school district's application submitted pursuant to Section 228.50 ~~of this Part~~. Documentation for this professional development activity shall be made available to a representative of the State Board of Education upon request.
- 3) A person who has been assigned to administer a TPI program in a district that experiences such growth in the number of students eligible for bilingual education that a TBE program is required shall become subject to the requirements of subsection (d)(1) ~~of this Section~~ at the beginning of the fourth school year of the TBE program's operation. A person who has been assigned to administer a program under subsection (d)(2) ~~of this Section~~ in a district where the number of students eligible for bilingual education reaches 200 shall become subject to the requirements of subsection (d)(1) ~~of this Section~~ at the beginning of the fourth school year in which the eligible population equals or exceeds 200 or more students. That is, each individual may continue to serve for the first three school

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years on the credentials that qualified him or her to administer the program previously operated.

- e) Professional Development for Staff
- 1) Each school district having a program shall annually plan professional development activities for the licensed and nonlicensed personnel involved in the education of English learners. This plan shall be included in the district's annual application and shall be approved by the State Superintendent of Education if it meets the standards set forth in subsections (e)(2) and (e)(3) ~~of this Section~~.
 - 2) Program staff beginning their initial year of service shall be involved in training activities that will develop their knowledge of the requirements for the program established under this Part and the employing district's relevant policies and procedures.
 - 3) Training activities shall be provided to all bilingual program staff at least twice yearly and shall address at least one of the following areas:
 - A) current research in bilingual education;
 - B) content-area and language proficiency assessment of English learners;
 - C) research-based methods and techniques for teaching English learners;
 - D) research-based methods and techniques for teaching English learners who also have disabilities; and
 - E) the culture and history of the United States and of the country, territory or geographic area that is the native land of the students or of their parents.
 - 4) In addition to any other training required under this subsection (e), each individual who is responsible for administering the prescribed screening instrument referred to in Section 228.15(e) ~~of this Part~~ or the annual English language proficiency assessment discussed in Section 228.25(b)

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~~of this Part~~ shall be required to complete on-line training designated by the State Superintendent of Education and to pass the test embedded in that material.

- 5) ~~Each Beginning in the 2012-13 school year, each~~ district that operates either a TBE or a TPI program for students of Spanish language background in kindergarten and any of grades 1 through 12 shall provide annually at least one training session related to the implementation of the Spanish language arts standards required under Section 228.30(b)(4) ~~of this Part~~ for staff members of that program who are providing instruction in the Spanish language arts.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Charter Schools
- 2) Code Citation: 23 Ill. Adm. Code 650
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
650.10	Amendment
650.20	Amendment
650.30	Amendment
650.55	New Section
650.65	New Section
650.Appendix A	New Section
- 4) Statutory Authority: 105 ILCS 5/Art. 27A
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking continues implementation of several provisions enacted by PA 97-152, effective July 20, 2011, which substantially amended Article 27A of the School Code (the Charter Schools Law). Additionally, changes are being proposed in Section 650.30 to identify the materials that a charter school authorizer must submit with its initial application for approval, as well as any application for renewal or revision of its approved charter.

The proposed changes in new Sections 650.55 and 650.65 address two provisions contained in Section 27A-12 of the School Code: biennial reporting to the State Board by authorizers of charter schools and ongoing monitoring of charter school authorizers by the agency to ensure compliance with laws and rules governing charter schools. The proposed changes further set forth the procedures that the State Board will use to sanction charter school authorizers or charter schools that are chronically underperforming.

Section 27A-12 of the School Code requires the State Board to publish a report about charter schools in January of every even-numbered year. To compile this report, the State Board must collect certain data from charter school authorizers by no later than September 30 of every odd-numbered year.

New Section 650.55 lists the information and data that all charter school authorizers must include in their reports. The information and data to be reported generally address a charter school authorizer's strategic vision for chartering and progress toward achieving that vision; the status of each charter school in the authorizer's portfolio; and the authorizing functions provided by the authorizer to the charter schools under its purview, including its operating costs and expenses. Section 650.55 also sets parameters for the

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agency's collection of this information and data, including submission requirements and timelines.

As further set forth in Section 27A-12 of the School Code, the State Board is authorized to remove a charter school authorizer's power to establish charter schools or oversee existing charter schools in those situations when the authorizer "does not demonstrate a commitment to high-quality authorization practices". The State Board also may, "if necessary, revoke the chronically low-performing charters authorized by the authorizer at the time of the removal". New Section 650.65 specifies the grounds upon which the State Board may remove an authorizer's authorizing power, based on information the agency receives from an authorizer's biennial reports, as well as complaints submitted to the agency and other ongoing monitoring efforts. The proposed amendments also establish a process for the State Board to follow if it chooses to remove an authorizer's power to authorize charter schools and address the process to be taken to determine the status of any charter schools established by an authorizer whose authorizing powers have been removed.

Proposed modifications in Section 650.30 place into rule specific mention of the format that authorizers must use when submitting to the State Board reports of approved charter school applications and reports related to renewal of approved charters or revisions to those charters made after approval is granted. The proposed changes do not place new requirements on charter school authorizers, as authorizers have been required to use certain forms for these processes for some time. Rather, the agency has an obligation to state all of its policies in administrative rules. The changes in Section 650.30 will correct the rule's oversight in not listing the complete requirements that apply to these reports.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule 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 will not create or enlarge a state mandate.

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street, S-493
Springfield IL 62777-0001

217/782-5270
rules@isbe.net

- 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: Yes; see Section 650.55
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER 6: MISCELLANEOUS

PART 650

CHARTER SCHOOLS

SUBPART A: GENERAL PROVISIONS

Section

650.10 Definitions

650.20 Purpose

SUBPART B: ACTIONS OF THE STATE BOARD OF EDUCATION

Section

650.30 Submission to the State Board of Education

650.40 Review by the State Superintendent of Education of Local or Commission Approvals

650.50 Revision and Renewal of Charters

[650.55 Biennial Reporting Requirements](#)

650.60 Appeal of Local School Board Decisions (Repealed)

[650.65 Monitoring of Charter Authorizers by the State Board of Education; Corrective Action](#)

650.70 Procedures for Closing a Charter School

SUBPART C: ACTIONS OF THE STATE CHARTER SCHOOL COMMISSION

Section

650.100 Appeals to, and Requests for Consideration by, the Commission

650.110 Review of Appeals and Requests for Consideration; Decision

[650.APPENDIX A Principles and Standards for Authorizing Charter Schools](#)

AUTHORITY: Implementing and authorized by Article 27A of the School Code [105 ILCS 5/Art. 27A].

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SOURCE: Emergency rules adopted at 20 Ill. Reg. 6329, effective April 23, 1996, for a maximum of 150 days; emergency expired; emergency amendment at 20 Ill. Reg. 8677, effective June 25, 1996, for a maximum of 150 days; new Part adopted at 20 Ill. Reg. 15284, effective November 15, 1996; emergency amendments at 22 Ill. Reg. 1479, effective January 1, 1998, for a maximum of 150 days; emergency expired; emergency amendment at 22 Ill. Reg. 5104, effective February 27, 1998, for a maximum of 150 days; emergency expired; amended at 22 Ill. Reg. 16455, effective September 3, 1998; amended at 36 Ill. Reg. 14801, effective September 20, 2012; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 650.10 Definitions

"Article 27A of the School Code" or the "Charter Schools Law" means 105 ILCS 5/Art. 27A.

"Authorizer" has the meaning set forth in Section 27A-3 of the School Code and includes the Commission.

"Commission" means the State Charter School Commission (see Section 27A-7.5)~~has the meaning set forth in Section 27A-3~~ of the School Code.

"Day" means calendar day, unless otherwise specified in this Part. The time within which any action required under this Part must occur shall be determined in accordance with the provisions of Section 1.11 of the Statute on Statutes [5 ILCS 70/1.11].

"School Code" means 105 ILCS 5.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 650.20 Purpose

Article 27A of the School Code sets forth the requirements for a charter school and the procedure for consideration of a charter school proposal by a local board~~boards~~ of education, by two or more local boards of education pursuant to Section 27A-4(e) of the School Code, or by the Commission.

a) This Part sets forth the procedures applicable to reporting to the State Board of

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Education by local school boards and the Commission of the submission of charter school proposals, as required by Sections 27A-8(f) ~~and 27A-9(e) and 27A-9(f)~~ of the School Code, and of reporting of data regarding the charter schools under the authorizer, as required by Section 27A-12 of the School Code.

- b) ~~This Further, this~~ Part further sets forth procedures for appeals to the Commission of local board of education decisions under Section 27A-9 of the School Code and for the orderly closing of charter schools.
- c) This Part also sets forth the procedures for the State Board of Education to remove the power of authorizers to authorize charter schools as provided under Section 27A-12 of the School Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: ACTIONS OF THE STATE BOARD OF EDUCATION

Section 650.30 Submission to the State Board of Education

Local boards of education shall submit a final report to the State Board of Education as to the action by the local boards of education with regard to an application for, revision of, renewal of, or revocation of a charter. A copy of the report shall be provided to the applicant or charter holder at the same time that the report is submitted to the State Board of Education. Reports shall be submitted as follows.

- a) The local board of education shall submit the report to the State Board of Education either by electronic mail or U.S. mail to the address in subsection (e) ~~of this Section~~ not later than seven days after the date of the public meeting at which the board acted on the charter request.
- 1) For reports submitted by U.S. mail, the report must bear a postmark date of not later than seven days following the meeting date.
 - 2) In case of separate public meetings by each school board involved, the seven days shall begin when the last school board votes on the matter.
- b) Section 27A-6 of the School Code provides that a proposed contract between the governing body of a proposed charter school and the local school board must be submitted to and certified by the State Board before it can take effect.

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- 1b) Reports of approved applications, ~~revisions~~, or renewals shall consist of the charter school proposal voted upon by each of the local boards of education authorizing the charter school and the contractual agreement. The report also shall be accompanied by each of the forms, a form to be supplied by the State Superintendent of Education, listed in this subsection (b)(1). Reports lacking one or more of these documents shall be considered incomplete and shall not be reviewed for certification until all required items have been submitted. ~~Board that~~
- A) A form attesting ~~attests~~ to the local board of education's compliance with all of the procedural requirements and application components set forth in Article 27A of the School Code. The form and the proposed contractual agreement shall be signed by the president of each local school board that is a party to the application and the appropriate officers of the charter school governing body. ~~Section 27A-6 of the School Code provides that a proposed contract between the governing body of a proposed charter school and the local school board must be submitted to and certified by the State Board before it can have effect.~~
- B) A budget narrative and financial schedule for the term of the charter.
- C) A plan for the provision of special education services to students with disabilities enrolled in the charter school, which, for approved applications, shall at least include, but not be limited to, an explanation of how parents of students with disabilities will be informed of their students' eligibility to participate in the charter school lottery held pursuant to Section 27A-4(h) of the School Code and how the charter school will identify students who may be eligible to receive special education services at the charter school.
- 2) Reports of approved revisions shall consist of the revised contractual agreement. The report also shall be accompanied by the form specified in subsection (b)(1)(A) and may include the forms specified in subsection (b)(1)(B) or (b)(1)(C), as applicable to the revisions being made.
- c) Reports of denials, revocations or non-renewals shall consist of the charter

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proposal or current charter contract voted upon by each of the local boards of education; a copy of each board's resolution setting forth the board's action and its reasons for the action; a notice to the applicant or charter holder to the effect that a denial, revocation or non-renewal of a charter school application or revision may be appealed to the Commission within 30 days from the date that the school board voted to deny the application or revoke or not renew a contract; and any other documents upon which the board relied in denying the current proposal or revoking or not renewing the contract.

- d) Each submission under subsection (b) or (c) ~~of this Section~~ also shall include a certification of publication and a copy of the printed notice of the public meeting for each local board of education involved, as required by Section 27A-8(d) of the School Code.
- e) Reports shall be submitted via electronic submission to charter@isbe.net or by certified mail, return receipt requested, addressed to:

Illinois State Board of Education
Charter Schools
100 West Randolph Street
Suite 14-300
Chicago, Illinois 60601

- f) Reports and other documentation pertaining to denials, revocations or non-renewals also shall be submitted to the Commission within the timeframe set forth in subsection (a) ~~of this Section~~ via electronic submission to Jeanne.Nowaczewski@Illinois.gov or by certified mail, return receipt requested, addressed to:

State Charter School Commission
Michael A. Bilandic Building
160 North LaSalle Street, 6th Floor
Chicago, Illinois 60601

(Source: Amended at 38 Ill. Reg. _____, effective _____)

[Section 650.55 Biennial Reporting Requirements](#)

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- a) No later than September 30 of every odd-numbered year, each authorizer shall submit a report to the State Board of Education that shall respond at least to the reporting elements set forth in Section 27A-12 of the School Code. The State Superintendent of Education shall develop and post at <http://www.isbe.net/charter/Default.htm> by July 1 of each odd-numbered year a standard form that shall be used for this purpose.
- b) The report shall include, but not be limited to, the information specified in this subsection (b), to be reported for each of the two school years immediately preceding submission of the report.
 - 1) The name, job title and contact information for each person who has principal responsibilities relative to the authorization of charter schools and, if applicable, the name of each contractor so engaged and a description of its authorizing responsibilities.
 - 2) Information relative to the authorizer's strategic vision for chartering, strategies for accomplishing that vision and an assessment of progress toward achieving that vision.
 - 3) Information relative to the chartering policies and practices developed and maintained by the authorizer, including but not limited to:
 - A) Solicitation and evaluation of charter applications;
 - B) Decision-making processes regarding new charter approvals;
 - C) Negotiation processes to ensure execution of sound charter contracts with clear performance standards established for each approved charter school;
 - D) Ongoing charter school oversight and evaluation;
 - E) Charter renewal decision-making; and
 - F) Charter school non-renewal or revocation decision-making.
 - 4) The status of the authorizer's charter school portfolio in each of the following categories:

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- A) For any charter school that has been approved but is not opened by the date the authorizer submits its report to the State Board of Education:
- i) the targeted student population and the community the school hopes to serve;
 - ii) the location or geographic area proposed for the school;
 - iii) the projected enrollment;
 - iv) the grades to be operated during each year in the term of the charter contract;
 - v) the names and contact information for the governing board; and
 - vi) the planned date for opening.
- B) The number of charter schools operating in each of the following categories:
- i) Charter schools operating more than one campus under a single charter agreement;
 - ii) Virtual charter schools;
 - iii) Charter schools devoted exclusively to students from low-performing or overcrowded schools; and
 - iv) Charter schools devoted exclusively to re-enrolled high school dropouts and/or students at risk of dropping out.
- C) Information relative to each charter school whose charter was renewed, to include at least the date of renewal.

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- D) Information relative to each charter school whose charter was transferred to another authorizer, to include at least the effective date of the transfer.
- E) Information relative to each charter school whose charter was not renewed or was revoked, to include at least the effective date of and reasons for the non-renewal or revocation.
- F) Information relative to each charter school that was voluntarily closed, to include at least the effective date of the closure.
- G) Information relative to each charter school that was approved but was never opened and has no planned date for opening.
- 5) The total student enrollment by September 30 of the applicable school year for all charter schools authorized by the authorizer.
- 6) Information relative to the academic and financial performance of each of the authorizer's operating charter schools, to include at least data related to the performance expectations for charter schools set forth in Section 2-3.64 of the School Code or the charter contract.
- 7) The authorizer's operating costs and expenses associated with the performance of the powers and duties enumerated in Section 27A-7.10(a) of the School Code and any additional duties set forth in the terms of each charter contract.
- 8) A description of the general categories of services provided by the authorizer to the charter schools in its portfolio pursuant to Section 27A-11(b) of the School Code, as set forth in the charter school contracts, and an itemized accounting of the revenue the authorizer received from its charter schools for a particular service and the authorizer's actual costs for services provided, when applicable.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 650.65 Monitoring of Charter Authorizers by the State Board of Education; Corrective Action

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In accordance with Section 27A-12 of the School Code, the State Board of Education shall rely on information reported by authorizers pursuant to Section 650.55 and *ongoing monitoring of both charter schools and authorizers to determine whether to remove the power to authorize from any authorizer in this State if the authorizer does not demonstrate a commitment to high-quality authorization practices and, if necessary, revoke the charters of the chronically low-performing charters authorized by the authorizer at the time the power to authorize is removed.* [105 ILCS 5/27A-12]

- a) A charter school authorizer may be subject to corrective action, including but not limited to removal of chartering authority, in the following circumstances:
 - 1) Failure to develop chartering policies and practices consistent with the principles and standards set forth in Appendix A (see Section 27A-7.10(e) of the School Code);
 - 2) Failure to comply with any State or federal statutory or regulatory requirement for charter authorization;
 - 3) Failure to require a plan of remediation pursuant to Section 27A-9(c) of the School Code for, and/or close, charter schools that:
 - A) remain on academic watch status for three or more years after initial placement on academic watch status; and/or
 - B) fail to meet performance targets and standards established by the authorizer in a charter school performance plan by the timelines specified in the plan;
 - 4) Failure to require a plan of remediation pursuant to Section 27A-9(c) for, and/or close, charter schools for financial mismanagement or failure to meet generally accepted standards of fiscal management; and/or
 - 5) A pattern of evidence-based complaints about the authorizer or any of its public charter schools, filed with the State Superintendent of Education in accordance with subsection (b).
- b) A complaint alleging that an authorizer has violated a requirement of Article 27A of the School Code or this Part may be submitted in writing to the State Superintendent of Education.

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- 1) The written complaint shall include:
 - A) A statement as to which provision of law or rules has been violated;
 - B) The facts on which the statement is based; and
 - C) The signature and contact information for the complainant.
- 2) A complaint submitted in accordance with subsection (b)(1) shall be considered by the State Superintendent of Education unless:
 - A) It clearly appears on its face to be frivolous, trivial or designed or intended primarily to harass the authorizer;
 - B) Prior to any action by the State Superintendent of Education, the authorizer voluntarily concedes noncompliance and agrees to take appropriate remedial action within a reasonable timeframe; or
 - C) Prior to any action by the State Superintendent of Education, the complainant withdraws the complaint.
- c) When the State Superintendent of Education has information that the authorizer may meet one or more of the conditions specified in subsection (a) or upon a determination that a complaint submitted pursuant to subsection (b) is within the State Board of Education's jurisdiction and merits consideration, the State Superintendent shall provide written notification to the authorizer enumerating the deficiencies found or the particulars of the complaint filed against the authorizer and providing a copy of the complaint, redacting any personally identifiable information.
 - 1) The written notification shall be sent by certified mail, return receipt requested, to the authorizer, and a copy of the notification shall be provided by regular U.S. mail to the complainant.
 - 2) Upon receipt of the notification, the authorizer shall have no more than 15 days to provide a written response to the State Board of Education. The

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authorizer and the State Superintendent of Education may mutually agree to a longer time for response, but in no case shall the response time exceed 45 days. The written response shall be addressed to the General Counsel, Illinois State Board of Education, 100 West Randolph Street, Suite 14-300, Chicago, Illinois 60601.

- 3) The authorizer's written response shall include a statement addressing any of the deficiencies cited by the State Superintendent of Education or the issues raised in a complaint, as well as any documentation requested by the State Superintendent.

d) Reasonable Inquiry

- 1) The State Superintendent of Education may conduct a reasonable inquiry to determine if the authorizer has violated any of the provisions of Article 27A of the School Code or this Part if:
- A) The authorizer fails to respond to the complaint within the timeframe specified in subsection (c);
 - B) The authorizer denies the allegations in the complaint;
 - C) It cannot otherwise be determined on the face of the complaint and the authorizer's response as to whether the authorizer has violated any Section of the Charter Schools Law or this Part; or
 - D) In the authorizer's initial response, the authorizer concedes noncompliance and agrees to take appropriate remedial action, but:
 - i) The complainant submits additional documentation, either orally or in writing, alleging that no remedial action has occurred or that remediation was not completed within the timeframe committed to by the authorizer; or
 - ii) The State Superintendent of Education finds that no remedial action has occurred or remediation was not completed within the timeframe committed to by the authorizer.

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- 2) The reasonable inquiry may include one or more of the following steps, which may be conducted by State Board of Education personnel, or an outside entity, at the State Superintendent of Education's discretion:
 - A) Review of all or selected portions of the authorizer's policies, practices, education records or curriculum;
 - B) Contact with individuals from the authorizer or any charter school under the authorizer's jurisdiction who might reasonably be expected to have information relevant to identified deficiencies or the allegations of the complaint;
 - C) Desk audit, whereby the State Superintendent of Education would require submission or complete access to materials or data from the authorizer or any charter school under the authorizer's jurisdiction that the State Superintendent of Education determines will assist him or her in responding to the identified deficiencies or the allegations in the complaint; and/or
 - D) Technical assistance as needed to attempt to bring the authorizer into compliance.
- e) If the reasonable inquiry results in a determination of noncompliance, the State Superintendent shall provide a written notification of noncompliance to the authorizer by certified mail, return receipt requested. The notification of noncompliance shall specify the following:
 - 1) All formal findings of noncompliance specific to the statutory or regulatory violations that led to the finding of noncompliance;
 - 2) The timeframe within which the areas of noncompliance must be cured;
 - 3) The technical assistance available to the authorizer, if applicable;
 - 4) The consequences, if any, that will be imposed by the State Board of Education should the authorizer fail to address the areas of noncompliance; and

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- 5) A statement informing the authorizer that it may seek a conference with representatives of the State Board of Education by submitting a written request to the address specified in subsection (c)(2) within 15 days after receiving the notification of noncompliance.
- f) Within 60 days after the date of receipt after notification of noncompliance issued under subsection (e), or within 60 days after the date of any conference scheduled pursuant to subsection (e)(5), whichever is later, the authorizer shall submit to the State Superintendent a corrective action plan that conforms to the requirements of subsection (g). The authorizer and State Superintendent of Education may mutually agree to a longer time for response, but in no case shall the response time exceed 90 days.
- 1) If the authorizer is a local school board, the plan shall be signed by the president and secretary of the local board of education pursuant to **Section 10-7 of the School Code**, as evidence that the board adopted a resolution authorizing its submission.
- 2) If the authorizer is the Commission, the plan shall be signed by the chairman of the Commission as evidence that the Commission adopted a resolution authorizing its submission.
- g) The State Superintendent of Education shall approve or disapprove a corrective action plan no later than 30 days after its receipt from the authorizer and shall notify the authorizer in writing of that decision.
- 1) The State Superintendent shall approve a plan if it:
- A) Specifies the steps to be taken by the authorizer that are directly related to the area or areas of noncompliance cited;
- B) Provides evidence that the authorizer has the resources and ability to take the steps described without giving rise to other issues of compliance that would subject the authorizer to corrective action; and

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- C) Specifies a timeline for correction of the cited deficiencies that is demonstrably linked to the factors leading to noncompliance and is no longer than needed to correct the identified problems.
- 2) If no plan is submitted, or if no approvable plan is received within the timeframe required under subsection (f), the State Board of Education may impose sanctions against the authorizer in accordance with subsection (i).
- h) If, at any time while a plan for corrective action is in effect, the State Board of Education determines that the agreed-upon actions are not being implemented in accordance with the plan or the underlying areas of noncompliance are not being remedied, the State Board of Education may impose sanctions in accordance with subsection (i).
- i) Sanctions Against an Authorizer
In accordance with Section 27A-12 of the School Code, the State Board of Education may remove an authorizer's power to authorize charter schools. For the purposes of this Section, "removal of the power to authorize" shall mean removal of an authorizer's power to approve and oversee any new charter schools, and/or removal of an authorizer's power to oversee charter schools already operating that are under the jurisdiction of the authorizer.
- 1) An authorizer that is subject to sanctions pursuant to this Section may make an oral presentation to the State Board. A request to make an oral presentation must be submitted in writing and postmarked no later than 30 days from the date of receipt of notice that sanctions may be imposed, and must identify the specific agency findings with which the authorizer disagrees. The State Board shall consider oral presentations and written documents presented by staff and interested parties prior to rendering a final decision.
- 2) In the event that chartering authorization is removed, the State Board of Education shall determine the status of each charter school within the authorizer's portfolio. With respect to each charter school, the State Board may:
- A) Allow the charter school to continue operating under the jurisdiction of the authorizer;

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- B) Terminate the existing charter agreement between the authorizer and the governing board of the charter school and transfer the charter school to another authorizer in accordance with subsection (j); or
 - C) Terminate the existing charter agreement between the authorizer and the governing board of the charter school and close the charter school in accordance with subsection (k).
- j) Transfer of Charter Schools
- 1) Based upon a recommendation of the State Superintendent of Education, the State Board of Education may order a change in authorizer for charter schools under the jurisdiction of an authorizer that has had its power to authorize charter schools removed under this Section. Unless compelling reasons justify a different recommendation:
 - A) The State Superintendent shall recommend a transfer to the Commission in the case of sanctions against a local school board authorizer; or
 - B) The State Superintendent shall recommend a transfer to the school board for the district or districts of student residency in the case of sanctions against the Commission.
 - 2) The State Superintendent of Education shall provide written notification of the transfer recommendation by certified mail, return receipt requested, to the governing bodies of any charter school subject to transfer and the entity recommended to become the authorizer.
 - 3) The governing bodies of any charter school that is subject to the transfer recommendation and the entity recommended to become the authorizer shall follow the same process and be subject to the same timelines for review as set forth in Section 27A-8 of the School Code to determine whether to enter into a contractual agreement for authorization. Until the process is complete, the charter school shall remain open under its current authorizer.

