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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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) Section Number: 120.61 Adopted Action: Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: The proposed amendment implements provisions of Public Act 98-0674, which increases the personal needs allowance to \$60.00 per month, for persons residing in an Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/IDD) licensed under the ID/DD Community Care Act or for persons residing in a Community Integrated Living Arrangement (CILA).
- 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? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
120.308	Amendment	38 Ill. Reg. 14654; July 18, 2014
120.380	Amendment	38 Ill. Reg. 14654; July 18, 2014
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

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

217/782-1233
HFS.Rules@illinois.gov

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 120

MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section

120.1 Incorporation by Reference

SUBPART B: ASSISTANCE STANDARDS

Section

120.10 Eligibility for Medical Assistance
120.11 Eligibility for Pregnant Women and Children
120.12 Healthy Start – Medicaid Presumptive Eligibility Program for Pregnant Women
120.14 Presumptive Eligibility for Children
120.20 MANG(AABD) Income Standard
120.30 MANG(C) Income Standard
120.31 MANG(P) Income Standard
120.32 FamilyCare Assist
120.34 FamilyCare Share and FamilyCare Premium Level 1 (Repealed)
120.40 Exceptions To Use Of MANG Income Standard (Repealed)
120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section

120.60 Community Cases
120.61 Long Term Care
120.62 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings Under 89 Ill. Adm.
Code 140.643 (Repealed)
120.63 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings (Repealed)
120.64 Determination of Eligibility for Cases Subject to Modified Adjusted Gross
Income (MAGI) Methodology

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 120.65 Department of Mental Health and Developmental Disabilities (DMHDD)
Licensed Community – Integrated Living Arrangements (Repealed)

SUBPART D: MEDICARE PREMIUMS

Section

- 120.70 Supplementary Medical Insurance Benefits (SMIB) Buy-In Program
120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)
120.73 Eligibility for Payment of Medicare Part B Premiums for Specified Low-Income
Medicare Beneficiaries (SLIBs) and Qualified Individuals-1 (QI-1)
120.74 Qualified Medicare Beneficiary (QMB) Income Standard
120.75 Specified Low-Income Medicare Beneficiaries (SLIBs) and Qualified
Individuals-1 (QI-1) Income Standards
120.76 Hospital Insurance Benefits (HIB)

SUBPART E: RECIPIENT RESTRICTION PROGRAM

Section

- 120.80 Recipient Restriction Program

SUBPART F: MIGRANT MEDICAL PROGRAM

Section

- 120.90 Migrant Medical Program (Repealed)
120.91 Income Standards (Repealed)

SUBPART G: AID TO THE MEDICALLY INDIGENT

Section

- 120.200 Elimination Of Aid To The Medically Indigent
120.208 Client Cooperation (Repealed)
120.210 Citizenship (Repealed)
120.211 Residence (Repealed)
120.212 Age (Repealed)
120.215 Relationship (Repealed)
120.216 Living Arrangement (Repealed)
120.217 Supplemental Payments (Repealed)
120.218 Institutional Status (Repealed)
120.224 Foster Care Program (Repealed)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

120.225	Social Security Numbers (Repealed)
120.230	Unearned Income (Repealed)
120.235	Exempt Unearned Income (Repealed)
120.236	Education Benefits (Repealed)
120.240	Unearned Income In-Kind (Repealed)
120.245	Earmarked Income (Repealed)
120.250	Lump Sum Payments and Income Tax Refunds (Repealed)
120.255	Protected Income (Repealed)
120.260	Earned Income (Repealed)
120.261	Budgeting Earned Income (Repealed)
120.262	Exempt Earned Income (Repealed)
120.270	Recognized Employment Expenses (Repealed)
120.271	Income From Work/Study/Training Program (Repealed)
120.272	Earned Income From Self-Employment (Repealed)
120.273	Earned Income From Roomer and Boarder (Repealed)
120.275	Earned Income In-Kind (Repealed)
120.276	Payments from the Illinois Department of Children and Family Services (Repealed)
120.280	Assets (Repealed)
120.281	Exempt Assets (Repealed)
120.282	Asset Disregards (Repealed)
120.283	Deferral of Consideration of Assets (Repealed)
120.284	Spend-down of Assets (AMI) (Repealed)
120.285	Property Transfers (Repealed)
120.290	Persons Who May Be Included in the Assistance Unit (Repealed)
120.295	Payment Levels for AMI (Repealed)

SUBPART H: MEDICAL ASSISTANCE – NO GRANT (MANG) ELIGIBILITY FACTORS

Section	
120.308	Client Cooperation
120.309	Caretaker Relative
120.310	Citizenship
120.311	Residence
120.312	Age
120.313	Blind
120.314	Disabled
120.315	Relationship
120.316	Living Arrangements

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

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120.327	Social Security Numbers
120.328	Compliance with Employment and Work Activity Requirements (Suspended; Repealed)
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120.363	Earned Income Disregard – MANG(C)
120.364	Earned Income Exemption
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120.371	Income From Work/Study/Training Programs
120.372	Earned Income From Self-Employment

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

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120.379	Provisions for the Prevention of Spousal Impoverishment
120.380	Resources
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120.382	Resource Disregard
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120.385	Factors Affecting Eligibility for Long Term Care Services
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120.387	Property Transfers Occurring On or After August 11, 1993 and Before January 1, 2007
120.388	Property Transfers Occurring On or After January 1, 2007
120.390	Persons Who May Be Included In the Assistance Unit
120.391	Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG And Children Born October 1, 1983, or Later
120.392	Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393	Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395	Payment Levels for MANG (Repealed)
120.399	Redetermination of Eligibility
120.400	Twelve Month Eligibility for Persons under Age 19

SUBPART I: SPECIAL PROGRAMS

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120.500	Health Benefits for Persons with Breast or Cervical Cancer
120.510	Health Benefits for Workers with Disabilities
120.520	SeniorCare (Repealed)
120.530	Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21
120.540	Illinois Healthy Women Program
120.550	Asylum Applicants and Torture Victims
120.TABLE A	Value of a Life Estate and Remainder Interest
120.TABLE B	Life Expectancy (Repealed)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13] and implementing the federal Deficit Reduction Act of 2005.

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; preemptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867,

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. 4701, effective March 3, 2004; amended at 28 Ill. Reg. 6139, effective April 1, 2004; emergency amendment at 28 Ill. Reg. 6610, effective April 19, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 7152, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11149, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12921, effective September 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13621, effective September 28, 2004; amended at 28 Ill. Reg. 13760, effective October 1, 2004; amended at 28 Ill. Reg. 14541, effective November 1, 2004; amended at 29 Ill. Reg. 820, effective January 1, 2005; amended at 29 Ill. Reg. 10195, effective June 30, 2005; amended at 29 Ill. Reg. 14939, effective September 30, 2005; emergency amendment at 30 Ill. Reg. 521, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10314, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 15029, effective September 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 2629, effective January 28, 2007; emergency amendment at 31 Ill. Reg. 7323, effective May 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11667, effective August 1, 2007; amended at 31 Ill. Reg. 12756, effective August 27, 2007; emergency amendment at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days; emergency rule suspended at 31 Ill. Reg. 16060, effective November 13, 2007; emergency rule repealed, effective May 10, 2008; preemptory amendment at 32 Ill. Reg. 7212, effective April 21, 2008; preemptory amendment suspended at 32 Ill. Reg. 8450, effective May 20, 2008; preemptory amendment repealed under Section 5-125 of the Illinois Administrative Procedure Act, effective November 16, 2008; amended at 32 Ill. Reg. 17428, effective November 1, 2008; preemptory amendment at 32 Ill. Reg. 18889, effective November 18, 2008; preemptory amendment suspended at 32 Ill. Reg. 18906, effective November 19, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at

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33 Ill. Reg. 6551, effective April 28, 2009; preemptory amendment repealed by emergency rulemaking at 33 Ill. Reg. 6712, effective April 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 1681, effective February 1, 2009; amended at 33 Ill. Reg. 2289, effective March 1, 2009; emergency amendment at 33 Ill. Reg. 5802, effective April 2, 2009, for a maximum of 150 days; emergency expired August 29, 2009; emergency amendment at 33 Ill. Reg. 10785, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 12703, effective September 7, 2009; amended at 33 Ill. Reg. 15707, effective November 2, 2009; amended at 33 Ill. Reg. 17070, effective December 2, 2009; amended at 34 Ill. Reg. 889, effective December 30, 2009; emergency rulemaking at 34 Ill. Reg. 13538, effective September 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. 379, effective December 27, 2010; amended at 35 Ill. Reg. 979, effective January 1, 2011; amended at 35 Ill. Reg. 18645, effective January 1, 2012; amended at 36 Ill. Reg. 4133, effective March 1, 2012; amended at 36 Ill. Reg. 9095, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013; amended at 36 Ill. Reg. 17044, effective November 26, 2012; emergency amendment at 36 Ill. Reg. 17549, effective December 3, 2012 through June 30, 2013; amended at 37 Ill. Reg. 10208, effective June 27, 2013; emergency amendment at 37 Ill. Reg. 15976, effective October 1, 2013, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 1139, effective January 1, 2014, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 2925, effective January 10, 2014, for a maximum of 150 days; emergency amendments effective January 1 and January 10, 2014 repealed by emergency rule at 38 Ill. Reg. 7368, effective March 24, 2014, for the remainder of the 150 day effective periods of each of the emergency rules; amended at 38 Ill. Reg. 5967, effective February 26, 2014; emergency amendment at 38 Ill. Reg. 7650, effective March 24, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 15646, effective July 7, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 16214, effective July 17, 2014; amended at 38 Ill. Reg. 18432, effective August 19, 2014; amended at 38 Ill. Reg. _____, effective _____.

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section 120.61 Long Term Care

This Section applies to persons residing in long term care facilities or State-certified, State-licensed, or State-contracted residential care programs who, as a condition of eligibility for medical assistance, are required to pay all of their income, less certain protected amounts, for the cost of their own care.

- a) The term "long term care facility" refers to:

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- 1) an institution (or a distinct part of an institution) that meets the definition of a "nursing facility" as that term is defined in 42 USC 1396r;
 - 2) licensed Intermediate Care Facilities (ICF and ICF/DD), licensed Skilled Nursing Facilities (SNF and SNF/Ped) and licensed hospital-based long term care facilities (see 89 Ill. Adm. Code 148.50(c)); and
 - 3) Supportive Living Facilities (SLF) and Community Integrated Living Facilities (CILA).
- b) The eligibility period shall begin with:
- 1) the first day of the month of application;
 - 2) up to three months prior to the month of application for any month in which the person meets both financial and non-financial eligibility requirements. Eligibility will be effective the first day of a retroactive month if the person meets eligibility requirements at any time during that month; or
 - 3) the first day of a month, after the month of application, in which the person meets non-financial and financial eligibility requirements.
- c) Eligibility Without Spenddown
- 1) A one-month eligibility period will be used. If a person's nonexempt income available during the eligibility period is equal to or below the applicable income standard and nonexempt resources are not in excess of the applicable resource disregard (see Section 120.382-~~of this Part~~), the person is eligible for medical assistance from the first day of the eligibility period without a spenddown.
 - 2) A person eligible under this subsection (c) is responsible for reporting any changes that occur during the eligibility period that might affect eligibility for medical assistance. If changes occur, appropriate action shall be taken by the Department, including termination of eligibility for medical assistance. If changes in income, resources or family composition occur that would make the person a spenddown case, a spenddown obligation will be determined and subsection (d)-~~of this Section~~ will apply. A

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redetermination of eligibility shall be made at least every 12 months.

- d) Eligibility with Spenddown
- 1) If countable income available during the eligibility period exceeds the applicable income standard and/or nonexempt resources exceed the applicable resource disregard, a person has a spenddown obligation that must be met before financial eligibility for medical assistance can be established. The spenddown obligation is the amount by which the person's countable income exceeds the applicable income standard or nonexempt resources exceed the applicable resource disregard.
 - 2) A person meets the spenddown obligation by incurring or paying for medical expenses in an amount equal to the spenddown obligation. Medical expenses shall be applied to the spenddown obligation as provided in Section 120.60(c) ~~of this Part~~.
 - 3) Projected expenses for services provided by a long term care facility that have not yet been incurred, but are reasonably expected to be, may also be used to meet a spenddown obligation. The amount of the projected expenses is based on the private pay rate of the long term care facility at which the person resides or is seeking admission.
 - 4) A person who has both an income spenddown and a resource spenddown cannot apply the same incurred medical benefits to both. Incurred medical expenses are first applied to an income spenddown.
- e) Post-eligibility Treatment of Income. If non-financial and financial eligibility is established, a person's total income, including income exempt and disregarded in determining eligibility, must be applied to the cost of the person's care, minus any applicable deductions provided under subsection (f) ~~of this Section~~.
- f) Post-eligibility Income Deductions. From a person's total income that is payable for a person's care, certain deductions are allowed. Allowed deductions shall increase the amount paid by the Department for residential services on behalf of the person, up to the Department's payment rate for the facility. Deductions shall be allowed for the following amounts in the following order:

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- 1) SSI benefits paid under 42 USC 1382(e)(1)(E) or (G) and, for residents of Supportive Living Facilities, the minimum current SSI payment standard for an individual (or a couple, if spouses reside together), less the personal needs allowance specified in subsection (f)(2)(C) of this Section, shall be deducted for room and board charges (see 89 Ill. Adm. Code 146.225(c) and (d));
- 2) a personal needs allowance:
 - A) for persons other than those specified in subsections (f)(2)(B) through ~~(FE)~~, \$30 per month;
 - B) for spouses residing together, \$60 per couple per month (\$30 per spouse);
 - C) for persons or spouses residing in Supportive Living Facilities, \$90;
 - D) for persons residing in Community Integrated Living Arrangements (see 59 Ill. Adm. Code 115), \$60 per month, with dates of service beginning on or after 9/1/14;~~\$50; or~~
 - E) for veterans who have neither a spouse nor dependent child, or surviving spouses of veterans who do not have a dependent child, and whose monthly veterans' benefits are reduced to \$90, a \$90 income disregard is allowed in lieu of a personal allowance deduction. Persons allowed the \$90 per month income disregard are not also permitted the \$30 per month personal allowance; or
 - F) for persons residing in an Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/DD) licensed under the ID/DD Community Care Act [210 ILCS 47], \$60 per month, with dates of service beginning on or after 9/1/14;
- 3) a community spouse income allowance pursuant to Section 120.379(e)~~-of this Part;~~
- 4) a family allowance pursuant to Section 120.379(e)(2)~~-of this Part;~~

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- 5) an amount to meet the needs of qualifying children (as defined in 26 USC 152) under age 21 who do not reside with either parent, who do not have enough income to meet their needs and whose resources do not exceed the resource limit. To determine needs and resource limits:
 - A) the MANG(C) and applicable resource disregard are used (see Sections 120.30 and 120.382 ~~of this Part~~); and
 - B) any payments made on medical bills for the children can be deducted from the person's income;
- 6) amounts for incurred expenses for certain Medicare and health insurance cost sharing that are not subject to payment by a third party, limited to:
 - A) Medicare premiums, deductibles, or coinsurance charges not paid by Medicaid or another third party payor;
 - B) Other health insurance premiums, deductibles or coinsurance (cost sharing) charges provided the insurance meets the definition of a "health benefit plan" and is approved for providing that insurance in Illinois by the Illinois Department of Insurance.
 - i) "Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA (Multiple Employer Welfare Arrangement) or plan provided by another benefit arrangement.
 - ii) Health benefit plan does not mean accident only, credit, or disability insurance; long-term care insurance (except for the month of admission to a long term care facility); dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily

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required to be contained in any liability insurance policy or equivalent self-insurance;

- 7) Expenses Not Subject to Third Party Payment for Necessary Medical Care Recognized under State Law, but Not a Covered Service under the Medical Assistance Program. "Necessary medical care" has the meaning described in [Section 2 of the Comprehensive Health Insurance Plan Act \[215 ILCS 105/2\]](#) and must be proved as such by a prescription, referral or statement from the patient's doctor or dentist. The following are allowable deductions from a person's post-eligibility income for medically necessary services:
- A) expenses incurred within the six months prior to the month of an application, provided those expenses remain a current liability to the person and were not used to meet a spenddown. Medical expenses incurred during a period of ineligibility resulting from a penalty imposed under Section 120.387 or 120.388 ~~of this Part~~ are not an allowable deduction;
 - B) expenses incurred for necessary medical services from a medical provider (subject to reasonable dollar limits on specific services) so long as the provider was not terminated, barred or suspended from participation in the Medical Assistance Program (pursuant to 89 Ill. Adm. Code 140.16, 140.17 or 140.18) at the time the medical services were provided; and
 - C) expenses for long term care services, subject to the limitations of this subsection (f)(7) and provided that the services were not provided by a facility to a person admitted during a time the facility was subject to the sanction of non-payment for new admissions (see 305 ILCS 5/12-4.25(I)(3));
- 8) Amounts to maintain a residence in the community for up to six months when:
- A) the person does not have a spouse and/or dependent children in the home;

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- B) a physician has certified that the stay in the facility is temporary and the individual is expected to return home within six months;
- C) the amount of the deduction is based on:
 - i) the rent or property expense allowed under the AABD MANG standard if the person was at home (see 89 Ill. Adm. Code 113.248); and
 - ii) the utility expenses that would be allowed under the AABD MANG standard if the person was at home (see 89 Ill. Adm. Code 113.249).

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

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- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Number: 140.497 Proposed Action: Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: The proposed amendment eliminates the prior approval requirement for binaural hearing aids.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
140.80	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.82	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.84	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.86	New Section	38 Ill. Reg. 14658; July 18, 2014
140.420	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.421	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.425	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.442	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.457	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.458	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.472	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.485	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.488	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.Table D	Repeal	38 Ill. Reg. 14658; July 18, 2014
140.20	Amendment	38 Ill. Reg. 16096; August 1, 2014

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140.25	Amendment	38 Ill. Reg. 16096; August 1, 2014
140.413	Amendment	38 Ill. Reg. 16468; August 8, 2014
140.462	Amendment	38 Ill. Reg. 16468; August 8, 2014
140.418	Amendment	38 Ill. Reg. 17533; August 22, 2014
140.6	Amendment	38 Ill. Reg. 18022; August 29, 2014
140.464	Amendment	38 Ill. Reg. 18022; August 29, 2014
140.513	Amendment	38 Ill. Reg. 18022; August 29, 2014

- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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

217/782-1233
HFS.Rules@illinois.gov

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

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

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14) Regulatory Agenda on which this Rulemaking was Summarized: July 2014

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

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TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER d: MEDICAL PROGRAMS

PART 140

MEDICAL PAYMENT

SUBPART A: GENERAL PROVISIONS

Section

- 140.1 Incorporation By Reference
- 140.2 Medical Assistance Programs
- 140.3 Covered Services Under Medical Assistance Programs
- 140.4 Covered Medical Services Under AFDC-MANG for non-pregnant persons who are 18 years of age or older (Repealed)
- 140.5 Covered Medical Services Under General Assistance
- 140.6 Medical Services Not Covered
- 140.7 Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Eight
- 140.8 Medical Assistance For Qualified Severely Impaired Individuals
- 140.9 Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-MANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
- 140.10 Medical Assistance Provided to Persons Confined or Detained by the Criminal Justice System

SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section

- 140.11 Enrollment Conditions for Medical Providers
- 140.12 Participation Requirements for Medical Providers
- 140.13 Definitions
- 140.14 Denial of Application to Participate in the Medical Assistance Program
- 140.15 Suspension and Denial of Payment, Recovery of Money and Penalties
- 140.16 Termination, Suspension or Exclusion of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.17 Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.18 Effect of Termination, Suspension, Exclusion or Revocation on Persons

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- 140.19 Associated with Vendor
Application to Participate or for Reinstatement Subsequent to Termination,
Suspension, Exclusion or Barring
- 140.20 Submittal of Claims
- 140.21 Reimbursement for QMB Eligible Medical Assistance Recipients and QMB
Eligible Only Recipients and Individuals Who Are Entitled to Medicare Part A or
Part B and Are Eligible for Some Form of Medicaid Benefits
- 140.22 Magnetic Tape Billings (Repealed)
- 140.23 Payment of Claims
- 140.24 Payment Procedures
- 140.25 Overpayment or Underpayment of Claims
- 140.26 Payment to Factors Prohibited
- 140.27 Assignment of Vendor Payments
- 140.28 Record Requirements for Medical Providers
- 140.30 Audits
- 140.31 Emergency Services Audits
- 140.32 Prohibition on Participation, and Special Permission for Participation
- 140.33 Publication of List of Sanctioned Entities
- 140.35 False Reporting and Other Fraudulent Activities
- 140.40 Prior Approval for Medical Services or Items
- 140.41 Prior Approval in Cases of Emergency
- 140.42 Limitation on Prior Approval
- 140.43 Post Approval for Items or Services When Prior Approval Cannot Be Obtained
- 140.44 Withholding of Payments Due to Fraud or Misrepresentation
- 140.45 Withholding of Payments Upon Provider Audit, Quality of Care Review, Credible
Allegation of Fraud or Failure to Cooperate
- 140.55 Electronic Data Interchange Service
- 140.71 Reimbursement for Medical Services Through the Use of a C-13 Invoice Voucher
Advance Payment and Expedited Payments
- 140.72 Drug Manual (Recodified)
- 140.73 Drug Manual Updates (Recodified)