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- A) If the charter school does not consent to the transfer, the State Board of Education shall order the charter school to close. Prior to this direction, the State Board of Education shall permit members of the governing board of the charter school subject to closure to present written and oral comments to the State Board of Education. Any closure of a charter school pursuant to this subsection (j)(3)(A) shall follow the procedures set forth in Section 650.70 (Procedures for Closing a Charter School).
- B) If the entity recommended to become the authorizer does not consent to the transfer, the State Board of Education shall direct the State Superintendent of Education to either recommend an alternative authorizer to which the charter school will be transferred in accordance with the requirements of this Section or to close the charter school by following the procedures set forth in Section 650.70.
- 4) Except in the case of an emergency that places the health, safety or education of the charter school's students at risk, the transfer of the charter school to its new authorizer shall occur at the end of the school year.
- 5) The term of the contract with a new authorizer after a transfer of authorizers may be for a period not to exceed five years, following certification of the new charter school in accordance with Article 27A of the School Code and this Part.
- k) Closure of Charter Schools
- 1) The State Board of Education may order any charter school under the jurisdiction of the authorizer that has had its power to authorize charter schools removed under this Section to close if the State Board of Education clearly demonstrates that the charter school did any of the following or otherwise failed to comply with the requirements of Article 27A of the School Code:
- A) Remained on academic watch status for three or more years after initial placement on academic watch status and/or failed to meet

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performance targets and standards established by the charter school's authorizer in a charter school performance plan within the timelines specified in the plan;

- B) Mismanaged its finances or failed to meet generally accepted standards of fiscal management; and/or
- C) Violated any provision of law from which the charter school was not exempted pursuant to Section 27A-5 of the School Code.
- 2) Prior to the State Board of Education's ordering any charter school to close under this subsection (k), the State Superintendent of Education shall provide written notification by certified mail, return receipt requested, to the governing board of the charter school subject to closure. The notice shall summarize the reasons for the closure recommendation and provide, as applicable, the formal opinion pertaining to the recommendation.
- 3) The governing board of the charter school subject to closure shall have seven days from the date of receipt of the State Superintendent's notice to request the opportunity to present written and oral comments to the State Board of Education about the closure recommendation.
- 4) Any closure of a charter school pursuant to this subsection (k) shall follow the procedures set forth in Section 650.70.
- l) An authorizer that has had its power to authorize charter schools removed pursuant to this Section may petition the State Board of Education for a return of authorizing powers. The State Board of Education shall reinstate the power to authorize to an authorizer if the authorizer clearly demonstrates that:

 - 1) Any noncompliance matters that resulted in the sanctions have been resolved;
 - 2) The authorizer has developed systems and processes to ensure that the noncompliance issues that resulted in the sanctions will not recur; and
 - 3) The authorizer has participated in a State- or national-level training program designed to develop the capacity and effectiveness of charter school authorizers, including but not limited to any training programs

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offered by the Commission, provided that the Commission is not the sanctioned authorizer submitting the petition for reinstatement.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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Section 650.APPENDIX A Principles and Standards for Authorizing Charter Schools

The following principles and standards for charter school authorizers align to Article 27A of the School Code and are based on the "Principles and Standards of Quality Charter School Authorizing" (2012), published by the National Association of Charter School Authorizers (NACSA), 105 West Adams Street, Suite 3500, Chicago IL 60603-6253 and posted at <http://www.qualitycharters.org/publications-resources/principles-standards.html>. No later amendments to or editions of these standards are incorporated.

PRINCIPLES

A high-quality authorizer engages in responsible oversight of charter schools by ensuring that schools have both the autonomy to which they are entitled and the public accountability for which they are responsible. The following three principles lie at the heart of the authorizing endeavor, and authorizers should be guided by and fulfill these principles in all aspects of their work.

Principle 1: Maintain High Standards

Sets high standards for approving charter applicants.

Maintains high standards for the schools it oversees.

Effectively cultivates high-quality charter schools that meet identified educational needs.

Oversees charter schools that meet over time the performance standards and targets on a range of measures and metrics set forth in the charter contracts.

Principle 2: Uphold School Autonomy

Honors and preserves core autonomies crucial to school success, including:

Governing board independent from the authorizer;

Personnel;

School vision and culture;

Instructional programming, design and use of time; and

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Budgeting.

Minimizes administrative and compliance burdens on schools.

Focuses on holding schools accountable for outcomes rather than processes, while at all times strictly enforcing all applicable statutory and regulatory requirements for charter schools.

Principle 3: Protect Student and Public Interests

Makes the well-being and interests of students the fundamental value informing all the authorizer's actions and decisions.

Holds schools accountable for fulfilling fundamental public education obligations to all students, which includes providing:

Nonselective, nondiscriminatory access to all eligible students;

Fair treatment in admissions and disciplinary actions for all students; and

Appropriate services for all students, including those with disabilities and who are English learners, in accordance with applicable laws.

Holds schools accountable for fulfilling fundamental obligations to the public, which includes providing:

Sound governance, management and stewardship of public funds;

Public information and operational transparency in accordance with applicable State and federal laws; and

Compliance with all applicable laws and regulations.

Ensures in its own work:

Ethical conduct;

Focus on the mission of chartering high-quality schools;

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Clarity, consistency and public transparency in authorizing policies, practices and decisions;

Effective and efficient public stewardship; and

Compliance with all applicable laws and regulations.

STANDARDS

Standard 1: Agency Commitment and Capacity

A high-quality authorizer engages in chartering as a means to foster excellent schools that meet identified needs; clearly prioritizes a commitment to excellence in education and in authorizing practices; and creates organizational structures and commits human and financial resources necessary to conduct its authorizing duties effectively and efficiently.

1.1 Standards for Planning and Commitment to Excellence

Supports and advances the purposes of Article 27A of the School Code.

Ensures that the authorizer's governing board, leadership and staff understand and are committed to the principles articulated in this Appendix A.

Defines external relationships and lines of authority to protect the authorizing functions from conflicts of interest and political influence.

Implements policies, processes and practices that streamline and organize its work toward State goals, and executes its duties efficiently while minimizing administrative burdens on schools.

Evaluates its work regularly against national standards for high-quality authorizing and recognized effective practices and develops and implements timely plans for improvement if these standards and practices are not achieved.

States a clear mission for high-quality authorizing (advanced).

Articulates and implements an intentional strategic vision and plan for chartering, including clear priorities, goals and timeframes for achievement (advanced).

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Evaluates its work regularly against its chartering mission and strategic plan goals, and implements plans for improvement when the mission and strategic plan goals are not achieved (advanced).

Conforms to reporting requirements about its progress and performance in meeting its strategic plan goals, as required by Section 27A-12 of the School Code and Section 650.55 of this Part.

1.2 Standards for Human Resources

Enlists expertise and competent leadership for all areas essential to charter school oversight, including, but not limited to, educational leadership; curriculum, instruction and assessment; special education; English learners and other diverse learning needs; performance management and accountability; law; finance; facilities; and nonprofit governance and management through the use of staff, contractual relationships, and/or intra- or inter-agency collaborations.

Employs competent personnel at a staffing level that is appropriate and sufficient, commensurate with the size of the charter school portfolio, to carry out all authorizing responsibilities in accordance with the principles and standards set forth in this Appendix A.

Provides for regular professional development for the authorizer's leadership and staff to achieve and maintain high standards of professional authorizing practice and to enable continual improvement.

1.3 Standards for Financial Resources

Determines the financial needs of the authorizing office and devotes sufficient financial resources to fulfill its authorizing responsibilities in accordance with the principles and standards set forth in this Appendix A and commensurate with the scale of the charter school portfolio.

Tracks operating costs and expenses associated with the performance of the powers and duties enumerated in Section 27A-7.10(a) of the School Code and any additional duties set forth in the terms of each charter contract.

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When making decisions pertaining to approving or renewing a charter school, considers whether the terms of the charter, as proposed, are economically sound for both the charter school and the school district. (See Section 27A-7(a) of the School Code.)

Provides funding to all charter schools in compliance with the requirements of Article 27A of the School Code and submits to the State Board of Education information about the budget and financial schedule as may be required.

Structures funding in such a way as to avoid conflicts of interest, inducements, incentives or disincentives that might compromise its judgment in charter approval and accountability decision-making.

Deploys funds effectively and efficiently and maintains the public's interests when doing so.

Standard 2: Application Process and Decision-Making

A high-quality authorizer implements a comprehensive application process that includes clear application questions and guidance; follows fair, transparent procedures and rigorous criteria; and grants charters only to applicants who demonstrate a strong capacity to establish and operate a high-quality charter school.

2.1 Standards for Proposal Information, Questions and Guidance

Maintains a charter application information packet or, if actively soliciting proposals, issues a request for proposals (RFP) that:

States any chartering priorities the authorizer may have established;

Articulates comprehensive application questions to elicit the information needed for a rigorous evaluation of the applicant's plans and capacities; and

Provides clear guidance and requirements for the content and format of the application and the evaluation criteria that will be used when considering the application.

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Welcomes proposals from first-time charter applicants, as well as existing school operators or replicators, and appropriately distinguishes between the two types of developers in proposal requirements and evaluation criteria.

To the extent it is determined to be economically sound for the district and the charter school, encourages expansion and replication of charter schools that demonstrate success and capacity for growth.

Is open to considering diverse educational philosophies and approaches, and expresses a commitment to serve students with diverse needs.

To the extent it is determined to be economically sound for the district and the charter school, broadly invites and solicits charter applications, while publicizing the authorizer's strategic vision and chartering priorities without restricting or refusing to review applications that propose to fulfill other goals (advanced).

2.2 Standards for Fair, Transparent, Quality-Focused Procedures

Implements a charter application process that is open, well-publicized and transparent, and is organized around timelines that are clear, realistic and compliant with the timelines for review of charter proposals set forth in Section 27A-8 of the School Code.

Allows sufficient time in the application process so that each stage of the application review and school pre-opening processes are carried out with integrity and attention to high quality.

Explains how each stage of the application process is conducted and evaluated.

Informs applicants of their rights and responsibilities and promptly notifies applicants in writing of approval or denial, while explaining the factors that determined the decision.

In compliance with Sections 27A-8(f) and 27A-9(e) of the School Code and Section 650.30 of this Part (Submission to the State Board of Education), submits all required documentation pertaining to charter school approvals to the State Board of Education, and all required documentation pertaining to denials, revocations or non-renewals to the State Board of Education and the Commission.

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2.3 Standards for Rigorous Approval Criteria

Requires all applicants to submit a charter school proposal that is complete and fully addresses all required elements under Section 27A-7(a) of the School Code, including, but not limited to, a clear and compelling mission; a high-quality educational program; a solid business plan; a transportation plan to meet the needs of low-income and at-risk students; effective governance and management structures and systems; founding team members who demonstrate diverse and necessary capabilities; and clear evidence of the applicant's capacity to execute its plan successfully.

Establishes distinct requirements and criteria for applicants that are existing school operators and those that are replicators.

Establishes distinct requirements and criteria for applicants proposing to contract with education service or management providers.

To the extent that these schools are permitted under Article 27A of the School Code, establishes distinct requirements for applicants proposing to operate schools devoted exclusively to students from low-performing or overcrowded schools.

To the extent that these schools are permitted under Article 27A of the School Code, establishes distinct requirements for applicants proposing to operate schools devoted exclusively to re-enrolled high school dropouts and/or students 16 or 15 years old who are at risk of dropping out.

To the extent that these schools are permitted under Article 27A of the School Code, establishes distinct requirements and criteria for applicants proposing to operate virtual or online charter schools.

2.4 Standards for Rigorous Decision-Making

Grants charters only to applicants that have demonstrated competence and capacity to succeed in all aspects of the school, consistent with the stated approval criteria.

Rigorously evaluates each application through the use of knowledgeable and competent evaluators who employ some combination of a thorough review of the

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written proposal, a substantive in-person interview with the applicant group, the public meeting required under Section 27A-8(c) of the School Code for gathering more information to assist in determining whether to grant or deny the charter school proposal, and other due diligence to examine the applicant's experience and capacity.

Engages, for both written application reviews and any applicant interviews, highly competent teams of internal and external evaluators with relevant educational, organizational (governance and management), financial and legal expertise, as well as thorough understanding of the provisions of Article 27A of the School Code and the essential principles of charter school autonomy and accountability.

Provides orientation or training to application evaluators (including interviewers) to ensure the use of consistent evaluation standards and practices, observance of essential protocols and fair treatment of applicants.

Ensures that the application review process and decision-making are free of conflicts of interest, and requires full disclosure of any potential or perceived conflicts of interest between reviewers or decision-makers and applicants.

Standard 3: Performance Contracting

A high-quality authorizer executes contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences and other material terms. The contract is an essential document, separate from the charter application, that establishes the legally binding agreement and terms under which the school will operate and be held accountable.

3.1 Standards for Contract Term, Negotiation and Execution

Executes a contract with a legally incorporated governing board of a nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois that is completely independent of the authorizer.

Executes all charter agreements within 120 days after the charter's approval and at least 30 days before the start of school, whichever date comes first.

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Ensures that all charter school agreements have been certified by the State Board of Education in accordance with Section 650.40 prior to the date on which the charter school opens or begins its renewal term.

Defines material terms of the contract.

Ensures mutual understanding and acceptance of the contract by the school's governing board prior to authorization or charter granting by the authorizing board.

Allows, and requires contract amendments for, occasional material changes to the school's plan, but does not require amending the contract for non-material modifications.

3.2 Standards for Rights and Responsibilities

Executes charter school contracts that clearly:

State the rights and responsibilities of the school and the authorizer;

State and respect the autonomies to which charter schools are entitled, based on statute, waiver or authorizer policy, including those relating to the school's authority over educational programming, staffing, budgeting and scheduling;

Define performance standards, criteria and conditions for renewal, intervention, revocation and non-renewal, while establishing the consequences for meeting or not meeting standards or conditions;

State the statutory, regulatory and procedural terms and conditions for the school's operation, including a clearly defined list of all health and safety requirements applicable to all public schools under the laws of the State of Illinois;

State reasonable pre-opening requirements or conditions for new schools to ensure that they meet all health, safety and other legal requirements prior to opening and are prepared to open smoothly;

State the responsibility and commitment of the school to adhere to essential public education obligations, including admitting and serving all eligible students so

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long as space is available, and not expelling or counseling out students except pursuant to a discipline policy approved by the authorizer; and

State the responsibilities of the school and the authorizer in the event of school closures.

Ensures that any fee-based services that the authorizer provides are set forth in a services agreement that respects charter school autonomy and treats the charter school equitably compared to district schools, if applicable; and ensures that purchasing these services is explicitly not a condition of charter approval, continuation or renewal.

3.3 Standards for Charter Performance Standards

Executes charter contracts that plainly:

Establish the performance standards under which schools will be evaluated, using objective and verifiable measures of student achievement as the primary measure of school quality;

Include expectations for appropriate access, education, support services and outcomes for students with disabilities;

Define clear, measurable and attainable academic, financial and organizational performance standards and targets that the school must meet as a condition of renewal, including but not limited to required State and federal measures;

Make increases in student academic achievement for all groups of students described in section 6311(b)(2)(C)(v) of the Elementary and Secondary Education Act (20 USC 6301 et seq.) the most important factor to be considered for charter renewal or revocation decision-making;

Define the sources of academic data that will form the evidence base for ongoing and renewal evaluation, including State-mandated and other standardized assessments, student academic growth measures, internal assessments, qualitative reviews and performance comparisons with other comparable public schools in the district and State;

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Define the sources of financial data that will form the evidence base for ongoing and renewal evaluation, grounded in professional standards for sound financial operations and sustainability;

Define the sources of organizational data that will form the evidence base for ongoing and renewal evaluation, focusing on fulfillment of legal obligations, fiduciary duties and sound public stewardship; and

Include clear, measurable performance standards to judge the effectiveness of alternative schools, if applicable, requiring and appropriately weighting rigorous mission-specific performance measures and metrics that credibly demonstrate each school's success in fulfilling its mission and serving its special population.

3.4 Standards for Education Service or Management Contracts (if applicable)

For any school that contracts with an external (third-party) provider for education design and operation or management, includes additional contractual provisions that ensure rigorous, independent contract oversight by the charter school governing board and the school's financial independence from the external provider. In determining whether a charter school is independent of the external provider, the authorizer shall consider the criteria listed in Q & A (B-13) of the U.S. Department of Education, Charter Schools Program, Title V, Part B of the ESEA, Nonregulatory Guidance (Published April 2011) and posted at <http://www2.ed.gov/programs/charter/nonregulatory-guidance.doc>. No later amendments to or editions of this guidance are incorporated.

Reviews the proposed third-party contract as a condition of charter approval to ensure that it is consistent with applicable laws, authorizer policy and the public interest.

Standard 4: Ongoing Oversight and Evaluation

A high-quality authorizer conducts contract oversight that competently evaluates performance and monitors compliance; ensures schools' legally entitled autonomy; protects student rights; informs intervention, revocation and renewal decisions; and provides regular public reports on school performance.

4.1 Standards for Performance Evaluation and Compliance Monitoring

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Implements a comprehensive performance accountability and compliance monitoring system that is defined by the charter contract and provides the information necessary to make rigorous and standards-based renewal, revocation and intervention decisions.

Defines and communicates to schools the process, methods and timing of gathering and reporting school performance and compliance data.

Implements an accountability system that effectively streamlines local, State and federal performance expectations and compliance requirements, while protecting schools' legally entitled autonomy and minimizing schools' administrative and reporting burdens.

Provides clear technical guidance to schools, as needed, to ensure timely compliance with applicable regulations.

Visits each school as appropriate and necessary for collecting data that cannot be obtained otherwise and in accordance with the contract, while ensuring that the frequency, purposes and methods of these visits respect school autonomy and avoid operational interference.

Evaluates each school annually on its performance and progress toward meeting the standards and targets stated in the charter contract, including essential compliance requirements, and clearly communicates evaluation results to the school's governing body and leadership.

In accordance with Section 27A-5(f) of the School Code, requires and reviews annual financial audits of schools conducted by a qualified independent auditor.

Communicates regularly with schools as needed, including both the school leaders and governing boards, and provides timely notice of contract violations or performance deficiencies.

Provides an annual written report to each school, summarizing its performance and compliance to date and identifying areas of strength and areas needing improvement.

Articulates and enforces stated consequences for failing to meet performance expectations or compliance requirements.

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4.2 Standards for Respecting School Autonomy

Respects the school's authority over its day-to-day operations.

Collects information from the school in a manner that minimizes administrative burdens on the school, while ensuring that performance and compliance information is sufficiently detailed and timely to protect student and public interests.

Periodically reviews compliance requirements and evaluates the potential to increase school autonomy based on flexibility in the law, streamlining requirements, demonstrated school performance or other considerations.

Refrains from directing or participating in the educational decisions or choices that are appropriately within a school's purview under Article 27A of the School Code or the contract.

4.3 Standards for Protecting Student Rights

In accordance with Section 27A-4(d) and (h) of the School Code, ensures that schools admit students through a random selection that is open to all students who reside within the geographic boundaries of the areas served by the local school board, is publicly verifiable, and does not establish undue barriers to application (such as mandatory information meetings, mandated volunteer service or parent contracts) that exclude students based on socioeconomic, family or language background, prior academic performance, special education status or parental involvement.

Ensures that schools provide access and services to students with disabilities, as required by applicable State and federal laws, including compliance with individualized education programs and section 504 plans, access to facilities and educational opportunities.

Ensures clarity in the roles and responsibilities of all parties involved in serving students with disabilities.

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Ensures that schools provide access to and appropriately serve other special populations of students, including English learners, homeless students and gifted students, as required by State and federal law.

Ensures that schools' student discipline policies and actions comply with applicable State and federal laws regarding discipline, are fair and ensure that no student is expelled or counseled out of a school outside of the process set forth in those policies.

4.4 Standards for Intervention

Establishes, and makes available to schools as they are chartered, an intervention policy that states the general conditions that may trigger intervention and the types of actions and consequences that may ensue.

Gives schools clear, adequate, evidence-based and timely notice of contract violations or performance deficiencies.

Allows schools reasonable time and opportunity for remediation in non-emergency situations.

When intervention is needed, engages in intervention strategies that clearly preserve school autonomy and responsibility (identifying what the school must remedy without prescribing solutions).

4.5 Standards for Public Reporting

Produces regular public reports that provide clear, accurate performance data for the charter schools overseen by the authorizer, reporting on individual school and overall portfolio performance according to the framework set forth in the charter contract. (Also see Section 650.55.)

Standard 5: Revocation and Renewal Decision-Making

A high-quality authorizer designs and implements a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions and revokes charters when necessary to protect student and public interests.

5.1 Standards for Revocation

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Adheres to all notice and corrective action requirements for revocation of a charter school, as set forth in Section 27A-9 of the School Code.

5.2 Standards for Renewal Decisions Based on Merit and Inclusive Evidence

Bases the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the performance framework in the charter contract.

Grants renewal only to schools that have achieved the standards and targets stated in the charter contract, are organizationally and fiscally viable, and have been faithful to the terms of the contract and applicable law.

Does not make renewal decisions, including granting probationary or short-term renewals, on the basis of political or community pressure or solely on promises of future improvement.

5.3 Standards for Cumulative Report and Renewal Application

Provides to each school, in advance of the renewal decision, a cumulative performance report that:

Summarizes the school's performance record over the charter term; and

States the authorizer's summative findings concerning the school's performance and its prospects for renewal.

Requires any school seeking renewal to apply through the use of a renewal application, which should provide the school with a meaningful opportunity and reasonable time to respond to the cumulative performance report, to correct the record, if needed, and to present additional evidence regarding its performance.

5.4 Standards for Fair, Transparent Process

Clearly communicates to schools the criteria for charter revocation, renewal and non-renewal decisions that are consistent with the charter contract and Article 27A of the School Code.

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Promptly notifies each school of its renewal (or, if applicable, revocation) decision, including a written explanation of the reasons for the decision.

Promptly communicates renewal or revocation decisions to the school community and public within a timeframe that allows parents and students to exercise choices for the coming school year.

Explains in writing any available rights of legal or administrative appeal through which a school may challenge the authorizer's decision.

In compliance with Sections 27A-8(f) and 27A-9(e) of the School Code and Section 650.30 of this Part, submits all required documentation pertaining to charter school renewals to the State Board of Education, and all required documentation pertaining to revocations or non-renewals to the State Board of Education and the Commission.

Regularly updates and publishes the process for renewal decision-making, including guidance regarding required content and format for renewal applications.

5.5 Standards for Closure

In the event of a school closure, oversees and works with the school's governing board and leadership in carrying out a detailed closure protocol that complies with Section 650.70 and all applicable State laws.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Provider Requirements, Type Services, and Rates of Payment
- 2) Code Citation: 89 Ill. Adm. Code 686
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
686.10	Amendment
686.25	Amendment
686.30	Amendment
686.100	Amendment
686.120	Amendment
686.130	Amendment
686.200	Amendment
686.210	Amendment
686.220	Amendment
686.230	Amendment
686.235	New Section
686.240	Amendment
686.250	Amendment
686.260	Amendment
686.270	Amendment
686.280	Amendment
- 4) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3]
- 5) Effective Date of Rulemaking: May 15, 2004
- 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 rules, including any material incorporated is on file in the Department's principal office and is available for public inspection.
- 9) Notices of Proposal published in the *Illinois Register*: 38 Ill. Reg. 2560; January 24, 2014
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No

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- 11) Differences between Proposal and Final Version: No substantive changes were made.
- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
686.20	Amendment	38 Ill. Reg. 5941; March 14, 2014
686.910	Amendment	38 Ill. Reg. 5941; March 14, 2014
686.930	Amendment	38 Ill. Reg. 5941; March 14, 2014
686.1010	Amendment	38 Ill. Reg. 5941; March 14, 2014
686.1025	Amendment	38 Ill. Reg. 5941; March 14, 2014
686.1030	Amendment	38 Ill. Reg. 5941; March 14, 2014

- 15) Summary and purpose of rulemaking: This rulemaking pertains to the Department of Human Services (DHS), Home Services Program (HSP). This rulemaking will authorize the payment of an enhanced rate for health insurance costs to eligible Homemaker Service Providers. It will establish additional payment and financial reporting guidelines for Homemaker Service Providers who are eligible for the enhanced rate for health insurance costs. PA 97-732, which amends Section 5-20 of the Disabled Persons Rehabilitation Act, provides HSP with the authority to pay the enhanced rate for health insurance costs. HSP shall have the authority to set rates and fees for services in a fair and equitable manner, and pay the same rate for services that are identical to the Department on Aging (DOA). Specifically, proposed changes to this rulemaking include the following:

- Language is added to 686.200 to indicate Homemaker Services Providers must be in compliance with all Medicaid provider requirements for the Illinois Department of Healthcare and Family Services (HFS) and DHS. With increased provider responsibilities required under the SMART Act (PA 97-689), the Division felt it was appropriate to add this reference.
- In Section 686.230, added language to indicate Homemaker Service Providers may appeal program decisions in addition to compliance reviews and establishes a 30 day time period in which to request an appeal.

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- A new Section 686.235 is added for the enhanced rate for health insurance costs for eligible Homemaker Service Providers. The information outlines the type of health insurance plans, eligibility requirements and the annual insurance review for participating providers. This is comparable to DOA language for the Community Care Program (89 Ill. Adm. Code 240.1970).
- New language is added to Section 686.240 and 686.250 (payment information and financial reporting sections) to address the additional requirements for Homemaker Service Providers who receive the enhanced rate. In addition, a new paragraph is added to 686.250 to address financial reporting of rate-based wage increases for Homemaker employees.
- The percentages in 686.270 have been changed to be comparable with the DOA.
- Section 686.260 and 682.280 are amended to reflect the enhanced rate information.
- Edits and updates have been included to make the rules consistent with current programmatic language and standards.

16) Information and questions regarding these adopted rules shall be directed to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield, IL 62762

217/785-9772

17) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? No

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

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER d: HOME SERVICES PROGRAM

PART 686
PROVIDER REQUIREMENTS, TYPE SERVICES, AND RATES OF PAYMENT

SUBPART A: PERSONAL ASSISTANTS

- Section
- 686.10 Personal Assistant (PA) Requirements
- 686.20 Services Which May Be Provided by a PA
- 686.25 Criminal Background Check
- 686.30 Annual Review of PA Performance
- 686.40 Payment for PA Services

SUBPART B: ADULT DAY CARE PROVIDERS

- Section
- 686.100 Adult Day Care (ADC) Provider Requirements
- 686.110 Services ~~That~~Which Must Be Provided by ADC Providers
- 686.120 Compliance Review of ADC Providers
- 686.130 Appeal of Compliance Review for ADC Providers
- 686.140 Payment for ADC Services

SUBPART C: HOMEMAKER SERVICES

- Section
- 686.200 Homemaker Service Provider Requirements
- 686.210 Services ~~That~~Which Must Be Provided by Homemaker ~~Service Providers~~ Agencies
- 686.220 Compliance Review of Homemaker ~~Service Providers~~ Agencies
- 686.230 Appeal ~~Rights of of Compliance Review for~~ Homemaker ~~Service Providers~~ Agencies
- 686.235 Enhanced Rate for Health Insurance Costs
- 686.240 Payment ~~Information~~ for Homemaker ~~Service Providers~~ Services
- 686.250 Financial Reporting of Homemaker ~~Service Services~~ Providers
- 686.260 Unallowable ~~Expenses~~ Costs for Homemaker Service Providers

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- 686.270 Minimum ~~Homemaker Direct Service Worker~~ Costs for Homemaker
~~Service Services~~ Providers
- 686.280 Cost Categories for Homemaker Services

SUBPART D: ELECTRONIC HOME RESPONSE SERVICES

Section

- 686.300 Electronic Home Response Services (EHRS) Provider Requirements
- 686.310 Services Which Must Be Provided by EHRS Providers
- 686.320 Minimum Specifications for EHRS Equipment
- 686.330 Compliance Review of EHRS Providers
- 686.340 Appeal of Compliance Review for EHRS Providers
- 686.350 Rate of Payment for EHRS Services

SUBPART E: MAINTENANCE HOME HEALTH SERVICE

Section

- 686.400 Maintenance Home Health Provider Requirements
- 686.410 Rate of Payment for Maintenance Home Health Services

SUBPART F: HOME DELIVERED MEALS

Section

- 686.500 Home Delivered Meals Provider Requirements
- 686.510 Rate of Payment for Home Delivered Meals

SUBPART G: ENVIRONMENTAL MODIFICATION

Section

- 686.600 Description
- 686.605 Criteria for the Provision of Environmental Modifications
- 686.608 Environmental Modification Provider Requirements
- 686.610 Cost of Environmental Modification (Repealed)
- 686.615 Environmental Modification Bidding Procedures and Requirements
- 686.620 Permanency of Environmental Modification
- 686.630 Reason for Denial of Environmental Modification
- 686.640 Verification of Environmental Modification

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SUBPART H: ASSISTIVE EQUIPMENT

Section	Description
686.700	Criteria for the Purchase, Rental, or Repair of Assistive Equipment
686.705	Purchase, Rental, or Repair of Assistive Equipment
686.708	Provision of Assistive Equipment (Repealed)
686.710	Assistive Equipment Provider Requirements
686.715	Verification of Receipt of Assistive Equipment (Repealed)
686.720	Assistive Equipment Bidding Procedures and Requirements
686.722	Verification of Receipt of, and Customer Satisfaction with, Assistive Equipment
686.730	

SUBPART I: RESPITE CARE

Section	Description
686.800	Respite Care Provider Requirements

SUBPART J: CASE MANAGEMENT SERVICES TO PERSONS WITH AIDS

Section	Description
686.900	Program Overview
686.910	Case Management Provider Responsibilities
686.920	Provider Staffing Requirements, Qualifications, and Training
686.930	Monitoring and Liability of Provider
686.940	Provider Compliance Requirements

SUBPART K: CASE MANAGEMENT SERVICES
TO PERSONS WITH BRAIN INJURIES

Section	Description
686.1000	Program Overview
686.1010	Case Management Provider Responsibilities
686.1020	Case Manager Staffing Requirements, Qualifications and Training
686.1025	Provisional Case Manager
686.1030	Monitoring and Liability
686.1040	Provider Compliance Requirements

SUBPART L: BEHAVIORAL SERVICES

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FOR PERSONS WITH BRAIN INJURIES

Section

686.1100 Behavioral Services Provider Requirements

686.1110 Rate of Payment for Behavioral Services

SUBPART M: DAY HABILITATION SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section

686.1200 Day Habilitation Services Provider Requirements

686.1210 Rate of Payment for Day Habilitation Services

SUBPART N: PREVOCATIONAL SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section

686.1300 Prevocational Services Provider Requirements

686.1310 Rate of Payment for Prevocational Services

SUBPART O: SUPPORTED EMPLOYMENT SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section

686.1400 Supported Employment Service Provider Requirements

686.1410 Rate of Pay for Supported Employment Services

686.APPENDIX A Acceptable Human Service Degrees

AUTHORITY: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

SOURCE: Adopted at 19 Ill. Reg. 5104, effective March 21, 1995; amended at 20 Ill. Reg. 12479, effective August 28, 1996; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; amended at 22 Ill. Reg. 18945, effective October 1, 1998; amended at 22 Ill. Reg. 19262, effective October 1, 1998; amended at 23 Ill. Reg. 499, effective December 22, 1998; amended at 23 Ill. Reg. 6457, effective May 17, 1999; amended at 24 Ill. Reg. 7501, effective May 6, 2000; amended at 24 Ill. Reg. 10212, effective

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July 1, 2000; amended at 24 Ill. Reg. 18174, effective November 30, 2000; amended at 25 Ill. Reg. 6282, effective May 15, 2001; amended at 26 Ill. Reg. 3994, effective February 28, 2002; amended at 28 Ill. Reg. 6453, effective April 8, 2004; amended at 29 Ill. Reg. 16508, effective October 17, 2005; amended at 31 Ill. Reg. 14238, effective September 27, 2007; emergency amendment at 33 Ill. Reg. 7017, effective May 5, 2009, for a maximum of 150 days; emergency expired October 1, 2009; emergency amendment at 38 Ill. Reg. 6473, effective February 28, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 11519, effective May 15, 2014.

SUBPART A: PERSONAL ASSISTANTS

Section 686.10 Personal Assistant (PA) Requirements

In order to be employed by a customer as a PA (89 Ill. Adm. Code 676.30~~(g)~~), an individual must:

- a) have a Social Security number and provide [the Department of Human Services \(DHS\)](#) with documented verification of this number;
- b) be a minor between 14 and 16 years of age who is not employed during school hours, has an employment certificate and meets all other requirements of the Child Labor Law [820 ILCS 205] and has an adult who is at least 21 years of age and who is legally responsible for the customer who will supervise the PA; be 16 years of age or older, enrolled in school and not employed during school hours; or be 17 years of age or older and not enrolled in school;
- c) have provided to the customer at least two written or verbal recommendations from present or former employers, the recommendation of a Center for Independent Living (CIL), or, if never employed, references from at least two non-relatives;
- d) be able to communicate with the customer to the satisfaction of the customer and counselor;
- e) be able to follow directions to the satisfaction of the customer and counselor;
- f) have previous experience and/or training that is adequate and consistent with the specific tasks required for safe and adequate care of the customer;

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- g) if the customer has a contagious infectious disease, have a physician, health care institution (i.e., hospital, nursing home, home health agency), or CIL certify, in writing, that he/she has the knowledge of precautionary procedures for the control of contagious infectious diseases, if it is anticipated that he/she will come into contact with bodily fluids, or be evaluated by a Registered Nurse licensed pursuant to the ~~Illinois Nursing and Nursing Practices-Nurse Practice Act of 1987~~ [225 ILCS 65] to determine that he/she has knowledge of ~~those such~~ procedures;
- h) complete an EMPLOYMENT AGREEMENT between the customer and PA that certifies the PA:
- 1) shall provide services to the individual in accordance with his/her SERVICE PLAN (IL 499-1049) (89 Ill. Adm. Code 676.30(u));
 - 2) shall submit a bi-monthly calendar listing actual hours worked each pay period (1-15; 16-last working day of the month), as verified by the customer and in accordance with the number of hours authorized by DHS. The PA shall not claim more hours than approved by DHS unless prior approval has been granted by the counselor to address a temporary increased service need;
 - 3) shall make available to DHS and other designated agencies those records described in subsection (h)(2);
 - 4) shall maintain all customer information as confidential and not for release, either in writing or verbally, to anyone other than those designated by DHS in writing;
 - 5) shall not subcontract to any other person, any of the services he/she has agreed to provide;
 - 6) shall provide services only while the individual is in his/her home or during the period covered by Section 684.60 (Provision of Services);
 - 7) shall agree that the customer is responsible for locating, choosing, employing, supervising, training, and disciplining as necessary the PA. Further, that the State of Illinois does not provide paid vacation, holiday, or sick leave; however, such absences shall be reported to the DHS

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counselor per the HOME SERVICES TIME SHEET (IL 488-2251) only for the purposes of processing payment;

- 8) understands that DHS reports all payments made to a PA to the Illinois Department of Employment Security (DES) and that the PA may apply for unemployment benefits, but DES, not DHS, makes the determination as to whether the PA shall receive benefits;
- 9) understands that he/she may apply for Workers' Compensation benefits through DHS and that some customers may carry such insurance coverage; however, DHS maintains that the customer, not DHS, is the employer for these purposes; and
- 10) understands that DHS will withhold Social Security tax (FICA) from payments made to him/her. Federal and State income tax shall be withheld if the PA completes and returns to DHS two separate W-4 forms;
 - i) complete an I-9 Immigration form, which must be retained by the customer;
 - j) for PAs starting on or after April 13, 1992, complete a PA STANDARDS (IL 488-2112) to be returned to DHS;
 - k) as of April 13, 1992, at the time of redetermination of eligibility of the customer by which he/she is employed, have completed by the customer, a PERSONAL ASSISTANT EVALUATION (IL 488-2089); and
 - l) if requested by the customer, give permission and the necessary information for the customer to request a conviction background check from the Illinois State Police. This permission will require the prospective PA to sign the appropriate form provided by the customer.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.25 Criminal Background Check

- a) A Home Services Customer may require any PA candidate to submit to a criminal background investigation and to successfully complete a criminal background investigation as a condition of being selected as the PA to that Customer.

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- b) In the event that a customer elects to require a PA candidate to submit to a criminal background investigation, the customer shall be obligated only to inform DHS-~~Division of Rehabilitation Services (DRS)~~-ORS of his/her decision and DHS-~~ORS~~~~DRS~~ORS will provide the Customer an appropriate form that the Customer may file with the Illinois State Police to initiate the criminal background investigation. The results of the criminal background investigation will be sent directly to the customer, and the customer shall have no obligation to share the results of the investigation with DHS-~~DRS~~ORS. Nothing contained in this Section shall restrict a customer from extending a conditional offer of employment to any PA candidate pending the results of the background investigation.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.30 Annual Review of PA Performance

- a) Pursuant to 686.10(k), annually, at the time of redetermination of the individual's eligibility, a Personal Assistant Evaluation (IL 488-2089) shall be completed, by the customer with assistance of the counselor, for each PA providing services through the Home Services Program (HSP).
- b) PAs shall be evaluated based upon:
- 1) accuracy of work (e.g., ranging from making many errors to few errors);
 - 2) cleanliness of working area (e.g., ranging from very untidy to exceptionally clean);
 - 3) use of work time (e.g., ranging from very wasteful to very efficient);
 - 4) responsibility (e.g., ranging from irresponsible to responsible);
 - 5) attendance (e.g., ranging from frequently absent or late to always prompt); and
 - 6) attitude towards the customer (e.g., ranging from disrespectful to respectful).

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- c) The outcome of the evaluation shall be mediated by the counselor between the PA and the customer regarding any unresolved issues, up to and including replacement of the PA by the customer, if necessary.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

SUBPART B: ADULT DAY CARE PROVIDERS

Section 686.100 Adult Day Care (ADC) Provider Requirements

Adult Day Care ([ADC](#)) ([see 89 Ill. Adm. Code 676.40](#)) Providers must either be approved by DHS or by the Illinois Department on Aging (DoA) pursuant to DoA's rules found at 89 Ill. Adm. Code 240, with the exception that the term "the elderly" in 89 Ill. Adm. Code 240.1560(a)(1)(A)(ii) and (a)(2)(A)(ii) should be replaced with the term "individuals with disabilities". In order to be approved as an ADC Provider by DHS, the ADC Provider must meet all of the conditions specified by DoA, as cited above, and:

- a) employ a full-time program director;
- b) employ the equivalent of a full-time program coordinator/director;
- c) employ a program nurse who is on duty at least a portion of every standard business day;
- d) employ a nutrition staff;
- e) comply with the provisions of:
 - 1) Section 504 of the Rehabilitation Act of 1973 (29 USC ~~701+2104~~), as amended;
 - 2) the Illinois Human Rights Act [775 ILCS 5];
 - 3) the Illinois Accessibility Code (71 Ill. Adm. Code 400);
 - 4) the Americans with Disabilities Act (42 USC 12101, et seq.); and

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- 5) the Health Insurance Portability and Accountability Act (42 USC 1320(d) et seq.);
- f) record the administration of all prescribed medications for those customers served through HSP who are unable to self-administer medication as documented by a physician licensed pursuant to the Medical Practice Act [225 ILCS 60], a registered nurse licensed pursuant to the ~~Nursing Practice~~Nursing and Advanced Practice Nursing Act [225 ILCS 65], or as documented in the individual's Service Plan (IL 488-1049) (89 Ill. Adm. Code 676.30);
- g) provide DHS with a record of the amount of pre-service training each employee has had;
- h) require, and provide DHS documentation of, at least 12 hours of in-service training for each staff person each fiscal year;
- i) successfully complete an Adult Day Care Provider Review (IL 488-2129) pursuant to Section 686.120;
- j) agree to and sign an Adult Day Care Provider Rate Agreement;
- k) maintain adequate records for planning, budgeting, administration and program evaluation and planning. These records shall be available to DHS and the United States Department of Health and Human Services (HHS), or any entity designated by DHS or HHS, and shall be maintained for a period of at least 5 years or until advised that all State and federal audits are completed. These records must include, but not be limited to:
 - 1) records of all referrals, including the disposition of each referral;
 - 2) all customer records;
 - 3) administrative records, including:
 - A) service statistics; and
 - B) billing and payment records;

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- 4) personnel records, including:
 - A) schedules and attendance records for staff and volunteers;
 - B) training records for staff and volunteers;
 - C) annual performance evaluations for all staff and, as appropriate, all volunteers; and
- l) have an Affirmative Action Plan in place which is approved by its governing body.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.120 Compliance Review of ADC Providers

- a) DHS-~~DRSORS~~ shall complete a review of each ~~Adult Day Care (ADC)~~ Provider, at least every two years, to ensure compliance with the criteria set forth in this Subpart.
- b) The review shall consist of an on-site review conducted by HSP staff using the Adult Day Care Review form (IL 488-2129). Written notification shall be provided to the ADC Provider prior to the review.
- c) Within 15 days after the completion of the review, a copy of the completed IL 488-2129, along with a letter stating the results of the review, shall be mailed to the ADC.
 - 1) If the ADC Provider is approved, included with the letter shall be an ADC Provider Rate Agreement for execution by the appropriate provider staff and return to DHS-~~DRSORS~~.
 - 2) If the ADC Provider is not approved, the letter shall contain specific information regarding:
 - A1) deficiencies found as a result of the review;
 - B2) the action necessary for the ADC Provider to come into

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compliance;

C3) the time frames within which the ADC Provider must come into compliance; and

D4) the information necessary for the ADC Provider to request re-evaluation after the compliance issues are addressed.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.130 Appeal of Compliance Review for ADC Providers

- a) ADC Providers determined not to be in compliance with DHS-~~DRSORS~~ requirements as a result of the review may appeal the decision to the Bureau Chief of the Bureau of Home Services Program. The Bureau Chief shall conduct a review of the facts related to the rating and shall, within 15 working days, provide a written decision to the ADC Provider.
- b) If the ADC Provider is not satisfied with the decision of the Bureau Chief, the ADC Provider may request review of the Chief's decision by the DHS-~~DRSORS Associate~~ Director. The request must be in writing from the ADC provider and received by the DHS-~~DRSORS Associate~~ Director within 10 working days after the date the decision was rendered by the Bureau Chief. The decision of the DHS-~~DRSORS Associate~~ Director shall be final.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

SUBPART C: HOMEMAKER SERVICES

Section 686.200 Homemaker Service Provider Requirements

In order to provide Homemaker Services under HSP (see 89 Ill. Adm. Code 676.40), a Homemaker Service Provider must be in compliance with all Medicaid provider requirements for the Illinois Department of Healthcare and Family Services (HFS) and DHS.

- a) Only Homemaker Service Providers ~~those vendors~~ with an approved Homemaker Agreement ~~Agreements~~ may be used to provide Homemaker Services to individuals being served through Home Services Program ~~(HSP)~~.

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- b) In order to be approved by HSPDHS, the Homemaker Service Provider Agency must comply with the following, to the satisfaction of HSPDHS:
- 1) provide a comprehensive array of services ~~that~~ which include, but are not limited to, those services described in Section 686.210;
 - 2) assure HSPDHS that all referrals will be responded to within 48 hours after receipt from HSPDHS;
 - 3) have written billing procedures and provide a copy to HSPDHS as part of the compliance review;
 - 4) have documented procedures to cover unexpected absences and emergencies to ensure services will be provided in an adequate and safe manner to all individuals served by the Homemaker Service Provider agency;
 - 5) have written procedures to respond to customer and counselor complaints regarding services;
 - 6) maintain comprehensive written job descriptions for, at a minimum, the positions of Executive Director ~~or~~ Administrator, supervisory staff, and Homemakers direct service providers;
 - 7) have established a local presence to ensure regular and on-going contact with HSPDHS and other appropriate community groups;
 - 8) have procedures for regular and on-going recruitment of Homemakers direct service providers through local resources;
 - 9) be ~~either~~ incorporated or provide HSPDHS with a copy of a written statement of purpose and function;
 - 10) maintain adequate records for planning, budgeting, administration and program evaluation and planning. These records shall be available at all times to HSPDHS and the United States Department of Health and Human Services (HHS), or any entity designated by HSPDHS or HHS, and shall

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be maintained for a period of at least 5 years, or until advised that all State and federal audits are completed. These records must include, but not be limited to:

- A) records of all referrals, including the disposition of each referral;
- B) customer records, which include:
 - i) dates and times services were provided to each individual;
 - ii) dates and times of supervisor-~~Homemaker~~homemaker weekly conferences;
 - iii) semi-annual reports of supervisory visits with each customer served;
 - iv) monthly service reports for each customer served that document a summary of services, actual or anticipated changes in the customer's condition, recommended changes in the current HSP Service Plan, and all customer contacts;
 - v) records of all staffings held pertaining to the customer;
 - vi) records of all financial transactions between the customer and any ~~Homemaker Service Provider~~agency employee;
- C) administrative records, which include:
 - i) cumulative service statistics pertaining to any agreement with ~~HSP~~DHS;
 - ii) billing and payment records ~~that~~which pertain to ~~HSP~~DHS;
- D) personnel records, which include:
 - i) attendance records;
 - ii) schedules for all direct service staff;

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- iii) documentation regarding each individual's qualification for the position held;
 - iv) wage rate and effective date for each staff member;
 - v) job performance evaluations for each staff person that include annual evaluations and at least one probationary evaluation completed within the first six months of employment;
 - vi) orientation and training attendance information for each staff member, which must include the name of each instructor, the date, the time and the title of each training program attended; and
 - vii) verification of liability insurance in the amounts of at least \$15,000 per person bodily injury, \$30,000 minimum per occurrence, and \$10,000 in property damage, per occurrence, if the employee will or could be expected to transport customers in the course of his/her work;
- 11) maintain insurance coverage against any and all liability, loss, damage and/or expense from wrongful or negligent acts of the Homemaker Service Provider or any of its employees and provide HSPDHS with written verification of ~~that such~~ coverage;
- 12) maintain written procedures on reporting loss and damage arising from the wrongful or negligent acts of the Homemaker Service Provider or any of its employees;
- 13) agree to hold harmless DHS and HSP against any and all liability, loss, damage, cost, or expense arising from wrongful or negligent acts of the Homemaker Service Provider or any of its employees;
- 14) assist HSPDHS in monitoring and evaluating the Homemaker Service Provider's performance under any agreement with HSPDHS;

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- 15) maintain any and all information regarding individuals referred to the Homemaker Service Provider Agency by HSPDHS as confidential and not for public release without the written consent of HSPDHS and the customer;
 - 16) maintain and have available for review by customers and purchasers of services policies governing:
 - A) the nature and scope of each service provided by the Homemaker Service Provider Agency;
 - B) a two-way receipt system for any time an employee of the Homemaker Service Provider Agency handles an individual's money, food stamps or other negotiable items or tender;
 - C) personnel policies governing salary, leave time, hours of work, employee grievance procedures, and attendance at in and out-service trainings; and
 - 17) have in place an Affirmative Action Plan ~~that~~ which is approved by its governing body.
- c) At a minimum, each Homemaker Service Provider Agency must employ qualified staff in the positions of:
- 1) Executive Director or Administrator for each local unit providing services, who is responsible for the administration of the Homemaker Services program and who, at a minimum, has or is making continued progress towards:
 - A) a Bachelor's degree in health, human services, or a related field;
 - B) licensure as a Registered Nurse pursuant to the Nurse Practice Nursing and Advanced Practice Nursing Act ~~[225 ILCS 65]~~;
 - C) certification as a home health care administrator, medical clinic administrator, or other health services administrator; or

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D) one year of related job experience in social services or in a health agency to replace each year of education required in subsections (c)(1)(A) through (C), provided that at least one year of experience was in a program that provides services to individuals with disabilities.

2) For the purposes of subsections (c)(1)(A) through (C) "continued progress" shall mean current registration and evidence of successful completion of course work in an accredited junior college, college, or university for a minimum of 2 semesters or 3 quarters of each academic year. Successful completion shall mean a grade of at least "C" in undergraduate course work or a grade of "B" in graduate course work;

32) Supervisors, in a ratio of no less than the equivalent of one full-time supervisor to the equivalent of every 20 full-time ~~Homemakers~~direct service providers, who ~~are~~is responsible for the supervision of ~~direct service~~Homemaker staff and who, at a minimum, ~~have~~has:

A) a Bachelor's degree with course work in social science, home economics, or nursing;

B) knowledge and skill equivalent to completion of a Bachelor's degree, as described in subsection (c)(1)(A); or

C) a high school diploma or its equivalent plus health service experience including at least 2 years supervisory experience;

43) ~~Homemakers~~direct service providers who have:

A) been determined to be in good health;

B) knowledge and skill equivalent to a high school diploma;

C) experience as a homemaker, either in his or her own home or through employment; and

D) knowledge of:

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- i) nursing care;
 - ii) first aid;
 - iii) personal and environmental hygiene;
 - iv) household budgeting;
 - v) housekeeping;
 - vi) nutrition;
 - vii) food preparation; and
 - viii) clothing care.
- d) Each supervisor and Homemaker~~direct service provider~~ must, at a minimum, participate in the following training programs:
- 1) Orientation, which shall include:
 - A) the philosophy and purpose of Homemaker Services~~homemaker services~~; and
 - B) the functions of Homemaker Services~~homemaker services~~;
 - 2) In-service training, directed at increasing the Homemaker Service Provider's~~direct service provider's~~ knowledge and skills, of not less than 12 hours each year in areas including:
 - A) disability awareness; and
 - B) Acquired Immunodeficiency Syndrome (AIDS).
- e) The Homemaker Service Provider~~Agency~~ shall have a written policy and procedures governing a self-evaluation process to evaluate services and case management with an outcome of written recommendations to the governing body

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of the Homemaker Service Provideragency to improve the services providedthe agency provides.

- f) The Homemaker Service Provideragency shall abide by provisions of the following federal and State laws and regulations regarding employment practices and compliance:

1) Laws and Regulations

A1) Title VI of the Civil Rights Act of 1964 (42 USC 2000d);

B2) Section 504 of the Rehabilitation Act of 1973 (29 USC 701794);

C3) the Americans Withwith Disabilities Act (42 USC 12101);

D4) the Illinois Human Rights Act [775 ILCS 5];

E5) the Health Care WorkerWorker's Background Check Act [225 ILCS 46]; and

F6) the Health Insurance Portability and Accountability Act (42 USC 1320(d) et seq.).

- 2) Further, the Homemaker Service Provideragency shall provide HSPDHS with a letter certifying compliance with the provisions of the laws listed in this subsection (f)(1) and a copy of the Affirmative Action Plan for the Homemaker Service Provideragency.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.210 Services ThatWhich Must Be Provided by Homemaker Service ProvidersAgencies

An approved Homemaker Service Provider must provide professionally directed home management and personal care services through trained Homemaker employees to HSP customers when the customer does not have a responsible person or entity to assist him or her, and the customer requires teaching, performance and/or assistance with:

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~~The Homemaker Agency must provide professionally directed home management and personal care services directly provided by trained homemakers to individuals served through HSP who require supportive, protective or teaching functions because of the lack of a responsible person or entity to provide such for the individual in the areas of:~~

- a) ~~teaching, performance and/or assistance with~~ household, financial and time management;
- b) ~~nutrition, teaching, performance and/or assistance with~~ meal planning and food preparation, which ~~includes preparation and nutrition, including the preparation of~~ specially prescribed diets and snacks;
- c) ~~teaching, performance and/or assistance with~~ personal care and hygiene ~~that~~ which is ~~nonmedical of a non-medical~~ in nature;
- d) observation and reporting of ~~a customer's~~ the individual's behavior and activities to HSP/DHS for the purpose of assessment and service planning; and
- e) emergency services to meet an unforeseen need in the areas listed in subsections (a) through (d) ~~above~~ when required by the customer contacted by the individual or DHS and preapproved by HSP/DHS.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.220 Compliance Review of Homemaker Service Providers Agencies

- a) ~~DHS-ORS shall conduct a compliance review of any Homemaker Agency seeking an approved rate agreement with DHS and, at least every two years, shall conduct a compliance review of all Homemaker Agencies that have current rate agreements with DHS-ORS for the purpose of determining compliance or continued compliance with the criteria set forth in this Subpart.~~
- b) ~~DHS-ORS shall notify all Homemaker Agencies having current approved rate agreements, in writing, at least 10 working days prior to the date of the review to determine continued compliance.~~

HSP shall conduct a compliance review on all Homemaker Service Providers as a condition of determining compliance, or continued compliance, with the criteria

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established under this Subpart.