SUBPART C: PROVIDER ASSESSMENTS

- Section
- 140.80 Hospital Provider Fund
- 140.82 Developmentally Disabled Care Provider Fund
- 140.84 Long Term Care Provider Fund
- 140.94 Medicaid Developmentally Disabled Provider Participation Fee Trust

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	Fund/Medicaid Long Term Care Provider Participation Fee Trust Fund
140.95	Hospital Services Trust Fund
140.96	General Requirements (Recodified)
140.97	Special Requirements (Recodified)
140.98	Covered Hospital Services (Recodified)
140.99	Hospital Services Not Covered (Recodified)
140.100	Limitation On Hospital Services (Recodified)
140.101	Transplants (Recodified)
140.102	Heart Transplants (Recodified)
140.103	Liver Transplants (Recodified)
140.104	Bone Marrow Transplants (Recodified)
140.110	Disproportionate Share Hospital Adjustments (Recodified)
140.116	Payment for Inpatient Services for GA (Recodified)
140.117	Hospital Outpatient and Clinic Services (Recodified)
140.200	Payment for Hospital Services During Fiscal Year 1982 (Recodified)
140.201	Payment for Hospital Services After June 30, 1982 (Repealed)
140.202	Payment for Hospital Services During Fiscal Year 1983 (Recodified)
140.203	Limits on Length of Stay by Diagnosis (Recodified)
140.300	Payment for Pre-operative Days and Services Which Can Be Performed in an Outpatient Setting (Recodified)
140.350	Copayments (Recodified)
140.360	Payment Methodology (Recodified)
140.361	Non-Participating Hospitals (Recodified)
140.362	Pre July 1, 1989 Services (Recodified)
140.363	Post June 30, 1989 Services (Recodified)
140.364	Prepayment Review (Recodified)
140.365	Base Year Costs (Recodified)
140.366	Restructuring Adjustment (Recodified)
140.367	Inflation Adjustment (Recodified)
140.368	Volume Adjustment (Repealed)
140.369	Groupings (Recodified)
140.370	Rate Calculation (Recodified)
140.371	Payment (Recodified)
140.372	Review Procedure (Recodified)
140.373	Utilization (Repealed)
140.374	Alternatives (Recodified)
140.375	Exemptions (Recodified)
140.376	Utilization, Case-Mix and Discretionary Funds (Repealed)
140.390	Subacute Alcoholism and Substance Abuse Services (Recodified)

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- 140.391 Definitions (Recodified)
- 140.392 Types of Subacute Alcoholism and Substance Abuse Services (Recodified)
- 140.394 Payment for Subacute Alcoholism and Substance Abuse Services (Recodified)
- 140.396 Rate Appeals for Subacute Alcoholism and Substance Abuse Services (Recodified)
- 140.398 Hearings (Recodified)

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section

- 140.400 Payment to Practitioners
- 140.402 Copayments for Noninstitutional Medical Services
- 140.403 Telehealth Services
- 140.405 Non-Institutional Rate Reductions
- 140.410 Physicians' Services
- 140.411 Covered Services By Physicians
- 140.412 Services Not Covered By Physicians
- 140.413 Limitation on Physician Services
- 140.414 Requirements for Prescriptions and Dispensing of Pharmacy Items – Prescribers
- 140.416 Optometric Services and Materials
- 140.417 Limitations on Optometric Services
- 140.418 Department of Corrections Laboratory
- 140.420 Dental Services
- 140.421 Limitations on Dental Services
- 140.422 Requirements for Prescriptions and Dispensing Items of Pharmacy Items – Dentists (Repealed)
- 140.425 Podiatry Services
- 140.426 Limitations on Podiatry Services
- 140.427 Requirement for Prescriptions and Dispensing of Pharmacy Items – Podiatry (Repealed)
- 140.428 Chiropractic Services
- 140.429 Limitations on Chiropractic Services (Repealed)
- 140.430 Independent Clinical Laboratory Services
- 140.431 Services Not Covered by Independent Clinical Laboratories
- 140.432 Limitations on Independent Clinical Laboratory Services
- 140.433 Payment for Clinical Laboratory Services
- 140.434 Record Requirements for Independent Clinical Laboratories
- 140.435 Advanced Practice Nurse Services
- 140.436 Limitations on Advanced Practice Nurse Services

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140.438	Diagnostic Imaging Services
140.440	Pharmacy Services
140.441	Pharmacy Services Not Covered
140.442	Prior Approval of Prescriptions
140.443	Filling of Prescriptions
140.444	Compounded Prescriptions
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140.449	Payment of Pharmacy Items
140.450	Record Requirements for Pharmacies
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140.452	Mental Health Services
140.453	Definitions
140.454	Types of Mental Health Services
140.455	Payment for Mental Health Services
140.456	Hearings
140.457	Therapy Services
140.458	Prior Approval for Therapy Services
140.459	Payment for Therapy Services
140.460	Clinic Services
140.461	Clinic Participation, Data and Certification Requirements
140.462	Covered Services in Clinics
140.463	Clinic Service Payment
140.464	Hospital-Based and Encounter Rate Clinic Payments
140.465	Speech and Hearing Clinics (Repealed)
140.466	Rural Health Clinics (Repealed)
140.467	Independent Clinics
140.469	Hospice
140.470	Eligible Home Health Care, Nursing and Public Health Providers
140.471	Description of Home Health Care Services
140.472	Types of Home Health Care Services
140.473	Prior Approval for Home Health Care Services
140.474	Payment for Home Health Care Services
140.475	Medical Equipment, Supplies, Prosthetic Devices and Orthotic Devices
140.476	Medical Equipment, Supplies, Prosthetic Devices and Orthotic Devices for Which Payment Will Not Be Made
140.477	Limitations on Equipment, Prosthetic Devices and Orthotic Devices

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- 140.478 Prior Approval for Medical Equipment, Supplies, Prosthetic Devices and Orthotic Devices
- 140.479 Limitations, Medical Supplies
- 140.480 Equipment Rental Limitations
- 140.481 Payment for Medical Equipment, Supplies, Prosthetic Devices and Hearing Aids
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- 140.484 Payment for Family Planning Services
- 140.485 Healthy Kids Program
- 140.486 Illinois Healthy Women
- 140.487 Healthy Kids Program Timeliness Standards
- 140.488 Periodicity Schedules, Immunizations and Diagnostic Laboratory Procedures
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- 140.491 Limitations on Medical Transportation
- 140.492 Payment for Medical Transportation
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- 140.494 Record Requirements for Medical Transportation Services
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- 140.496 Payment for Psychological Services
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SUBPART E: GROUP CARE

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- 140.502 Cessation of Payment at Federal Direction
- 140.503 Cessation of Payment for Improper Level of Care
- 140.504 Cessation of Payment Because of Termination of Facility
- 140.505 Informal Hearing Process for Denial of Payment for New ICF/MR
- 140.506 Provider Voluntary Withdrawal
- 140.507 Continuation of Provider Agreement
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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 and VI and 12-13].

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a

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maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.Table H and 140.Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.Table A and 147.Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940

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thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990;

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amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; Notice of Corrections to Adopted Amendment at 15 Ill. Reg. 1174; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired January 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10050, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30, 1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16 Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment

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suspended at 17 Ill. Reg. 18902, effective October 12, 1993; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended at 18 Ill. Reg. 17286, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 20 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. Reg. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective May 23, 1997; amended at 21 Ill. Reg. 9763, effective July 15, 1997; amended at 21 Ill. Reg. 11569, effective August 1, 1997; emergency amendment at 21 Ill. Reg. 13857, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 1416, effective December 29, 1997; amended at 22 Ill. Reg. 4412, effective February 27, 1998; amended at 22 Ill. Reg. 7024, effective April 1, 1998; amended at 22 Ill. Reg. 10606, effective June 1, 1998; emergency amendment at 22 Ill. Reg. 13117, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16302, effective August 28, 1998; amended at 22 Ill. Reg. 18979, effective

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September 30, 1998; amended at 22 Ill. Reg. 19898, effective October 30, 1998; emergency amendment at 22 Ill. Reg. 22108, effective December 1, 1998, for a maximum of 150 days; emergency expired April 29, 1999; amended at 23 Ill. Reg. 5796, effective April 30, 1999; amended at 23 Ill. Reg. 7122, effective June 1, 1999; emergency amendment at 23 Ill. Reg. 8236, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9874, effective August 3, 1999; amended at 23 Ill. Reg. 12697, effective October 1, 1999; amended at 23 Ill. Reg. 13646, effective November 1, 1999; amended at 23 Ill. Reg. 14567, effective December 1, 1999; amended at 24 Ill. Reg. 661, effective January 3, 2000; amended at 24 Ill. Reg. 10277, effective July 1, 2000; emergency amendment at 24 Ill. Reg. 10436, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15086, effective October 1, 2000; amended at 24 Ill. Reg. 18320, effective December 1, 2000; emergency amendment at 24 Ill. Reg. 19344, effective December 15, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 3897, effective March 1, 2001; amended at 25 Ill. Reg. 6665, effective May 11, 2001; amended at 25 Ill. Reg. 8793, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 8850, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 11880, effective September 1, 2001; amended at 25 Ill. Reg. 12820, effective October 8, 2001; amended at 25 Ill. Reg. 14957, effective November 1, 2001; emergency amendment at 25 Ill. Reg. 16127, effective November 28, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 16292, effective December 3, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 514, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 663, effective January 7, 2002; amended at 26 Ill. Reg. 4781, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 5984, effective April 15, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 7285, effective April 29, 2002; emergency amendment at 26 Ill. Reg. 8594, effective June 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 11259, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 12461, effective July 29, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16593, effective October 22, 2002; emergency amendment at 26 Ill. Reg. 12772, effective August 12, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13641, effective September 3, 2002; amended at 26 Ill. Reg. 14789, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 15076, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16303, effective October 25, 2002; amended at 26 Ill. Reg. 17751, effective November 27, 2002; amended at 27 Ill. Reg. 768, effective January 3, 2003; amended at 27 Ill. Reg. 3041, effective February 10, 2003; amended at 27 Ill. Reg. 4364, effective February 24, 2003; amended at 27 Ill. Reg. 7823, effective May 1, 2003; amended at 27 Ill. Reg. 9157, effective June 2, 2003; emergency amendment at 27 Ill. Reg. 10813, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 13784, effective August 1, 2003; amended at 27 Ill. Reg. 14799, effective September 5, 2003; emergency amendment at 27 Ill. Reg. 15584, effective September 20, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16161, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18629, effective

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November 26, 2003; amended at 28 Ill. Reg. 2744, effective February 1, 2004; amended at 28 Ill. Reg. 4958, effective March 3, 2004; emergency amendment at 28 Ill. Reg. 6622, effective April 19, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7081, effective May 3, 2004; emergency amendment at 28 Ill. Reg. 8108, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9640, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10135, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11161, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12198, effective August 11, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13775, effective October 1, 2004; amended at 28 Ill. Reg. 14804, effective October 27, 2004; amended at 28 Ill. Reg. 15513, effective November 24, 2004; amended at 29 Ill. Reg. 831, effective January 1, 2005; amended at 29 Ill. Reg. 6945, effective May 1, 2005; emergency amendment at 29 Ill. Reg. 8509, effective June 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12534, effective August 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 14957, effective September 30, 2005; emergency amendment at 29 Ill. Reg. 15064, effective October 1, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 15985, effective October 5, 2005, for the remainder of the 150 days; emergency amendment at 29 Ill. Reg. 15610, effective October 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 16515, effective October 5, 2005, for a maximum of 150 days; amended at 30 Ill. Reg. 349, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 573, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 796, effective January 1, 2006; amended at 30 Ill. Reg. 2802, effective February 24, 2006; amended at 30 Ill. Reg. 10370, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 12376, effective July 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 13909, effective August 2, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 14280, effective August 18, 2006; expedited correction at 31 Ill. Reg. 1745, effective August 18, 2006; emergency amendment at 30 Ill. Reg. 17970, effective November 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18648, effective November 27, 2006; emergency amendment at 30 Ill. Reg. 19400, effective December 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 388, effective December 29, 2006; emergency amendment at 31 Ill. Reg. 1580, effective January 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 2413, effective January 19, 2007; amended at 31 Ill. Reg. 5561, effective March 30, 2007; amended at 31 Ill. Reg. 6930, effective April 29, 2007; amended at 31 Ill. Reg. 8485, effective May 30, 2007; emergency amendment at 31 Ill. Reg. 10115, effective June 30, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 14749, effective October 22, 2007; emergency amendment at 32 Ill. Reg. 383, effective January 1, 2008, for a maximum of 150 days; preemptory amendment at 32 Ill. Reg. 6743, effective April 1, 2008; preemptory amendment suspended at 32 Ill. Reg. 8449, effective May 21, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 32 Ill. Reg. 18323, effective November 12, 2008; preemptory amendment repealed by emergency rulemaking at 32 Ill. Reg. 18422, effective November 12, 2008, for a maximum of 150 days;

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emergency expired April 10, 2009; preemptory amendment repealed at 33 Ill. Reg. 6667, effective April 29, 2009; amended at 32 Ill. Reg. 7727, effective May 5, 2008; emergency amendment at 32 Ill. Reg. 10480, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 32 Ill. Reg. 17133, effective October 15, 2008; amended at 33 Ill. Reg. 209, effective December 29, 2008; amended at 33 Ill. Reg. 9048, effective June 15, 2009; emergency amendment at 33 Ill. Reg. 10800, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 11287, effective July 14, 2009; amended at 33 Ill. Reg. 11938, effective August 17, 2009; amended at 33 Ill. Reg. 12227, effective October 1, 2009; emergency amendment at 33 Ill. Reg. 14324, effective October 1, 2009, for a maximum of 150 days; emergency expired February 27, 2010; amended at 33 Ill. Reg. 16573, effective November 16, 2009; amended at 34 Ill. Reg. 516, effective January 1, 2010; amended at 34 Ill. Reg. 903, effective January 29, 2010; amended at 34 Ill. Reg. 3761, effective March 14, 2010; amended at 34 Ill. Reg. 5215, effective March 25, 2010; amended at 34 Ill. Reg. 19517, effective December 6, 2010; amended at 35 Ill. Reg. 394, effective December 27, 2010; amended at 35 Ill. Reg. 7648, effective May 1, 2011; amended at 35 Ill. Reg. 7962, effective May 1, 2011; amended at 35 Ill. Reg. 10000, effective June 15, 2011; amended at 35 Ill. Reg. 12909, effective July 25, 2011; amended at 36 Ill. Reg. 2271, effective February 1, 2012; amended at 36 Ill. Reg. 7010, effective April 27, 2012; amended at 36 Ill. Reg. 7545, effective May 7, 2012; amended at 36 Ill. Reg. 9113, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 11329, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 140.442(e)(4) suspended at 36 Ill. Reg. 13736, effective August 15, 2012; suspension withdrawn from Section 140.442(e)(4) at 36 Ill. Reg. 14529, September 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.442(e)(4) at 36 Ill. Reg. 14820, effective September 21, 2012 through June 30, 2013; emergency amendment to Section 140.491 suspended at 36 Ill. Reg. 13738, effective August 15, 2012; suspension withdrawn by the Joint Committee on Administrative Rules from Section 140.491 at 37 Ill. Reg. 890, January 8, 2013; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.491 at 37 Ill. Reg. 1330, effective January 15, 2013 through June 30, 2013; amended at 36 Ill. Reg. 15361, effective October 15, 2012; emergency amendment at 37 Ill. Reg. 253, effective January 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 846, effective January 9, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 1774, effective January 28, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 2348, effective February 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 3831, effective March 13, 2013; emergency amendment at 37 Ill. Reg. 5058, effective April 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 5170, effective April 8, 2013 through June 30, 2013; amended at 37 Ill. Reg. 6196, effective April 29, 2013; amended at 37 Ill. Reg. 7985, effective May 29, 2013; amended at 37 Ill. Reg. 10282, effective June 27, 2013; amended at 37 Ill. Reg. 12855, effective July 24, 2013; emergency amendment at 37 Ill. Reg. 14196, effective August 20, 2013, for a maximum of 150 days; amended at 37 Ill. Reg. 17584, effective October 23,

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2013; amended at 37 Ill. Reg. 18275, effective November 4, 2013; amended at 37 Ill. Reg. 20339, effective December 9, 2013; amended at 38 Ill. Reg. 859, effective December 23, 2013; emergency amendment at 38 Ill. Reg. 1174, effective January 1, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 4330, effective January 29, 2014; amended at 38 Ill. Reg. 7156, effective March 13, 2014; amended at 38 Ill. Reg. 12141, effective May 30, 2014; amended at 38 Ill. Reg. 15081, effective July 2, 2014; emergency amendment at 38 Ill. Reg. 15673, effective July 7, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 18216, effective August 18, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 18462, effective August 19, 2014; amended at 38 Ill. Reg. _____, effective _____.

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section 140.497 Hearing Aids

- a) Hearing aids are reimbursed in accordance with Section 140.481(d).
- b) In order to be eligible for reimbursement from the Department for monaural hearing aids, the following criteria must be met:
 - 1) When testing is performed in an acoustically treated sound suite:
 - A) The hearing loss must be 20 decibels or greater at any two of the following frequencies: 500, 1000, 2000, 4000, 8000 Hertz; or
 - B) The hearing loss must be 25 decibels or greater at any one of 500, 1000, 2000 Hertz.
 - 2) When testing is performed in other than an acoustically treated sound suite:
 - A) The hearing loss must be 30 decibels or greater at any two of the following frequencies: 500, 1000, 2000, 4000, 8000 Hertz; or
 - B) The hearing loss must be 35 decibels or greater at any one of 500, 1000, 2000 Hertz.
- c) The following items are to be kept in the patient's file:
 - 1) Practitioner Referral~~M.D. or Otolaryngologist clearance~~

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- 2) Audiogram
 - 3) Hearing Aid Evaluation Results
 - 4) Case history and identifying information
 - 5) Copy of Manufacturer's invoice with patient's name and hearing aid serial number.
 - 6) Copy of Manufacturer's invoice for ear mold, if applicable.
- d) ~~Binaural hearing aids require prior approval (see Sections 140.40 through 140.42).~~
- de) Payment for all hearing aids is contingent upon providers fitting and dispensing hearing aids in accordance with the requirements set forth in the Hearing Instrument Consumer Protection Act [225 ILCS 50] and implementing Public Health regulations.

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

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- 1) Heading of the Part: Foreclosure Prevention Program Graduated Fund
- 2) Code Citation: 47 Ill. Adm. Code 386
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
386.101	New Section
386.102	New Section
386.103	New Section
386.104	New Section
386.105	New Section
386.106	New Section
386.107	New Section
386.108	New Section
386.109	New Section
386.110	New Section
386.111	New Section
386.112	New Section
386.201	New Section
386.301	New Section
386.302	New Section
386.303	New Section
386.304	New Section
386.305	New Section
386.306	New Section
386.307	New Section
386.308	New Section
- 4) Statutory Authority: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(b-1) of the Illinois Housing Development Act [20 ILCS 3805/7.30(b-1)]
- 5) A Complete Description of the Subjects and Issues Involved: The Illinois Housing Development Authority is the designated administrator for the Foreclosure Prevention Program Graduated Fund (the "Program"). The purpose of the Program is to use moneys appropriated from the Foreclosure Prevention Program Graduated Fund, and any other funds appropriated for this purpose, to support housing counseling. The purpose of the rules is to create uniform procedures in order to operate the Program.