- a) A Homemaker Service Provider seeking an HSP rate agreement shall undergo a compliance review as a condition of approval by HSP.
- b) A Homemaker Service Provider with a current HSP rate agreement shall undergo a compliance review at least every two years as a condition of determining continued compliance under the program.
- c) All Homemaker Service Providers with current HSP rate agreements shall be notified in writing by HSP, at least 10 working days prior to the date of the compliance review.
- a) ~~DHS-ORS shall conduct a compliance review of any Homemaker Agency seeking an approved rate agreement with DHS and, at least every two years, shall conduct a compliance review of all Homemaker Agencies that have current rate agreements with DHS-ORS for the purpose of determining compliance or continued compliance with the criteria set forth in this Subpart.~~
- b) ~~DHS-ORS shall notify all Homemaker Agencies having current approved rate agreements, in writing, at least 10 working days prior to the date of the review to determine continued compliance.~~

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.230 Appeal Rights of Compliance Review for Homemaker Service Providers Agencies

- a) ~~Homemaker Service Providers not satisfied with a DHS program decision or an HSP compliance Agencies determined not to be in compliance with DHS-ORS requirements, as a result of the review, may submit an appeal request in writing the decision to the Chief of the Bureau Chief of the Home Services Program. Appeal requests must be filed within 30 days after the program decision or compliance review.~~ The Bureau Chief shall conduct a review of the facts ~~related to the rating~~ and shall, within 15 working days, provide a written decision to the Homemaker ~~Service Provider Agency~~.
- b) If the Homemaker ~~Service Provider Agency~~ is not satisfied with the decision of the Bureau Chief, the Homemaker ~~Service Provider Agency~~ may request review of

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the Bureau Chief's decision by ~~the DHS-ORS Associate~~ Director of DHS-DRS. The request must be in writing and received by ~~the DHS-DRSORS Associate~~ Director within 10 working days after the date the decision was rendered by the Bureau Chief. The decision of ~~the DHS-DRSORS Associate~~ Director shall be final.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.235 Enhanced Rate for Health Insurance Costs

An enhanced rate shall be paid to Homemaker Service Providers that offer health insurance coverage as a benefit to their Homemaker employees who provide services to customers under HSP.

- a) For purposes of this Section, "health insurance" means a Type 1 plan or a Type 2 plan as described in subsections (a)(1) and (2).
- 1) Type 1 Plan
A Type 1 plan must comply with, be comparable to, or exceed required mandated benefits, coverages, and co-payment levels for individuals and group insurance policies and individual and group contracts for health maintenance organizations under the Illinois Insurance Code [215 ILCS 5], the Health Maintenance Organization Act [215 ILCS 125], and 50 Ill. Adm. Code 2001.
- 2) Type 2 Plan
A Type 2 plan is employer-paid health insurance as part of collective bargaining with unionized Homemaker employees through a Taft-Hartley Multi-employer Health and Welfare Plan. The Labor Management Relations Act of 1947 (29 USC 141 et seq.) describes the requirements and coverage at 29 USC 186(c)(5).
- b) Initial Application
- 1) An interested Homemaker Service Provider must submit an initial application at least 120 days prior to the end of each State fiscal year. The application may be obtained from and must be submitted to the Home Services Liaison for Health Insurance, Department of Human Services,

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100 South Grand Avenue East, P.O. Box 19429, Springfield, Illinois 62794-9429.

- 2) Homemaker Service Providers that are found by HSP to have deficiencies may not apply for the enhanced rate until deficiencies are corrected to the satisfaction of HSP.

c) Eligibility

Eligibility requirements include:

- 1) Verification of a current rate agreement as a Homemaker Service Provider under the HSP.
- 2) A copy of a health insurance plan or a certification of insurance and the effective date of that document, to establish that:
- A) the Homemaker Service Provider provides health insurance at its own expense for its Homemaker employees, which may include coverage for those employees' dependents; or
- B) the Homemaker Service Provider will provide for health insurance as part of collective bargaining with unionized Homemaker employees, which may include coverage for those employees' dependents through a Taft-Hartley Multi-employer Health and Welfare Plan.
- 3) Specification of the total number of employees and the total number of Homemaker employees, together with a certification from a responsible party for the Homemaker Service Provider to the effect that:
- A) under a Type 1 health insurance plan:
- i) health insurance coverage is offered to all Homemaker employees who have worked at least an average of 20 hours per week for three consecutive months under HSP; and

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- 3) HSP reserves the right to require a Homemaker Service Provider to engage an independent certified public accounting firm, approved by HSP, to verify the information and data submitted by the Homemaker Service Provider if HSP is in possession of evidence to suggest the information and data submitted is inaccurate, incomplete or fraudulent. This audit will be performed at the Homemaker Service Provider's expense.
- 4) HSP shall notify a Homemaker Service Provider in the event of a determination during the Annual Insurance Review that:
 - A) the Homemaker Service Provider is no longer eligible for continued payment of the enhanced rate for health insurance costs;
 - B) the total revenue from the enhanced rate for health insurance costs exceeds the actual, documented expenses for health insurance costs for the reporting period;
 - C) there was an error in eligibility of a Homemaker Service Provider for the prior reporting period;
 - D) there was an error in the amount of revenue from the enhanced rate for health insurance costs; or
 - E) there was an error in the amount of the health insurance costs.
- 5) A Homemaker Service Provider may appeal an adverse eligibility decision regarding continued payment of the enhanced rate for health insurance costs or a repayment decision in accordance with Section 686.230. HSP will continue to pay the enhanced rate for health insurance costs until the appeal is resolved.
- 6) Supporting documentation may be subject to release under the Freedom of Information Act [5 ILCS 140] unless an exemption applies for confidentiality, privacy, or other proprietary business purpose and is marked accordingly on the face of any submission.

(Source: Added at 38 Ill. Reg. 11519, effective May 15, 2014)

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Section 686.240 Payment Information for Homemaker Service ProvidersServices

- a) Payment information for all Homemaker Service Providers
- 1a) Payment for Homemaker Services shall be at the rate specified in the rate agreement signed by HSP/DHS and the approved Homemaker Service Provider/Agency.
- 2b) Services shall be paid in accordance with the time recorded by the Homemaker employee/increments of not less than one-quarter hour, pursuant to the Service Plan (see 89 Ill. Adm. Code 676.30) developed for the customer/individual.
- 3e) Homemaker Service Providers/Agencies shall submit monthly billings for approved services provided the previous month and monthly progress reports for each customer served by the Homemaker Service Provider/agency for the month being billed. ~~Billings may be submitted less frequently at the discretion of the Homemaker Agency.~~
- 4d) Payment for Homemaker Services shall be allowed only for those hours services are being provided to the ~~individual being served through~~ HSP customer. No payment shall be claimed for those periods ~~that which~~ the Homemaker/agency employee spends traveling, in conferences, etc., or for expenses incurred by the Homemaker/agency employee.
- 5) By accepting any payment under HSP, a Homemaker Service Provider agrees to repay the State of Illinois if:
- A) the total revenue from the monthly billings exceeds the actual, approved documented services under this Section for the reporting period;
- B) an error occurred in the calculation of the monthly billing submitted to HSP and the provider was overpaid;
- C) the Homemaker Service Provider received payment for services during a time the provider was determined ineligible to provide services under HSP; or

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- D) the Homemaker Service Provider misspent HSP funds or received funding from HSP while participating in fraudulent activity.
- b) Additional Payment Information for Homemaker Service Providers with the Enhanced Rate for Health Insurance Costs
- 1) If a Homemaker Service Provider is determined eligible for the enhanced rate for health insurance costs, HSP will thereafter calculate the appropriate payment based on the number of units of Homemaker Service accepted as billed for the eligible dates of service.
 - 2) A Homemaker Service Provider that makes a switch between a Type 1 and a Type 2 plan is not entitled to any retroactive payments for a period of time preceding the date on which benefits are actually available under the new plan.
 - 3) No Homemaker Service Provider is entitled to a duplicate payment for the same period of time or for the same units of Homemaker Service accepted as billed per contract.
 - 4) By accepting any payment under HSP, a Homemaker Service Provider agrees to repay the State of Illinois if:
 - A) the total revenue from the enhanced rate for health insurance costs exceeds the actual, documented expenses for its health insurance costs under this Section for the reporting period;
 - B) an error in eligibility of a Homemaker Service Provider, or the amount of revenue from the enhanced rate for health insurance costs, or the amount of the health insurance costs is subsequently determined by the Homemaker Service Provider or HSP; or
 - C) the Homemaker Service Provider misspent HSP funds or received funding from HSP for the enhanced rate for health insurance costs while participating in fraudulent activity.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

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Section 686.250 Financial Reporting of Homemaker Service Providers

- a) Homemaker Service Providers shall be required to:
- 1) complete and submit a Homemaker Cost Certification report that is based upon actual, documented expenditures.
 - A) The report must be submitted annually, within 60 days after the end of the reporting period, and may be prepared as a part of the Homemaker Service Provider's annual audit.
 - B) The report may be based on a calendar year or on the Homemaker Service Provider's fiscal year; however, once it is determined which time period is to be used, written approval from HSP shall be required for a change in that determination.
 - C) The report must demonstrate that the Homemaker Service Provider has expended a minimum of 77% of the total revenues due from HSP, including the customer incurred expense, for Homemaker costs as enumerated in Section 686.280. For purposes of this report, the phrase "total revenues due from HSP" does not include any amount received as an enhanced rate under Section 686.235 by a qualifying Homemaker Service Provider.
 - D) The report shall identify the Homemaker Service Provider's expenditures for Homemaker costs of Program support costs, and administrative costs as enumerated in Section 686.280.
 - 2) complete and submit a Homemaker Cost Certification report to document compliance with any rate-based wage increase for Homemaker employees who provide services under HSP. The report must be submitted within 60 calendar days after issuance of written notification of the increase by HSP.
- b) The accuracy of the reports identified in subsections (a)(1) and (2) must be attested to by an authorized representative of the Homemaker Service Provider.

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- c) HSP reserves the right to require the Homemaker Service Provider to engage an independent certified public accounting firm, approved by HSP, to verify the information and data submitted by the Homemaker Service Provider if HSP is in possession of evidence to suggest the information and data submitted is inaccurate, incomplete or fraudulent. This audit will be performed at the Homemaker Service Provider's expense.
- d) HSP may take appropriate enforcement action in the following instances:
- 1) a Homemaker Service Provider did not submit a report;
 - 2) a report is inaccurate, incomplete or fraudulent; or
 - 3) a Homemaker Service Provider did not increase the wages paid to its Homemaker employees in the amount required by a rate increase under HSP.
- e) Homemaker Services Providers approved for the enhanced rate for health insurance costs:
- 1) shall not report the enhanced rate for health insurance costs paid by HSP as part of their revenue for purposes of the required financial reporting under this Section; and
 - 2) shall not report health insurance for Homemaker employees as an incurred cost for purposes of the required financial reporting under this Section, except for an amount in excess of the enhanced rate paid by HSP during a reporting period.
- f) Enforcement action towards a Homemaker Service Provider includes, but is not limited to the imposition of a corrective action plan, suspension of referrals from HSP, and/or termination of rate agreements with HSP.
- a) ~~Homemaker Agencies will be required to submit a cost report, the Direct Service Worker Cost Certification, as specified below. The report must be based upon actual, documented expenditures.~~

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- 1) ~~The report must be submitted annually, within 6 months after the end of the reporting period, and may be prepared as a part of the Homemaker Agency's annual audit.~~
- 2) ~~The report may be on either a calendar year basis or the Homemaker Agency's fiscal year, however, once a Homemaker Agency has elected to base the report on a calendar or fiscal year, this election can be changed only upon written approval of the Department.~~
- b) ~~The cost report must demonstrate that the Homemaker Agency has expended a minimum of 73% of the total revenues due from the Department, to include the client incurred expense, for Direct Service Worker costs as enumerated in Section 686.280.~~
- c) ~~The cost report shall identify the Homemaker Agency's expenditures for Direct Service Worker costs of Program Support costs, and Administrative costs as enumerated in Section 686.280.~~
- d) ~~The accuracy of the report must be attested to by an authorized representative of the Homemaker Agency.~~
- e) ~~The Department reserves the right to require the Homemaker Agency to engage an independent certified public accounting firm to verify the information and data submitted by the Homemaker Agency if the Department is in possession of evidence to suggest the information and data submitted is inaccurate, incomplete or fraudulent. This audit will be performed at the Homemaker Agency's expense.~~

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.260 Unallowable Expenses~~Costs~~ for Homemaker Service Providers

The following Homemaker Service Provider expenses~~Certain costs~~ shall not be considered by HSP~~the Department in establishing a fixed rate of reimbursement for homemaker service:~~

- a) expenses resulting from transactions with related parties or ~~/~~parent organizations that are greater than the going market cost of the transactions to the Homemaker Service Provider~~provider~~;

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- b) non-straightline depreciation;
- c) bad debts;
- d) special benefits to owners, including owner and key-man life insurance;
- e) compensation to non-working owners and officers;
- f) discounts, rebates, allowances, and charity grants offered by the Homemaker Service Provider agency;
- g) entertainment expenses;
- h) fundraising fund-raising;
- i) legal fees for litigation with governmental agencies;
- j) awards, grants and gifts to individuals;
- k) fines and penalties;
- l) contingency funds; and
- m) losses on other grants and contracts; and
- n) health coverage costs as described under Section 686.250(e)(2).

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.270 Minimum Homemaker Direct Service Worker Costs for Homemaker Service Providers

- a) As provided under Section 686.250(a)(1)(C), Homemaker Service Providers Agencies are required to expend a minimum of 77%73% of the total revenues due from the HSP Department, to include the customerelient incurred expense, for Homemaker Direct Service Worker costs, as enumerated in Section 686.280, during a reporting year.

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- 1) This percentage is to be adhered to on a statewide basis.
 - 2) The remaining ~~23%~~^{27%} of the total revenues may be spent by the Homemaker ~~Service Providers~~^{Agencies} at their discretion on ~~administrative~~^{Administrative} or Program ~~support~~^{Support} costs, also delineated in Section 686.280.
- b) Failure of the Homemaker ~~Service Provider~~^{Agency} to meet the requirements in subsection (a) ~~above~~ may result in the following:
- 1) Within 60 days, the Homemaker ~~Service Provider~~^{Agency} will be required to submit a corrective action plan that shall include Homemaker ~~Service Provider~~^{Agency} payments to current ~~Homemakers~~^{direct service workers} in an amount that will, in total, bring the Homemaker ~~Service Provider~~^{Agency} into compliance with the requirements in subsection (a) ~~above~~. After ~~HSP's~~^{the Department's} review and approval of the corrective action plan, the Homemaker ~~Service Provider~~^{Agency} shall implement and observe it.
 - 2) Failure by the Homemaker ~~Service Provider~~^{Agency} to submit and/or observe a corrective action plan that is acceptable to ~~HSP~~^{DHS} shall result in termination after 60 days notice.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

Section 686.280 Cost Categories for Homemaker Services

~~Homemaker Service Providers~~^{Providers of homemaker service for which a fixed rate is established} will provide for cost reporting based on the following categories:

- a) ~~Homemaker Direct Service Worker~~^{Homemakers}~~direct service workers~~ costs (costs paid to or on behalf of ~~Homemakers~~^{direct service workers}) that may include:
 - 1) wages, time paid on behalf of the worker (i.e., vacation, sick leave, holiday and personal leave);
 - 2) health coverage for any Homemaker Service Provider that does not qualify for the enhanced rate for health insurance costs from the HSP or the

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amount of the cost incurred in excess of the enhanced rate paid to the Homemaker Service Provider during a reporting period, life insurance and disability insurance;

- 3) retirement coverage;
- 4) Federal Insurance Contributions Act (FICA) (26 USC 21);
- 5) uniforms;
- 6) worker's compensation;
- 7) Federal Unemployment Tax Act (FUTA) (26 USC 23);
- 8) travel time and travel reimbursement;
- 9) unemployment insurance; and
- 10) other costs approved, in advance, as Homemaker direct service costs by HSP the Department.

b) Administrative Costs:

- 1) personnel:
 - A) administrator;
 - B) assistant administrator;
 - C) accountant/bookkeeper;
 - D) clerical;
 - E) other office staff;
 - F) supervisor of Homemakers~~homemakers~~;
 - G) other personnel expenses;

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- 2) consultant:
 - A) auditors;
 - B) management consultants;
 - C) management fees from the parent organization;
 - D) other related consultant costs;
 - E) other consultant expenses;
- 3) non-personnel:
 - A) office supplies;
 - B) office equipment (expense or depreciation based upon company policy);
 - C) telephone/facsimile;
 - D) conferences, conventions, meeting expenses;
 - E) subscriptions and reference materials;
 - F) postage and shipping;
 - G) advertising;
 - H) outside printing and art work;
 - I) membership dues;
 - J) moving and recruiting;
 - K) other general operating expenses;

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- L) profit;
- 4) occupancy:
 - A) depreciation;
 - B) amortization of leasehold improvements;
 - C) rent;
 - D) property taxes;
 - E) interest;
 - F) other related occupancy costs.
- c) Program ~~support costs~~ Support Costs that include all allowable costs not specifically made a part of Homemaker ~~direct service~~ costs or administrative costs. These may include:
 - 1) training expenses;
 - 2) malpractice insurance;
 - 3) Homemaker ~~direct service worker~~ supervisor costs.

(Source: Amended at 38 Ill. Reg. 11519, effective May 15, 2014)

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- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Number: 148.436 Adopted Action:
New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Rulemaking: May 13, 2014
- 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 rule, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: November 15, 2013; 37 Ill. Reg. 18011
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences Between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
148.600	Amendment	37 Ill. Reg. 18959; December 2, 2013
148.610	Amendment	37 Ill. Reg. 18959; December 2, 2013
148.630	Amendment	37 Ill. Reg. 18959; December 2, 2013
148.20	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.25	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.30	Amendment	38 Ill. Reg. 4640; February 21, 2014

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148.40	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.50	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.60	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.70	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.82	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.85	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.90	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.95	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.100	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.103	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.105	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.110	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.112	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.115	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.116	New Section	38 Ill. Reg. 4640; February 21, 2014
148.117	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.120	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.122	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.126	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.140	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.150	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.160	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.170	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.175	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.180	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.200	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.210	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.220	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.230	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.240	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.250	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.260	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.270	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.280	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.290	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.295	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.296	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.297	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.298	Repealed	38 Ill. Reg. 4640; February 21, 2014

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

148.300	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.310	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.320	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.330	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.370	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.390	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.400	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.440	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.442	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.444	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.446	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.448	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.450	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.452	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.454	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.456	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.458	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.460	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.462	Repealed	38 Ill. Reg. 4640; February 21, 2014
148.464	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.466	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.468	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.470	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.472	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.474	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.476	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.478	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.480	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.482	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.484	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.486	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.860	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.Table C	Amendment	38 Ill. Reg. 4640; February 21, 2014
148.130	Amendment	38 Ill. Reg. 6505; March 21, 2014

- 15) Summary and Purpose of Rulemaking: This adopted rulemaking converts static supplemental payments for long term stay hospitals to a per diem rate add-on with admissions on or after November 16, 2013.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

- 16) Information and questions regarding this adopted rule shall be directed to:

Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

217/782-1233

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMSPART 148
HOSPITAL SERVICES

SUBPART A: GENERAL PROVISIONS

Section	
148.10	Hospital Services
148.20	Participation
148.25	Definitions and Applicability
148.30	General Requirements
148.40	Special Requirements
148.50	Covered Hospital Services
148.60	Services Not Covered as Hospital Services
148.70	Limitation On Hospital Services

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section	
148.80	Organ Transplants Services Covered Under Medicaid (Repealed)
148.82	Organ Transplant Services
148.85	Supplemental Tertiary Care Adjustment Payments
148.90	Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments
148.95	Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments
148.100	Outpatient Rural Hospital Adjustment Payments
148.103	Outpatient Service Adjustment Payments
148.105	Psychiatric Adjustment Payments
148.110	Psychiatric Base Rate Adjustment Payments
148.112	High Volume Adjustment Payments
148.115	Rural Adjustment Payments
148.117	Outpatient Assistance Adjustment Payments
148.120	Disproportionate Share Hospital (DSH) Adjustments
148.122	Medicaid Percentage Adjustments
148.126	Safety Net Adjustment Payments
148.130	Outlier Adjustments for Exceptionally Costly Stays
148.140	Hospital Outpatient and Clinic Services

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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- 148.150 Public Law 103-66 Requirements
- 148.160 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million
- 148.170 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act
- 148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act
- 148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting
- 148.190 Copayments
- 148.200 Alternate Reimbursement Systems
- 148.210 Filing Cost Reports
- 148.220 Pre September 1, 1991, Admissions
- 148.230 Admissions Occurring on or after September 1, 1991
- 148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements
- 148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals
- 148.260 Calculation and Definitions of Inpatient Per Diem Rates
- 148.270 Determination of Alternate Cost Per Diem Rates For All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals
- 148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements
- 148.285 Excellence in Academic Medicine Payments (Repealed)
- 148.290 Adjustments and Reductions to Total Payments
- 148.295 Critical Hospital Adjustment Payments (CHAP)
- 148.296 Tertiary Care Adjustment Payments
- 148.297 Pediatric Outpatient Adjustment Payments
- 148.298 Pediatric Inpatient Adjustment Payments
- 148.300 Payment
- 148.310 Review Procedure
- 148.320 Alternatives
- 148.330 Exemptions
- 148.340 Subacute Alcoholism and Substance Abuse Treatment Services
- 148.350 Definitions (Repealed)
- 148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.368 Volume Adjustment (Repealed)
- 148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services

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- 148.380 Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.390 Hearings
- 148.400 Special Hospital Reporting Requirements
- 148.402 Medicaid Eligibility Payments (Repealed)
- 148.404 Medicaid High Volume Adjustment Payments (Repealed)
- 148.406 Intensive Care Adjustment Payments (Repealed)
- 148.408 Trauma Center Adjustment Payments (Repealed)
- 148.410 Psychiatric Rate Adjustment Payments (Repealed)
- 148.412 Rehabilitation Adjustment Payments (Repealed)
- 148.414 Supplemental Tertiary Care Adjustment Payments (Repealed)
- 148.416 Crossover Percentage Adjustment Payments (Repealed)
- 148.418 Long Term Acute Care Hospital Adjustment Payments (Repealed)
- 148.420 Obstetrical Care Adjustment Payments (Repealed)
- 148.422 Outpatient Access Payments (Repealed)
- 148.424 Outpatient Utilization Payments (Repealed)
- 148.426 Outpatient Complexity of Care Adjustment Payments (Repealed)
- 148.428 Rehabilitation Hospital Adjustment Payments (Repealed)
- 148.430 Perinatal Outpatient Adjustment Payments (Repealed)
- 148.432 Supplemental Psychiatric Adjustment Payments (Repealed)
- 148.434 Outpatient Community Access Adjustment Payments (Repealed)
- 148.436 Long Term Stay Hospital Per Diem Payments
- 148.440 High Volume Adjustment Payments
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- 148.444 Capital Needs Payments
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- 148.450 Supplemental Tertiary Care Payments
- 148.452 Crossover Care Payments
- 148.454 Magnet Hospital Payments
- 148.456 Ambulatory Procedure Listing Increase Payments
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- 148.460 Catastrophic Relief Payments
- 148.462 Hospital Medicaid Stimulus Payments
- 148.464 General Provisions
- 148.466 Magnet and Perinatal Hospital Adjustment Payments
- 148.468 Trauma Level II Hospital Adjustment Payments
- 148.470 Dual Eligible Hospital Adjustment Payments
- 148.472 Medicaid Volume Hospital Adjustment Payments

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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148.474	Outpatient Service Adjustment Payments
148.476	Ambulatory Service Adjustment Payments
148.478	Specialty Hospital Adjustment Payments
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148.484	Freestanding Children's Hospital Adjustment Payments
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SUBPART C: SEXUAL ASSAULT EMERGENCY TREATMENT PROGRAM

Section	
148.500	Definitions
148.510	Reimbursement

SUBPART D: STATE CHRONIC RENAL DISEASE PROGRAM

Section	
148.600	Definitions
148.610	Scope of the Program
148.620	Assistance Level and Reimbursement
148.630	Criteria and Information Required to Establish Eligibility
148.640	Covered Services

SUBPART E: INSTITUTION FOR MENTAL DISEASES PROVISIONS FOR HOSPITALS

Section	
148.700	General Provisions

SUBPART F: EMERGENCY PSYCHIATRIC DEMONSTRATION PROGRAM

Section	
148.800	General Provisions
148.810	Definitions
148.820	Individual Eligibility for the Program
148.830	Providers Participating in the Program
148.840	Stabilization and Discharge Practices
148.850	Medication Management
148.860	Community Connect IMD Hospital Payment
148.870	Community Connect TCM Agency Payment

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

148.880 Program Reporting

148.TABLE A Renal Participation Fee Worksheet

148.TABLE B Bureau of Labor Statistics Equivalence

148.TABLE C List of Metropolitan Counties by SMSA Definition

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

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg.

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9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. 16067, effective October 16, 2000; amended at 24 Ill. Reg. 17146, effective November 1, 2000; amended at 24 Ill. Reg. 18293, effective December 1, 2000; amended at 25 Ill. Reg. 5359, effective April 1, 2001; emergency amendment at 25 Ill. Reg. 5432, effective April 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6959, effective June 1, 2001; emergency amendment at 25 Ill. Reg. 9974, effective July 23, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 10513, effective August 2, 2001; emergency amendment at 25 Ill. Reg. 12870, effective October 1, 2001, for a maximum of 150 days; emergency expired February 27, 2002; amended at 25 Ill. Reg. 16087, effective December 1, 2001; emergency amendment at 26 Ill. Reg. 536, effective December 31, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 680, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 4825, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 4953, effective March 18, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 7786, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 7340, effective April 30, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8395, effective May 28, 2002; emergency amendment at 26 Ill. Reg. 11040, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16612, effective October 22, 2002; amended at 26 Ill. Reg. 12322, effective July 26, 2002; amended at 26 Ill. Reg. 13661, effective September 3, 2002;

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NOTICE OF ADOPTED AMENDMENT

amended at 26 Ill. Reg. 14808, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 14887, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17775, effective November 27, 2002; emergency amendment at 27 Ill. Reg. 580, effective January 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 866, effective January 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 4386, effective February 24, 2003; emergency amendment at 27 Ill. Reg. 8320, effective April 28, 2003, for a maximum of 150 days; emergency amendment repealed at 27 Ill. Reg. 12121, effective July 10, 2003; amended at 27 Ill. Reg. 9178, effective May 28, 2003; emergency amendment at 27 Ill. Reg. 11041, effective July 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16185, effective October 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16268, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18843, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 1418, effective January 8, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 1766, effective January 10, 2004, for a maximum of 150 days; emergency expired June 7, 2004; amended at 28 Ill. Reg. 2770, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. 8072, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 8167, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9661, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10157, effective July 1, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12036, effective August 3, 2004, for a maximum of 150 days; emergency expired December 30, 2004; emergency amendment at 28 Ill. Reg. 12227, effective August 6, 2004, for a maximum of 150 days; emergency expired January 2, 2005; amended at 28 Ill. Reg. 14557, effective October 27, 2004; amended at 28 Ill. Reg. 15536, effective November 24, 2004; amended at 29 Ill. Reg. 861, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2026, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5514, effective April 1, 2005; emergency amendment at 29 Ill. Reg. 5756, effective April 8, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 11622, effective July 5, 2005, for the remainder of the 150 days; amended at 29 Ill. Reg. 8363, effective June 1, 2005; emergency amendment at 29 Ill. Reg. 10275, effective July 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12568, effective August 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 15629, effective October 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 19973, effective November 23, 2005; amended at 30 Ill. Reg. 383, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 596, effective January 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 955, effective January 9, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 2827, effective February 24, 2006; emergency amendment at 30 Ill. Reg. 7786, effective April 10, 2006, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 12400, effective July 1, 2006, for the remainder of the 150 days; emergency expired September 6, 2006;

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

amended at 30 Ill. Reg. 8877, effective May 1, 2006; amended at 30 Ill. Reg. 10393, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 11815, effective July 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18672, effective November 27, 2006; emergency amendment at 31 Ill. Reg. 1602, effective January 1, 2007, for a maximum of 150 days; emergency amendment at 31 Ill. Reg. 1997, effective January 15, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 5596, effective April 1, 2007; amended at 31 Ill. Reg. 8123, effective May 30, 2007; amended at 31 Ill. Reg. 8508, effective June 1, 2007; emergency amendment at 31 Ill. Reg. 10137, effective July 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11688, effective August 1, 2007; amended at 31 Ill. Reg. 14792, effective October 22, 2007; amended at 32 Ill. Reg. 312, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 518, effective January 1, 2008, for a maximum of 150 days; emergency amendment at 32 Ill. Reg. 2993, effective February 16, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 8718, effective May 29, 2008; amended at 32 Ill. Reg. 9945, effective June 26, 2008; emergency amendment at 32 Ill. Reg. 10517, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 33 Ill. Reg. 501, effective December 30, 2008; peremptory amendment at 33 Ill. Reg. 1538, effective December 30, 2008; emergency amendment at 33 Ill. Reg. 5821, effective April 1, 2009, for a maximum of 150 days; emergency expired August 28, 2009; amended at 33 Ill. Reg. 13246, effective September 8, 2009; emergency amendment at 34 Ill. Reg. 15856, effective October 1, 2010, for a maximum of 150 days; emergency expired February 27, 2011; amended at 34 Ill. Reg. 17737, effective November 8, 2010; amended at 35 Ill. Reg. 420, effective December 27, 2010; amended at 35 Ill. Reg. 10033, effective June 15, 2011; amended at 35 Ill. Reg. 16572, effective October 1, 2011; emergency amendment at 36 Ill. Reg. 10326, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 148.70(g) suspended at 36 Ill. Reg. 13737, effective August 15, 2012; suspension withdrawn from Section 148.70(g) at 36 Ill. Reg. 18989, December 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 148.70(g) at 36 Ill. Reg. 18976, effective December 12, 2012 through June 30, 2013; emergency amendment to Section 148.140(b)(1)(F) suspended at 36 Ill. Reg. 13739, effective August 15, 2012; suspension withdrawn from Section 148.140(b)(1)(F) at 36 Ill. Reg. 14530, September 11, 2012; emergency amendment to Sections 148.140(b) and 148.190(a)(2) in response to Joint Committee on Administrative Rules action at 36 Ill. Reg. 14851, effective September 21, 2012 through June 30, 2013; amended at 37 Ill. Reg. 402, effective December 27, 2012; emergency amendment at 37 Ill. Reg. 5082, effective April 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 10432, effective June 27, 2013; amended at 37 Ill. Reg. 17631, effective October 23, 2013; amended at 38 Ill. Reg. 4363, effective January 29, 2014; amended at 38 Ill. Reg. 11557, effective May 13, 2014.

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

Section 148.436 Long Term Stay Hospital Per Diem PaymentsConversion of Static Payments to Per Diem Payments for Long Term Stay Hospital

- a) Hospitals qualifying as a long term stay hospital on July 1, 2013, as defined at 89 Ill. Adm. Code 149.50(c)(4), shall have their payments paid as a per diem rate add-on for all current claims beginning with admissions on or after November 16, 2013.
- b) Each long term stay hospital's per diem add-on shall be the sum of its annual payment amounts in accordance with Sections 148.126, 148.295 and 148.296 for State fiscal year 2011, divided by its covered days for dates of service in State fiscal year 2011 as contained in the Department's Medicaid Management Information System (MMIS).
- c) For the payments due and payable in the period beginning July 1, 2013 through November 15, 2013, each long term stay hospital will be paid an annual amount prorated. The prorated amount shall be the product of the sum of the long term stay hospital's annual payment amounts in accordance with Sections 148.126, 148.295 and 148.296 for State fiscal year 2013 multiplied by the quotient resulting from dividing 137 days by 365 days.

(Source: Added at 38 Ill. Reg. 11557, effective May 13, 2014)

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Health and Safety
- 2) Code Citation: 56 Ill. Adm. Code 350
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
350.10	Repeal
350.20	Repeal
350.30	Repeal
350.40	Repeal
350.50	Repeal
350.60	Repeal
350.70	Repeal
350.80	Repeal
350.90	Repeal
350.100	Repeal
350.110	Repeal
350.120	Repeal
350.130	Repeal
350.140	Repeal
350.210	Repeal
350.220	Repeal
350.230	Repeal
350.240	Repeal
350.250	Repeal
350.300	Repeal
- 4) Statutory Authority: Safety Inspection and Education Act [820 ILCS 220] and Health and Safety Act [820 ILCS 225]
- 5) Effective Date of Repealer: May 16, 2014
- 6) Does this repealer contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the adopted repealer, 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 the *Illinois Register*: 38 Ill. Reg. 2599; January 24, 2014

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF ADOPTED REPEALER

- 10) Has JCAR issued a Statement of Objection to this repealer? No
- 11) Differences between Proposal and Final Version: No changes
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were needed.
- 13) Will this repealer replace any emergency repealer in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Repealer: The repeal of these rules corresponds with the update of these rules to correlate with the OSHA requirements to become a certified State Plan.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Cheryl J. Neff, Division Manager
Illinois Department of Labor
900 South Spring Street
Springfield IL 62704

217/782-9386
fax: 217/785-8776
email: cheryl.neff@illinois.gov

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Health and Safety
- 2) Code Citation: 56 Ill. Adm. Code 350
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
350.10	New Section
350.20	New Section
350.30	New Section
350.40	New Section
350.50	New Section
350.60	New Section
350.70	New Section
350.80	New Section
350.90	New Section
350.100	New Section
350.110	New Section
350.120	New Section
350.130	New Section
350.140	New Section
350.150	New Section
350.160	New Section
350.170	New Section
350.180	New Section
350.190	New Section
350.200	New Section
350.210	New Section
350.220	New Section
350.250	New Section
350.260	New Section
350.270	New Section
350.280	New Section
350.290	New Section
350.300	New Section
350.310	New Section
350.320	New Section
350.330	New Section
350.340	New Section

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

350.350	New Section
350.360	New Section
350.370	New Section
350.380	New Section
350.390	New Section
350.400	New Section
350.410	New Section
350.420	New Section
350.430	New Section
350.500	New Section
350.600	New Section
350.700	New Section
350.APPENDIX A	New Section
350.APPENDIX B	New Section

- 4) Statutory Authority: Safety Inspection & Education Act [820 ILCS 220] and Health and Safety Act [820 ILCS 225]
- 5) Effective Date of Rule: May 16, 2014
- 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 rule, 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 the *Illinois Register*: 38 Ill. Reg. 2634; January 24, 2014
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version:

In the Table of Contents:

added: "Section 350.125 Discrimination Prohibited Against Employees".

the Section 350.250 title reads: "Purpose, Scope and Definitions".

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In Section 350.10, added:

"Authorized Employee Representative – any person authorized by the employees to represent their interests in collective bargaining and other labor relations matters.

Employee – means every person in the service of:

the State, including members of the General Assembly, members of the Commerce Commission, members of the Workers' Compensation Commission and all persons in the service of the public universities and colleges in Illinois;

an Illinois county, including deputy sheriffs and assistant state's attorney; or

an Illinois city, township, incorporated village or school district, body politic, or municipal corporation;

whether by election, under appointment or contract, or hire, express or implied, oral or written.

Employer – the State of Illinois and all political subdivisions."

In Section 350.20:

added: "public" to read "that public employers comply" twice.

After violators added:

"The Act also contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties, if contested by an employer or by an employee or authorized representative of employees, and for judicial review."

In Section 350.30(c):

changed "www.state.il.us/agency/idol" to "labor.illinois.gov".

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In Section 350.40(b), after "national" added and/or "State" to read:

"national and/or State security."

After Section 350.120, add the following Section:

"Section 350.125 Discrimination Prohibited Against Employees

- a) Basic Requirement
Section 2.2 of the Safety Inspection and Education Act provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:
 - 1) Filed any complaint under the Acts or related to the Acts;
 - 2) Instituted or caused to be instituted any proceeding under the Acts or related to the Acts;
 - 3) Testified or is about to testify in any proceeding under the Acts or related to the Acts; or
 - 4) Exercised on his or her own behalf or on behalf of another any right afforded by the Acts.
- b) Any employee who believes that he or she has been discriminated against in violation of Section 2.2 may, within 30 days after the violation occurs, lodge a written complaint with the Division alleging the violation.
- c) The Division shall then cause appropriate investigation to be made. If, as a result of the investigation, it is determined that the provisions of Section 2.2 have been violated, civil action may be instituted in any appropriate court to restrain violations of Section 2.2 and to obtain appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay.
- d) Section 2.2 of the Safety Inspection and Education Act further provides for notification of complainants by the Division of determinations made pursuant to their complaints.

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- e) Section 2.2 does not limit the actions to employers against employees. A person may be chargeable with discriminatory action against an employee of another person. It would extend to such entities as organizations representing employees for collective bargaining purposes or any other person in a position to discriminate against an employee.
- f) All public employees are afforded the full protection of Section 2.2. The Act does not define the term "employ"; however, the broad remedial nature of the Acts demonstrates a clear intent that the existence of an employment relationship is to be based upon economic realities rather than upon common law doctrines and concepts.
- g) Actions taken by an employer, or others, that adversely affect an employee may be predicated upon non-discriminatory grounds. The proscriptions of Section 2.2 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Acts does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.
- h) At the same time, to establish a violation of Section 2.2, the employee's engagement in a protected activity need not be the sole consideration behind discharge or other adverse action. If a protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in a protected activity, Section 2.2 has been violated. Ultimately, the issue as to whether a discharge was because of a protected activity will have to be determined on the basis of the facts in the particular case.
- i) Complaints Under or Related to the Acts
 - 1) Discharge or discrimination against an employee because the employee has filed *any complaint under or related to the Acts* [810 ILCS 220/2.2(a)] is prohibited by Section 2.2. An example of a complaint made under the Acts would be an employee request for inspection pursuant to Section 2.1 of the Safety Inspection and

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Education Act. However, this would not be the only type of complaint protected by Section 2.2.

- 2) The salutary principles of the Acts would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. These complaints to employers, if made in good faith, therefore would be related to the Acts, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.
- j) Proceedings Under or Related to the Acts
- 1) Discharge or discrimination against an employee because the employee has *instituted or caused to be instituted any proceeding under or related to the Acts* [810 ILCS 220/2.2(a)] is also prohibited by Section 2.2. Examples of proceedings that could arise specifically under the Acts would be inspection of worksites under Section 2 of the Safety Inspection and Education Act, employee contest of abatement date under Section 2.4 of that Act, employee initiation of proceeding for promulgation of an occupational safety and health standard under Section 4.1 of the Health and Safety Act, and employee application for modification or revocation of a variance under Section 4.2 of the Health and Safety Act.
 - 2) An employee need not himself or herself directly institute the proceedings. It is sufficient if he or she sets into motion activities of others result in proceedings under or related to the Acts.
- k) Testimony
- 1) Discharge or discrimination against an employee because the employee has *testified or is about to testify in proceedings* [810 ILCS 220(2.2)(a)] under or related to the Acts is also prohibited under Section 2.2. This protection would not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial and administrative proceedings,

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including inspections, investigations and administrative rulemaking or adjudicative functions.

- 2) If the employee is giving or is about to give testimony in any proceeding under or related to the Acts, he or she would be protected against discrimination resulting from that testimony.
- 1) Exercise of Any Right Afforded by the Acts
 - 1) Section 2.2 also protects employees from discrimination occurring because of the exercise of any right afforded by the Acts. Certain rights are explicitly provided in the Acts; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the Safety Inspection and Education Division; these requests would constitute the exercise of a right afforded by the Acts. Likewise, employees interviewed by agents of the Department in the course of inspections or investigations could not be subsequently discriminated against because of their cooperation.
 - 2) As a general matter, there is no right afforded by the Acts that entitles employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions that may be violative of the Acts will ordinarily be corrected by the employer, once brought to his or her attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have the opportunity to request inspection of the workplace. Under these circumstances, an employer would not ordinarily be in violation of Section 2.2 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.
 - 3) An employee may be confronted with a choice between performing assigned tasks or subjecting himself or herself to serious injury or death arising from a hazardous condition in the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself or herself to the dangerous

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condition, he or she would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, when possible, must also have sought from his or her employer, and been unable to obtain, a correction of the dangerous condition.

m) Filing of a Discrimination Complaint

- 1) A complaint of Section 2.2 discrimination may be filed by the employee or by an authorized representative of the employee.
 - A) Nature of Filing. The complaint must be received in a verbal or written form by the employee or authorized representative of the employee.
 - B) Place of Filing. A complaint should be filed in the local Department office responsible for enforcement activities in the geographical area where the employee resides or is employed.
 - C) Time for Filing. Section 2.2 provides that an employee who believes that he or she has been discriminated against *may, within 30 days after the violation occurs*, [810 ILCS 220/2.2(b)] file a complaint with the Division.
 - D) There may be circumstances that would justify tolling of the 30 day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., when the employer has concealed the nature of, or misled the employee regarding the grounds for, discharge or other adverse action; or when the discrimination is in the nature of a continuing violation. The pendency of grievance-

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arbitration proceedings or filing with another agency, among others, are circumstances that do not justify tolling the 30-day period. In the absence of circumstances justifying tolling of the 30-day period, untimely complaints will not be processed.

- n) Notification of the Division's Determination. The complainant will be notified of the Division's determination in a timely manner.
- o) Withdrawal of Complaint. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the investigation. The Division's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his or her complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.
- p) Arbitration or Other Agency Proceedings. The Division's jurisdiction to entertain Section 2.2 complaints, to investigate, and to determine whether discrimination has occurred is independent of the jurisdiction of other agencies or bodies. Due deference may be paid to the jurisdiction of other forums established to resolve disputes that may also be related to Section 2.2 complaints. Postponement of the Division's determination, and deferral to the results of the proceedings of another jurisdiction, may be warranted.
 - 1) Postponement of Determination. Postponement of determination would be justified when the rights asserted in other proceedings are substantially the same as rights under Section 2.2, and those proceedings are not likely to violate the rights guaranteed under Section 2.2. The factual issues in such proceedings must be substantially the same as those raised by the Section 2.2 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.
 - 2) Deferral to Outcome of Other Proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis,

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after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular and free of procedural infirmities, and that the outcome of the proceedings were not repugnant to the purpose and policy of the Acts. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing, that dismissal will not ordinarily be regarded as determinative of the Section 2.2 complaint.

- q) Employee Refusal to Comply with Safety Rules. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Acts are not exercising any rights afforded by the Acts. Disciplinary measures taken by an employer solely in response to an employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Section 2.2. This situation should be distinguished from refusals to work as discussed in subsection (k)."

In Section 350.60(c)(3), at the end of the sentence added: "[820 ILCS 220/2.4(a)(3)].

In Section 350.210(e)(2), after the last sentence added: "(Appendix B – Sample Abatement Plan)".

In Section 350.250:

changed "**Purpose and Definitions**" to "**Purpose, Scope and Definitions**".

added: b) Scope. All public employers are required to maintain records of work-related injuries and illnesses under Subpart B."

After 350.250(a) relabeled b) to c) Definitions

In Section 350.250, added:

"Forms – the required forms for documenting work-related deaths, injuries and illnesses are the OSHA 300 (Log of Injuries/Illnesses), the OSHA 300A (Summary of Injuries/Illnesses) and the OSHA 301 (Injury/Illness Incident Form).

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The IWCC Form 45 may be substituted for the OSHA 301 as long as the information is equivalent."

In Section 350.290(b)(3), deleted:

"Begin counting days away on the day after the injury occurred or the illness began."

Replaced the text in Section 350.400 with:

- "a) Section 2.2 of the Safety Inspection and Education Act prohibits employers from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Subpart B records, or otherwise exercises any right afforded by the Acts.
- b) Variance. If a public employer wishes to keep records in a manner different from Subpart B, the employer must submit a variance request petition in accordance with Section 350.500."

In Section 350.410(a), deleted: "multiple".

and changed:

"or in person to the IDOL Safety Inspection and Education Division that is nearest to the site of the incident.

Chicago Office – (312) 793-7308
Springfield Office – (217) 782-9386
Marion Office – (618) 993-7090
After Hours – (217) 725-5485
email: DOL.Safety@illinois.gov"

to:

"24/7 Notification – (800) 782-7860 or (217) 782-7860".

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In Section 350.410(b), deleted:

- "1) If the office is closed, report the incident by leaving a voice mail, faxing the area office, or sending an e-mail, as long as every attempt is made to report the details of the incident. A telephone number at which fatalities must be reported during non-office hours is included on the IDOL voice mail messages and the website."

renumbered: 2) to 1) and deleted: "multiple".

relabeled: 3) to 2) and deleted: "multiple".

deleted:

- "4) A fatality or multiple hospitalization incident that occurs on a commercial or public transportation system does not need to be reported. This includes incidents involving a commercial airplane, train, subway or bus accident. However, these injuries must be recorded on the OSHA injury and illness records."

relabeled: 5) to 3).

relabeled: 6) to 4) and deleted: "multiple".

relabeled: 7) to 5).

In Section 350.600, added:

"The Illinois On-Site Safety and Health Consultation Program will provide compliance assistance to small businesses and the public sector establishments in Illinois."

changed "Subpart references to program was established under and change the brackets to parenthesis around [29 USC 670(d)]".

In Section 350.700(a) changed: "a) All materials incorporated by this Section are incorporated as of the date specified and do not include any later amendments or editions." to "a) State Standards and Rulemaking. Section 4.1 of the Health and

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Safety Act outlines the Director's authority to promulgate, amend and revoke state standards. Any promulgation, amending or revoking of state standards will be done in accordance with the Illinois Administrative Procedures Act."

In Section 350.700(b)(1) after the last sentence, added:

"All materials incorporated by this Section are incorporated as of the date specified and do not include any later amendments or editions."

Other minor typographical and semantic changes were also made.

- 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 rule replace any emergency rule in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rule: The update of this Part is necessary to correlate with the OSHA requirements to become a certified State Plan.
- 16) Information and questions regarding these Adopted Rules shall be directed to:

Cheryl J. Neff, Division Manager
Illinois Department of Labor
900 South Spring Street
Springfield IL 62704

217/782-9386
fax: 217/785-8776
email: cheryl.neff@illinois.gov

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

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TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONSPART 350
HEALTH AND SAFETY

SUBPART A: INSPECTIONS AND CITATIONS

Section	
350.10	Definitions
350.20	Purpose and Scope
350.30	Posting of Notice; Availability of the Acts, Regulations and Applicable Standards
350.40	Authority for Inspection
350.50	Objection to Inspection
350.60	Entry Not a Waiver
350.70	Advance Notice of Inspections
350.80	Conduct of Inspections
350.90	Representatives of Employers and Employees
350.100	Trade Secrets
350.110	Consultation with Employees
350.120	Complaints by Employees
350.125	Discrimination Prohibited Against Employees
350.130	Inspection not Warranted; Informal Review
350.140	Imminent Danger
350.150	Citations; Policy Regarding Employee Rescue Activities
350.160	Petitions for Modification of Abatement Date
350.170	Proposed Penalties
350.180	Posting of Citations
350.190	Employer and Employee Contests before the Administrative Law Judges of the Hearings Division
350.200	Failure to Correct a Violation for which a Citation has been Issued
350.210	Abatement Verification
350.220	Informal Conferences

SUBPART B: INJURY/ILLNESS RECORDKEEPING REQUIREMENTS

Section

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- 350.250 Purpose, Scope and Definitions
- 350.260 Recording Criteria
- 350.270 Determination of Work-Relatedness
- 350.280 Determination of New Cases
- 350.290 General Recording Criteria
- 350.300 Recording Criteria for Needlestick and Sharps Injuries
- 350.310 Recording Criteria for Cases Involving Medical Removal under IDOL-Adopted OSHA Standards
- 350.320 Recording Criteria for Cases Involving Occupational Hearing Loss
- 350.330 Recording Criteria for Work-Related Tuberculosis Cases
- 350.340 Forms
- 350.350 Multiple Establishments
- 350.360 Covered Employees
- 350.370 Annual Summary
- 350.380 Retention and Updating
- 350.390 Employee Involvement
- 350.400 Prohibition Against Discrimination
- 350.410 Reporting Fatalities and Hospitalization Incidents to the Illinois Department of Labor
- 350.420 Providing Records to Government Representatives
- 350.430 Requests from the Illinois Department of Public Health/Bureau of Labor Statistics for Data

SUBPART C: VARIANCES FROM STANDARDS

- Section
- 350.500 Petition for Variance from Standards

SUBPART D: CONSULTATION PROGRAM

- Section
- 350.600 Purpose

SUBPART E: ADOPTION OF FEDERAL STANDARDS

- Section
- 350.700 Adoption of Federal Standards

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350.APPENDIX A Decision Tree

350.APPENDIX B Sample Abatement Plan or Progress Report (Non-mandatory)

AUTHORITY: Implementing and authorized by the Safety Inspection and Education Act [820 ILCS 220] and the Health and Safety Act [820 ILCS 225].

SOURCE: Emergency rules adopted at 9 Ill. Reg. 17004, effective October 17, 1985, for a maximum of 150 days; adopted at 10 Ill. Reg. 8765, effective May 14, 1986; amended at 11 Ill. Reg. 2798, effective January 28, 1987; amended at 12 Ill. Reg. 17086, effective October 11, 1988; amended at 16 Ill. Reg. 8518, effective May 26, 1992; amended at 17 Ill. Reg. 1074, effective January 19, 1993; emergency amendment at 17 Ill. Reg. 7072, effective April 27, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 14724, effective September 15, 1994; amended at 19 Ill. Reg. 11923, effective August 7, 1995; amended at 20 Ill. Reg. 7419, effective May 10, 1996; amended at 21 Ill. Reg. 12850, effective September 4, 1997; amended at 23 Ill. Reg. 3993, effective October 1, 1999; amended at 23 Ill. Reg. 12447, effective October 2, 1999; amended at 24 Ill. Reg. 13693, effective August 23, 2000; amended at 25 Ill. Reg. 860, effective January 5, 2001; amended at 25 Ill. Reg. 10196, effective July 30, 2001; old Part repealed at 30 Ill. Reg. 5531 and new Part adopted at 30 Ill. Reg. 4777, effective March 13, 2006; amended at 34 Ill. Reg. 4793, effective March 16, 2010; old Part repealed at 38 Ill. Reg. 11570, and new Part adopted at 38 Ill. Reg. 11572, effective May 16, 2014.

SUBPART A: INSPECTIONS AND CITATIONS

Section 350.10 Definitions

The definitions and interpretations contained in Section .01 of the Health and Safety Act and Section .02 of the Safety Inspection and Education Act shall apply when those terms are used in this Part.