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- 6) Published Studies or reports, and sources of underlying data, used to compose the rulemaking: Historical data was obtained by the Illinois Housing Development Authority who has administered housing counseling and foreclosure prevention programs such as National Foreclosure Mitigation Counseling Program, Hardest Hit Fund Program, Predatory Lending Database Program, Foreclosure Prevention Program and Cook County Mortgage Foreclosure Mediation Program and has assisted in Mortgage Relief Project Events.
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rule contain an automatic repeal date? No
- 9) Does this rule contain incorporations by reference? No.
- 10) Are there any proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objective: Rulemaking does not create or expand any State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to:
- Kristi S. Poskus, Esq.
Deputy General Counsel
Illinois Housing Development Authority
401 N. Michigan Avenue, Suite 700
Chicago IL 60611
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: HUD-certified counseling agencies.
- B) Reporting, bookkeeping or other procedures required for compliance: Reporting requirements, books and records of each counseling agency that receives funds under the Program shall be subject to examination by the Illinois Housing Development Authority.

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- C) Types of Professional skills necessary for compliance: No new professional skills required.

- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was included on the July 2014 Regulatory Agenda.

The full text of the Proposed Rule begins on the next Page:

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TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 386
FORECLOSURE PREVENTION PROGRAM GRADUATED FUND

SUBPART A: GENERAL RULES

- Section:
386.101 Authority
386.102 Purpose and Objectives
386.103 Definitions
386.104 Compliance with Federal and State Law
386.105 Forms and Procedures for the Program
386.106 Fees and Charges
386.107 Authority Administrative Expenses
386.108 Amendment
386.109 Severability
386.110 Gender and Number
386.111 Non-Discrimination
386.112 Titles and Captions

SUBPART B: DISTRIBUTION OF FUNDS

- Section:
386.201 Grants to Counseling Agencies

SUBPART C: GRANTS TO COUNSELING AGENCIES

- Section:
386.301 Counseling Agencies Eligibility
386.302 Eligible Uses of Grant Funds
386.303 Application Cycle
386.304 Application Requirements
386.305 Review of Applications
386.306 Grant Administration
386.307 Funding of Grants
386.308 Reporting Requirements

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AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(b-1) of the Illinois Housing Development Act [20 ILCS 3805/7.30(b-1)].

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

SUBPART A: GENERAL RULES

Section 386.101 Authority

The Illinois Housing Development Authority is the designated administrator for the Foreclosure Prevention Program Graduated Fund in Illinois, which was established by Section 7.30(b-1) of the Illinois Housing Development Act, effective October 1, 2010.

Section 386.102 Purpose and Objectives

The purpose of the Program is to use moneys appropriated from the Foreclosure Prevention Program Graduated Fund, and any other funds appropriated for this purpose, to support housing counseling. Under the Program, the Authority will make grants to the Counseling Agencies for Eligible Uses.

Section 386.103 Definitions

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

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

"Applicant": A prospective Counseling Agency making an Application for a Grant.

"Application": An application to the Authority on the Authority's form for a Grant completed by a prospective Counseling Agency.

"Appropriation": The annual Appropriation of funds for the program by the Illinois General Assembly from the Foreclosure Prevention Graduated Fund to the Illinois Department of Revenue for the Authority, including any other funds appropriated for this purpose.

"Attorney General": The Illinois Attorney General.

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"Auditor General": The Illinois Auditor General.

"Authority": The Illinois Housing Development Authority.

"City": The City of Chicago.

"Commitment": A contract executed by the Authority and a Counseling Agency under which the Authority agrees to make a Grant to the Counseling Agency. Each Commitment shall contain a provision to the effect that the Authority shall not be obligated to provide funds under the Commitment if the Authority has not received sufficient funds from an Appropriation.

"Computer and Equipment Expenses": Computer and equipment costs incurred by a Counseling Agency in connection with the administration of the Grant.

"Counseling Agencies": Shall have the meaning set forth in Section 386.301.

"Eligible Uses": Shall have the meaning set forth in Section 386.302.

"Foreclosure Prevention Graduated Fund" or "Fund": A fund created in the State Treasury for the collection of certain fees as set forth in Section 15-1504.1 of the Illinois Code of Civil Procedure [735 ILCS 5/15-1504.1] paid by a plaintiff at the time of a filing of a foreclosure complaint in connection with residential real estate.

"General Operational Expenses": Operational costs incurred by a Counseling Agency in connection with the administration of the Grant.

"Grant": The portion of the Appropriation granted by the Authority to the Counseling Agencies for Eligible Uses under the Program.

"Housing Counseling": In-person counseling provided by a counselor employed by a Counseling Agency to all homeowners, or documented telephone counseling if a hardship would be imposed on one or more homeowners. A hardship shall exist in instances in which the homeowner is confined to his or her home due to medical condition, as verified in writing by a physician, or the homeowner resides 50 miles or more from the nearest approved Counseling Agency. In instances of

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telephone counseling, the homeowner must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"HUD": The U.S. Department of Housing and Urban Development.

"Program": The Foreclosure Prevention Program authorized by Section 7.30(a) of the Act.

"State": The State of Illinois.

"Statewide Activities": Shall have the meaning set forth in Section 386.302(b).

"Technical Assistance": Counseling Agencies activities involving:

planning for Housing Counseling; or

assistance with an Application.

Section 386.104 Compliance with Federal and State Law

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

Section 386.105 Forms and Procedures for the Program

The Authority may prepare, use, prescribe, supplement and amend such forms, agreements and other documents and procedures as may be necessary to implement the Program.

Section 386.106 Fees and Charges

The Authority will not charge an application fee for the Program.

Section 386.107 Authority Administrative Expenses

The Authority is entitled to deduct from each Appropriation, prior to any distribution of funds under the Program and prior to making any Grants, an amount not to exceed 4% of each Appropriation for expenses associated with the administration of the Program, including, without limitation, expenses for staff salaries and benefits for time spent on design and administration of

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the Program; expenses incurred in performing outreach activities and providing Technical Assistance to the Counseling Agencies; the use of the Authority's equipment for Program purposes; the cost of office space and utilities incurred in connection with the Program; and any other expenses incurred in the administration of the Program. The Authority shall maintain a detailed accounting of its administrative expenses, which shall be available to the public for review. Notwithstanding the 4% cap on Authority deductions, in the event a Counseling Agency is not able to administer all or a portion of the Statewide Activities, the Authority may oversee and implement the Statewide Activities directly and shall be entitled to a dollar for dollar reimbursement from the Foreclosure Prevention Graduated Fund of any costs and expenses incurred in connection with the administration of all or any portion of the Statewide Activities, exclusive of the 4% cap.

Section 386.108 Amendment

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

Section 386.109 Severability

If any clause, sentence, paragraph, subsection, Section or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart to which the judgment is rendered.

Section 386.110 Gender and Number

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

Section 386.111 Non-Discrimination

The Counseling Agencies shall comply with the applicable provisions of the Illinois Human Rights Act [775 ILCS 5] and the regulations promulgated under that Act, the Fair Housing Act (42 USC 3601), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Environmental Barriers Act [410 ILCS 25], the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other applicable State and federal law concerning discrimination and fair housing.

Section 386.112 Titles and Captions

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

SUBPART B: DISTRIBUTION OF FUNDS

Section 386.201 Grants to Counseling Agencies

The Authority shall distribute funds from annual Appropriations in accordance with the following priorities:

- a) To the Authority for its administrative expenses.
- b) After distributing the amount listed in subsection (a), the Authority shall make Grants as follows:
 - 1) 30% of the moneys remaining in the Foreclosure Prevention Graduated Fund that have been appropriated shall be used to make Grants to the Counseling Agencies that provide for Housing Counseling located in Cook County, but outside of the City.
 - 2) 25% of the moneys remaining in the Foreclosure Prevention Graduated Fund that have been appropriated shall be used to make Grants to Counseling Agencies that provide Housing Counseling located in the City.
 - 3) 30% of the moneys remaining in the Foreclosure Prevention Graduated Fund that have been appropriated shall be used to make Grants to Counseling Agencies that provide Housing Counseling located in DuPage, Kane, Lake, McHenry and Will Counties.
 - 4) 15% of the moneys remaining in the Foreclosure Prevention Graduated Fund that have been appropriated shall be used to make Grants to Counseling Agencies that provide Housing Counseling in Illinois located in counties other than Cook, DuPage, Kane, Lake, McHenry and Will Counties, provided that grants to provide approved housing counseling to borrowers residing within these counties shall be based, to the extent practicable:

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- A) proportionately on the amount of fees paid to the respective clerks of the courts within these counties; and
- B) on any other factors that the Authority deems appropriate.

SUBPART C: GRANTS TO COUNSELING AGENCIES

Section 386.301 Counseling Agencies Eligibility

The Counseling Agencies are generally eligible to submit an Application for funding if they have been certified as a housing counseling agency by HUD. The Counseling Agencies are eligible for funding if they are certified prior to their application for funding under the Program and committed to participation in the Program. The Counseling Agencies must agree to the terms and conditions of the Program in order to be eligible.

Section 386.302 Eligible Uses of Grant Funds

- a) Eligible Uses of Grant Funds by the Counseling Agencies
 - 1) Eligible Uses of Grant funds by the Counseling Agencies under the Program shall be:
 - A) Computer and Equipment Expenses;
 - B) General Operational Expenses;
 - C) Housing Counseling;
 - D) training of a Counseling Agency's employees;
 - F) capacity building that increases a Counseling Agency's capacity to provide Housing Counseling;
 - G) Technical Assistance; and
 - H) advertising and marketing of the Program, and any other housing counseling activity as may be approved by the Authority.

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- 2) No Counseling Agency shall receive Grant funds for Computer and Equipment Expenses, General Operational Expenses and Technical Assistance Expenses in an amount greater than 10% of the Grant funds granted to the Counseling Agency during the term of the Counseling Agency's Grant.
- b) Eligible Uses for Statewide Activities. Eligible uses of Grant funds supporting Statewide Activities shall include, but are not limited to:
- 1) organizing regional Housing Counseling fairs and events, including the promotion of these events;
 - 2) the creation and dissemination of radio and print advertising;
 - 3) the creation and dissemination of posters, flyers and information materials;
 - 4) establishing and operating a toll-free helpline to connect residents of the State;
 - 5) the creation and use of internet resources; and
 - 6) any other similar activities approved by the Authority that are deemed necessary to help ensure the success of the Program on a statewide basis.

Section 386.303 Application Cycle

The Authority will supply interested Applicants with an Application. Applications under the Program will be accepted periodically until the Appropriation is disbursed.

Section 386.304 Application Requirements

Each Application shall include the information required by this Section, provided that those requirements are included in the Application to be completed by the Applicant, and any additional information the Authority may require to promote efficient Program administration and quality of performance.

- a) **Qualifications.** Each Applicant shall document qualifications to complete the Program activities, including evidence that a Counseling Agency is a HUD certified housing counseling agency.

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- b) **Counseling Data.** Each Applicant shall document the statistics in its area relevant to the types of Housing Counseling offered (i.e., number of foreclosures filed, increase or decrease in homebuying, rental properties available, etc.).
- c) **Applicant's Capacity.** Each Applicant shall document its capacity to administer, and prior experience in administering, Housing Counseling.
- d) **Capacity Building.** Each Applicant shall document how capacity will be expanded to meet the need for Housing Counseling in response to subsection (b).
- e) **Activities to be Undertaken.** Each Applicant shall list which Eligible Uses are to be undertaken with Program funds, including without limitation those activities outlined in Section 386.302 and the rest of this Part.
- f) **Time for Expending.** Each Applicant shall include a budget and schedule for performing the eligible activities outlined in the Application.
- g) **Marketing and Outreach Capacity.** Each Applicant shall document its capacity and prior experiences, to the sole satisfaction of the Authority, to undertake and administer all or a portion of the Statewide Activities as set forth in the applicable Application.

Section 386.305 Review of Applications

- a) **Application Screening.** The Authority shall screen all Applications to confirm that all elements of the Application package have been addressed. Applicants may be notified of deficiencies in Applications and may, at the option of the Authority, be given the opportunity to correct those deficiencies. Completed Applications will be reviewed and evaluated by the Authority staff in accordance with criteria in subsections (b) through (e).
- b) **Basic Eligibility Evaluation.** Each Application will be reviewed to assure compliance with Sections 386.301 and 386.302.
- c) **Willingness to Perform.** The Applicant must commit to remain ready, willing and able to perform Housing Counseling and Statewide Activities as applicable throughout the Grant term.

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- d) **Costs.** The Applicant must demonstrate that the costs identified in the Application are eligible Program costs under Section 386.302.
- e) **Capacity.** The Applicant must demonstrate that the proposed activities identified in the Application can be accomplished.

Section 386.306 Grant Administration

- a) **Commitment.** Each Counseling Agency shall enter into a Commitment with the Authority; the Grant may be less than the amount requested in the Application. The term of Commitment shall be up to one year, subject to the availability of funds from an Appropriation, and may be renewed for one additional year at the discretion of the Authority.
- b) **Record Retention.** Each Counseling Agency shall maintain records in connection with the Grant under the Counseling Agency's Commitment for five years after the date of termination of the Commitment.
- c) **Monitoring.** The Authority, the Auditor General and the Attorney General shall have the right to monitor all Counseling Agency books and records relating to the implementation of the Program. Each Counseling Agency shall make all records relating to its Grant available for inspection, examination and copying by the Authority, the Auditor General or the Attorney General upon reasonable prior notice, as the Authority, the Auditor General or the Attorney General may reasonably require. The required documentation may include, but is in no way limited to, a copy of the Counseling Agency's Application to the Authority; all records relating to the eligible uses of Grant funds under the Program as set forth in Section 386.302; and any other documentation required by the Authority, the Auditor General or the Attorney General.

Section 386.307 Funding of Grants

Subject to the terms of the applicable Commitment with a Counseling Agency and the related documents evidencing the Grant, the Authority shall provide funds to the Counseling Agencies when the Appropriation is made available and as set forth in Section 386.302.

Section 386.308 Reporting Requirements

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

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- a) Counseling Agency. Each Counseling Agency shall provide reports to the Authority, on forms provided by the Authority, at the end of each quarter of the term of its Commitment. The Counseling Agency shall identify, at a minimum, the number of households that received Housing Counseling; the number of Counseling Agency staff who attended training; the number of new counselors/staff hired to increase a Counseling Agency's capacity; the expenditures incurred for Technical Assistance, Computer and Equipment Expenses, General Operational Expenses, and any other expenses incurred by the Counseling Agency related to the Program. In the event a Counseling Agency administers all or a portion of the Statewide Activities, the Counseling Agency shall identify, at a minimum, the costs and expenses incurred in connection with the administration of the Statewide Activity. The Authority reserves the right to request any other data it deems necessary for the administration of the Program.
- b) Authority. In the event the Authority administers all or a portion of the Statewide Activities, the Authority shall maintain a detailed accounting of its costs and expenses in connection with the administration of the Statewide Activity, which shall be available to the public for review.

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

<u>Section Numbers:</u>	<u>Proposed Action:</u>
775.10	Amend
775.20	Amend
775.30	Amend
775.50	Amend
775.55	New Section
775.57	New Section
- 4) Statutory Authority: Authorized by the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635] and the Illinois Food, Drug and Cosmetic Act [410 ILCS 620]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will address the procedures for permitting and inspecting dairy farms that sell or distribute raw milk from the premises of the dairy farm directly to consumers. This practice has occurred for over 30 years without rules. Per the Act, the practice of selling raw milk from the premises of the dairy farm must be done in accordance with rules. In the absence of rules and with Illinois' adoption of the federal Pasteurized Milk Ordinance, raw milk sales are currently prohibited. This rulemaking will create a two-tiered permitting system for sales or distribution of raw milk from the premises of the dairy farm to consumers, given that certain requirements are met.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: This rulemaking references several documents that are incorporated by reference in the Grade A Pasteurized Milk and Milk Products rules. Documents used in developing this rulemaking include: the Grade A Pasteurized Milk Ordinance (PMO), EML, Standard Methods for the Examination of Dairy Products (17th Edition, 2004), 3-A Sanitary and Accepted Practices, National Mastitis Council position paper on somatic cell counts, incorporated sections of the Code of Federal Regulations, the Evaluation of Milk Laboratories, all published by the FDA, and raw milk rules and regulations from various states
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
775.20	Amendment	38 Ill. Reg. 1794; January 17, 2014
775.10	Amendment	38 Ill. Reg. 10853; May 23, 2014
775.20	Amendment	38 Ill. Reg. 10853; May 23, 2014
775.50	Amendment	38 Ill. Reg. 10853; May 23, 2014
775.115	New Section	38 Ill. Reg. 10853; May 23, 2014

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand any State mandates on units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written or e-mail comments may be submitted within 45 days after this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield IL 62761

217/782-2043
rules@idph.state.il.us

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Dairy Farms producing and selling raw milk to consumers
- B) Reporting, bookkeeping or other procedures required for compliance: Raw milk farms will be required to keep a log of each raw milk sale or transaction, have a written procedure for recalling products and notifying consumers, be able to provide the total number of gallons of raw milk sold in the previous 12 months if requested by the Department, post placards at the point of sale or distribution, provide consumer awareness information to consumers with each sale or transaction, and provide proper product labeling.

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- 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:

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

Section

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

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

SOURCE: Adopted and codified at 8 Ill. Reg. 4190, effective March 16, 1984; amended at 11 Ill. Reg. 1464, effective February 1, 1987; amended at 12 Ill. Reg. 17925, effective December 1, 1988; amended at 17 Ill. Reg. 14015, effective August 15, 1993; amended at 19 Ill. Reg. 12271, effective August 10, 1995; amended at 22 Ill. Reg. 20633, effective November 10, 1998; amended at 25 Ill. Reg. 11904, effective September 1, 2001; amended at 25 Ill. Reg. 12629, effective September 25, 2001; amended at 27 Ill. Reg. 15979, effective October 1, 2003; amended at 32 Ill. Reg. 8432, effective May 21, 2008; amended at 35 Ill. Reg. 14193, effective August 2, 2011; amended at 37 Ill. Reg. 7166, effective May 13, 2013; amended at 38 Ill. Reg. 11796, effective May 21, 2014; amended at 38 Ill. Reg. _____, effective _____.

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Section 775.10 Definitions

In addition to the definitions contained in Section 1 of the Grade A Pasteurized Milk Ordinance (PMO), the following definitions shall apply:

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

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

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

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

"Change of ownership" means a transaction in which a new or different owner takes possession of a specified entity.

"Change of tenant" means a transaction in which a new or different tenant rents or leases a specified entity such as a dairy farm.

"Consumer" means a person or group of people, such as a household or those under a distribution agreement, that purchase raw milk from the dairy farm for consumption.

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

"Dairy farm" means any place or premises where one or more lactating animals (cows, goats, sheep, water buffalo, or other hoofed mammal) are kept for milking purposes, and from which a part or all of the milk or milk product is provided, sold or offered for sale to a consumer, milk plant, receiving station or transfer station.

~~*Dairy farm" means any place or premise where one or more cows or goats are*~~

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~~kept, and from which a part or all of the milk or milk products are provided, sold or offered for sale to a milk plant, transfer station, or receiving station. (Section 3(b)(1) of the Act)~~

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

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

"Distribution agreement" means a community supported agriculture (CSA) program in which consumers purchase a membership from the dairy farm that entitles them to share the dairy farm's raw milk production, or a buying club in which consumers order raw milk directly from the farm for pick-up by the consumer on the premises of the dairy farm.

"Downstream " means located after the automatic milk flow safety device in a high temperature short time (HTST) flow-diversion device.

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

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

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

"Grade A" means that milk and milk products are produced and processed in accordance with the current Grade A Pasteurized Milk Ordinance as adopted by the National Conference on Interstate Milk Shipments and the United States Public Health Service – Food and Drug Administration. The term Grade A is applicable to "dairy farm", "milk hauler-sampler", "milk plant", "milk product", "receiving station", "transfer station", "bulk milk pickup tank", and "certified

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pasteurizer sealer" whenever used in the Act. (Section 3(a) of the Act)

"Herd share" means a consumer-signed agreement with the owner of the dairy farm that offers partial ownership of one or more animals, stipulates the expected quantity of raw milk to be received, and requires ongoing payment by the consumer to the farmer for boarding the animal, animals or herd and the service of milking for the consumer.

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

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

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

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

"Milk hauler-sampler" means a person who is qualified and trained for the grading and sampling of raw milk in accordance with federal and State quality standards and procedures (Section 3(b)(14) of the Act) and transports bulk raw milk for pasteurization from a dairy farm to a receiving station, transfer station, or milk plant. (Section 3(b)(16)(A) of the Act)

"Milk product" means any product including cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat (skim) milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk or nonfat

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(skim) milk, cottage cheese (including dry curd, reduced fat, lowfat, and nonfat), yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, or nonfat (skim) milk, low-sodium milk, low-sodium reduced fat lowfat milk, low-sodium nonfat (skim) milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat (skim) milk, aseptically processed and packaged milk and milk products, and milk, reduced fat, lowfat milk or nonfat (skim) milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined in this Section. (Section 3(b)(4) of the Act)

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

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

"Pasteurization" or "pasteurized" or similar terms mean the process of heating every particle of milk or milk products, in properly designed and operated equipment, to one of the temperatures given in the charts in the Pasteurized Milk Ordinance (PMO) (see Section 775.20(a)(1)(A)) and held continuously at or above that temperature for at least the corresponding specified time.

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

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

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

"Raw milk" means milk that has not been pasteurized.

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"Raw milk dispenser" means equipment approved by 3-A standards and used to store, cool and provide a mechanism for self-service of bottled raw milk to the consumer. "Raw milk dispenser" does not mean household refrigerator or commercial refrigerator.

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

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

"Tier I permit" means a permit that allows a dairy farm to sell or distribute raw milk, for use or consumption to consumers, only on the premises of the dairy farm where the animal, animals or herd is located.

"Tier II permit" means a permit that allows a dairy farm to sell or distribute raw milk for use or consumption to consumers under a herd share or distribution agreement on the premises of the dairy farm.

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

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

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

Section 775.20 Incorporated and Referenced Materials

- a) The following regulations, guidelines and standards are incorporated in this Part:
 - 1) Federal government guidelines:
 - A) The Grade A Pasteurized Milk Ordinance (PMO), and Appendices A through R (except Sections 16 and 17) Recommendations of the United States Public Health Service/Food and Drug Administration, 2011 Revision (Publication 229). U.S. Department of Health and Human Services, Public Health Service,

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Food and Drug Administration, Milk Safety Branch (HFS-316), 5100 Paint Branch Parkway, College Park MD 20740-3835. In addition, the jurisdiction name, left blank in Sections 1, 2, 3, 5, and 11 of the PMO, for the purposes of this Part, shall mean the State of Illinois; and the regulatory agency referred to in Section 1 shall mean the Illinois Department of Public Health. (See Section 775.30(a).)

- B) Evaluation of Milk Laboratories (2013 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, Milk Safety Branch (HFS-316), 5100 Paint Branch Parkway, College Park MD 20740-3835.
 - C) Methods of Making Sanitation Ratings of Milk Supplies (2013 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, Milk Safety Branch (HFS-316), 5100 Paint Branch Parkway, College Park MD 20740-3835.
 - D) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments (2013 Revision), U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, Milk Safety Branch (HFS-316), 5100 Paint Branch Parkway, College Park MD 20740-3835.
- 2) Private and professional standards:
- A) Standard Methods for the Examination of Dairy Products (17th Edition, 2004, American Public Health Association, 1015 – 18th Street, N.W., Washington ~~DCD-C~~, 20036). (See Section 775.70(b).)
 - B) Official Methods of Analysis of the Association of Official Analytical Chemists (18th Edition, 2010, Association of Official Analytical Chemists, P.O. Box 540, Ben Franklin Station, Washington ~~DCD-C~~, 20044). (See Section 775.70(b).)
- 3) Federal regulations:

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- A) 21 CFR 131.110, Milk (2013). (See Section 775.10, the definition of "milkfat and nonfat solid content standards".)
 - B) 21 CFR 556, Tolerances for Residues or New Animal Drugs in Food (2013). (See Section 775.10, the definition of "violative drug residue".)
 - C) 40 CFR 180, Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food (2013). (See Section 775.140(a)(1).)
- b) The following rules and statutes are referenced in this Part:
- 1) Illinois Plumbing Code (77 Ill. Adm. Code 890), Illinois Department of Public Health. (See Section 775.30(c)(4).)
 - 2) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100), Illinois Department of Public Health. (See Section 775.90.)
 - 3) [Food Service Sanitation Code \(77 Ill. Adm. Code 750\).](#)
 - 43) The Veterinary Medicine and Surgery Practice Act of 2004 [225 ILCS 115].
 - 54) Illinois Administrative Procedure Act [5 ILCS 100].
 - 6) [Food Handling Regulation Enforcement Act \[410 ILCS 625\].](#)
- c) All incorporations by reference of federal guidelines and regulations and the standards of professional organizations refer to the materials on the date specified and do not include any amendments or editions subsequent to the date specified.
- d) All citations to federal regulations in this Part concern the specified regulation in the 2013 Code of Federal Regulations, unless another date is specified.
- e) Copies of all incorporated materials are available for inspection and copying by the public at the Department's Central Office, Division of Food, Drugs, and Dairies, 525 West Jefferson Street, Springfield ~~IL, Illinois~~ 62761.

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

Section 775.30 Minimum Requirements

- a) The production, transportation, processing, handling, sampling, examination, grading, labeling and sale of all milk and milk products; the inspection of dairy herds, dairy farms and milk plants, receiving and transferring stations, and cleaning and sanitizing facilities; the suspension of permits to milk producers and haulers, shall be regulated in accordance with the provisions of the PMO and Appendices A through R (with the exception of Sections 16 and 17) of the PMO. (See Section 775.20.)
- b) The production, handling, sale, distribution, labeling, sampling and testing requirements and quality standards for raw milk, the inspection of dairy farms, and the suspension, revocation and reinstatement of permits of dairy farms shall be regulated in accordance with Sections 775.55, 775.57 and 775.60.
- cb) The production, manufacture, packaging, labeling and sale of all Grade A condensed milk, Grade A dry milk products, Grade A condensed whey and Grade A dry whey, for use in the commercial preparation of Grade A pasteurized milk products; the inspection of condensing plants and/or drying plants; and the suspension of permits to condensing plants and/or drying plants, shall be regulated in accordance with the provisions of the PMO and Appendices A through R (with the exception of Sections 16 and 17 of the PMO). (See Section 775.20.)
- de) In addition to subsections (a), ~~and (b)~~, and (c), the following provisions shall apply:
- 1) In addition to Section 7, item 15p of the PMO:
 - A) All raw milk piping and equipment shall be completely separated from pasteurized milk and milk product piping and equipment during processing. No raw milk piping or fittings shall be interchanged with pasteurized milk piping and fittings unless they have been cleaned and sanitized before use.
 - B) Heat-treated and pasteurized milk or milk products that are not produced at the packaging plant, but that are to be used within a

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plant for processing pasteurized milk or milk products, shall be re-pasteurized.

- C) Blending of pasteurized milk or milk products may occur downstream from the HTST flow-diversion device only when approved by the Department in accordance with the following specific requirements:
- i) All pasteurized milk product lines, raw product lines and cleaning lines within the milk plant shall be labeled so that the lines can be differentiated by visual inspection. The specific configuration of the lines must be verified by a Department on-site inspection prior to the issuance or renewal of a permit. In addition, any segments of lines that are or can be removed for cleaning shall be individually labeled.
 - ii) Cultured dairy products are exempt from this requirement.
- 2) In addition to complying with Section 6 of the PMO, each approved milk plant shall retain from each processing day at least one time and date stamped sample from each continuous processing of a specific pasteurized fluid milk product as defined in the PMO (see Section 1 of the PMO). These samples shall be of the pasteurized milk product itself and not of each type of container in which the milk product is packaged. In addition, the samples shall be retained until two days after the guaranteed sale date in accordance with the cooling requirements of the PMO (see Section 7, Table 1 of the PMO).
- 3) In addition to Section 7, items 8r and 7p, of the PMO, the Illinois Plumbing Code shall apply.

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

Section 775.50 Permits

It shall be unlawful for any person to establish, maintain, conduct, or operate a dairy farm, milk plant, receiving station, or transfer station processing milk or milk products, to establish and operate a cleaning and sanitizing facility or milk tank truck, to haul or sample milk, or to act as

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a certified pasteurizer sealer within this State, or to bring in and distribute from out-of-state milk and milk products without first obtaining a permit from the Department. (Section 5 of the Act)

- a) The Department will grant and renew a permit for persons who maintain, conduct, or operate a milk plant, receiving station, transfer station, or cleaning and sanitizing facilities within the State of Illinois upon completion of an inspection that establishes compliance with the Act and this Part and upon payment of the fee required by Section 5.1 of the Act. Milk plants that maintain cleaning and sanitizing facilities on the same site as the plant do not have to obtain a separate permit for those facilities.
- b) The Department will grant and renew a permit for persons who bring into and distribute pasteurized milk or milk products from another state that has administrative rules or requirements that provide for clean, sanitary and safe handling and processing of pasteurized milk and milk products to ensure protection equivalent to that provided by this Part upon receipt of an inspection report that establishes compliance with that state's administrative rules or requirements and upon payment of the fee required by Section 5.1 of the Act.
- c) A permit will be granted to a milk hauler-sampler when the following conditions are met:
 - 1) An inspection establishes that the milk hauler-sampler's equipment is in compliance with the provisions of the Act and this Part;
 - 2) The milk hauler-sampler has successfully completed an examination administered by the Department; and
 - 3) The milk hauler-sampler has paid the fee required by Section 5.1 of the Act.
- d) A renewal permit will be granted to a milk hauler-sampler when an inspection establishes that the milk hauler-sampler's equipment and sampling procedures are in compliance with the provisions of the Act and this Part and upon payment of the fee required by Section 5.1 of the Act.
- e) Dairy Farm Permits
 - 1) A dairy farm permit is necessary when a farm does not presently hold a

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permit, when a change of ownership occurs and only the farm owner's name was on the permit, or when a change of tenant occurs and only the former tenant's name was on the permit.

- 2) A dairy farm permit will be granted to a dairy farm upon the completion of an inspection that establishes compliance with the Act and this Part. The inspection includes procedures for the establishment of a quality record. The quality record is established by the results of four samples taken at a rate of not more than two per week and on separate days within a three-week period.
- 3) A dairy farm with a dairy farm permit may sell or offer for sale for human consumption raw milk on the premises of the dairy farm in accordance with Section 775.55 or 775.57.
- 4) It is unlawful for any person who does not possess a dairy farm permit in accordance with Section 775.50, Tier I permit in accordance with Section 775.55 or Tier II permit in accordance with Section 775.57 to produce, process, sell, offer for sale or distribute raw milk for human consumption.
- 5) Donations, bartering, free samples, gifts and any type of transaction that is not considered the sale of raw milk is prohibited.
- 6) A dairy farm producing raw milk for consumption only by family members living on the dairy farm shall be exempt from Section 775.55.

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

Section 775.55 Tier I Permit

- a) The consumption of raw milk increases the risk of foodborne illness because the milk may contain harmful organisms (bacteria, parasites, etc.). Clinical and epidemiological studies have established a direct association between gastrointestinal illness and the consumption of raw milk. Proper pasteurization of raw milk is the only proven, reliable method to decrease the amount of harmful organisms to levels safe for human consumption.
- b) A Tier I permit shall be obtained for a dairy farm to sell or distribute raw milk on the premises of the dairy farm in accordance with Section 775.50 and this Section.

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The dairy farm owner shall notify the Department when a change of ownership occurs or when a change of tenant occurs. Dairy farms selling or distributing raw milk will be listed on the Department website (www.idph.state.il.us).

- 1) The Department will inspect a dairy farm for compliance with the Act and this Part prior to issuance of a Tier I permit. Inspections will be in accordance with subsection (f).
- 2) A dairy farm participating in only Tier I sales or distribution of raw milk shall comply with the quality count requirements and standards in subsection (g) and Section 775.50(e)(2) prior to the issuance of the permit and at all times.

c) Sales or Distribution of Raw Milk Procedures

- 1) Raw milk shall be sold or distributed only on the premises of the dairy farm.
- 2) All transactions shall take place physically on the premises of the dairy farm. Raw milk sold on the dairy farm shall not be re-sold or re-distributed. Distribution agreements, herd shares or any other contractual arrangements or exchanges are prohibited under Tier I permitted dairy farms.
- 3) Raw milk shall be offered for sale only within five days after production.
- 4) Consumers may bring their own containers for their raw milk. If the farm provides the containers for consumer transport, the containers shall meet the requirements of subsection (f)(2)(D).
- 5) The dairy farm owner shall have a written procedure for recalling products and notifying consumers in accordance with the Illinois Food, Drug and Cosmetic Act, which shall be made available to the Department upon request. The dairy farm owner shall maintain a log of each raw milk sale or transaction with consumer name, address, phone number and date of sale for one year from the date of sale. The dairy farm owner shall report consumer complaints received to the Department.

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- 6) A dairy farm shall not make milk products, such as, but not limited to, cheese or yogurt, from raw milk for sale to consumers. Consumers may make milk products from the purchased raw milk but shall not sell, barter or distribute these products.
 - 7) Raw milk that is sold, bartered or distributed for pet or animal consumption is not to be re-directed for human consumption.
 - 8) The dairy farm shall submit to the Department, upon request, a statement of the total gallons of raw milk sold the previous 12 months.
- d) Signage and Consumer Advisory
- 1) A dairy farm that participates in Tier I sales or distribution of raw milk shall post a placard at the point of sale or distribution that is noticeable to consumers. The placard shall read: "Notice: Raw Milk that is not pasteurized is sold or distributed here. This dairy farm is not inspected routinely by the Illinois Department of Public Health." The placard shall be written in a legible font, such as Arial, and in black ink. The size of the letters on the placard shall be no less than 2 inches in height.
 - 2) A dairy farm that participates in sales or distribution of raw milk shall post a placard at the point of sale or distribution that is noticeable to consumers that reads: "WARNING: This product has not been pasteurized and, therefore, may contain pathogens that cause serious illness, especially in children, the elderly, women who are pregnant and persons with weakened immune systems." The placard shall be written in a legible font, such as Arial, and in black ink. The size of the letters on the placard shall be no less than 2 inches in height.
 - 3) The dairy farm shall provide the consumer with Department-approved consumer awareness information with each sale or transaction. The Department will also post the information on the Department website.
- e) Department-approved Labeling and Receipt Information
- 1) The name, address and permit number of the permit holder and product date shall be affixed to the container.

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- 2) The following shall be provided to the consumer either through container labeling or product receipt:
- A) The words "not pasteurized" or "unpasteurized" in addition to "raw" preceding the name of the product;
 - B) The quantity of contents;
 - C) The production date and the last date the container may be offered for sale, which shall be within five days after the production date;
 - D) The type of animal preceding the term "raw milk" for example "cow raw milk" or "goat raw milk";
 - E) The statement "WARNING: This product has not been pasteurized and, therefore, may contain pathogens that cause serious illness, especially in children, the elderly, women who are pregnant and persons with weakened immune systems."; and
 - F) Instructions for the consumer to notify the local health department for the area in which the consumer resides of a consumer complaint or suspected foodborne illness or to notify the Department of a complaint of farm sanitary conditions.
- f) Inspection Standards for Tier I Permitted Dairy Farms
- 1) Dairy Animal Health and Cleanliness
 - A) Lactating animals that show evidence of the secretion of milk with abnormalities in one or more udders, based upon bacteriological, chemical or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded (not offered for sale or for human consumption).
 - B) Clean bedding material shall be provided for all lactating dairy animals.

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C) Cow yard and loafing areas adjacent to lactating dairy animal housing shall be graded and drained and shall have no standing pools of water or accumulation of organic waste.

D) Swine or poultry shall not be housed with lactating dairy animals.

2) Equipment Construction and Storage

A) All multi-use containers, utensils and equipment used in handling, storing or transporting milk shall be made of smooth, nonabsorbent and corrosion-resistant food-grade material. Containers, utensils and equipment shall be in good repair. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported and handled in a sanitary manner. Articles intended for single use shall not be reused.

B) All multiple-use containers, utensils and equipment that are exposed to milk or milk products, or from which liquids may drip, drain or be drawn into milk or milk products, shall be made of smooth, impervious, nonabsorbent, safe materials of the following types:

i) Stainless steel of the American Iron and Steel Institute (AISI) 300 series;

ii) Equally corrosion-resistant non-toxic metal;

iii) Heat-resistant glass; or

iv) Plastic or rubber and rubber-like materials that are relatively inert, resistant to scratching, scoring, decomposition, crazing, chipping and distortion under normal use conditions; that are non-toxic, fat resistant, relatively nonabsorbent, and relatively insoluble; that do not release component chemicals or impart flavor or odor to the product; and that maintain their original properties under repeated use conditions.

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- C) Milk cans shall have umbrella lids.
- D) All containers, utensils and equipment used in handling or storing milk or transporting milk by the consumer, unless stored in sanitizing solution, shall be stored to assure complete drainage and shall be protected from contamination prior to use. These requirements do not apply to containers furnished by the consumer.

3) Milking practices

- A) The flanks, udders, bellies and tails of all lactating dairy animals shall be free from visible dirt. The udders and teats of all lactating dairy animals shall be clean and dry before milking. Teats shall be treated with a sanitizing solution just prior to the time of milking and shall be dry before milking.
- B) The product contact surfaces of all multi-use containers, equipment and utensils used in handling or storing milk shall be cleaned after each use.
- C) The product contact surfaces of all multi-use containers, equipment and utensils used in handling or storing milk and transporting milk by the consumer shall be sanitized before each use.
 - i) Complete immersion in hot water at a temperature of at least 77°C (170°F) for at least five minutes; or exposure to a flow of hot water at a temperature of at least 77°C (170°F), as determined by the use of a calibrated thermometer, at the outlet for at least five minutes.
 - ii) Chemical compounds contained in 40 CFR 180.940 shall be used in accordance with label directions for sanitizing milk utensils, containers and equipment.
- D) The milking operator shall wash his or her hands and dry the hands on a disposable towel prior to beginning milking.
- E) Milk shall be cooled to 45°F or below within four hours after beginning milking. If milk is not sold or distributed to the

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consumer within four hours after beginning milking, it shall be immediately cooled to 41°F or below.

F) Wet hand milking is prohibited.

4) Milking Environment

A) Milking shall take place in an area with overhead protection to prevent contamination of the raw milk; walls and floors shall be made of a smooth, easily cleanable material, and the area shall have sufficient lighting to visually inspect flanks, teats and equipment. This area shall be cleaned prior to milking.

B) Milking equipment shall be washed and sanitized using a safe, potable water supply.

C) All milking equipment shall be stored in a dust-tight room with smooth and easily cleanable walls, or in a sealed storage vessel that protects the food contact surfaces of the equipment. The storage room shall be maintained in a clean state.

g) Quality Count Requirements and Standards

1) Quality Counts and Standards shall be performed in a certified laboratory in accordance with Section 775.20(a)(1)(A) and (B), Section 775.100 and Appendix B of the PMO. The results shall be sent to the Department.

2) The samples shall be collected by a certified sampler in accordance with the Act and this Part.

3) Sampling and testing shall be conducted prior to issuance of a permit in accordance with Section 775.50(e)(2) and at least four times during every six consecutive months. A permit will not be issued until all of the following standards are met.

A) Coliform shall be less than 10 coliforms per milliliter of raw milk.

B) Bacteria count shall be less than 20,000 bacteria per milliliter of raw milk.

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- C) The milk supply shall not contain any drug residues.
- D) The somatic cell count shall be less than or equal to 400,000 cells per milliliter of raw milk.
- E) The dairy farm water supply shall be free of coliform bacteria.
- 4) In response to a foodborne outbreak or when a high risk of infection exists, the Department will require pathogen testing to be performed on the raw milk.
- 5) For every day of a sale or distribution transaction, two raw milk samples shall be kept a minimum of 14 days. One sample shall be stored between 32°F and 40°F in a sanitary container, be at least 6 ounces and be labeled with the date of the production. The second sample shall be kept in a frozen state, be at least 6 ounces and be labeled with the date of production.
- h) Enforcement of Standards and Quality Counts
 - 1) The Department will issue a warning when two out of the last four coliform, bacteria or somatic cell counts are in violation of the standards established in subsection (g)(3). The raw milk permit will be suspended when three out of the last five coliform, bacteria or somatic cell counts are in violation of the standards.
 - 2) The Department will suspend the permit when drug residues are detected in the raw milk supply.
 - 3) The Department will suspend the permit when coliforms are detected in the water supply.
 - 4) The Department will suspend or revoke the dairy farm permit whenever:
 - A) the Department has reason to believe that a public hazard exists;
 - B) the dairy farm has interfered with the Department in performance of its duties; or

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- C) the dairy farm has violated any of the procedures in subsection (a) or (f)(3); Section 775.60(a), (b), (c), (d) or (e); Section 775.80; Section 775.130; or Section 775.150.
- i) Reinstatement of Permit
The Department will reinstate the permit
- 1) when an inspection of the dairy farm does not reveal violations; and
- 2) when the dairy farm is in compliance with subsection (g).
- j) The Department will conduct an inspection of the dairy farm at any time or in response to a consumer complaint, product complaint, or reported suspected foodborne illness pursuant to Section 775.70. The inspection may include collection of samples and notification to consumers. The Department will suspend sales if a confirmation test reveals the presence of a pathogen.
- k) The Grade A Pasteurized Milk Ordinance does not apply to this Section.