Acts – the Health and Safety Act [820 ILCS 225] and Safety Inspection and Education Act [820 ILCS 220].

Authorized Employee Representative – any person authorized by the employees to represent their interests in collective bargaining and other labor relations matters.

Department or IDOL – the Illinois Department of Labor.

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Director – the Director of the Department of Labor.

Division – the Illinois Department of Labor Safety Inspection and Education Division.

Division Manager – the employee or officer regularly or temporarily in charge of the Safety Inspection and Education Division, Illinois Department of Labor, or any other person or persons who are authorized to act for that employee or officer. The latter authorizations may include general delegations of the authority of the Division Manager under this Part to an Enforcement Inspector/Officer or delegations to the officer for more limited purposes, such as the exercise of the Division Manager's duties under Section 350.160.

Employee – means every person in the service of:

the State, including members of the General Assembly, members of the Commerce Commission, members of the Workers' Compensation Commission and all person in the service of the public universities and colleges in Illinois;

an Illinois county, including deputy sheriffs and assistant state's attorney;
or

an Illinois city, township, incorporated villages or school district, body politic, or municipal corporation;

whether by election, under appointment or contract, or hire, express or implied, oral or written.

Employer – the State of Illinois and all political subdivisions.

Enforcement Inspector/Officer or Inspector – a person authorized by the Safety Inspection and Education Division, Illinois Department of Labor, to conduct inspections.

Inspection – any inspection of an employer's establishment or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed

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under Section 350.120(a) and (c), any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 2 of the Safety Inspection and Education Act.

Working Days – Mondays through Fridays, but not including State holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

Section 350.20 Purpose and Scope

The Health and Safety Act requires, in part, that every employer covered under the Acts furnish to his or her employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees. The Act also requires that public employers comply with occupational safety and health standards promulgated under the Acts, and that public employees comply with standards, rules, regulations and orders issued under the Acts that are applicable to their own actions and conduct. The Safety Inspection and Education Act authorizes the Illinois Department of Labor to conduct inspections and to issue citations and proposed penalties for alleged violations. The Act also contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this Subpart A is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Acts. In situations in which this Subpart A sets forth general enforcement policies rather than substantive or procedural rules, the policies may be modified in specific circumstances in which the Director or his or her designee determines that an alternative course of action would better serve the objectives of the Acts.

Section 350.30 Posting of Notice; Availability of the Acts, Regulations and Applicable Standards

- a) Job Safety and Health Poster
 - 1) Each employer shall post and keep posted a notice or notices, to be furnished by the IDOL Safety Inspection and Education Division, informing employees of the protections and obligations provided for in the Acts, and that, for assistance and information, including copies of the Acts and of specific safety and health standards, employees should contact the employer or the nearest IDOL office. The notice or notices shall be posted

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by the employer in each establishment (see subsection (b)) in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that the notices are not altered, defaced or covered by other material.

- 2) Reproductions or facsimiles of State posters shall constitute compliance with the posting requirements of Section 2.5 of the Safety Inspection and Education Act if the reproductions or facsimiles are at least 8½ by 11 inches and the font size at least 10 point.
- b) Establishment means a single physical location where business is conducted or where services or operations are performed. (For example: An office, warehouse or central administrative office.) When distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each establishment, to the extent that the notices have been made available by the Safety Inspection and Education Division. When employers are engaged in activities that are physically dispersed, such as construction, transportation, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. When employees do not usually work at, or report to, a single establishment (such as technicians, engineers, etc.), the notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, the notice or notices shall be posted in accordance with the requirements of subsection (a).
 - c) Copies of the Acts, all regulations published in this Chapter, and all applicable standards will be available at all IDOL offices and on the IDOL website at labor.illinois.gov. If an employer has obtained copies of these materials, he or she shall make them available upon request to any employee or the employee's authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his or her authorized representative and the employer.
 - d) Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of Section 2.6 of the Safety Inspection and Education Act.

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Section 350.40 Authority for Inspection

- a) Enforcement Inspector/IDOL Officers are authorized to enter without delay and at reasonable times any establishment, construction site, or other area, workplace or environment where work is performed by an employee of a public employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials in the place of employment; to question privately any employer, owner, operator, agent or employee; and to review records required by the Acts, regulations and other records that are directly related to the purpose of the inspection.
- b) Prior to inspecting areas containing information deemed classified by a State agency in the interest of national and/or State security, Inspectors shall have obtained the appropriate security clearance.

Section 350.50 Objection to Inspection

- a) Upon a refusal to permit the Enforcement Inspector/Officer, in exercise of his or her official duties, to enter without delay and at reasonable times any place of employment or any area within the place of employment to inspect, to review records, or to question any employer, owner, operator, agent or employee, in accordance with Section 350.40 or to permit a representative of employees to accompany the Inspector during the physical inspection of any workplace, in accordance with Section 350.90, the Inspector shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The Inspector shall endeavor to ascertain the reason for the refusal and shall immediately report the refusal and the reason for the refusal to the Enforcement Supervisor. The Enforcement Supervisor shall consult with the Division Manager and Chief Legal Counsel, who shall take appropriate action, including compulsory process, if necessary.
- b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Division Manager and Chief Legal Counsel, circumstances exist that make the pre-inspection process desirable or

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necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include, but are not limited to:

- 1) When the employer's past practice either implicitly or explicitly puts the Director on notice that a warrantless inspection will not be allowed;
 - 2) When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;
 - 3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of the equipment or expert.
- c) With the approval of the Division Manager and Chief Legal Counsel, compulsory process may also be obtained by the Enforcement Supervisor or his or her designee.
 - d) For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances in which compulsory process is relied upon to seek entry to a workplace under this Section.

Section 350.60 Entry Not a Waiver

Any permission to enter, inspect, review records, or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Acts. Enforcement Inspectors/Officers are not authorized to grant a waiver.

Section 350.70 Advance Notice of Inspections

- a) Advance notice of inspections may not be given, except in the following situations:

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- 1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
 - 2) In circumstances in which the inspection can most effectively be conducted after regular business hours or when special preparations are necessary for an inspection;
 - 3) When necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection and in other circumstances in which the Division Manager determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- b) In the situations described in subsection (a), advance notice of inspections may be given only if authorized by the Division Manager, except that, in cases of apparent imminent danger, advance notice may be given by the Enforcement Inspector/Officer without such authorization if the Division Manager is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. Upon the request of the employer, the Inspector will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Inspector with the identity of the representative and with other information as is necessary to enable him or her promptly to inform the representative of the inspection. An employer who fails to comply with his or her obligation under this subsection promptly to inform the authorized representative of employees of the inspection, or to furnish information necessary to enable the Inspector promptly to inform the representative of the inspection, may be subject to citation and penalty. Advance notice in any of the situations described in subsection (a) shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.
- c) Section 2.6 of the Safety Inspection and Education Act provides that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Director or his or her designees, shall have committed a Class B misdemeanor and shall be subject to all repercussions, if convicted.

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Section 350.80 Conduct of Inspections

- a) Subject to Section 350.40, inspections shall take place at such times and in such places of employment as the Division Manager or the Inspector may direct. At the beginning of an inspection, Inspectors shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, the designation of records shall not preclude access to additional records specified in Section 350.40.
- b) Inspectors shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See Section 350.100, Trade Secrets.) As used in this subsection, "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices by employees in order to monitor their exposures.
- c) In taking photographs and samples, Inspectors shall take reasonable precautions to ensure that actions with flash, spark-producing or other equipment would not be hazardous. Inspectors shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
- e) At the conclusion of an inspection, the Inspector shall confer with the employer or his or her representative and informally advise the employer of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the Inspector any pertinent information regarding conditions in the workplace.
- f) Inspections shall be conducted in accordance with this Part.

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Section 350.90 Representatives of Employers and Employees

- a) Enforcement Inspectors/Officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the Inspector during the physical inspection of any workplace for the purpose of aiding the inspection. An Inspector may permit additional employer representatives and additional representatives authorized by employees to accompany him or her when he or she determines that additional representatives will further aid the inspection. A different employer and employee representative may accompany the Inspector during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- b) Inspectors shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this Section. If there is no authorized representative of employees, or if the Inspector is unable to determine with reasonable certainty who is the representative, he or she shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- c) The representatives authorized by employees shall be employees of the employer. However, if, in the judgment of the Inspector, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Inspector during the inspection.
- d) Inspectors are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of Section 350.100. With regard to information classified by an agency of State Government in the interest of homeland security, only persons authorized to have access to the information may accompany an Inspector in areas containing the information.

Section 350.100 Trade Secrets

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- a) *All information reported to or otherwise obtained by the Director of Labor or his or her representative in connection with any inspection or proceeding under the Acts that contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed confidentially to other officers or employees concerned with carrying out the Acts. In any such proceeding, the Director of Labor or the court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets. [820 ILCS 225/22]*
- b) *Any person who violates the confidentiality of trade secrets commits a Class B misdemeanor. [820 ILCS 225/22]*
- c) At the commencement of an inspection, the employer may identify areas in the establishment that contain or might reveal a trade secret. If the Enforcement Inspector/Officer has no clear reason to question the identification, information obtained in those areas, including all negatives and prints of photographs and environmental samples, shall be labeled "Confidential– Trade Secret" and shall not be disclosed.
- d) Upon the request of an employer, any authorized representative of employees in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. When there is no such representative or employee, the Inspector shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

Section 350.110 Consultation with Employees

Enforcement Inspectors/Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Acts that he or she has reason to believe exists in the workplace to the attention of the Inspector.

Section 350.120 Complaints by Employees

- a) Any employee or representative of employees who believes that a violation of the Acts exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the

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Division Manager or to an Enforcement Inspector/Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided to the employer or his or her agent by the Inspector no later than at the time of inspection, except that, upon the request of the person giving the notice, his or her name and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released or made available by IDOL.

- b) If, upon receipt of the notification required by subsection (a), the Enforcement Supervisor determines that the complaint meets the requirements set forth in subsection (a) and that there are reasonable grounds to believe that the alleged violation exists, the Enforcement Supervisor shall cause an inspection to be made as soon as practicable to determine if the alleged violation exists. Inspections under this Section shall not be limited to matters referred to in the complaint.
- c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the Inspector, in writing, of any violation of the Acts that he or she has reason to believe exists in the workplace. The notice shall comply with the requirements of subsection (a).
- d) *A person may not discharge or in any way discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to the Acts; has testified or is about to testify in any such proceeding; or, on behalf of himself or herself or others, exercises any right afforded by the Acts. [820 ILCS 220/2.2]*

Section 350.125 Discrimination Prohibited Against Employees

- a) **Basic Requirement**
Section 2.2 of the Safety Inspection and Education Act provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:
 - 1) Filed any complaint under the Acts or related to the Acts;
 - 2) Instituted or caused to be instituted any proceeding under the Acts or related to the Acts;

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- 3) Testified or is about to testify in any proceeding under the Acts or related to the Acts; or
 - 4) Exercised on his or her own behalf or on behalf of another any right afforded by the Acts.
- b) Any employee who believes that he or she has been discriminated against in violation of Section 2.2 may, within 30 days after the violation occurs, lodge a written complaint with the Division alleging the violation.
 - c) The Division shall then cause appropriate investigation to be made. If, as a result of the investigation, it is determined that the provisions of Section 2.2 have been violated, civil action may be instituted in any appropriate court to restrain violations of Section 2.2 and to obtain appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay.
 - d) Section 2.2 of the Safety Inspection and Education Act further provides for notification of complainants by the Division of determinations made pursuant to their complaints.
 - e) Section 2.2 does not limit the actions to employers against employees. A person may be chargeable with discriminatory action against an employee of another person. It would extend to such entities as organizations representing employees for collective bargaining purposes or any other person in a position to discriminate against an employee.
 - f) All public employees are afforded the full protection of Section 2.2. The Act does not define the term "employ"; however, the broad remedial nature of the Acts demonstrates a clear intent that the existence of an employment relationship is to be based upon economic realities rather than upon common law doctrines and concepts.
 - g) Actions taken by an employer, or others, that adversely affect an employee may be predicated upon non-discriminatory grounds. The proscriptions of Section 2.2 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Acts does not automatically render him or her immune from discharge or

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discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

- h) At the same time, to establish a violation of Section 2.2, the employee's engagement in a protected activity need not be the sole consideration behind discharge or other adverse action. If a protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in a protected activity, Section 2.2 has been violated. Ultimately, the issue as to whether a discharge was because of a protected activity will have to be determined on the basis of the facts in the particular case.
- i) Complaints Under or Related to the Acts
 - 1) Discharge or discrimination against an employee because the employee has filed *any complaint under or related to the Acts* [810 ILCS 220/2.2(a)] is prohibited by Section 2.2. An example of a complaint made under the Acts would be an employee request for inspection pursuant to Section 2.1 of the Safety Inspection and Education Act. However, this would not be the only type of complaint protected by Section 2.2.
 - 2) The salutary principles of the Acts would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. These complaints to employers, if made in good faith, therefore would be related to the Acts, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.
- j) Proceedings Under or Related to the Acts
 - 1) Discharge or discrimination against an employee because the employee has *instituted or caused to be instituted any proceeding under or related to the Acts* [810 ILCS 220/2.2(a)] is also prohibited by Section 2.2. Examples of proceedings that could arise specifically under the Acts would be inspection of worksites under Section 2 of the Safety Inspection and Education Act, employee contest of abatement date under Section 2.4 of that Act, employee initiation of proceeding for promulgation of an occupational safety and health standard under Section 4.1 of the Health

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and Safety Act, and employee application for modification or revocation of a variance under Section 4.2 of the Health and Safety Act.

- 2) An employee need not himself or herself directly institute the proceedings. It is sufficient if he or she sets into motion activities of others that result in proceedings under or related to the Acts.

k) Testimony

- 1) Discharge or discrimination against an employee because the employee has *testified or is about to testify in proceedings* [810 ILCS 220/2.2(a)] under or related to the Acts is also prohibited under Section 2.2. This protection would not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial and administrative proceedings, including inspections, investigations and administrative rulemaking or adjudicative functions.
- 2) If the employee is giving or is about to give testimony in any proceeding under or related to the Acts, he or she would be protected against discrimination resulting from that testimony.

l) Exercise of Any Right Afforded by the Acts

- 1) Section 2.2 also protects employees from discrimination occurring because of the exercise of any right afforded by the Acts. Certain rights are explicitly provided in the Acts; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the Safety Inspection and Education Division; these requests would constitute the exercise of a right afforded by the Acts. Likewise, employees interviewed by agents of the Department in the course of inspections or investigations could not be subsequently discriminated against because of their cooperation.
- 2) As a general matter, there is no right afforded by the Acts that entitles employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions that may be violative of the Acts will

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ordinarily be corrected by the employer, once brought to his or her attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have the opportunity to request inspection of the workplace. Under these circumstances, an employer would not ordinarily be in violation of Section 2.2 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

- 3) An employee may be confronted with a choice between performing assigned tasks or subjecting himself or herself to serious injury or death arising from a hazardous condition in the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself or herself to the dangerous condition, he or she would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, when possible, must also have sought from his or her employer, and been unable to obtain, a correction of the dangerous condition.

m) Filing of a Discrimination Complaint

- 1) A complaint of Section 2.2 discrimination may be filed by the employee or by an authorized representative of the employee.
 - A) Nature of Filing. The complaint must be received in a verbal or written form by the employee or authorized representative of the employee.
 - B) Place of Filing. A complaint should be filed in the local Department office responsible for enforcement activities in the geographical area where the employee resides or is employed.
 - C) Time for Filing. Section 2.2 provides that an employee who believes that he or she has been discriminated against *may, within*

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30 days after the violation occurs, [810 ILCS 220/2.2(b)] file a complaint with the Division.

- D) There may be circumstances that would justify tolling of the 30 day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., when the employer has concealed the nature of, or misled the employee regarding the grounds for, discharge or other adverse action; or when the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances that do not justify tolling the 30-day period. In the absence of circumstances justifying tolling of the 30-day period, untimely complaints will not be processed.
- n) Notification of the Division's Determination. The complainant will be notified of the Division's determination in a timely manner.
- o) Withdrawal of Complaint. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the investigation. The Division's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his or her complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.
- p) Arbitration or Other Agency Proceedings. The Division's jurisdiction to entertain Section 2.2 complaints, to investigate, and to determine whether discrimination has occurred is independent of the jurisdiction of other agencies or bodies. Due deference may be paid to the jurisdiction of other forums established to resolve disputes that may also be related to Section 2.2 complaints. Postponement of the Division's determination, and deferral to the results of the proceedings of another jurisdiction, may be warranted.
- 1) Postponement of Determination. Postponement of determination would be justified when the rights asserted in other proceedings are substantially the same as rights under Section 2.2, and those proceedings are not likely to violate the rights guaranteed under Section 2.2. The factual issues in such proceedings must be substantially the same as those raised by the

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Section 2.2 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

- 2) **Deferral to Outcome of Other Proceedings.** A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular and free of procedural infirmities, and that the outcome of the proceedings were not repugnant to the purpose and policy of the Acts. In this regard, if the other actions initiated by a complainant are dismissed without adjudicatory hearing, that dismissal will not ordinarily be regarded as determinative of the Section 2.2 complaint.
- q) **Employee Refusal to Comply with Safety Rules.** Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Acts are not exercising any rights afforded by the Acts. Disciplinary measures taken by an employer solely in response to an employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Section 2.2. This situation should be distinguished from refusals to work as discussed in subsection (k).

Section 350.130 Inspection not Warranted; Informal Review

- a) If the Enforcement Supervisor determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 350.120, he or she shall notify the complaining party in writing of that determination. The complaining party may obtain review of the determination by submitting a written statement of position to the Division Manager and, at the same time, providing the employer with a copy of the statement by certified mail. The employer may submit an opposing written statement of position with the Division Manager and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Division Manager, at his or her discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After

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considering all written and oral views presented, the Division Manager shall affirm, modify or reverse the determination of the Enforcement Supervisor and furnish the complaining party and the employer written notification of this decision and the reasons for the decision. The decision of the Division Manager shall be final and not subject to further review.

- b) If the Enforcement Supervisor determines that an inspection is not warranted because the requirements of Section 350.120(a) have not been met, he or she shall notify the complaining party in writing of that determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 350.120(a).

Section 350.140 Imminent Danger

Whenever, and as soon as, an Enforcement Inspector/Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment that could reasonably be expected to immediately cause death or serious physical harm or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by the Acts, he or she shall inform the affected employees and employers of the danger and that he or she is recommending a civil action to restrain the conditions or practices and for other appropriate relief in accordance with the provisions of Section 2(b)(7) of the Safety Inspection and Education Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the Inspector, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

Section 350.150 Citations; Policy Regarding Employee Rescue Activities

- a) The Enforcement Supervisor, on behalf of the Division Manager, shall review the inspection report of the Enforcement Inspector/Officer. If, on the basis of the report, the Enforcement Supervisor believes that the employer has violated a requirement of Section 3 of the Health and Safety Act, of any standard, rule or order promulgated pursuant to section 3 of the Health and Safety Act, or of this Chapter, he or she shall, if appropriate, consult with the Chief Legal Counsel and shall issue to the employer a citation on behalf of the Division Manager. An appropriate citation shall be issued even though, after being informed of an alleged violation by the Inspector, the employer immediately abates, or initiates steps to abate, the alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under

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this Section after the expiration of 6 months following the occurrence of any alleged violation.

- b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provisions of the Act, standard, rule, regulation or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.
- c) If a citation is issued for a violation alleged in a request for inspection under Section 350.120(a) or a notification of violation under Section 350.120(c), a copy of the citation shall also be sent to the employee or representative of employees who made the request or notification.
- d) After an inspection, if the Enforcement Supervisor determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under Section 350.120(a) or a notification of violation under Section 350.120(c), the informal review procedures prescribed in Section 350.130 shall be applicable. After considering all views presented, the Division Manager shall affirm the determination of the Enforcement Supervisor, order a re-inspection, or issue a citation if he or she believes that the inspection disclosed a violation. The Division Manager shall furnish the complaining party and the employer with written notification of his or her determination and the reasons for that determination. The determination of the Division Manager shall be final and not subject to review.
- e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Acts has occurred unless there is a failure to contest as provided for in the Acts or, if contested, unless the citation is affirmed by the Administrative Law Judge.
- f) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:
 - 1) the employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

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- 2) the employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or
- 3) the employee:
 - A) is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and
 - B) the employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and
 - C) the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue and not to attempt rescue, and to instruct employees of the hazards of attempting rescue without adequate training or equipment.
- g) For purposes of this Section, the term imminent danger means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated.

Section 350.160 Petitions for Modification of Abatement Date

- a) An employer may file a petition for modification of an abatement date when he or she has made a good faith effort to comply with the abatement requirements of a citation, but the abatement has not been completed because of factors beyond his or her reasonable control.

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- b) A petition for modification of an abatement date shall be in writing and shall include the following information:
- 1) All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.
 - 2) The specific additional abatement time necessary to achieve compliance.
 - 3) The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
 - 4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
 - 5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with subsection (c)(1) and a certification of the date upon which the posting and service was made.
- c) A petition for modification of abatement date shall be filed with the Division Manager or his or her designee who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.
- 1) A copy of the petition shall be posted in a conspicuous place where all affected employees will have notice of the petition or near the location where the violation occurred. The petition shall remain posted for a period of 10 working days. When affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition.
 - 2) Affected employees or their representatives may file an objection in writing to the petition with the Division Manager. Failure to file the objection within 10 working days after the date of posting of the petition

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or after service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

- 3) The Director or his or her duly authorized agent shall have the authority to approve any petition for modification of an abatement date filed pursuant to subsection (b) and this subsection (c). Uncontested petitions shall become final orders [820 ILCS 220/2.4(a)(3)].
 - 4) The Director or his or her authorized representative shall not exercise his or her approval power until the expiration of 15 working days from the date the petition was posted or served by the employer pursuant to subsections (c)(1) and (2).
- d) When any petition is objected to by the Director or affected employees, the petition, citation and any objections shall be forwarded to the Chief Administrative Law Judge within 3 working days after the expiration of the 15 day period set out in subsection (c)(4).

Section 350.170 Proposed Penalties

- a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Division Manager shall notify the employer by certified mail or by personal service by the Enforcement Inspector/Officer of the proposed penalty under Section 2.3(b) of the Safety Inspection and Education Act or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty is the final order of the Director of Labor and not subject to review by any court or agency unless, within 15 working days from the date of receipt of the notice, the employer notifies the Division Manager in writing that he or she intends to contest the citation or the notification of proposed penalty before an Administrative Law Judge.
- b) The Division Manager shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with Section 2.3(b) of the Safety Inspection and Education Act.

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- c) Appropriate penalties may be proposed with respect to an alleged violation even though, after being informed of the alleged violation by the Inspector, the employer immediately abates, or initiates steps to abate, the alleged violation.

Section 350.180 Posting of Citations

- a) Upon receipt of any citation under the Acts, the employer shall immediately post the citation, or a copy of the citation, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this subsection. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, when employers are engaged in activities that are physically dispersed (see Section 350.30(b)), the citation may be posted at the location to which employees report each day. When employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material.
- b) Each citation, or a copy, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under Section 350.190 shall not affect the posting responsibility under this Section unless and until the Administrative Law Judge issues a final order vacating the citation.
- c) An employer to whom a citation has been issued may post a notice in the same location where the citation is posted indicating that the citation is being contested before an Administrative Law Judge, the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.
- d) Any employer failing to comply with the provisions of subsections (a) and (b) shall be subject to citation and penalty in accordance with provisions of Section 2.3(b) of the Safety Inspection and Education Act.

Section 350.190 Employer and Employee Contests before the Administrative Law Judges of the Hearings Division

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- a) Any employer to whom a citation or notice of proposed penalty has been issued may, under Section 2.4 of the Safety Inspection and Education Act, notify the Division Manager in writing that he or she intends to contest the citation or proposed penalty before an Administrative Law Judge. The notice of intention to contest shall be postmarked within 15 working days after receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Division Manager shall immediately transmit the notice to the Chief Administrative Law Judge in accordance with IDOL's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120).
- b) Any employee or representative of employees of an employer to whom a citation has been issued may, under Section 2.4 of the Safety Inspection and Education Act, file a written notice with the Division Manager alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. The notice shall be postmarked within 15 working days after the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Division Manager shall immediately transmit the notice to the Chief Administrative Law Judge in accordance with 56 Ill. Adm. Code 120.

Section 350.200 Failure to Correct a Violation for which a Citation has been Issued

- a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Division Manager shall, if appropriate, consult with the Chief Legal Counsel, and he or she shall notify the employer by certified mail or by personal service by the Enforcement Inspector/Officer of that failure and of the penalty proposed to be assessed under Section 2.3 of the Safety Inspection and Education Act. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Administrative Law Judge in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.
- b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 2.3 of the Safety Inspection and Education Act, notify the Division Manager in writing that he or she intends to contest the notification or proposed additional penalty before an Administrative

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Law Judge. The notice of intention to contest shall be postmarked within 15 working days after the receipt by the employer of the notification of failure to correct a violation and of the proposed additional penalty. The Division Manager shall immediately transmit the notice to the Chief Administrative Law Judge in accordance with 56 Ill. Adm. Code 120.

- c) Each notification of failure to correct a violation and of proposed additional penalty shall state that it is the final order of the Administrative Law Judge and not subject to review by any court or agency unless, within 15 working days from the date of receipt of the notification, the employer notifies the Division Manager in writing that he or she intends to contest the notification or the proposed additional penalty before an Administrative Law Judge.