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

Section 775.57 Tier II Permit

For the purposes of this Section, "premises" means the dairy farm or farms and one receiving station under the control and responsibility of the dairy farm owner that is part of the dairy farm operations. The premises of a dairy farm does not include any property located within the incorporated area of a municipality, within 1.5 miles of an incorporated municipality, or within an unincorporated urban area.

- a) A dairy farm permit shall be obtained for a dairy farm to sell or distribute raw milk on the premises of the dairy farm in accordance with Section 775.50 and with the requirements set forth in this Section. The owner shall notify the Department when a change of ownership occurs or when a change of tenant occurs. Dairy farms selling raw milk will be listed on the Department website (www.idph.state.il.us).

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- 1) All provisions of Section 775.55 apply to Tier II dairy farms. If more stringent in Section 775.55 than the PMO, Tier I requirements shall supersede the PMO.
 - 2) Tier II raw milk transport shall be limited to the premises of the dairy farm, and sales or distribution shall be in accordance with a distribution agreement between the dairy farm and the consumer. The dairy farm owner shall keep these agreements on file and make them available to the Department upon request. Distribution agreements are allowed only under a Tier II permit. All sales and distribution transactions shall occur on the premises of the dairy farm. Tier II is exempt from Section 775.55(c)(1) and (3).
 - 3) The Department will inspect a dairy farm for compliance with the Grade A Pasteurized Milk and Milk Products Act and this Part before issuing a Tier II permit.
 - 4) A dairy farm shall not make milk products, such as, but not limited to, cheese or yogurt, from raw milk for sale to consumers. Consumers may make milk products from the purchased raw milk but shall not sell or distribute these products.
 - 5) Monetary transactions shall not occur at a receiving station located on the premises of a Tier II dairy farm.
- b) Raw milk shall be transported in approved single-service containers or containers approved in accordance with PMO Item 12p as long as the containers are properly cleanable and shall be protected from contamination in a sanitary manner in accordance with the PMO. The temperature of the product shall be maintained at 41°F or below. The containers shall be labeled in accordance with the PMO.
- c) The Department will issue a permit for a receiving station on the premises of the dairy farm where raw milk is being stored for sale or distribution in compliance with the requirements of this Section and in accordance with Section 775.50. The receiving station shall be accessible for inspection every three months in accordance with the PMO and upon the Department's receiving any complaints. The storage place for raw milk shall be protected from contamination, be kept in a sanitary manner and maintained at a temperature of 41°F or below. The

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Department will notify the local health department of the issuance of a permit for a receiving station located in the local health department's jurisdiction.

- d) The raw milk dispenser used for refrigeration of bottled raw milk on the premises of the dairy farm shall be in compliance with the 3-A standards in accordance with PMO Item 9r and Item 11p. A household refrigerator or commercial refrigerator is an option for refrigeration and is exempt from 3-A standards. The Tier II dairy farm shall notify the Department before purchasing the raw milk dispenser. The raw milk dispenser must be preapproved by the Department before being used in compliance with 3-A standards in accordance with the PMO Item 9r and Item 11p. The raw milk dispenser shall be kept clean, shall protect the product from contamination, and shall maintain the raw milk temperature at 41°F or below.
- e) Raw milk shall not be sold to, or offered for sale at, locations including, but not limited to, food service establishments as defined by the Food Service Sanitation Code or farmers' markets as defined by the Food Handling Regulation Enforcement Act. For the purposes of this Section, lodging facilities, public roadside markets and public food vending machines shall not sell raw milk.

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

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- 1) Heading of the Part: Public Schools Evaluation, Recognition and Supervision
- 2) Code Citation: 23 Ill. Adm. Code 1
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
1.440	Amendment
1.442	New Section
- 4) Statutory Authority: 105 ILCS 2-3.6
- 5) A Complete Description of the Subjects and Issues Involved: P.A. 98-560, effective August 27, 2013, authorizes school districts to designate a State Seal of Biliteracy and place that designation on the academic transcript and diploma of any student who attains "a high level of proficiency, sufficient for meaningful use in college and a career (...) in one or more languages in addition to English". The law further directs the State Board of Education to establish the criteria that school districts would use in order to identify the students who qualify for the credential. The law, however, does not mandate school districts' participation in the program, which will begin in the 2014-15 school year.

As proposed in new Section 1.442, school districts would use the language proficiency standards established by the American Council on the Teaching of Foreign Languages (ACTFL) to determine proficiency under the program. As proposed, a student would need to show attainment of a score equivalent to ACTFL's "intermediate high" proficiency on a standardized assessment that includes the language domains of speaking, writing, listening and reading to qualify. Staff believe that this is a rigorous proficiency standard that recognizes the limited availability of foreign language programs for many Illinois students in the elementary grade levels, which research suggests is required for most students to achieve the "advanced" level of performance under ACTFL guidelines. The proposed rules also include standards for proficiency in American Sign Language, which is defined in the law as a foreign language for purposes of qualifying for the State Seal of Biliteracy.

Section 1.442(b) also allows participating school districts to award the State Seal of Biliteracy using a method other than a standardized assessment in certain circumstances:

- when a student fails to achieve an "intermediate high" proficiency but receives a composite score of "intermediate mid" proficiency;
- when a standardized assessment is not available for the targeted foreign language;
- when a standardized assessment for the targeted foreign language does not assess one or more of the four domains; or

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- when evaluating the language proficiency of a student with disabilities for whom the standardized assessment is inappropriate.

Proficiency in English may be demonstrated by achieving a "meets standards" or "exceeds standards" in English language arts on the State assessment or by achieving a "proficiency" score either on the ACCESS English proficiency examination or a standardized assessment (see Section 1.442(b)). Further, Section 1.442(c) would establish a State Commendation toward Biliteracy to be issued by participating school districts to students attaining at least an "intermediate low" proficiency level under ACTFL standards in each of the domains of speaking, writing, listening and reading, as well as demonstrating proficiency in English. The State Commendation, while not required under the statute, recognizes students with a strong, demonstrated foundation of biliteracy who have not yet attained the high proficiency standards required for the State Seal of Biliteracy.

Each participating school district will be required to assign a coordinator to oversee the State Seal of Biliteracy program (Section 1.442(e)). The proposed rules also require participating school districts to inform students and their parents of the availability of the program, and comply with certain reporting requirements about the program (Section 1.442(e)).

Finally, the rules acknowledge the change in the statutory citation for the state assessments (see P.A. 98-972, effective August 15, 2014).

- 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 Section 1.442.
- 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: 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 a: PUBLIC SCHOOL RECOGNITION

PART 1

PUBLIC SCHOOLS EVALUATION, RECOGNITION AND SUPERVISION

SUBPART A: RECOGNITION REQUIREMENTS

Section

- 1.10 Public School Accountability Framework
- 1.20 Operational Requirements
- 1.30 State Assessment
- 1.40 Adequate Yearly Progress
- 1.50 Calculation of Participation Rate
- 1.60 Subgroups of Students; Inclusion of Relevant Scores
- 1.70 Additional Indicators for Adequate Yearly Progress
- 1.75 Student Information System
- 1.77 Educator Licensure Information System (ELIS)
- 1.80 Academic Early Warning and Watch Status
- 1.85 School and District Improvement Plans; Restructuring Plans
- 1.88 Additional Accountability Requirements for Districts Serving Students of Limited English Proficiency under Title III
- 1.90 System of Rewards and Recognition – The Illinois Honor Roll
- 1.95 Appeals Procedure
- 1.100 Waiver and Modification of State Board Rules and School Code Mandates
- 1.110 Appeal Process under Section 22-60 of the School Code

SUBPART B: SCHOOL GOVERNANCE

Section

- 1.210 Approval of Providers of Training for School Board Members under Section 10-16a of the School Code
- 1.220 Duties of Superintendent (Repealed)
- 1.230 Board of Education and the School Code (Repealed)
- 1.240 Equal Opportunities for all Students
- 1.242 Temporary Exclusion for Failure to Meet Minimum Academic or Attendance Standards

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- 1.245 Waiver of School Fees
- 1.250 District to Comply with 23 Ill. Adm. Code 180 (Repealed)
- 1.260 Commemorative Holidays to be Observed by Public Schools (Repealed)
- 1.270 Book and Material Selection (Repealed)
- 1.280 Discipline
- 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint
- 1.290 Absenteeism and Truancy Policies

SUBPART C: SCHOOL DISTRICT ADMINISTRATION

Section

- 1.310 Administrative Qualifications and Responsibilities
- 1.320 Evaluation of Licensed Educators
- 1.330 Toxic Materials Training

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section

- 1.410 Determination of the Instructional Program
- 1.420 Basic Standards
- 1.430 Additional Criteria for Elementary Schools
- 1.440 Additional Criteria for High Schools
- [1.442 State Seal of Biliteracy](#)
- 1.445 Required Course Substitute
- 1.450 Special Programs (Repealed)
- 1.460 Credit Earned Through Proficiency Examinations
- 1.462 Uniform Annual Consumer Education Proficiency Test (Repealed)
- 1.465 Ethnic School Foreign Language Credit and Program Approval
- 1.470 Adult and Continuing Education
- 1.480 Correctional Institution Educational Programs

SUBPART E: SUPPORT SERVICES

Section

- 1.510 Transportation
- 1.515 Training of School Bus Driver Instructors
- 1.520 Home and Hospital Instruction
- 1.530 Health Services
- 1.540 Pupil Personnel Services (Repealed)

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SUBPART F: STAFF LICENSURE REQUIREMENTS

Section

- 1.610 Personnel Required to be Qualified
- 1.620 Accreditation of Staff (Repealed)
- 1.630 Paraprofessionals; Other Unlicensed Personnel
- 1.640 Requirements for Different Certificates (Repealed)
- 1.650 Transcripts of Credits
- 1.660 Records of Professional Personnel

SUBPART G: STAFF QUALIFICATIONS

Section

- 1.705 Requirements for Supervisory and Administrative Staff
- 1.710 Requirements for Elementary Teachers
- 1.720 Requirements for Teachers of Middle Grades
- 1.730 Minimum Requirements for Secondary Teachers and Specified Subject Area Teachers in Grades 6 and Above through June 30, 2004
- 1.735 Requirements to Take Effect from July 1, 1991, through June 30, 2004
- 1.736 Requirements to Take Effect from July 1, 1994, through June 30, 2004
- 1.737 Minimum Requirements for the Assignment of Teachers in Grades 9 through 12 Beginning July 1, 2004
- 1.740 Standards for Reading through June 30, 2004
- 1.745 Requirements for Reading Teachers and Reading Specialists at all Levels as of July 1, 2004
- 1.750 Standards for Media Services through June 30, 2004
- 1.755 Requirements for Library Information Specialists Beginning July 1, 2004
- 1.760 Standards for School Support Personnel Services
- 1.762 Supervision of Speech-Language Pathology Assistants
- 1.770 Standards for Special Education Personnel
- 1.780 Standards for Teachers in Bilingual Education Programs
- 1.781 Requirements for Bilingual Education Teachers in Prekindergarten, Kindergarten and any of Grades 1-12
- 1.782 Requirements for Teachers of English as a Second Language in Prekindergarten, Kindergarten and any of Grades 1-12
- 1.783 Requirements for Administrators of Bilingual Education Programs
- 1.790 Substitute Teacher

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- 1.APPENDIX A Professional Staff Educator Licensure
- 1.APPENDIX B Certification Quick Reference Chart (Repealed)
- 1.APPENDIX C Glossary of Terms (Repealed)
- 1.APPENDIX D State Goals for Learning
- 1.APPENDIX E Evaluation Criteria – Student Performance and School Improvement Determination (Repealed)
- 1.APPENDIX F Criteria for Determination – Student Performance and School Improvement (Repealed)
- 1.APPENDIX G Criteria for Determination – State Assessment (Repealed)

AUTHORITY: Implementing Sections 2-3.25, 2-3.25g, 2-3.44, 2-3.96, 2-3.157, 10-17a, 10-20.14, 10-22.43a, 14C-8, 21B-5, 22-60, 26-13, 27-3.5, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3 and 27-23.8 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/2-3.25, 2-3.25g, 2-3.44, 2-3.96, 2-3.157, 10-17a, 10-20.14, 10-22.43a, 14C-8, 21B-5, 22-60, 26-13, 27-3.5, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3, 27-23.8 and 2-3.6].

SOURCE: Adopted September 21, 1977; codified at 7 Ill. Reg. 16022; amended at 9 Ill. Reg. 8608, effective May 28, 1985; amended at 9 Ill. Reg. 17766, effective November 5, 1985; emergency amendment at 10 Ill. Reg. 14314, effective August 18, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 3073, effective February 2, 1987; amended at 12 Ill. Reg. 4800, effective February 26, 1988; amended at 14 Ill. Reg. 12457, effective July 24, 1990; amended at 15 Ill. Reg. 2692, effective February 1, 1991; amended at 16 Ill. Reg. 18010, effective November 17, 1992; expedited correction at 17 Ill. Reg. 3553, effective November 17, 1992; amended at 18 Ill. Reg. 1171, effective January 10, 1994; emergency amendment at 19 Ill. Reg. 5137, effective March 17, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 6530, effective May 1, 1995; amended at 19 Ill. Reg. 11813, effective August 4, 1995; amended at 20 Ill. Reg. 6255, effective April 17, 1996; amended at 20 Ill. Reg. 15290, effective November 18, 1996; amended at 22 Ill. Reg. 22233, effective December 8, 1998; emergency amendment at 24 Ill. Reg. 6111, effective March 21, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 12985, effective August 14, 2000; amended at 25 Ill. Reg. 8159, effective June 21, 2001; amended at 25 Ill. Reg. 16073, effective November 28, 2001; amended at 26 Ill. Reg. 1157, effective January 16, 2002; amended at 26 Ill. Reg. 16160, effective October 21, 2002; amended at 28 Ill. Reg. 8486, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 13637, effective September 27, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 1891, effective January 24, 2005; amended at 29 Ill. Reg. 11811, effective July 13, 2005; amended at 29 Ill. Reg. 12351, effective July 28, 2005; amended at 29 Ill. Reg. 15789, effective October 3, 2005; amended at 29 Ill. Reg. 19891, effective November 23, 2005; amended at 30 Ill. Reg. 8480, effective April 21, 2006; amended at 30 Ill. Reg. 16338, effective September 26, 2006; amended at 30 Ill. Reg. 17416, effective October 23, 2006; amended at 31 Ill. Reg. 5116, effective March 16, 2007; amended at

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31 Ill. Reg. 7135, effective April 25, 2007; amended at 31 Ill. Reg. 9897, effective June 26, 2007; amended at 32 Ill. Reg. 10229, effective June 30, 2008; amended at 33 Ill. Reg. 5448, effective March 24, 2009; amended at 33 Ill. Reg. 15193, effective October 20, 2009; amended at 34 Ill. Reg. 2959, effective February 18, 2010; emergency amendment at 34 Ill. Reg. 9533, effective June 24, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 17411, effective October 28, 2010; amended at 35 Ill. Reg. 1056, effective January 3, 2011; amended at 35 Ill. Reg. 2230, effective January 20, 2011; amended at 35 Ill. Reg. 12328, effective July 6, 2011; amended at 35 Ill. Reg. 16743, effective September 29, 2011; amended at 36 Ill. Reg. 5580, effective March 20, 2012; amended at 36 Ill. Reg. 8303, effective May 21, 2012; amended at 38 Ill. Reg. 6127, effective February 27, 2014; amended at 38 Ill. Reg. 11203, effective May 6, 2014; amended at 38 Ill. Reg. _____, effective _____.

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section 1.440 Additional Criteria for High Schools

The School Code establishes differing requirements for the coursework that high schools must offer, the courses students must take, and the courses students must pass in order to graduate.

- a) Course Offerings. Each district shall provide a comprehensive curriculum that includes at least the following offerings. The time allotment, unless specified by the School Code or applicable rules, is the option of the local school district.
 - 1) Language Arts
 - 2) Science
 - 3) Mathematics
 - 4) History of the United States
 - 5) Foreign Language
 - 6) Music
 - 7) Art
 - 8) Career and Technical Education – Orientation and Preparation

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- 9) Health Education
 - 10) Physical Education
 - 11) Consumer Education
 - 12) Conservation of Natural Resources
 - 13) Driver and Safety Education (see the Driver Education Act [105 ILCS 5/27-24 through [27-24.1027-24.8](#)] and 23 Ill. Adm. Code 252)
- b) Required Participation
- 1) Each student shall be required to take one semester or the equivalent, i.e., at least 18 weeks, of health education during the secondary school experience.
 - 2) Each student shall be required to take physical education daily, except as provided in Section 27-6 of the School Code and Section 1.445 of this Part.
 - 3) Each student shall be required to take consumer education for 50 minutes per day for a period of nine weeks in any of grades 9-12.
 - 4) Each student shall be required to take a course covering *American patriotism and the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag for not less than one hour per week, or the equivalent.* (Sections 27-3 and 27-4 of the School Code)
- c) Specific Requirements for Graduation. A "unit" is the credit accrued for a year's study or its equivalent. A student may be permitted to retake a course that he or she has already successfully completed (for example, to earn a better grade). However, credit may not be awarded more than once for completion of the same course, and the same course may not be counted more than once toward fulfillment of the State requirements for graduation.
- 1) Each student shall be required to have accrued at least 16 units in grades

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9-12 if graduating from a four-year school or 12 units in grades 10-12 if graduating from a three-year high school. In either case, one unit shall be in American History or American History and Government. (Section 27-22 of the School Code) *No student shall receive certification of graduation without passing an examination on the subjects discussed in subsection (b)(4)-of this Section.*

- 2) Pursuant to Section 27-22 of the School Code, all students, except students with disabilities whose course of study is determined by an individualized education program, must successfully complete certain courses, depending upon the school year in which they enter ~~the 9th~~ grade 9 and subject to the exceptions provided in Section 1.445 of this Part, as a prerequisite to receiving a high school diploma.
- 3) Credits earned by students prior to entry into ~~grade~~Grade 9 as authorized by Section 27-22.10 of the School Code [105 ILCS 5/27-22.10] may be used to fulfill any of the requirements of subsection (c)(2) of this Section.
- d) School districts shall have on file in the local district office a description of all course offerings that may comply with the requirements of the law. A course will be accepted as meeting the relevant requirement for graduation if its description shows that its principal instructional activity is the development and application of knowledge and skills related to the applicable requirement.
 - 1) "Writing-Intensive" Courses
The course description for a "writing-intensive" course will be accepted for purposes of Section 27-22 of the School Code if:
 - A) a goal of the course is to use the writing that students do relative to the subject matter being presented as a vehicle for improving their writing skills;
 - B) writing assignments will be an integral part of the course's content across the time span covered by the course;
 - C) the written products students are required to prepare in order to receive credit for the course and the feedback students receive are such that:

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- i) students' writing proficiency is evaluated against expectations that are appropriate to early or late high school and encompass all of the writing standards-standards for those grade levels enumerated inapplicable to State Goals 3 and 5 (see the State Goals for Learning and the Illinois Learning Standards for English Language Arts and Literacy in History/Social Studies, Sciences, and Technical Subjects (see in Appendix D to this Part); and
- ii) students receive information from the evaluation of their written products that will permit them to improve their writing skills in terms of correct usage; well-organized composition; communication of ideas for a variety of purposes; and locating, organizing, evaluating, and using information;-

D2) The writing-intensive study provided in at least one writing-intensive course ismust be designed to address and integrate the elements of the writing process and to refine or apply research skills.

2) Foreign Language Courses

The description for any foreign language course shall indicate whether the school district will award a State Seal of Biliteracy in accordance with the requirements of Section 1.442 of this Part and Section 2-3.157 of the School Code [105 ILCS 5/2-3.157] and state the qualifications for receipt of the seal.

- e) It is the responsibility of the school district's administration to provide parents and guardians timely and periodic information concerning graduation requirements for all students, particularly in cases where a student's eligibility for graduation may be in question.
- f) Additional requirements for graduation may be adopted by local boards of education. Boards of education may accept courses completed in a community college toward graduation.

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

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Section 1.442 State Seal of Biliteracy

In accordance with Section 2-3.157 of the School Code, a school district may establish a program to recognize high school graduates who have attained a high level of proficiency in one or more languages in addition to English, by designating on a student's transcript and high school diploma his or her receipt of the State Seal of Biliteracy, provided that all the conditions of this Section are met. For purposes of this Section, "foreign language" has the meaning prescribed in Section 2-3.157(a) of the School Code.