Section 350.210 Abatement Verification

IDOL inspections are intended to result in the abatement of violations of the Acts. This Section sets forth the procedures the Division will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

- a) **Scope and Application**
This Section applies to employers who receive a citation for a violation of the Acts.
- b) **Definitions**
 - 1) Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by the Division during an inspection.
 - 2) Abatement date means:
 - A) For an uncontested citation item, the later of:
 - i) The date in the citation for abatement of the violation;
 - ii) The date approved by the Division or established in litigation as a result of a petition for modification of the abatement date (PMA); or

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- iii) The date established in a citation by an informal settlement agreement.
- B) For a contested citation item for which the Administrative Law Judge has issued a final order affirming the violation, the later of:
 - i) The date identified in the final order for abatement; or
 - ii) The date computed by adding the period allowed in the citation for abatement to the final order date;
 - iii) The date established by a formal settlement agreement.
- 3) Affected employees means those employees who are exposed to the hazards identified as violations in a citation.
- 4) Final order date means:
 - A) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;
 - B) For a contested citation item:
 - i) The 30th day after the date on which a decision or order of an Administrative Law Judge has been docketed; or
 - ii) When review has been directed, the thirtieth day after the date on which the Administrative Law Judge issues his or her decision or order disposing of all or pertinent parts of a case; or
 - iii) The date on which an appeals court issues a decision affirming the violation in a case in which a final order of an Administrative Law Judge has been stayed.

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- 5) Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.
- c) Abatement Certification
- 1) Within 10 calendar days after the abatement date, the employer must certify to the Division Manager that each cited violation has been abated, except as provided in subsection (c)(2).
 - 2) The employer is not required to certify abatement if the Enforcement Inspector/Officer, during the on-site portion of the inspection:
 - A) Observes, within 24 hours after a violation is identified, that abatement has occurred; and
 - B) Notes in the citation that abatement has occurred.
 - 3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (h), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.
- d) Abatement Documentation
- 1) The employer must submit to the Division Manager, along with the information on abatement certification required by subsection (c)(3), documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Division Manager indicates in the citation that abatement documentation is required.
 - 2) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.
- e) Abatement Plans

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- 1) The Division Manager may require an employer to submit an abatement plan for each cited violation when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.
 - 2) The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, when necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. (See Appendix B – Sample Abatement Plan.)
- f) Progress Reports
- 1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:
 - A) That periodic progress reports are required and the citation items for which they are required;
 - B) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
 - C) Whether additional progress reports are required; and
 - D) The dates on which additional progress reports must be submitted.
 - 2) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.
- g) Employee Notification
- 1) The employer must inform affected employees and their representatives about abatement activities covered by this Section by posting a copy of

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each document submitted to the Division Manager or a summary of the document near the place where the violation occurred.

- 2) When the posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:
 - A) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
 - B) Take other steps to communicate fully to affected employees and their representatives about abatement activities.
 - 3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the Division Manager.
 - A) An employee or an employee representative must submit a request to examine and copy abatement documents within 3 working days after receiving notice that the documents have been submitted.
 - B) The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within 5 working days after receiving the request.
 - 4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Division Manager and that abatement documents are:
 - A) Not altered, defaced or covered by other material; and
 - B) Remain posted for 3 working days after submission to the Division Manager.
- h) Transmitting Abatement Documents

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- 1) The employer must include, in each submission required by this Section, the following information:
 - A) The employer's name and address;
 - B) The inspection number to which the submission relates;
 - C) The citation and item numbers to which the submission relates;
 - D) A statement that the information submitted is accurate; and
 - E) The signature of the employer or the employer's authorized representative.
 - 2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division Manager receives the document is the date of submission.
- i) Movable Equipment
- 1) For serious, repeat and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this Section, as well as the posting requirements of Section 350.180.
 - 2) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.
 - 3) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:
 - A) For hand-held equipment, immediately after the employer receives the citation; or

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- B) For non-hand-held equipment, prior to moving the equipment within or between worksites.
- 4) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 1926.200(h) is deemed to meet the requirements of this Section when the information required by subsection (i)(2) is included on the tag.
- 5) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced or covered by other material.
- 6) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:
 - A) The violation has been abated and all abatement verification documents required by this Section have been submitted to the Division Manager;
 - B) The cited equipment has been permanently removed from service or is no longer within the employer's control; or
 - C) The Administrative Law Judge issues a final order vacating the citation.

Section 350.220 Informal Conferences

At the request of an affected employer, employee or representative of employees, the Division Manager may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to 56 Ill. Adm. Code 120. If the conference is requested by the employer, an affected employee or his or her representative shall be afforded an opportunity to participate, at the discretion of the Division Manager. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Division Manager. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in Section 350.190.

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SUBPART B: INJURY/ILLNESS RECORDKEEPING REQUIREMENTS

Section 350.250 Purpose, Scope and Definitions

- a) **Purpose**
The purpose of this Subpart B is to require employers to record and report work-related fatalities, injuries and illnesses. Recording or reporting a work-related injury, illness or fatality does not mean that the employer or employee was at fault, that a standard or rule has been violated, or that the employee is eligible for workers' compensation or other benefits.
- b) **Scope.** All public employers are required to maintain records of work-related injuries and illnesses under Subpart B.
- c) **Definitions**
For purposes of this Subpart B, the following terms have the meanings ascribed in this subsection:

Establishment – a single physical location where business is conducted or where services or industrial operations are performed. For activities in which employees do not work at a single physical location, such as construction, transportation, and electric, gas and sanitary services, and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise those activities or are the base from which personnel carry out those activities.

One location contains two or more establishments if:

Each group represents a distinctly separate function (i.e., police, fire); or

Each establishment is engaged in different economic activity;

No one SIC (Standard Industrial Classification) applies to the joint activities; or

Separate reports are routinely prepared for each group on the number of employees and/or wages.

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An establishment can include more than one physical location if:

The employer operates the locations as a single operation under common management;

The locations are all located in close proximity to each other; and

The employer keeps one set of records for the locations, such as records on the number of employees, their wages and salaries and other kinds of business information. For example, one establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

When an employee telecommutes from home, the employee's home is not a business establishment and a separate OSHA 300 Log (Log of Work-Related Injuries and Illnesses) is not required. Employees who telecommute must be linked to one establishment.

Forms – the required forms for documenting work-related deaths, injuries and illnesses are the OSHA 300 (Log of Injuries/Illnesses), the OSHA 300A (Summary of Injuries/Illnesses) and the OSHA 301 (Injury/Illness Incident Form). The IWCC Form 45 may be substituted for the OSHA 301 as long as the information is equivalent.

Injury or Illness – an abnormal condition or disorder. Injuries include, but are not limited to, a cut, fracture, sprain or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder or poisoning. Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of this Subpart's recording criteria.

Physician or Other Licensed Health Care Professional – an individual whose legally permitted scope of practice (i.e., license, registration or certification) allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this Subpart.

Section 350.260 Recording Criteria

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- a) **Basic Requirement**

Every public employer that is required by this Part to keep records of fatalities, injuries and illnesses must record each fatality, injury and illness that:

 - 1) is work-related;
 - 2) is a new case; and
 - 3) meets one or more of the general recording criteria of Section 350.290 or or the recording criteria applying to specific cases in Sections 350.300 through 350.330.
- b) **Implementation**
 - 1) **Criteria for Recording Work-Related Injuries and Illnesses**

The criteria for recording work-related injuries and illnesses are found in various Sections of this Part as follows:

 - A) Determination of work-relatedness: Section 350.270.
 - B) Determination of a new case: Section 350.280.
 - C) General recording criteria: Section 350.290.
 - D) Additional criteria (needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases): Sections 350.300 through 350.330.
 - 2) Appendix A includes a decision tree to assist reporters in determining what particular injuries or illnesses are recordable.

Section 350.270 Determination of Work-Relatedness

- a) **Basic Requirement**

An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or

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significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in subsection (b)(2) specifically applies.

b) Implementation

1) Work Environment

The work environment is defined as the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work.

2) Exceptions

An injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related and, therefore, is not recordable:

A) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.

B) The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.

C) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball or baseball.

D) The injury or illness is solely the result of an employee eating, drinking or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in).
EXAMPLE: if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. However, if the employee is made ill by

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ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.

- E) The injury or illness is solely the result of an employee doing personal tasks (unrelated to the employment) at the establishment outside of the employee's assigned working hours.
 - F) The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or intentionally self-inflicted.
 - G) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
 - H) The illness is the common cold or flu. Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work.
 - I) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.
- 3) Determining whether the Precipitating Event Occurred in the Work Environment
If it is not obvious whether the precipitating event or exposure occurred in the work environment, the employer must evaluate the employee's work duties and environment to decide whether one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.
- 4) Aggravating Pre-Existing Conditions

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A pre-existing injury or illness has been significantly aggravated, for purposes of injury and illness recordkeeping, when an event or exposure in the work environment results in any of the following:

- A) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.
 - B) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.
 - C) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.
 - D) Medical treatment in a case in which no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.
- 5) Pre-existing Conditions
An injury or illness is a pre-existing condition if it resulted solely from a non-work-related event or exposure that occurred outside the work environment.
- 6) Travel Status
Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities in the interest of the employer. Examples of these activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one of the following exceptions:

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- A) When a traveling employee checks into a hotel or motel, or other temporary residence, he or she establishes a home away from home. The employee's activities after he or she checks into the temporary residence must be evaluated by the employer for work-relatedness in the same manner as the employer evaluates the activities of a non-traveling employee. When the employee checks into the temporary residence, he or she is considered to have left the work environment. When the employee begins work each day, he or she re-enters the work environment. If the employee has established a home away from home and is reporting to a fixed worksite each day, injuries or illnesses are not work-related if they occur while the employee is commuting between the temporary residence and the job location.
- B) Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., has taken a side trip for personal reasons).
- 7) **Work at Home**
Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting. **EXAMPLE:** If an employee drops a box of work documents and injures his or her foot, the case is considered work-related. If an employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related. If an employee is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work-related. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.

Section 350.280 Determination of New Cases

- a) Basic Requirement

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An injury or illness is a new case if:

- 1) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body; or
- 2) The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

b) Implementation

- 1) Recurrences
For occupational illnesses in which the signs or symptoms recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. EXAMPLES: Occupational cancer, asbestosis, byssinosis and silicosis.
- 2) New Cases
When an employee experiences the signs or symptoms of an injury or illness as a result of an event or exposure in the workplace, such as an episode of occupational asthma, the incident must be treated as a new case because the episode or recurrence was caused by an event or exposure in the workplace.
- 3) Advice of a Health Care Professional
The employer is not required to seek the advice of a physician or other licensed health care professional. However, if such advice is sought, the employer must follow the licensed health care professional's recommendation about whether the case is a new case or a recurrence. If the employer receives recommendations from 2 or more licensed health care professionals, he or she must make a decision as to which recommendation is the most authoritative, best documented or best reasoned and record the case based upon that recommendation.

Section 350.290 General Recording Criteria

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- a) **Basic Requirement**
An injury or illness meets the general recording criteria, and is, therefore recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. A case meets the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.
- b) **Implementation**
- 1) **Recording Required**
A work-related injury or illness must be recorded if it results in one or more of the following:
- A) Death (see subsection (b)(2)).
 - B) Days away from work (see subsection (b)(3)).
 - C) Restricted work or transfer to another job (see subsection (b)(4)).
 - D) Medical treatment beyond first aid (see subsection (b)(5)).
 - E) Loss of consciousness (see subsection (b)(6)).
 - F) A significant injury or illness diagnosed by a physician or other licensed health care professional (see subsection (b)(7)).
- 2) **Employee Death**
The employer must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. He or she must also report any work-related fatality to IDOL within 8 hours, as required by Section 350.410.
- 3) **Days Away from Work**
When an injury or illness involves one or more days away from work, record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of

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calendar days away from work in the number of days column. If the employee is out for an extended period of time, enter an estimate of the days that the employee will be away and update the day count when the actual number of days is known. Begin counting days away on the day after the injury occurred or the illness began.

- 4) Advice of Health Care Professional
 - A) When a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway, record the injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If the licensed health care professional recommends days away, encourage the employee to follow that recommendation. The days away must be recorded whether or not the employee follows the licensed health care professional's recommendation. If recommendations are received from 2 or more licensed health care professionals, the employer must decide which is the most authoritative and record the case based upon that recommendation.
 - B) When a licensed health care professional recommends that the worker return to work but the employee stays at home anyway, end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.
- 5) Non-Work Days
 - A) The number of calendar days the employee was unable to work as a result of the injury or illness shall be counted, regardless of whether the employee was scheduled to work on those days. Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

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- B) When a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend, record the case only if the employer receives information from a licensed health care professional indicating that the employee should not have worked or should have performed only restricted work during the weekend. The injury or illness must be recorded as a case with days away from work or restricted work and the day counts must be entered, as appropriate.
- 6) **Day Before Scheduled Time Off**
When a worker is injured or becomes ill on the day before scheduled time off, such as a holiday, planned vacation, or temporary closing, the case needs to be recorded only if the employer receives information from a licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. The injury or illness shall be recorded as a case with days away from work or restricted work and the day counts shall be entered, as appropriate.
- 7) **Limitation on Days Counted**
- A) The employer may cap the total days away at 180 calendar days. The employer is not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than 180 calendar days away from work and/or days of job transfer or restriction. In such a case, entering 180 in the total days away column will be considered adequate.
- B) The employer may stop counting days if an employee who is away from work because of an injury or illness retires or leaves employment. If the employee leaves employment for some reason unrelated to the injury or illness, such as retirement, or to take another job, stop counting days away from work or days of restriction/job transfer. If the employee leaves because of the injury or illness, estimate the total number of days away or days of restriction/job transfer and enter the day count on the OSHA 300 Log.

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- C) If a case occurs in one year but results in days away during the next calendar year, only record the injury or illness once. Enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when the annual summary is prepared, estimate the total number of calendar days the employee is expected to be away from work, use this number to calculate the total for the annual summary, and update the initial log entry later when the day count is known or reaches the 180-day cap.
- 8) Restricted Work or Job Transfer
- A) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and entering the number of restricted or transferred days in the restricted workdays column. Restricted work occurs when, as the result of a work-related injury or illness:
- i) The employer keeps the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or
 - ii) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.
- B) For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.
- C) Do not record restricted work or job transfers if the employer or the licensed health care professional imposes the restriction or

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transfer only for the day on which the injury occurred or the illness began.

- D) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from the employer or licensed health care professional keeps the employee from performing one or more of his or her routine job functions or from working the full workday the injured or ill employee would otherwise have worked, the employee's work has been restricted and the case must be recorded.
- E) A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.
- F) The case is not considered restricted work if the injured or ill worker produces fewer services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work. The case is considered restricted work only if the worker does not perform all of the routine functions of his or her job or does not work the full shift that he or she would otherwise have worked.
- G) Restrictions from a licensed health care professional may be vague, such as limiting the employee to only "light duty" or instructing the employee to "take it easy for a week". If the licensed health care professional's recommendation is not clear, ask whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is "yes", the case does not involve a work restriction and does not have to be recorded as such. If the answer to one or both of these questions is "no", the case involves restricted work and must be recorded as a restricted work case. If you are unable to obtain this additional information from the licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

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- H) If a licensed health care professional recommends a job restriction meeting the definition, but the employee does all of his or her routine job functions anyway, record the injury or illness on the OSHA 300 Log as a restricted work case. If a licensed health care professional recommends a job restriction, ensure that the employee complies with that restriction. If recommendations are received from 2 or more physicians or other licensed health care professionals, make a decision as to which recommendation is the most authoritative and record the case based upon that recommendation.
- I) Job Transfers
- i) If an injured or ill employee assigned to a job other than his or her regular job for part of the day, the case involves transfer to another job. This does not include the day on which the injury or illness occurred.
- ii) Both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. EXAMPLE: if the employer assigns, or a licensed health care professional recommends that the employer assign, an injured or ill worker to his or her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. Record an injury or illness that involves a job transfer by placing a check in the box for job transfer.
- J) Count days of job transfer or restriction in the same way days away from work are counted, using subsection (b)(3) through (b)(7). The only difference is that, if the injured or ill employee is assigned to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for the cases.

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- 9) Medical Treatment Beyond First Aid
- A) If a work-related injury or illness results in medical treatment beyond first aid, record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, enter a check mark in the box for cases in which the employee received medical treatment but remained at work and was not transferred or restricted.
- B) Medical treatment means the management and care of a patient to combat disease or disorder. For the purposes of this Subpart B, medical treatment does not include:
- i) Visits to a physician or other licensed health care professional solely for observation or counseling;
 - ii) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or
 - iii) First aid as defined in subsection (b)(9)(C).
- C) For the purposes of Subpart B, first aid means the following:
- i) Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);
 - ii) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

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- iii) Cleaning, flushing or soaking wounds on the surface of the skin;
- iv) Using wound coverings such as bandages, Band-Aids, gauze pads, etc., or using butterfly bandages or Steri-Strips (other wound closing devices such as sutures, staples, etc., are considered medical treatment);
- v) Using hot or cold therapy;
- vi) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
- vii) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);
- viii) Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;
- ix) Using eye patches;
- x) Removing foreign bodies from the eye using only irrigation or a cotton swab;
- xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
- xii) Using finger guards;
- xiii) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or

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- xiv) Drinking fluids for relief of heat stress.
- D) No other treatments are considered first aid for the purposes of this Subpart B.
- E) The professional status of the person providing the treatment has no effect on what is considered first aid or medical treatment. Even when these treatments are provided by a licensed health care professional, they are considered first aid. Similarly, treatment beyond first aid is considered to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.
- 10) Refusal of Medical Treatment
If a licensed health care professional recommends medical treatment, encourage the injured or ill employee to follow that recommendation. However, the case must be recorded even if the injured or ill employee does not follow the licensed health care professional's recommendation.
- 11) Loss of Consciousness
Record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.
- 12) Significant Diagnosed Injury or Illness
- A) Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.
 - B) Most significant injuries and illnesses will result in one of the criteria listed in this Part, i.e., death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant

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injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

Section 350.300 Recording Criteria for Needlestick and Sharps Injuries

- a) **Basic Requirement**
Record all work-related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 29 CFR 1910.1030). Enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, do not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in Section 350.340(b)(6) through (b)(9)).
- b) **Implementation**
 - 1) Other potentially infectious materials is defined in the Bloodborne Pathogens standard at 29 CFR 1910.1030(b). These materials include:
 - A) Human bodily fluids, tissues and organs; and
 - B) Other materials infected with the HIV or hepatitis B virus, such as laboratory cultures or tissues from experimental animals.
 - 2) All cuts, lacerations, punctures and scratches need to be recorded only if they are work-related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration or scratch involves a clean object, or a contaminant other than blood or other

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potentially infectious material record the case only if it meets one or more of the recording criteria in Section 350.290.

- 3) If an injury is recorded and the employee is later diagnosed with an infectious bloodborne disease, update the OSHA 300 Log. The classification of the case on the OSHA 300 Log must be updated if the case results in death, days away from work, restricted work or job transfer. The description must also be updated to identify the infectious disease and change the classification of the case from an injury to an illness.
- 4) If an employee is splashed with or exposed to blood or other potentially infectious material without being cut or scratched, record the incident on the OSHA 300 Log as an illness if:
 - A) It results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or
 - B) It meets one or more of the recording criteria in Section 350.290.

Section 350.310 Recording Criteria for Cases Involving Medical Removal under IDOL-Adopted OSHA Standards

- a) Basic requirement
If an employee is medically removed under the medical surveillance requirements of an OSHA standard, record the case on the OSHA 300 Log.
- b) Implementation
 - 1) Enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how the employer decides to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, enter the case on the OSHA 300 Log by checking the poisoning column.
 - 2) Some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many OSHA standards that cover specific chemical substances have medical

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removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde and benzene.

- 3) When the employer voluntarily removes the employee from exposure before the medical removal criteria in an OSHA standard are met, the case does not need to be recorded on the OSHA 300 Log.

Section 350.320 Recording Criteria for Cases Involving Occupational Hearing Loss

- a) **Basic Requirement**

If an employee's hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee's total hearing level is 25 dB or more above audiometric zero (averaged at 2000, 3000 and 4000 Hz) in the same ear or ears as the STS, record the case on the OSHA 300 Log.
- b) **Implementation**
 - 1) An STS is defined in the occupational noise exposure standard (29 CFR 1910.95(g)(10)(i)) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 dB or more at 2000, 3000 and 4000 Hz in one or both ears.
 - 2) **Evaluating the Current Audiogram to Determine Whether an Employee has an STS and a 25-dB Hearing Level**
 - A) **STS.** If the employee has never previously experienced a recordable hearing loss, compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).
 - B) **25-dB Loss.** Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, you must use the average

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hearing level at 2000, 3000 and 4000 Hz to determine whether the employee's total hearing level is 25 dB or more.

- 3) When determining whether an STS has occurred, adjust the employee's current audiogram results by using Table F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. Do not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.
- 4) If the employee's hearing is retested within 30 days of the first test, and the retest does not confirm the recordable STS, the employer is not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, record the hearing loss illness within 7 calendar days after the retest. If subsequent audiometric testing performed under the testing requirements of the 29 CFR 1910.95 noise standard indicates that an STS is not persistent, you may erase or line-out the recorded entry.
- 5) In determining whether a hearing loss case is work-related, use Section 350.270 to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, consider the case to be work-related.
- 6) If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the employer is not required to consider the case work-related or to record the case on the OSHA 300 Log.
- 7) When entering a recordable hearing loss case on the OSHA 300 Log, check the 300 Log column for hearing loss.

Section 350.330 Recording Criteria for Work-Related Tuberculosis Cases

- a) **Basic Requirement**
If any employee has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a TB infection, as evidenced by a positive skin test or diagnosis by a physician or other

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licensed health care professional, record the case on the OSHA 300 Log by checking the respiratory condition column.

- b) Implementation
 - 1) A positive TB skin test result obtained at a pre-employment physical does not need to be recorded because the employee was not occupationally exposed to a known case of active TB in the workplace.
 - 2) If the employer obtains evidence that the case was not caused by occupational exposure, the employer may line-out or erase the case from the Log under the following circumstances:
 - A) The worker is living in a household with a person who has been diagnosed with active TB;
 - B) The Illinois Department of Public Health has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or
 - C) A medical investigation shows that the employee's infection was caused by exposure to TB away from work or proves that the case was not related to the workplace TB exposure.

Section 350.340 Forms

- a) Basic Requirement

Use the OSHA 300 (Log of Work-Related Injuries and Illnesses), 300-A (Summary of Work-Related Injuries and Illnesses) and 301 (Injury and Illness Incident Report) forms, or equivalent forms for recorded injuries or illnesses.
- b) Implementation
 - 1) Enter information about the employer's business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

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- 2) Complete an OSHA 301 Incident Report form, or an equivalent form (i.e., Form 45 for Illinois Workers Compensation Commission), for each recordable injury or illness entered on the OSHA 300 Log.
- 3) Enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within 7 calendar days after receiving information that a recordable injury or illness has occurred.
- 4) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report or supplement an insurance form by adding any additional information required.
- 5) Records may be kept on a computer if the computer can produce equivalent forms when they are needed, as described under Sections 350.390 and 350.420.
- 6) If there are privacy concerns, do not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under Section 350.390(b)(2). Keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so the cases can be updated and provide the information to the government if asked to do so.
- 7) Consider only the following injuries or illnesses to be privacy concern cases:
 - A) An injury or illness to an intimate body part or the reproductive system;
 - B) An injury or illness resulting from a sexual assault;
 - C) Mental illnesses;

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- D) HIV infection, hepatitis, or tuberculosis;
 - E) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material; and
 - F) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.
- 8) If the employer has a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, he or she may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. Enter enough information to identify the cause of the incident and the general severity of the injury or illness, but do not include details of an intimate or private nature. EXAMPLE: A sexual assault case could be described as "injury from assault", or an injury to a reproductive organ could be described as "lower abdominal injury".
- 9) If the employer decides to voluntarily disclose the OSHA forms to persons other than government representatives, employees, former employees or authorized representatives, remove or hide the employees' names and other personally identifying information, except in the following instances. Disclose the forms with personally identifying information only to:
- A) an auditor or consultant hired by the employer to evaluate the safety and health program;
 - B) the extent necessary for processing a claim for workers' compensation or other insurance benefits; or
 - C) a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information (45 CFR 164.512).

Section 350.350 Multiple Establishments

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- a) **Basic Requirement**
Keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.
- b) **Implementation**
 - 1) Keep OSHA injury and illness records for short-term establishments (i.e., establishments that will exist for less than a year), but the employer does not have to keep a separate OSHA 300 Log for each such establishment. One OSHA 300 Log may be kept that covers all of the employees short-term establishments. Include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.
 - 2) Keep the records for an establishment at the employer's headquarters or other central location if the employer can:
 - A) Transmit information about the injuries and illnesses from the establishment to the central location within 7 calendar days after receiving information that a recordable injury or illness has occurred; and
 - B) Produce and send the records from the central location to the establishment within the time frames required by Sections 350.390 and 350.420 when the employer is required to provide records to a government representative, employees, former employees or employee representatives.
 - 3) Each employee must be linked to one of the employer's establishments for recordkeeping purposes. Record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment or on an OSHA 300 Log that covers that employee's short-term establishment.
 - 4) When an employee of one of the employer's establishments is injured or becomes ill while visiting or working at another of the employer's establishments, or while working away from any of the employer's establishments the injury or illness must be recorded. If the injury or

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illness occurs at one of the employer's establishments, record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of the employer's establishments, record the case on the OSHA 300 Log at the establishment at which the employee normally works.

Section 350.360 Covered Employees

- a) **Basic Requirement**
Record on the OSHA 300 Log the recordable injuries and illnesses of all employees on the employer's payroll, whether they are labor, executive, hourly, salary, part-time, seasonal or migrant workers. Record the recordable injuries and illnesses that occur to employees who are not on the employer's payroll if the employer supervises these employees on a day-to-day basis.
- b) **Implementation**
 - 1) A self-employed person who is injured or becomes ill while doing work at an establishment is not covered by this Part.
 - 2) Injury or illness to employees obtained from a temporary help service, employee leasing service or personnel supply service (the direct employer) must be recorded if the establishment employer supervises these employees on a day-to-day basis.
 - 3) If a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If the employer in the establishment supervises the contractor employee's work on a day-to-day basis, that employer must record the injury or illness.
 - 4) A direct employer or contractor does not also record the injuries or illnesses occurring to temporary, leased or contract employees supervised by the establishment employer on a day-to-day basis. The establishment employer and the direct employer or contractor should coordinate efforts to make sure that each injury and illness is recorded only once, either on the establishment employer's OSHA 300 Log (if the establishment employer provides day-to-day supervision) or on the direct employer's or

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contractor's OSHA 300 Log (if that entity provides day-to-day supervision).

Section 350.370 Annual Summary

- a) Basic Requirement
At the end of each calendar year:
 - 1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;
 - 2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;
 - 3) Certify the summary; and
 - 4) Post the annual summary.
- b) Implementation
 - 1) The employer must review the entries as extensively as necessary to make sure that they are complete and correct.
 - 2) To complete the annual summary:
 - A) Total the columns on the OSHA 300 Log (if no recordable cases, enter zeros for each column total);
 - B) Enter the calendar year covered, the employer's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log; and
 - C) If using an equivalent form other than the OSHA 300-A Summary form, the summary used must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.

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- 3) A management executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.
- 4) The management executive who certifies the log must be:
 - A) The highest ranking management official working at the establishment; or
 - B) The highest ranking supervisor at the establishment who has signature authority for the highest ranking management official.
- 5) Post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.
- 6) Post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

Section 350.380 Retention and Updating

- a) **Basic Requirement**
Save the OSHA 300 Log, the privacy case list (if one exists), the annual summary, and the OSHA 301 Incident Report forms for 5 years following the end of the calendar year that these records cover.
- b) **Implementation**
 - 1) During the storage period, update the stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, remove or line out the original entry and enter the new information.
 - 2) The employer is not required to update the annual summary, but may do so if he or she wishes.

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- 3) The employer is not required to update the OSHA 301 Incident Reports, but may do so if he or she wishes.

Section 350.390 Employee Involvement

- a) **Basic Requirement**
Employees and their representatives must be involved in the recordkeeping system in several ways.
 - 1) Inform each employee of how he or she is to report an injury or illness to the employer.
 - 2) The employer must provide limited access to its injury and illness records for its employees and their representatives.
- b) **Implementation**
 - 1) The employer must set up a way for employees to report work-related injuries and illnesses promptly and must tell each employee how to report work-related injuries and illnesses.
 - 2) The employer must give its employees and their representatives access to the OSHA injury and illness records. Employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the injury and illness records, with the limitations provided in this subsection (b).
 - 3) An authorized employee representative is an authorized collective bargaining agent of employees.
 - 4) A personal representative is:
 - A) Any person that the employee or former employee designates as such, in writing; or
 - B) The legal representative of a deceased or legally incapacitated employee or former employee.

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- 5) When an employee, former employee, personal representative, or authorized employee representative asks for copies of the current or stored OSHA 300 Logs for an establishment, the employee or former employee has worked in, the employer must give the requester a copy of the relevant OSHA 300 Logs by the end of the next business day.
- 6) Privacy
 - A) The employer shall not remove the names of the employees or any other information from the OSHA 300 Log before giving copies to an employee former employee, or employee representative. However, to protect the privacy of injured and ill employees, the employer shall not record the employee's name on the OSHA 300 Log for privacy concern cases (see Section 350.340(b)).
 - B) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to the employee or former employee, give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day. When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, give copies of those forms to the authorized employee representative within 7 calendar days. The employer is only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case". Remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form given to the authorized employee representative.
- 7) The employer shall not charge for copies of OSHA reports the first time they are provided. However, if one of the designated persons asks for additional copies, the employer may assess a reasonable charge for retrieving and copying the records.

Section 350.400 Prohibition Against Discrimination

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- a) Section 2.2 of the Safety Inspection and Education Act prohibits employers from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Subpart B records, or otherwise exercises any right afforded by the Acts.
- b) Variance. If a public employer wishes to keep records in a manner different from Subpart B, the employer must submit a variance request petition in accordance with Section 350.500.

Section 350.410 Reporting Fatalities and Hospitalization Incidents to the Illinois Department of Labor

- a) Basic Requirement
Within 8 hours after the death of any employee from a work-related incident or the in-patient hospitalization of one or more employees as a result of a work-related incident, orally report the fatality/hospitalization by telephone 24/7 Notification – (800) 782-7860 or (217) 782-7860.
- b) Implementation
 - 1) The reporter must give the following information for each fatality or hospitalization incident:
 - A) The establishment name;
 - B) The location of the incident;
 - C) The time of the incident;
 - D) The number of fatalities or hospitalized employees;
 - E) The names of any injured employees;
 - F) The reporter's contact person and his or her phone number; and
 - G) A brief description of the incident.

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- 2) Every fatality or hospitalization incident resulting from a motor vehicle accident must be reported.
- 3) Report a fatality caused by a heart attack at work. The Division Manager will decide whether to investigate the incident, depending on the circumstances of the heart attack.
- 4) Only report fatalities or hospitalizations that occur within 30 days after an incident.
- 5) If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this Section, make the report within 8 hours after the incident is reported to the employer or any agent or employee of the employer.

Section 350.420 Providing Records to Government Representatives

- a) **Basic Requirement**
When an authorized government representative asks for the records kept under this Subpart B, provide copies of the records within 4 business hours.
- b) **Implementation**
The following government representatives have the right to get copies of injury and illness records:
 - 1) A representative of the IDOL Director conducting an inspection or investigation under the Acts.
 - 2) A representative of the Secretary of Health and Human Services representing the National Institute for Occupational Safety and Health conducting an inspection under section 20(b) of the federal Occupational Safety and Health Administration Act (OSHAct) (29 USC 669(b)).

Section 350.430 Requests from the Illinois Department of Public Health/Bureau of Labor Statistics for Data

- a) **Basic Requirement**

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If the Illinois Department of Public Health submits to the employer a Survey of Occupational Injuries and Illnesses Form for the Bureau of Labor Statistics, promptly complete the form and return it following the instructions contained on the survey form.

b) Implementation

Each year, injury and illness survey forms are sent to randomly selected employers and the Bureau of Labor Statistics uses that information to create the U.S. occupational injury and illness statistics. In any year, some employers will receive a survey form and others will not. Employers do not have to send injury and illness data to the Illinois Department of Public Health unless they receive a survey form.

SUBPART C: VARIANCES FROM STANDARDS

Section 350.500 Petition for Variance from Standards

a) General

The Director can grant either temporary or permanent variances from any of the State standards upon application by a public employer. [820 ILCS 225/4.2(a)]

The petition shall be filed by the employer as soon as practicable when he or she finds that compliance has not been, or will not be, achieved. Any variance from State health and safety standards may only have future effect.

b) The petition for a variance from a standard shall be granted if it meets the requirements of this Section and establishes:

- 1) The reasons for the employer's inability to achieve compliance by the required date, such as the unavailability of necessary professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the effective date;
- 2) A description of interim steps being taken to safeguard the employees against the hazard during the period of noncompliance;
- 3) The details of an effective program for coming into compliance as quickly as practicable; and

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- 4) A statement certifying that the employees have been notified of the petition and that a copy of the petition has been posted in a conspicuous location in the workplace for a period of at least 10 working days. This statement must summarize the application, specify where a copy may be examined, and describe how the employees were informed and their rights to petition the Director for a hearing.
- c) Affected employees or their authorized representatives may participate in the hearing on the petition by filing a request to participate with the Department within 10 working days after the date of the posting of the petition or the service of the petition.
- d) Within 15 working days after receipt of the petition, the Department shall schedule a hearing on the petition, appoint an impartial hearing officer to conduct the hearing, and serve notice of the time and location of the hearing on the employer and any employees and employee representatives who have filed a request to participate in the hearing. The hearing shall be held within 45 calendar days after receipt of the petition.
- e) The Department shall fully consider the petition and any testimony presented by the employer, employees and employee representatives. The requested variance shall be granted when the Department finds that the employer has made and is making a good faith effort to achieve compliance (such as ordering necessary materials and designing, planning and scheduling alterations), that the health and safety of the employees is being safeguarded during the noncompliance period (such as by the use of barriers, prohibition of access to the hazardous area, or posting of warning notices), and that the noncompliant condition is due to circumstances beyond the control of the employer. If the Department finds that the conditions of this subsection have not been met, the variance shall be denied.
- f) If the employees or their authorized representatives do not file a request to participate or otherwise raise objections to the petition and the Department finds that the requested variance meets the conditions set forth in subsection (e), the Department shall issue the requested variance without holding a hearing.
- g) No order for a temporary variance may be in effect for longer than the period needed by the employer to achieve compliance or one year, whichever is shorter,

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except that such a variance may be renewed not more than twice, so long as the requirements of this Section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the variance. No interim renewal of a variance may remain in effect for longer than 180 days.

- h) Application. An application for a temporary order shall contain:
- 1) The name and address of the applicant;
 - 2) The address of the affected establishments;
 - 3) A statement establishing that applicant:
 - i) is unable to comply with a standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
 - ii) is taking all available steps to safeguard his/her employees against the hazards covered by the standard; and
 - iii) has an effective program for coming into compliance with a standard as quickly as possible;
 - 4) The standard or portion of a standard from which the employer seeks a variance;
 - 5) A representation by the employer, along with qualified support, of the reasons for not being able to comply with the standard;
 - 6) A statement of when, with specific dates, the employer expects to comply with the standard; and
 - 7) A certification that the employer has informed the employees and their authorized representatives of the application and their right to petition the Department for a hearing, and has provided them a copy of the posting.

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- i) Permanent Variance
 - 1) The Director can issue an order for permanent variance from a safety standard when:
 - A) notice has been given to affected employees and the employees have been afforded the opportunity to participate in the hearing process; and
 - B) a preponderance of the evidence demonstrates that the conditions, practices, means, methods, operations or processes used or proposed to be used will provide employment and places of employment as safe and healthful as those that would be produced by compliance with the standard.
 - 2) The order may be modified or revoked upon application by an affected party at any time after 6 months following its issuance.
- j) Modification or Revocation
 - 1) An affected employer or an affected employee may apply in writing to the Director for a modification or revocation of a rule or order. The application shall contain:
 - A) The name and address of the applicant;
 - B) A description of the relief sought;
 - C) A statement setting forth with particularity the grounds for relief;
 - D) If the applicant is an employer, a certification that the applicant has informed his or her affected employees of the application by:
 - i) Giving a copy of the application to the authorized employee representative;
 - ii) Posting, at the place or places where the notices to employees are normally posted, a statement giving a

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summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

- iii) Other appropriate means.
 - E) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
 - F) Any request for a hearing, as provided in this Part.
- k) The Director, on his or her own motion, may proceed to modify or revoke a rule, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100], or to modify or revoke an order issued under Section 4.2 of the Illinois Health and Safety Act. In that event, the Director shall cause to be published in the Illinois Register a notice of his or her intention, affording interested persons an opportunity to submit written data, views or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:
- 1) how the proposed modification or revocation would affect the requesting party; and
 - 2) what the requesting party would seek to show on the subjects or issues involved.
- l) Defective Applications
- 1) If an application for variance does not conform to the applicable portions of this Section, the Director may deny the application.
 - 2) Prompt notice of denial of an application shall be given to the applicant.
 - 3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

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- 4) A denial of an application pursuant to this subsection (l) shall be without prejudice to the filing of another application.
- m) Adequate Applications
- 1) If an application has not been denied pursuant to subsection (l), the Director shall cause to be published in the Illinois Register a notice of the filing of the application.
 - 2) A notice of the filing of an application shall include:
 - A) The terms or an accurate summary of the application;
 - B) A reference to the Section of the Acts under which the application has been filed;
 - C) An invitation to interested persons to submit, within a stated period of time, written data, views or arguments regarding the application; and
 - D) Information to affected employers and employees covered in the application of any right to request a hearing on the application.
- n) Request for Hearings on Applications
- 1) Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Director a request for a hearing on the application.
 - 2) Contents of a Request for a Hearing
A request for a hearing filed pursuant to this Section shall include:
 - A) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;
 - B) A specification of any statement or representation in the application that is denied and a concise summary of the evidence that would be adduced in support of each denial; and

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- C) Any views or arguments on any issue of fact or law presented.
- 3) All hearings held pursuant to this Section will abide by IDOL's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120).

SUBPART D: CONSULTATION PROGRAM

Section 350.600 Purpose

The Illinois On-Site Safety and Health Consultation Program will provide compliance assistance to small businesses and the public sector establishments in Illinois. This program was established under the Cooperative Agreement between Illinois and the federal Occupational Safety and Health Administration (29 USC 670(d)), under which OSHA will utilize state personnel to provide consultative services to employers. The provisions for the Illinois On-Site Safety and Health Consultation Program funded under Sections 21(d) and 23(g) of the federal Occupational Safety and Health Act (29 USC 672(g)) are detailed in 29 CFR 1908.

SUBPART E: ADOPTION OF FEDERAL STANDARDS

Section 350.700 Adoption of Federal Standards

- a) State Standards and Rulemaking. Section 4.1 of the Health and Safety Act outlines the Director's authority to promulgate, amend and revoke State standards. Any promulgation, amending or revoking of State standards will be done in accordance with the Illinois Administrative Procedure Act.
- b) Incorporation of Federal Regulations
 - 1) Pursuant to Section 4 of the Health and Safety Act, the Department hereby incorporates by reference the general health and safety standards and special maritime and construction industry standards adopted by the federal Occupational Safety and Health Administration, effective January 9, 2014. These standards are located at 29 CFR 1904, 1908, 1910, 1915 and 1926. All materials incorporated by this Section are incorporated as of the date specified and do not include any later amendments or editions.

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- 2) The Department hereby adopts as a rule of the Department, through incorporation by reference, 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens (1991). The dates listed in subsection (i) of 29 CFR 1910.1030 are not applicable to Illinois public sector employers. The effective date (subsection (i)(1) of the adopted standard) for the Illinois public sector shall be January 19, 1993. The compliance date for subsection (i)(2) of the adopted standard shall be February 18, 1993, the date for subsection (i)(3) shall be March 20, 1993 and the date for subsection (i)(4) shall be April 19, 1993.
- c) Incorporation of Interpretations of Federal Regulations
- 1) The following interpretations of 29 CFR 1910.134, Respiratory Protection Standard (1998) are incorporated into this Part. Copies of the federal Occupational Safety and Health Administration material may also be obtained at <http://www.osha-slc.gov/SLTC/respiratoryprotection/index.html>.

Preamble: Respiratory Protection; Final Rule, 63 Fed. Reg. 1152 (Jan. 8, 1998)

Questions & Answers on the Respiratory Protection Standard, OSHA Memorandum (Aug. 17, 1998)

Inspection Procedure for the Respiratory Protection Standard, CPL 2-0.120 (Sept. 18, 1998)

Small Entity Compliance Guide for the Revised Respiratory Protection Standard, OSHA Directorate of Health Standards Programs (Sept. 30, 1998)

Illinois Fire Chiefs Association – A Guideline on OSHA's 1998 Update of Its 1971 Respiratory Protection Standard (Mar. 9, 1999)
 - 2) The following interpretation of 29 CFR 1910 and 1926, Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic (1998); 29 CFR 1915 and 1926, Occupational

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Exposure to Asbestos (1998); 29 CFR 1910, Methylene Chloride (1998); 29 CFR 1910, Permit-Required Confined Spaces (1998); and 29 CFR 1910, 1915, 1917, 1918 and 1926, Powered Industrial Truck Operator Training (1999) are incorporated into this Part. Copies are available at the Department's Chicago office. Copies may also be obtained at <http://www.osha.gov/comp-links.html>.

Preamble: Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic; Final Rule, 63 Fed. Reg. 33450 (June 18, 1998)

Preamble: Occupational Exposure to Asbestos; 63 Fed. Reg. 35137 (June 29, 1998)

Preamble: Methylene Chloride; Final Rule, 63 Fed. Reg. 50711 (Sept. 22, 1998)

Preamble: Permit-Required Confined Spaces; Final Rule, 63 Fed. Reg. 66018 (Dec. 1, 1998)

Preamble: Powered Industrial Truck Operator Training; Final Rule, 63 Fed. Reg. 66238 (Dec. 1, 1998)

- 3) The following interpretation of 29 CFR 1910, Dipping and Coating Operations (1999) is incorporated into this Part. Copies are available at the Department's Chicago office. Copies may also be obtained at <http://www.osha.gov/comp-links.html>.

Preamble: Dipping and Coating Operations; Final Rule, 64 Fed. Reg. 13897 (Mar. 23, 1999)

- 4) The following interpretation of 29 CFR 1926, Safety Standards for Steel Erection (2001), and 29 CFR 1910, Occupational Exposure to Bloodborne Pathogens; Needlesticks and Other Sharps Injuries (2001), are incorporated into this Part. Copies are available at the Department's Chicago office. Copies may also be obtained at <http://www.osha.gov/comp-links.html>.

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Preamble: Safety Standards for Steel Erection; Final Rule, 66 Fed. Reg. 5196 (Jan. 18, 2001)

Preamble: Occupational Exposure to Bloodborne Pathogens; Needlesticks and Other Sharps Injuries; Final Rule, 66 Fed. Reg. 5318 (Jan. 18, 2001)

- 5) The following interpretation of 29 CFR 1910.36, 1910.37, 1910.38 and 1910.39, Exit Routes, Emergency Action Plans and Fire Prevention Plans, Final Rule (Nov. 11, 2002); 29 CFR 1904, Occupational Injury and Illness Recording and Reporting, Final Rule (July 1, 2002 and Dec. 17, 2002 update); 29 CFR 1910.139, Termination of Rulemaking Respiratory Protection for M. Tuberculosis, Final Rule (Dec. 31, 2003); 29 CFR 1915.52, Fire Protection in Shipyard Employment, Final Rule (Sept. 15, 2004); and 29 CFR 1910 et al., Standards Improvement Project – Phase II (Jan. 5, 2005) are incorporated into this Part. Copies are available at any of the Department's offices. Copies may also be obtained at <http://www.osha.gov>.
- 6) The following interpretations of 29 CFR 1910, 1915 and 1926, Assigned Protection Factors, Final Rule (Aug. 24, 2006); 29 CFR 1926, Roll-Over Protective Structure, Final Rule (Dec. 29, 2005, corrected July 20, 2006); 29 CFR 1910.1026, Occupational Exposure to Hexavalent Chromium, Final Rule (Feb. 28, 2006, corrected June 23, 2006); 29 CFR 1926, Steel Erection: Slip Resistance of Skeletal Structural Steel, Final Rule (Jan. 18, 2006); 29 CFR 1910, 1915 and 1926, Electrical Installation Requirements, subpart S, Final Rule (Feb. 14, 2007, corrected Oct. 29, 2008); 29 CFR 1915, Updating National Consensus Standards in OSHA Standard for Fire Protection in Shipyard Employment, Final Rule (Jan. 3, 2007); 29 CFR 1910, Employer Payment for Personal Protective Equipment, Final Rule (Nov. 15, 2007, clarified Dec. 12, 2008); and 29 CFR 1910, Updating OSHA Standards Based on National Consensus Standards, Final Rule (Mar. 14, 2008, Dec. 14, 2007, Sept. 9, 2009) are incorporated into this Part. Copies are available at any of the Department's offices, on the Department website at www.state.il.us/agency/idol or the OSHA website at <http://www.osha.gov>.

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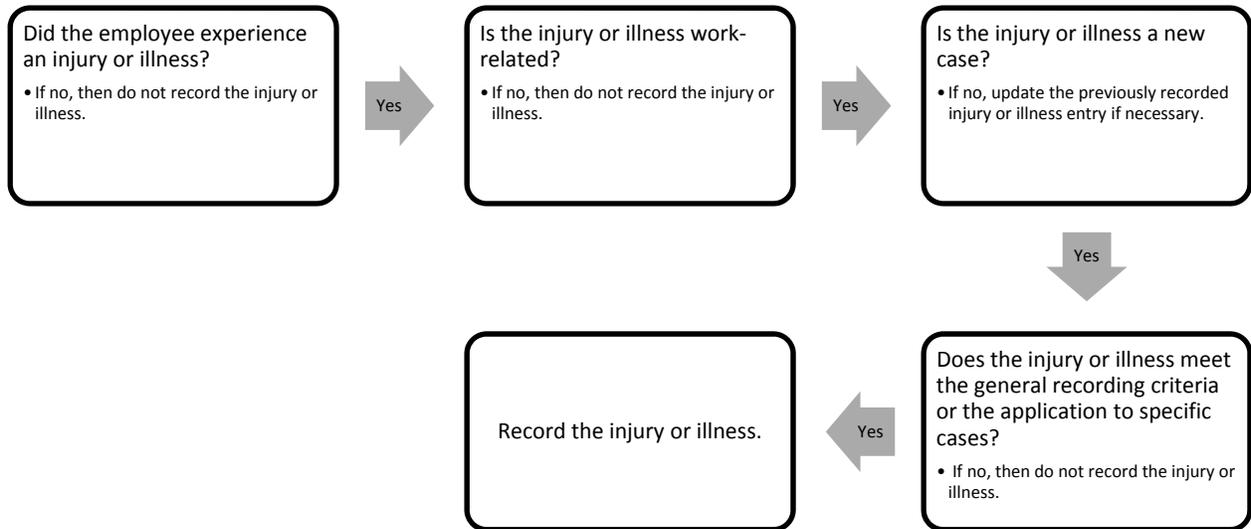
NOTICE OF ADOPTED RULES

- 7) The following interpretations of 29 CFR 1910, 1915 and 1926 as appropriate, Standards Improvement Project, Phase III (June 8, 2011); Cranes and Derricks in Construction (Aug. 9, 2010); Technical Amendment concerning Safety Standards for Steel Erection (May 17, 2010); 29 CFR Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards (May 14, 2010); Revising Standards Referenced in the Acetylene Standard (Nov. 10, 2009);
- d) **Clarification of Effective Dates**
The effective dates for 29 CFR 1910.119(e)(1)(i), (ii), (iii), and (iv), which establish timelines for hazard analyses for hazardous materials, are one, 2, 3 and 4 years, respectively, after August 1, 1994.
- e) **Conformity with Federal Regulations**
The Department shall consider any subsequent amendments to the health and safety standards adopted by the federal Occupational Safety and Health Administration. Those amendments will be incorporated by reference or substitute provisions that provide equivalent protection will be adopted. Amendments will be adopted in accordance with the Illinois Administrative Procedure Act.

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350.APPENDIX A Decision Tree



ILLINOIS DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

350.APPENDIX B Sample Abatement Plan or Progress Report (Non-mandatory)

Illinois Department of Labor
Safety Inspection and Education Division
900 South Spring Street
Springfield IL 62704
(217) 782-9386
(217) 785-8776 fax

Establishment Name & Address:
IL Dept. of ABC
123 South Main Street
City, State Zip Code

Check One:
Abatement Plan: Inspection Number: _____
Progress Report:

Citation Number	Item Number	Action	Proposed Completion Date (Abatement Plans)	Completion Date (Progress Reports)

Date required for final abatement: _____

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Name of primary point of contact for questions (optional): _____

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Telephone Number: _____

Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion date, and actual completion dates (for progress reports only) are the same for each of the citation items.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Pharmacy Practice Act
- 2) Code Citation: 68 Ill. Adm. Code 1330
- 3) Register citation of proposed rulemaking and other pertinent action: 38 Ill. Reg. 10534; May 16, 2104
- 4) Explanation: DFPR's proposed amendments to 68 Ill. Adm. Code 1330 that JCAR inadvertently omitted. The omitted amendments were to be included in Section 1330.510 (b) and (c). The proposed amendments should have included:

Section 1330.510(b)(4)(C): The remote dispensing site shall utilize a barcode system that prints the barcode of the stock bottle on the label of the dispensed drug. If the stock bottle does not have a barcode, the pharmacy shall create one. The technician shall scan both the stock bottle and the label of the dispensed drug to verify that the drug dispensed is the same as the drug in the stock bottle for each prescription dispensed.

Section 1330.510(b)(5): Counseling must be done by a pharmacist via video link and audio link before the drug or medical device-script is released. The pharmacist must counsel the patient or the patient's agent on all new prescriptions and refills. The pharmacist providing counseling, pursuant to this subsection, must be employed or contracted by the home pharmacy or by a pharmacy contracted with the home pharmacy and have access to all relevant patient information maintained by the home pharmacy.

Section 1330.510(c)(3): These sites must be staffed with a pharmacy technician or certified pharmacy technician who has the knowledge necessary to use computer audio/video link for dispensing and consultation to occur. Pharmacist and pharmacy technician initials or unique identifiers must appear on the prescription record and the prescription label.

JCAR regrets the error.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of May 13, 2014 through May 19, 2014. These rulemakings are scheduled for review at the Committee's June 17, 2014 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>
6/26/14	<u>Department of Central Management Services</u> , Pay Plan (80 Ill Adm. Code 310)	3/28/14 38 Ill. Reg. 6751	6/17/14
6/26/14	<u>Department of Insurance</u> , Improper Claims Practice (50 Ill. Adm. Code 919)	2/21/14 38 Ill. Reg. 4999	6/17/14
6/27/14	<u>Department of Revenue</u> , Income Tax (86 Ill. Adm. Code 100)	2/28/14 38 Ill. Reg. 5503	6/17/14
6/26/14	<u>Department of Revenue</u> , Income Tax (86 Ill. Adm. Code 100)	2/21/14 38 Ill. Reg. 5148	6/17/14
7/2/14	<u>Secretary of State</u> , Uniform Commercial Code (14 Ill. Adm. Code 180)	3/28/14 38 Ill. Reg. 7088	6/17/14

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 38, Issue 22 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.

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