- a) A school district may award the State Seal of Biliteracy to any high school graduate who attains a high level of proficiency, sufficient for meaningful use in college and career (Section 2-3.157 of the School Code), in a language other than English as evidenced by his or her attainment of a composite score of "intermediate high", or its equivalent, on a standardized assessment that addresses the four domains of speaking, writing, listening and reading in the targeted foreign language. For the purposes of this Section, proficiency may be shown using one of the methods outlined in this subsection (a).
- 1) Assessment Method
For purposes of using an assessment to determine proficiency:
- A) "Intermediate high" is defined in the ACTFL Proficiency Guidelines 2012, published by the American Council on the Teaching of Foreign Languages, 1001 North Fairfax Street, Suite 200, Alexandria VA 22314 and available at <http://www.actfl.org/publications/guidelines-and-manuals/actfl-proficiency-guidelines-2012>. (No later amendments to or editions of these guidelines are incorporated.)
- B) For the American Sign Language, "intermediate high" is equivalent to meeting progress indicators for grade 12 set forth in the Standards for Learning American Sign Language (2013), published by the American Sign Language Teachers Association, P.O. Box 38, Clinton WA 98236 and available at <http://www.aslta.org/node/1938>. (No later amendments to or editions of these guidelines are incorporated.)
- C) "Standardized assessment" is one that is available for use on a statewide or national basis and meets generally accepted standards

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of fairness, validity and reliability as stated in "Standards for Educational and Psychological Testing" (2013), published by the American Educational Research Association, 1430 K Street, N.W., Suite 1200, Washington D.C. 20005. (No later amendments to or editions of these standards are incorporated.)

- 2) Alternative Evidence Method
A school district may choose to award the State Seal of Biliteracy through an alternative evidence method in accordance with this subsection (a)(2).
- A) The alternative evidence method may be used when:
- i) a student attains an "intermediate mid" composite score, as defined in the ACTFL guidelines set forth in subsection (a)(1), or its equivalent, on a standardized assessment that addresses the four domains of speaking, writing, listening and reading in the targeted foreign language;
 - ii) no standardized assessment exists for the targeted foreign language;
 - iii) evaluating the language proficiency of a student with disabilities for whom the standardized assessment is inappropriate; or
 - iv) the standardized assessment for the targeted foreign language does not assess one or more of the four domains of speaking, writing, listening and reading.
- B) Any alternative evidence method used shall consist of a student portfolio that contains evidence for each component set forth in subsections (a)(2)(C) and (a)(2)(D) that demonstrates proficiency equivalent to an "intermediate high" level in the four domains of speaking, writing, listening and reading.
- C) Experience in the Targeted Foreign Language

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- i) The extent to which the student's language background enables him or her to gain proficiency in the targeted foreign language in one or more of the four domains;
 - ii) The extent to which the student's participation in intercultural activities provided opportunities to gain proficiency in the targeted foreign language in one or more of the four domains;
 - iii) The courses taken in the targeted foreign language and the grades received; and/or
 - iv) The extent to which any time spent in countries where the targeted foreign language is spoken contributed to the student's opportunities to gain proficiency in the targeted foreign language in one or more of the four domains.
- D) Work Samples
- i) Formal presentations in the targeted foreign language;
 - ii) Student-produced compositions, articles, papers and other formal documents in the targeted foreign language; and/or
 - iii) Certificates, diplomas, results from tests or assessments other than those identified under subsection (a) and additional achievements that demonstrate sufficient proficiency in the targeted foreign language.
- b) To be eligible to be awarded the State Seal of Biliteracy, each student also shall demonstrate proficiency in English through:
- 1) Attainment of either a "meets standards" or "exceeds standards" for English language arts on the State assessments administered at the secondary level, as authorized in Section 2-3.64a-5 of the School Code;
 - 2) Attainment of a "proficient" score on the English language proficiency assessment defined at 23 Ill. Adm. Code 228.10 (Transitional Bilingual Education) administered at the secondary level; or

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- 3) Attainment of an "intermediate high" composite score on an assessment in English identified pursuant to subsection (a)(1).
- c) The State Seal of Biliteracy program also shall offer a State Commendation toward Biliteracy to any student who fails to meet the requirements of subsection (a) but attains a score of "intermediate low", or its equivalent, in the targeted foreign language using the method set forth in subsection (a)(1) or (a)(2).
- 1) "Intermediate low" is defined in the ACTFL Proficiency Guidelines 2012 referenced in subsection (a)(1).
 - 2) Each student also shall demonstrate a level of proficiency in English through:
 - A) Attainment of either a "meets standards" or "exceeds standards" for English language arts on the State assessments administered at the secondary level, as authorized in Section 2-3.64a-5 of the School Code;
 - B) Attainment of a score established for part-time placement in a transitional bilingual education program (see 23 Ill. Adm. Code 228.30(c) (Establishment of Programs)) on the English language proficiency assessment defined at 23 Ill. Adm. Code 228.10 (Transitional Bilingual Education) that is administered at the secondary level; or
 - C) Attainment of an "intermediate low" composite score on an assessment in English identified pursuant to subsection (a).
- d) In accordance with Section 2-3.157(g) of the School Code, the school district shall place a designation of a qualifying student's receipt of the State Seal of Biliteracy in the student's permanent record on the academic transcript as defined in 23 Ill. Adm. Code 375 (Student Records) and include the designation on the student's diploma. A school district also shall place a designation of a qualifying student's receipt of the State Commendation toward Biliteracy both in the permanent record on the academic transcript and on the student's diploma. The designations shall list each of the targeted foreign languages for which the State Seal of Biliteracy or State Commendation toward Biliteracy is being awarded. The

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State Board of Education shall make an electronic facsimile of the State Seal of Biliteracy and the State Commendation toward Biliteracy available to school districts for this purpose.

- e) A school district that chooses to participate in the State Seal of Biliteracy program shall meet the requirements of this subsection (e).
- 1) A participating school shall notify the State Board of Education of its participation by October 1 of each year or within 30 days after electing to participate, if that occurs after October 1. A district that fails to submit the proper notification within the timeframes provided shall be prohibited from awarding the seal and commendation for that school year.
 - 2) A participating district shall designate at least one individual to serve as coordinator of the State Seal of Biliteracy program and include the individual's name and contact information in the notice provided pursuant to subsection (e)(1). The individual assigned to serve as the coordinator of the program shall:
 - A) Hold a professional educator license endorsed in an administrative area issued pursuant to 23 Ill. Adm. Code 25 (Educator Licensure); and
 - B) Participate in training approved by the State Board of Education prior to awarding the State Seal of Biliteracy awarded under the provisions of Section 2-3.157 of the School Code and this Section and the State Commendation toward Biliteracy awarded under the provisions of this Section.
 - 3) Using a format prescribed by the State Superintendent of Education, a participating school shall submit an annual report to the State Board of Education no later than 30 days after the end of the school year that includes, but is not limited to, identification of each student awarded the State Seal of Biliteracy or the State Commendation toward Biliteracy, targeted foreign language or languages for which the State Seal of Biliteracy or State Commendation toward Biliteracy was awarded to the student and the method the student used to demonstrate proficiency.

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- 4) A participating school district shall make available information about the State Seal of Biliteracy program to parents and students by posting on the district's website, if the district maintains a website, and in the student handbook the following information:
- A) General information about the State Seal of Biliteracy program and the opportunity for students to participate;
 - B) A description of the process a student would use to demonstrate proficiency in the targeted foreign language, including details about any alternative evidence that may be required under the provisions of subsection (a)(2), if applicable;
 - C) An estimate of the costs, if known, that students might incur to demonstrate proficiency using either of the methods under subsection (a); and
 - D) The name and contact information for any individuals designated to serve as the coordinator of the State Seal of Biliteracy program.

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

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- 1) Heading of the Part: Standards for Endorsements in Early Childhood Education and in Elementary Education
- 2) Code Citation: 23 Ill. Adm. Code 26
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
26.100	Amendment
26.110	Amendment
26.120	Amendment
26.125	New Section
26.130	Amendment
26.135	New Section
26.140	Amendment
26.150	Amendment
26.240	Amendment
26.245	New Section
- 4) Statutory Authority: 105 ILCS 2-3.6
- 5) A Complete Description of the Subjects and Issues Involved: With the adoption of updated Illinois Learning Standards (ILS) for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects and those in Mathematics for kindergarten through grade 12 in 2010, agency staff began work to update the standards for receipt of the early childhood endorsement. In November 2011, the Early Childhood Advisory Group began reviewing the current standards, and the group completed its work earlier this year. The advisory group included representatives from postsecondary institutions, including faculty; community- and school-based early childhood programs; early childhood credentialing and professional organizations; teacher unions; and the Illinois Board of Higher Education and Illinois Community College Board.

The proposed early childhood standards align to the ILS, as well embody the Illinois Professional Teaching Standards, which are set forth in 23 Ill. Adm. 24 (Standards for All Illinois Teachers). The standards consider the content and pedagogical knowledge necessary to work with children in the early childhood years of birth through grade 2 (currently birth through grade 3). Specifically, the proposed standards for English language arts align to the foundational knowledge and skills that preschoolers should possess to become successful readers, writers and speakers in the later grades, and for English learners, emphasize the relationship between knowledge and skills needed to acquire English and those that develop concurrently as the student learns his or her home

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language. The proposed mathematics standards underscore the importance of early childhood teachers being familiar with the mathematics that they teach, understanding how children develop mathematical skills and methods, and presenting mathematical concepts in "everyday terms or analogies" that are accessible and meaningful to preschoolers.

The advisory group also recommended updating the general standards to which programs must align and the assessment standards. Beginning January 1, 2015, all early childhood programs seeking approval for the first time will be required to show alignment to the 2010 National Association for the Education of Young Children (NAEYC) Standards for Initial and Advanced Early Childhood Professional Preparation Programs. Existing programs must show alignment to these standards no later than September 1, 2019.

As proposed, the new early childhood standards will take effect beginning September 1, 2019. To minimize the effect of making a transition from the existing standards to the new standards, the proposed amendments prohibit institutions from placing candidates, after February 1, 2017, into programs that have not shown alignment to the new standards. The delayed effective date will allow sufficient time for existing programs to align their course of study to the new standards and for candidates currently enrolled to complete these programs and be issued the early childhood education endorsement prior to the new standards taking effect.

- 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 Section 26.110(c).
- 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:

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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: 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 b: PERSONNEL

PART 26
 STANDARDS FOR ENDORSEMENTS IN EARLY CHILDHOOD
 EDUCATION AND IN ELEMENTARY EDUCATION

SUBPART A: STANDARDS FOR ENDORSEMENTS
 IN EARLY CHILDHOOD EDUCATION

Section

26.100	Purpose and Effective Dates of Standards in Subpart A
26.110	Curriculum: General
26.120	Curriculum: English Language Arts Standards Through August 31, 2019
26.125	Curriculum: English Language Arts Standards Beginning September 1, 2019
26.130	Curriculum: Mathematics Standards Through August 31, 2019
26.135	Curriculum: Mathematics Standards Beginning September 1, 2019
26.140	Curriculum: Science
26.150	Curriculum: Social Science
26.160	Curriculum: Physical Development and Health
26.170	Curriculum: Fine Arts
26.180	Human Development and Learning
26.190	Diversity
26.200	Planning for Instruction
26.210	Learning Environment
26.220	Instructional Delivery
26.230	Communication
26.240	Assessment Standards Through August 31, 2019
26.245	Assessment Standards Beginning September 1, 2019
26.250	Collaborative Relationships
26.260	Reflection and Professional Growth
26.270	Professional Conduct and Leadership

SUBPART B: STANDARDS FOR ENDORSEMENTS
 IN ELEMENTARY EDUCATION

Section

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26.300	Purpose and Effective Dates of Standards in Subpart B
26.310	Curriculum
26.320	Curriculum: English Language Arts
26.330	Curriculum: Mathematics
26.340	Curriculum: Science
26.350	Curriculum: Social Science
26.360	Curriculum: Physical Development and Health
26.370	Curriculum: Fine Arts
26.380	Human Development and Learning
26.390	Diversity
26.400	Planning for Instruction
26.410	Learning Environment
26.420	Instructional Delivery
26.430	Communication
26.440	Assessment
26.450	Collaborative Relationships
26.460	Reflection and Professional Growth
26.470	Professional Conduct and Leadership

AUTHORITY: Implementing Article 21B and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art. 21B and 2-3.6].

SOURCE: Adopted at 26 Ill. Reg. 6263, effective April 22, 2002; amended at 37 Ill. Reg. 16759, effective October 2, 2013; amended at 38 Ill. Reg. _____, effective _____

SUBPART A: STANDARDS FOR ENDORSEMENTS
IN EARLY CHILDHOOD EDUCATION

Section 26.100 Purpose and Effective Dates of Standards in Subpart A

Beginning September 1, 2019, the provisions of Sections 26.120, 26.130 and 26.240 are replaced by Sections 26.125, 26.135 and 26.245 as This Subpart A establishes the standards that, together with the standards set forth in Standards for All Illinois Teachers (23 Ill. Adm. Code 24) and the standards in this Subpart A, shall apply to the issuance of endorsements in early childhood education on professional educator licenses pursuant to Article 21B of the School Code [105 ILCS 5/Art. 21B]. The standards set forth in this Subpart A shall apply both to candidates for an endorsement in early childhood education and to the programs that prepare them. ~~That is:~~

- a) Approval~~beginning July 1, 2003, approval~~ of any teacher preparation program or

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course of study in early childhood education pursuant to the State Board's rules for Educator Licensure (23 Ill. Adm. Code 25, Subpart C) shall be based on the congruence of that program's or course's content with the standards identified in this Subpart A; ~~and~~

- b) ~~The beginning July 1, 2004, the~~ examinations required for issuance of an endorsement in early childhood education shall be based on the standards identified in this Subpart A.
- c) Beginning September 1, 2017, no candidate shall be admitted to a program that has not shown alignment to the standards set forth in Sections 26.125, 26.135 and 26.245. Any candidate who is enrolled in an elementary program aligned to the standards set forth in Sections 26.120, 26.130 and 26.240 shall complete the program on or before September 1, 2018 and have the early childhood education endorsement issued by September 1, 2019.

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

Section 26.110 Curriculum: General

The competent early childhood teacher understands and demonstrates the central concepts, tools of inquiry, and structures of the content areas and creates and integrates meaningful learning experiences that develop children's competence across all developmental areas and content areas.

- a) Knowledge Indicators – The competent early childhood teacher:
- 1) demonstrates current knowledge of integrated learning experiences for children from birth through grade three and understands the central concepts and tools of inquiry in each of the following content areas: language and literacy (English language arts); mathematics; science; health, safety, nutrition; and movement (physical development and health); art, music; and drama (fine arts); and social science;~~;~~
 - 2) understands conceptually sound and meaningful curriculum for children from birth through grade 2; and three.
 - 3) demonstrates an understanding of current research, best practice; and professional standards.

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- b) Performance Indicators – The competent early childhood teacher:
- 1) plans, implements, and evaluates integrated, conceptually sound, meaningful learning experiences for children from birth through grade 2; ~~and three.~~
 - 2) structures a variety of learning experiences that reflect the standards set forth in this Subpart A.
- c) National Standards
Each early childhood preparation program shall align to "2010 NAEYC Standards for Initial and Advanced Early Childhood Professional Preparation Programs" (2010) published by the National Association for the Education of Young Children, 1313 L Street, Suite 500, Washington DC 20005 and posted at <http://www.naeyc.org/ncate/standards>. (No later amendments to or editions of these standards are incorporated.)
- 1) Recognized institutions seeking initial approval for early childhood education preparation programs on or after January 1, 2015 shall align to the standards set forth in this subsection (c).
 - 2) Early childhood education preparation programs approved prior to January 1, 2015 shall meet the standards set forth in this subsection (c) no later than September 1, 2019.

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

Section 26.120 Curriculum: English Language Arts Standards Through August 31, 2019

The competent early childhood teacher demonstrates proficiency in the use of oral and written English; understands and communicates ideas, information, and perspectives in reading, writing, speaking, and listening; and promotes the abilities of children from birth through grade 3~~three~~ as they apply language and thinking skills to many different genres, concepts, and situations.

- a) Knowledge Indicators – The competent early childhood teacher:
- 1) understands vocabulary and word analysis skills that promote comprehension of meaning in a variety of contexts; ~~and~~

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- 2) understands various language components in literacy development: phonemes (sounds of the language); morphemes (words and meaningful parts of words); semantics (meaning); and syntax (sentence structure and parts of speech); as well as the pragmatic aspect of language (how language works in social contexts);-
 - 3) demonstrates knowledge of a variety of materials for promoting literacy, including various genres and authors of children's literature, trade books (fiction and nonfiction), books designed for beginning readers, "big books", anthologies, newspapers, and magazines;-
 - 4) understands a variety of age-appropriate strategies that promote reading and listening comprehension and foster development within and among the four language arts (listening, speaking, reading, and writing), including shared, guided, and interactive reading and writing;-
 - 5) understands the relationships among oral language, written language, and the basic concepts of print;-
 - 6) understands the appropriate use of the conventions involved in various forms of writing, such as stories, letters, journals, and poetry;-
 - 7) understands skills and strategies that promote listening and speaking for various purposes, discussion and comprehension, the ability to ask and respond to questions, and the ability to understand different literary and social contexts;-
 - 8) understands how to locate, organize, and use information from various sources to answer questions, solve problems, and communicate ideas; and;-
 - 9) understands children's abilities to communicate ideas through technology.
- b) Performance Indicators – The competent early childhood teacher:
- 1) uses vocabulary and word analysis skills that promote comprehension of meaning in a variety of contexts;-
 - 2) promotes integration of various language components in literacy development;-

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- 3) identifies, evaluates, and uses a variety of materials for promoting literacy, including various genres and authors of children's literature, trade books (fiction and nonfiction), books designed for beginning readers, "big books", anthologies, newspapers, and magazines;
- 4) applies a variety of age-appropriate strategies that promote reading and listening comprehension and foster development within and among the four language arts, including shared, guided, and interactive reading and writing;
- 5) assists students in developing basic concepts of print using activities based on oral and written language;
- 6) provides opportunities for students to use writing conventions involved in various forms of writing, such as stories, letters, journals, and poetry;
- 7) facilitates skills and strategies that promote listening and speaking for various purposes, discussion and comprehension, the ability to ask and respond to questions, and the ability to understand different literary and social contexts;
- 8) provides opportunities for children to locate, organize, and use information from various sources to answer questions, solve problems, and communicate ideas; and;
- 9) promotes children's abilities to communicate ideas through technology.

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

Section 26.125 Curriculum: English Language Arts Standards Beginning September 1, 2019

Each teacher holding an early childhood education endorsement shall possess the knowledge and skills articulated in this Section.

- a) Foundational Knowledge
 - 1) Language

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The effective early childhood education teacher:

- A) applies major theories, stages and processes of first and second language acquisition, in particular understanding the importance of social interaction, culture, play, emergence of social discourse and the relationship between first and second language development during the early years;
- B) applies the nature, development and communicative role of various features of language, including the four cuing systems of graphophonemic, syntactic, semantic and pragmatic, in the language experiences of children;
- C) demonstrates the importance of play as the cognitive and social basis for the development of phonemic, semantic and pragmatic knowledge across languages in young children;
- D) supports the role of the home (the first) language in learning to read and write in a second language;
- E) applies the theories, principles and practices of emergent literacy, including the development of speaking and listening and their relationship to the developmental process of reading and writing acquisition;
- F) recognizes the sequence of stages in language, reading and writing development from birth through grade 2 using supporting evidence from theory and research, and acknowledges individual differences among children progressing through those stages. Applies understanding of the particularities of these processes for children whose first language is other than English;
- G) utilizes social discourse in developing critical thinking, argumentation and analysis;
- H) acknowledges the role of fine motor development in children's emergent literacy, specifically the ability to form letters and words through a variety of media;

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- D) provides experiences with content-specific vocabulary and decontextualized language that develop children's understanding of concepts, content, skills and processes;
- J) applies understanding of the relationship between first and second language content-specific vocabulary for children whose first language is other than English;
- K) provides experiences explicitly designed to facilitate the acquisition of academic decontextualized language and English vocabulary for children whose first language is not English;
- L) models and supports children's use of conventions of grammar and language of wider communication; and
- M) supports bilingual children's awareness of differences and commonalities between the conventions of grammar and language of English and that of the home language.

2) Alphabetic CodeThe effective early childhood teacher:

- A) models and supports the development of phonological awareness (recognition of phonemes and the sound structure of words, including rhyming words; initial, middle and ending sounds; syllables; and onsets and rhymes) and its relationship to reading and writing proficiency;
- B) supports children's developing understanding of the orthographic-phonological system, including sound-letter relationships and common English spelling patterns and their relationship to pronunciation and developmental spelling;
- C) supports bilingual children's awareness of the differences and commonalities between the orthographic-phonological systems of English and the home language; and
- D) supports structural analysis (e.g., syllabication, affixes, root words) for decoding unknown words in language experiences for children.

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- 3) Text
The effective early childhood teacher:
- A) supports the development of narratives in young children's spoken language and understanding of narrative structure;
 - B) supports the development of text awareness and emergent reading behaviors in young children, including concepts of print, book knowledge and narrative structure evidenced in picture reading, story-telling and retelling of the story;
 - C) uses "read-alouds" and shared reading experiences to support emerging language and literacy, and ongoing literacy development;
 - D) acknowledges and uses the quantitative, qualitative and individual factors that affect text complexity, including how to estimate developmentally appropriate levels of text;
 - E) uses texts that engage children with the organizational structures, literary devices, rhetorical features, text features and graphics commonly used in literary and informational texts;
 - F) uses texts that engage children with the characteristics of various genre or forms of literary and informational text;
 - G) uses a variety of textual and authentic resources that promote differentiated instruction that meets the needs of all learners;
 - H) understands the role, perspective and purpose of text in all content areas; and
 - I) supports the transference of text competencies from the home language to English for bilingual children.
- b) The Language and Literacy Curriculum
The effective early childhood teacher:

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- 1) understands and uses developmentally appropriate and evidence-based practices to plan, evaluate and modify instruction (e.g., use of appropriate research in identifying and implementing effective instructional practices);
- 2) knows the developmental sequence of language acquisition and emergent literacy strategies and skills, along with age-level or grade-level benchmarks of development, and utilizes them in classroom practice;
- 3) demonstrates the understanding that language is acquired through social interaction and that social discourse, in spoken and written formats, underlies all learning in literacy;
- 4) incorporates the Illinois Early Learning and Development Standards – Children Age 3 to Kindergarten Enrollment Age set forth in 23 Ill. Adm. Code 235.Appendix A, the Illinois Early Learning Guidelines – Children from Birth to Age 3 set forth in 23 Ill. Adm. Code 235.Appendix C, and the Illinois Learning Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects set forth in 23 Ill. Adm. Code 1.Appendix D, including their organization and progressions and the interconnections among the strategies and skills;
- 5) evaluates the components of a comprehensive curriculum that develops children's language and literacy skills and strategies, and ensures that instructional goals and objectives are met;
- 6) creates a developmentally appropriate language- and literacy-rich classroom environment that incorporates opportunities, experiences, routines and activities that promote literacy;
- 7) intentionally engages children in experiences that will build foundational literacy skills;
- 8) understands and uses evidence-based instructional strategies that have been demonstrated to be particularly successful in differentiating instruction for all learners;
- 9) builds upon children's skills in their home language to develop language and literacy skills that are transferable to English;

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- 10) understands and uses the relationship between first and second language and literacy development to support the transfer of language and literacy skills from the home language to English; and
 - 11) utilizes a wide range of developmentally appropriate literacy assessments (e.g., informal, observational, performance-based, standardized, diagnostic measures, universal screening, curriculum-based and progress monitoring), recognizing their purposes, strengths and limitations.
- c) Using Research-based Instructional Approaches
- 1) Current Research
The effective early childhood teacher:
 - A) critically reviews current research in English language arts; and
 - B) applies research to instructional practice as appropriate.
 - 2) Decoding and Fluency
The effective early childhood teacher:
 - A) uses a developmentally appropriate, balanced literacy framework, such as "read-alouds", guided reading, centers, and independent reading and writing;
 - B) systematically and intentionally engages children with authentic functions of print to develop awareness and build understanding of concepts of print and text, including the use of illustrations and graphic representations; the use and understanding of graphemes and grapheme patterns; and understanding directionality of print in a wide variety of graphic and textual formats;
 - C) intentionally and systematically engages and supports children in developing the use of oral language, play and experimentation with language;
 - D) utilizes phonologically significant text to build children's knowledge and understanding of the phonological aspects of

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language, including the patterns of sounds and segmentation in and blending of speech at the word, syllable and phoneme levels;

E) engages children in textual experiences that provide opportunities for exploration of sound-symbol relationships at the word, syllable and phoneme levels;

F) intentionally and systematically engages children in textual experiences that provide opportunities for exploration and for embedded implicit and explicit instruction of varied and appropriate word identification strategies, including sight word recognition, phonics, and context and morphemic cues;

G) models and supports fluent language use in dialogue and in numerous and varied print sources and encourages children's developing use of fluent oral language;

H) provides intentional instruction of strategies that support the development of fluency, such as recognition of word and letter patterns, use of high frequency words and development of reading comprehension; and

I) intentionally supports the transfer of literacy competencies from the first to the second language for English learners, particularly in regards to functions of print (e.g., understanding the concepts of print and text, use of illustrations and graphic representations, use of oral language, play and experimentation with language, and sound-symbol relationships).

3) Reading Comprehension
The effective early childhood teacher:

A) selects a balance of developmentally appropriate, high-quality, complex information and narrative texts that match children's interests, cultural backgrounds, developmental levels and reading purposes;

B) recognizes text features that may challenge readers' understanding (e.g., prior knowledge assumptions, unfamiliar vocabulary,

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sentence complexity, unclear cohesive links, subtlety of relationships among characters or ideas, sophistication of tone, complexity of text structure, literary devices or data) and provides explicit modeling, instruction and discussion of these features to support reading comprehension;

- C) selects texts that support and build comprehension, vocabulary, understanding of text structure and literary devices and that provide clear and cohesive links between ideas and relationships. Illustrations, photographs, charts and graphs should meet the same criteria;
- D) models for and engages children in social discourse about texts as a means of scaffolding their understanding of more complex texts;
- E) provides text-appropriate supports, such as background experiences, previewing text, pre-teaching vocabulary or key information, repeated reading, discussing illustrations or other graphic features, and other strategies to enable children to understand and learn from challenging text;
- F) provides developmentally appropriate introductions to text, including materials, experiences, discussion and background connections that support children's motivation, purpose and understanding;
- G) provides developmentally appropriate modeling of and instruction on close reading of text, including identification of key ideas and details; analysis of craft, structure and illustrations; critical text evaluation; and numerous opportunities for guided and independent practice;
- H) models and engages children in the interpretation of graphic text features (e.g., tables, charts, illustrations, tables of contents, captions, headings, indexes) and includes numerous opportunities for guided and independent practice;
- I) models for and engages children in developmentally appropriate guided and independent discussions of high-level, text-dependent

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topics and ideas requiring complex thinking, understanding, inference, application, evaluation, analysis, synthesis, persuasion and evidentiary argument;

- J) models for and engages children in developmentally appropriate independent practice of comparing multiple texts and evaluating and synthesizing information between and across texts to support coherent understanding of a topic;
- K) models for and engages children in the use of developmentally appropriate reading comprehension strategies (e.g., predicting, sequencing, connecting, visualizing, monitoring, questioning, summarizing, synthesizing, making inferences, evaluating), and includes numerous opportunities for guided and independent practice of these strategies' use in understanding text;
- L) models, discusses and supports children's developmentally appropriate use of literary elements and text features across multiple genres and disciplines in age-appropriate text;
- M) shares varied print sources, discussing, as appropriate, alternate views and perspectives of topics presented in texts;
- N) models, discusses and supports children's use of critical reading strategies, including the evaluation of text claims through identification of supporting evidence, such as evidentiary argument and persuasion;
- O) shares varied print sources, discussing, as appropriate, text structures that support children's understanding of the text;
- P) provides intentional modeling of and instruction on the use of the organizational structure of texts, including how specific sentences, paragraphs and larger portions of the text relate to each other and the whole, and offers numerous opportunities for guided and independent practice; and

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Q) intentionally plans experiences for English learners that facilitate the transfer of effective reading comprehension strategies and competencies from the home language to English.

4) Writing

The effective early childhood teacher:

A) introduces children to the organization and basic features of print;

B) provides opportunities for children to write, including pictures and dictation, for authentic purposes in multiple forms and genres to demonstrate how ideas, thoughts and language can be represented by pictures and/or texts;

C) engages children in using drawing and writing to develop an understanding of content-area concepts and skills;

D) encourages and guides children in all stages of writing development from the earliest scribbles through conventional writing;

E) models and provides instruction in producing coherent and clear writing with organization, development, substance and style appropriate to the task, purpose and audience;

F) confers with children to motivate and scaffold children's development throughout the writing process;

G) models and provides instruction in creating a text (oral or written) that represents information learned through a hands-on experience;

H) introduces and provides instruction in creating an informative and explanatory text that introduces a topic supported by logically ordered facts, definitions, details, examples, quotations and other types of information; uses precise language, academic vocabulary and appropriate transitional devices; and concludes with a statement related to the topic;

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- D) models and provides instruction in creating a text (oral or written) with a beginning, middle and end, based on real or imagined experiences or events;
- J) introduces and provides instruction in creating a narrative text based on real or imagined experiences or events that introduces a narrator and/or characters; uses dialogue, description and pacing to develop and organize a sequence of events; uses concrete words, phrases, sensory details and transitional devices; and uses a conclusion that follows from the experiences or events;
- K) models and provides instruction in creating a text (oral or written) that shares an opinion about a hands-on experience;
- L) provides instruction in creating a text that introduces an opinion on a topic, supports the opinion with information and reasons based on facts and details, uses appropriate transitional devices and concludes with a statement supporting the opinion;
- M) models and provides instruction in developing written and oral arguments to support claims in an analysis of substantive topics or texts using valid reasoning and relevant and sufficient evidence;
- N) teaches children to conduct research projects, as developmentally appropriate, using evidence drawn from multiple sources, including how to select and develop topics; gather information from a variety of sources, including the Internet; synthesize information; and paraphrase, summarize, and quote and cite sources;
- O) models and provides instruction in the conventions of standard English grammar and usage (e.g., irregular verbs, plural nouns, past tense of irregular verbs, subject-verb agreement, pronoun-antecedent agreement, conjunctions, prepositions, interjections, perfect verb tenses) in children's oral and written work;
- P) models, encourages and guides the use of widely accepted English conventions of capitalization, punctuation and spelling as children use these conventions in creating written work;

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- Q) models and provides instruction in using technology to produce and publish oral and written texts and to interact and collaborate with others;
 - R) provides feedback to written work to guide the process of children's revising and editing their work; and
 - S) intentionally plans experiences for English learners that facilitate the transfer of effective writing strategies and competencies from the home language to English.
- 5) Speaking and Listening
The effective early childhood teacher:
- A) provides opportunities for social discourse between individual children and in whole and small group collaborative discussions and assists them in following appropriate social conventions, such as eye contact, body language and taking turns;
 - B) engages children in a variety of developmentally appropriate oral language and listening activities, including following directions, asking and responding to questions, conveying information and ideas, describing feelings, and arguing and persuading;
 - C) engages children in a variety of listening activities, including identifying rhymes and sounds in the environment, discriminating phonemes and conducting other phonemic awareness activities;
 - D) models and supports children in listening actively and critically in order to understand, evaluate and respond to a speaker's message;
 - E) models, guides and instructs children in presenting ideas, opinions and information using facts and relevant details to support main ideas;
 - F) accepts children's home language and developing English language skills while modeling the widely accepted conventions of English grammar and usage; and

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G) intentionally plans experiences for English learners that facilitate the transfer of speaking and listening strategies and competencies from the home language to English.

6) Vocabulary

The effective early childhood teacher:

A) supports vocabulary development daily by intentionally selecting literacy materials that expand children's knowledge and language development;

B) guides and supports children's explorations of word relationships and nuances in word meanings;

C) understands the socio-cultural context for language use and social discourse;

D) uses information about children's individual experiences, families, cultures and communities to create meaningful vocabulary learning opportunities and enrich instruction for all children;

E) for the instructional focus, selects appropriate words central to the meaning of the text and likely to be unknown, academic vocabulary and word relationships;

F) introduces children to word play and forms of language that enhance vocabulary and understanding of language (e.g., poetic devices, synonyms, antonyms, homonyms);

G) introduces strategies for clarifying the meaning of unknown words, including contextual analysis, structural analysis and the use of reference materials;

H) plans experiences that promote oral and written language development and the use of newly acquired vocabulary across disciplines;

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- D) understands and implements the forms and functions of academic language to help children develop and express content understandings;
- J) utilizes authentic text (e.g., informational text, fiction, newspapers, recipes, charts) to help children develop word consciousness;
- K) actively engages children in using a wide variety of strategies and authentic materials for developing and expanding vocabularies; and
- L) uses home language vocabulary to develop and expand English vocabulary for English learners.

d) Authentic Materials

The effective early childhood teacher:

- 1) selects and uses a wide range of high-quality, diverse literature and informational, narrative and other texts that address the interests and social and cultural backgrounds of children at levels that are appropriate to their development and build background knowledge and understanding;
- 2) uses evidence-based and developmentally based criteria for evaluating and selecting texts and instructional materials;
- 3) estimates the accessibility of texts using qualitative and quantitative factors, as well as children's background knowledge;
- 4) uses culturally responsive texts to promote children's understanding of their lives, society and other cultures and societies;
- 5) uses a variety of technology and technologically based texts and online resources to support literacy instruction; and
- 6) makes available to English learners a wide range of high-quality, diverse literature and informational, narrative and other texts that address the interests and social, cultural and language backgrounds of these children at levels that are appropriate to their development and build background knowledge and understanding.

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- e) Constructing a Supportive Language and Literacy Environment
The effective early childhood teacher:
- 1) understands the foundational role that literacy and language play across the classroom environment and in content areas;
 - 2) sets up an environment that is safe and low risk that encourages children and allows them be comfortable taking risks;
 - 3) designs a literacy-rich environment incorporating authentic, diverse, inclusive and developmentally appropriate materials and experiences;
 - 4) understands motivation and engagement and the use of the "gradual-release-of-responsibility" approach to design learning experiences that build children's self-direction and ownership of literacy learning;
 - 5) establishes classroom routines that promote independence, self-direction, collaboration and responsibility for literacy learning;
 - 6) uses a strategic combination of flexible groupings (individual, group and whole class) to meet the learning needs of each child efficiently and effectively;
 - 7) incorporates children's choices in choosing literacy materials and activities; and
 - 8) builds collaborative classroom communities that support and engage all children in reading, writing, listening, speaking, viewing and visually representing in their home language and English.

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

Section 26.130 Curriculum: Mathematics Standards Through August 31, 2019

The competent early childhood teacher demonstrates proficiency in the use of mathematics; understands and communicates the major concepts, procedures, and reasoning processes of mathematics, which include number systems, number sense, geometry, measurement, statistics, probability; and algebra; and promotes the abilities of children from birth to grade ~~3~~three as they

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apply, interpret, and construct mathematical thinking skills in a variety of situations.

- a) Knowledge Indicators – The competent early childhood teacher:
 - 1) understands problem-solving approaches that children may use to investigate and understand mathematical content;
 - 2) understands various approaches (estimation, mental math, manipulative modeling, pattern recognition, and technology) that can be used to explore and communicate mathematical ideas, solve problems, and investigate everyday situations;
 - 3) understands concepts, skills, and procedures related to number, number sense, computation and numeration;
 - 4) understands concepts, skills, and procedures related to geometry and spatial relationships;
 - 5) understands concepts, skills, and procedures related to measurement of attributes such as length, weight, volume, and temperature;
 - 6) understands concepts, skills, and procedures needed to collect and analyze data;
 - 7) understands concepts, skills, and procedures related to exploring concepts of chance; and
 - 8) understands and uses patterns and relationships to analyze mathematical situations.
- b) Performance Indicators – The competent early childhood teacher:
 - 1) provides opportunities for students to apply problem-solving strategies in order to investigate and understand mathematical content;
 - 2) uses various approaches (estimation, mental math, manipulative modeling, pattern recognition, and technology) to assist students as they explore and communicate mathematical ideas, solve problems, and investigate everyday situations;

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- 3) provides opportunities for children to learn and apply number, number sense, computation and numeration in everyday situations;-
- 4) provides opportunities for children to learn and apply geometry and spatial relationships in everyday situations;-
- 5) provides opportunities for children to learn and apply measurements, such as length, weight, volume, and temperature, in everyday situations;-
- 6) provides opportunities for children to learn and apply procedures needed to collect and analyze data in everyday situations as they use graphing and estimation;-
- 7) provides opportunities for children to learn and apply concepts of chance in everyday situations; and-
- 8) provides opportunities for children to learn and apply patterns and relationships ~~to analyze~~ in their analysis of everyday situations.

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

Section 26.135 Curriculum: Mathematics Standards Beginning September 1, 2019

Each teacher holding an early childhood education endorsement shall possess the knowledge and skills articulated in this Section.

a) Foundational Mathematical Knowledge

1) Mathematical Proficiency

The effective early childhood teacher:

- A) understands conceptually the mathematical content taught during preschool to grade 2 as well as the content taught in grades 3 to 8; can explain and apply mathematical concepts and procedures; and can make connections to everyday mathematical applications or real-world analogies necessary to translate formal mathematical content into meaningful instruction that children can understand and learn;

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- B) understands the mathematical procedures taught during the early childhood years and just beyond, including the skills to link procedural knowledge to conceptual understanding so each step in a procedure can be explained or a procedure can be readily adapted to solve a novel problem; and
 - C) possesses affective capacities, including a productive disposition with positive beliefs about mathematics (e.g., nearly everyone is capable of understanding at an elementary level) and the confidence to tackle challenging problems and teach mathematics.
- 2) Children's Mathematical Development
The effective early childhood teacher:
- A) understands how children develop mathematical proficiency from birth to age 8 and what conditions foster or impede this development;
 - B) understands how informal mathematical knowledge based on everyday experiences develops and provides a basis for understanding and learning formal mathematics (i.e., school-taught and largely symbolic) during the early childhood years and beyond; and
 - C) understands the developmental progressions of key early childhood concepts and skills.
- b) Pedagogical Knowledge
- 1) Best Practices
The effective early childhood teacher:
- A) understands the importance of using a variety of teaching techniques (including regular instruction that specifically targets mathematics, integrated instruction, and unstructured and structured play) and how to systematically and intentionally engage children with developmentally appropriate and worthwhile mathematical activities, materials and ideas; take advantage of

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spontaneous learning moments; structure the classroom environment to elicit self-directed mathematical engagement; and choose and use games to serve as the basis for intentional, spontaneous or self-directed learning;

- B) understands the importance of using instructional activities and materials or manipulatives thoughtfully and how these are used to transmit key concepts and skills;
- C) understands the importance of focusing on the learning of both skills and concepts that is meaningful;
- D) understands the importance of engaging children in the processes of mathematical inquiry (problem-solving, reasoning, conjecturing and communicating/justifying or "talking math") and how to do so effectively;
- E) understands the importance of fostering a positive disposition and how to do so effectively (e.g., encouraging children to do as much for themselves as possible), including how to prevent or remedy math anxiety; and
- F) understands the importance of using assessment on an ongoing basis in planning and evaluating instruction, targeting student needs and evaluating student progress.

2) Psychological Development

The effective early childhood teacher:

- A) understands the importance of building on what children already know, so that instruction is meaningful (e.g., how to relate or connect formal terms and procedures to children's informal knowledge);
- B) understands the importance of using developmental progressions effectively in assessing developmental readiness (e.g., identifying whether developmental prerequisites for an instructional goal have been acquired), planning developmentally appropriate instruction and determining the next instruction, step or a remedial plan;

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- C) understands the importance of the limitations of children's informal knowledge and how developmentally inappropriate instruction can cause misconceptions or other learning difficulties, as well as how to address common learning pitfalls; and
- D) understands the importance of the progression in children's thinking from concrete (relatively specific and context-bound) to abstract (relatively general and context free), including the need to help children "mathematize" situations (going beyond appearances to consider underlying commonalities or patterns).

c) Standards1) Counting and Cardinality

The effective early childhood teacher:

- A) understands that subitizing (i.e., immediately and reliably recognizing the total number of items in small collections of items and labeling the total with an appropriate number word) is the basis for a learning trajectory of verbal-based number, counting and arithmetic concepts and skills;
- B) understands the requirements, components and principles of meaningful object counting (i.e., stable order principle, one-for-one principle, cardinality principle and abstraction principle);
- C) understands key, more advanced verbal and object counting skills on the learning trajectory for counting and cardinality and knows how these skills are logically and developmentally related;
- D) understands how children's ability to make verbal-based magnitude comparisons develops, including the mathematical ideas this entails;
- E) understands why written numbers (numerals) are valuable tools (e.g., can serve as a memory aid; make written calculations with large numbers easier or even possible) and how to promote the meaningful learning of numeral reading and writing to 10; and

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F) understands the role of estimation (e.g., useful when exact answers are not possible or an approximate answer is sufficient) and why children resist estimating answers (e.g., fear of being wrong, obsession with the correct answer as reinforced by the guess-and-check).

2) Operations and Algebraic Thinking
The effective early childhood teacher:

A) understands the specific addition and subtraction concepts and skills children need to learn in early childhood;

B) understands the formal meaning of relational symbols and how these symbols are or can be interpreted by children; and

C) understands the specific multiplication and division concepts and skills children need to learn in early childhood.

3) Numbers and Operations in Base Ten
The effective early childhood teacher:

A) understands, can identify and can apply the fundamental concepts of grouping and place-value that underlie the Hindu-Arabic numeral system and operations with multi-digit numbers;

B) understands the application of place value, the properties of operations, and the relation between addition and subtraction to adding and subtracting multi-digit numbers up to 1,000, including demonstrating and explaining renaming (carrying and borrowing) algorithms with base-ten blocks; and

C) understands the application of place value and properties of operations to multiply one-digit whole numbers and multiples of 10 up to 90 (e.g., 9×80), including demonstrating and explaining how the meaning of multiplication can be demonstrated with base-ten blocks.

4) Numbers and Operations: Fractions

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The effective early childhood teacher:

- A) understands, and can explain, two common meanings of fraction notation in terms of the conceptual basis for fractions (equal partitioning) using the informal analogy of "fair" sharing;
- B) understands, and can justify, equivalent fractions in terms of the informal analogy of "fair" sharing; and
- C) understands, and can justify, fraction comparisons in terms of the informal analogy of "fair" sharing.

5) Measurement and DataThe effective early childhood teacher:

- A) understands the general principles of measurement (e.g., object attributes, direct and indirect comparisons, unit value);
- B) explicitly understands purposes of and procedures for measurements (e.g., length, time, currency, volume) commonly used in everyday life, including how to derive formulas for area and perimeter; and
- C) understands the role of data, data analysis and data representations (e.g., graphs, tables) in solving problems, raising or addressing issues or questions (e.g., scientific, social, economic or political), and informing others about the importance of involving participants in collecting and analyzing their own data.

6) GeometryThe effective early childhood teacher:

- A) understands the van Hiele developmental levels of geometric thinking and demonstrates achievement of at least Level 2 (i.e., Level 0, visual; Level 1, analysis; Level 2, informal reasoning or abstraction; Level 3, deduction; and Level 4, rigor);
- B) understands how the "big ideas" of composition and decomposition and equal partitioning apply to geometry and the developmental

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trajectory children follow in becoming competent composers and decomposers;

- C) understands basic geometric concepts, such as angle, parallel and perpendicular, and can describe these ideas in terms of an informal analogy (e.g., an angle is the "amount of turn");
- D) understands and can summarize and illustrate the cognitive developmental progression from visual to descriptive to analytic to abstract characterizations of shapes; uses this progression to understand children's thinking;
- E) understands the importance of precision in describing and reasoning about spatial locations and relationships, including descriptive power of prepositions (and their imprecise mapping among languages and dialects) and mathematically precise tools, such as measurements, grids and the coordinate plane;
- F) understands that spatial relationships can be manipulated mentally and that point of view affects both experiences and representations of spatial relationships; and
- G) describes the connections (relationships) between geometric properties and arithmetic and algebraic properties, and adapts a problem in one domain to be solved in the other domain.

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

Section 26.140 Curriculum: Science

The competent early childhood teacher understands the interrelationships among science, technology, and society; understands and applies fundamental concepts related to earth and space science, the life sciences, the physical sciences, and the environmental sciences; and promotes the scientific abilities of children ~~from birth through grade three~~ as they acquire new knowledge through the use of scientific thinking, reasoning, and inquiry.

- a) Knowledge Indicators – The competent early childhood teacher:
 - 1) understands the process of scientific inquiry and the interrelationships

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among science, technology, and society;

- 2) understands the principles of earth and space science, the life sciences, and the physical sciences and their interconnectedness in everyday environments; and-
- 3) incorporates the Illinois Early Learning and Development Standards – Children Age 3 to Kindergarten Enrollment Age set forth in 23 Ill. Adm. Code 235.Appendix A, the Illinois Early Learning Guidelines – Children from Birth to Age 3 set forth in 23 Ill. Adm. Code 235.Appendix C, and the Illinois Learning Standards for Science set forth in 23 Ill. Adm. Code 1.Appendix D.

b) Performance Indicators – The competent early childhood teacher:

- 1) promotes and encourages children's innate curiosity about objects and events, respect for living organisms, and appreciation of the environment;
- 2) provides opportunities for children to conduct experiments, solve problems, apply the scientific process, and incorporate safety practices during all investigations; and-
- 3) implements activities that foster children's application of the principles of earth and space science, the life sciences, and the physical sciences, and exploration of their interconnectedness in everyday environments.

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

Section 26.150 Curriculum: Social Science

The competent early childhood teacher understands the interrelationships among the social sciences; uses historical, geographical, economic, and political concepts and modes of inquiry; and promotes the abilities of children ~~from birth through grade three~~ as they begin to experience, think about, and make informed decisions as members of a culturally diverse, democratic society and interdependent world.

a) Knowledge Indicators – The competent early childhood teacher:

- 1) understands the basic concepts of and interrelationships among the social

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sciences and the ways in which geography, history, civics, and economics relate to everyday situations and experiences;

- 2) understands geographic concepts and phenomena;
- 3) understands the major ideas, eras, themes, developments, and turning points in the history of Illinois, the United States, and the world;
- 4) understands the rights and responsibilities of citizenship in the United States;
- 5) understands the basic concepts of economic systems, with emphasis on the United States;
- 6) understands concepts related to the structure and organization of human societies and relationships among social, economic, cultural, and political activities and institutions; and
- 7) incorporates the Illinois Early Learning and Development Standards – Children Age 3 to Kindergarten Enrollment Age set forth in 23 Ill. Adm. Code 235.Appendix A, the Illinois Early Learning Guidelines – Children from Birth to Age 3 set forth in 23 Ill. Adm. Code 235.Appendix C, and the Illinois Learning Standards for Social Science set forth in 23 Ill. Adm. Code 1.Appendix D.

b) Performance Indicators – The competent early childhood teacher:

- 1) provides opportunities for children to develop beginning concepts, skills, and dispositions that focus on how geography, history, civics (participation and citizenship), and economics relate to everyday situations and experiences;
- 2) provides opportunities for children to use maps and symbols, observe and describe physical characteristics of local communities, and explain the interdependence of people, places, and regions;
- 3) creates opportunities for children to develop beginning historical concepts involving people, cultures, families, folklore, and related events;

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- 4) provides opportunities for children to explore the interrelationships among people and the roles of individuals and groups in the world in which ~~they~~we live;~~;~~
- 5) provides opportunities for children to gather, organize, map, and interpret data and to use technology to communicate concepts, information, and procedures; ~~and~~.
- 6) creates opportunities for children to understand the relationship of self to others and to social, economic, cultural, and political activities and institutions.

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

Section 26.240 Assessment Standards Through August 31, 2019

The competent early childhood teacher understands various formal and informal assessment strategies and uses them to support the continuous development of all children.

- a) Knowledge Indicators – The competent early childhood teacher:
 - 1) understands assessment as a means of evaluating how children learn, what they know and are able to do in relationship to national, State, and local standards, and what kinds of experiences will support their further growth and development;~~;~~
 - 2) understands the purposes, characteristics, and limitations of different kinds of assessments;~~;~~
 - 3) understands measurement theory and assessment-related issues, such as validity, reliability, bias, and scoring;~~;~~
 - 4) understands how to use the results of assessment to reflect on and modify teaching; ~~and~~.
 - 5) understands how to select, construct, and use assessment and evaluation strategies and instruments for diagnosis and prescription.
- b) Performance Indicators – The competent early childhood teacher:

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- 1) uses a variety of assessment results to diagnose students' learning and development, develop a student profile, align and modify instruction, and design teaching strategies;~~;~~
- 2) maintains useful, accurate, and ethical records of students' work and performance and communicates about students' progress knowledgeably and responsibly to students, parents, school~~;~~ and community;~~;~~
- 3) uses assessment results for the purpose of planning appropriate programs, environments~~;~~ and interactions and adapting for individual differences;~~;~~
- 4) participates and assists other professionals in conducting family-centered assessments;~~;~~
- 5) selects, evaluates~~;~~ and interprets formal, standardized assessment instruments and information used in the assessment of children and integrates authentic classroom assessment data with formal assessment information;~~;~~
- 6) communicates assessment results and integrates assessment results from others as an active participant in the development and implementation of students' IEPs and IFSPs;~~;~~
- 7) involves families in assessing and planning for individual children, including children with disabilities, developmental delays~~;~~ or special abilities; and~~;~~
- 8) uses appropriate technologies to monitor and assess students' progress.

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

Section 26.245 Assessment Standards Beginning September 1, 2019

The effective early childhood teacher:

- a) creates and uses assessment information both for the facilitation of child development and measuring academic achievement;

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- b) uses a variety of assessment tools, including developmental continuums, universal screening, authentic assessment, diagnostic measures, curriculum-based assessment and progress monitoring procedures;
- c) monitors child progress for content area benchmarks and developmental outcomes;
- d) assesses children's interests, motivation and engagement in instruction;
- e) uses assessment data, including observational records and children's work products to plan instruction;
- f) partners with families to understand children's background and ongoing learning progress;
- g) empowers children to self-assess their learning progress;
- h) communicates academic progress and personal development to all stakeholders, including children, families, other teachers and school administrators, and communicates aggregated trends to the school board and other policy bodies;
- i) aligns assessments with required reporting mechanisms to assure that benchmarks for learning standards and developmental growth are monitored systematically; and
- j) uses, interprets and plans instruction with all forms of assessment instruments appropriate to the developmental level. These instruments include standardized instruments, textbook and other curricular instruments and teacher-developed approaches.

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

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- 1) Heading of the Part: Student Records
- 2) Code Citation: 23 Ill. Adm. Code 375
- 3) Section Number: 375.10 Proposed Action:
Amendment
- 4) Statutory Authority: 105 ILCS 10
- 5) A Complete Description of the Subjects and Issues Involved: Two technical changes are being proposed in Part 375, both of which are being made in the definition of "Student Permanent Record". The first change reminds districts of the need to affix the State Seal of Biliteracy or the State Commendation toward Biliteracy to the academic transcripts of qualifying students, which are retained in each student's permanent school student record. The second change reiterates the need for school districts to retain the copy of a student's certified birth certificate in the student's permanent record.

The rulemaking also acknowledges the change in the statutory citation for the state assessments (see P.A. 98-972, effective August 15, 2014).
- 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.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this Notice to:

Shelley Helton

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENT

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: 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 Amendment 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 k: SCHOOL RECORDSPART 375
STUDENT RECORDS

Section

375.10	Definitions
375.20	Rights of Students
375.30	Notification
375.40	Maintenance and Destruction of School Student Records
375.50	Cost for Copies of Records
375.60	Emergency Release of Information
375.70	Release of Information
375.75	Public and Nonpublic Schools: Transmission of Records for Transfer Students
375.80	Directory Information
375.90	Challenge Procedures
375.100	Implementation
375.110	Enforcement

AUTHORITY: Implementing and authorized by the Illinois School Student Records Act [105 ILCS 10] and Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a].

SOURCE: Emergency rule adopted March 24, 1976; codified at 7 Ill. Reg. 12864; amended at 10 Ill. Reg. 12602, effective July 9, 1986; amended at 12 Ill. Reg. 4818, effective February 25, 1988; amended at 20 Ill. Reg. 15304, effective November 18, 1996; amended at 23 Ill. Reg. 13843, effective November 8, 1999; amended at 26 Ill. Reg. 16202, effective October 21, 2002; amended at 29 Ill. Reg. 5467, effective March 29, 2005; amended at 32 Ill. Reg. 7143, effective April 17, 2008; amended at 32 Ill. Reg. 16475, effective September 29, 2008; amended at 36 Ill. Reg. 2220, effective January 24, 2012; amended at 37 Ill. Reg. 9479, effective June 19, 2013; amended at 38 Ill. Reg. _____, effective _____.

Section 375.10 Definitions

"Accident Report" means documentation of any reportable student accident that results in an injury to a student, occurring on the way to or from school or on school grounds, at a school athletic event or when a student is participating in a

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school program or school-sponsored activity or on a school bus and that is severe enough to cause the student not to be in attendance for one-half day or more or requires medical treatment other than first aid. The accident report shall include identifying information, nature of injury, days lost, cause of injury, location of accident, medical treatment given to the student at the time of the accident, or whether the school nurse has referred the student for a medical evaluation, regardless of whether the parent, guardian or student (if 18 years or older) or an unaccompanied homeless youth (as defined by 42 USC 11434a) has followed through on that request.

"Act" means the Illinois School Student Records Act [105 ILCS 10].

"Health Record" means medical documentation necessary for enrollment and proof of dental examinations, as may be required under Section 27-8.1 of the School Code [105 ILCS 5/27-8.1].

"Health-related Information" means current documentation of a student's health information, not otherwise governed by the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110] or other privacy laws, which includes identifying information, health history, results of mandated testing and screenings, medication dispensation records and logs (e.g., glucose readings), long-term medications administered during school hours, documentation regarding a student athlete's and his or her parents' acknowledgement of the district's concussion policy adopted pursuant to Sections 10-20.53 and 34-18.45 of the School Code [105 ILCS 5/10-20.53 and 34-18.45], and other health-related information that is relevant to school participation (e.g., nursing services plan, failed screenings, yearly sports physical exams, interim health histories for sports).

"Official Records Custodian" means the individual appointed in each school in accordance with Section 4 of the Act [105 ILCS 10/4] who has responsibility for the *maintenance, care and security of all school student records, whether or not the records are in his or her personal custody or control.*

"School Student Record" shall have the meaning set forth in Section 2(d) of the Act [105 ILCS 10/2(d)], except that school student records shall not include:

Video or other electronic recordings created and maintained by law enforcement professionals working in the school or for security or safety

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reasons or purposes, provided the information was created at least in part for law enforcement or security or safety reasons or purposes;

Electronic recordings made on school buses, as defined in Section 14-3 of the Criminal Code of 1961 [720 ILCS 5/14-3]; and

Any information, either written or oral, received pursuant to Section 22-20 of the School Code [105 ILCS 5/22-20] and Sections 1-7 and 5-905 of the Juvenile Court Act of 1987 [705 ILCS 405/1-7 and 5-905].

The content of a video or other electronic recording may become part of a student's school student record to the extent school officials use and maintain this content for a particular reason (e.g., disciplinary action, compliance with a student's Individualized Education Program) regarding that specific student. Video or other electronic recordings that become part of a student's school record shall not be a public record and shall be released only in conformance with Section 6(a) of the Act and the federal Family Educational Rights and Privacy Act (20 USC 1232g).

"Special Education Records" means school records that relate to identification, evaluation, or placement of, or the provision of a free and appropriate public education to, students with disabilities under the Individuals with Disabilities Education Act (20 USC 1400 et seq.) and Article 14 of the School Code [105 ILCS 5/Art. 14], to include the report of the multidisciplinary staffing conference on which placement or nonplacement was based, and all records and audio recordings in any format relating to special education placement hearings and appeals.

"Student Permanent Record" means and shall consist of the following, as limited by Section 2(d) of the Act:

Basic identifying information, including the student's name and address, birth date and place, and gender, and the names and addresses of the student's parents;

[Evidence required under Section \(5\)\(b\)\(1\) of the Missing Children's Records Act \[325 ILCS 50/5\(b\)\(1\)\];](#)

Academic transcript, including:

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grades, class rank, graduation date and grade level achieved;

scores on college entrance examinations, except that a parent may request, in writing, the removal from the academic transcript of any score received on college entrance examinations (also see Section 375.30(d) ~~of this Part~~); ~~and~~

the unique student identifier assigned and used by the Student Information System established pursuant to ~~Section 1.75 of rules governing Public Schools Evaluation, Recognition and Supervision (see 23 Ill. Adm. Code 1.75 (Student Information System))~~;

as applicable, designation of the student's achievement of the State Seal of Biliteracy, awarded in accordance with Section 2-3.157 of the School Code [105 ILCS 5/2-3.157] and 23 Ill. Adm. Code 1.442 (State Seal of Biliteracy); and

as applicable, designation of the student's achievement of the State Commendation Toward Biliteracy, awarded in accordance with 23 Ill. Adm. Code 1.442 (State Seal of Biliteracy);

Attendance record;

Health record;

Record of release of permanent record information in accordance with Section 6(c) of the Act [105 ILCS 10/6(c)];

Scores received on all State assessment tests administered at the high school level (i.e., grades 9 through 12) (see 105 ILCS 5/~~2-3.64a-52-3.64(a)~~); and

If not maintained in the temporary record, may also consist of:

Honors and awards received; and

Information concerning participation in school-sponsored activities or athletics, or offices held in school-sponsored organizations.

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No other information shall be placed in the student permanent record.

"Student Temporary Record" means all information not required to be in the student permanent record and shall consist of the following, as limited by Section 2(d) of the Act:

A record of release of temporary record information in accordance with Section 6(c) of the Act [105 ILCS 10/6(c)];

Scores received on the State assessment tests administered in the elementary grade levels (i.e., kindergarten through grade 8) (see 105 ILCS ~~5/2-3.64a-52-3.64(a)~~);

The completed home language survey form (see 23 Ill. Adm. Code 228.15 ([Identification of Eligible Students](#)));

Information regarding serious disciplinary infractions (i.e., those involving drugs, weapons, or bodily harm to another) that resulted in expulsion, suspension or the imposition of punishment or sanction;

Information provided under Section 8.6 of the Abused and Neglected Child Reporting Act [325 ILCS 5/8.6], as required by Section 2(f) of the Act [105 ILCS 10/2(f)];

Any biometric information that is collected in accordance with Section 10-20.40 or 34-18.34 of the School Code [105 ILCS 5/10-20.40 or 34-18.34];

Health-related information;

Accident Reports; and

May also consist of:

Family background information;

Intelligence test scores, group and individual;

Aptitude test scores;

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Reports of psychological evaluations, including information on intelligence, personality and academic information obtained through test administration, observation, or interviews;

Elementary and secondary achievement level test results;

Participation in extracurricular activities, including any offices held in school-sponsored clubs or organizations;

Honors and awards received;

Teacher anecdotal records;

Other disciplinary information;

Special education records;

Records associated with plans developed under section 504 of the Rehabilitation Act of 1973 (29 USC 701 et seq.); and

Any verified reports or information from non-educational persons, agencies or organizations of clear relevance to the education of the student.

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

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- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
120.10	Amendment
120.12	Amendment
120.32	Amendment
120.64	Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Rule: August 19, 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 *Illinois Register*: April 4, 2014; 38 Ill. Reg. 7426
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences Between Proposal and Final Version: The following change has been made:

Subsection (k) of Section 120.64 has been amended to delete "except 120.385(c)" in the last sentence and shall read as follows:

"The provisions in this subsection are intended to comport with federal requirements related to eligibility for long term care, in particular, requirements under 42 U.S.C. 1396p (Section 1917 of the Social Security Act), federal regulations and guidance from the US Department of Health and Humana Services related to those statutory requirements for cases under this Section 120.64. Interpretation and application of this subsection shall be made in light of those requirements. Effective January 1, 2014, for the purposes of determining long term care eligibility for cases under this Section 120.64, the following provisions shall apply: 89 Ill. Adm. Code 120.61, except 120.61(e) and (f) until such time as federal rules are promulgated expanding post-eligibility treatment of income to cases

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under this Section, and those Sections of Subpart H of this Part 120 relating to long term care eligibility, including Sections 120.346, 120.347, 120.379, 120.385 (except 120.385(c)) and 120.388."

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rules currently in effect? Yes, 38 Ill. Reg. 7650; effective 3/24/14
- 14) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
120.308	Amendment	38 Ill. Reg. 14654; July 18, 2014
120.380	Amendment	38 Ill. Reg. 14654; July 18, 2014

- 15) Summary and Purpose of Rulemaking: Article 7 of PA 98-104 establishes eligibility for the newly eligible adults and former foster care children under the Affordable Care Act (ACA) and financial eligibility methodology mandated by the ACA for newly eligible adults and certain existing Medicaid eligible groups. This rulemaking makes clarifications to the eligibility criteria for these groups, including the criteria for long term care.
- 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 Amendments begins on the next page:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 120

MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section

120.1 Incorporation by Reference

SUBPART B: ASSISTANCE STANDARDS

Section

120.10 Eligibility for Medical Assistance
120.11 Eligibility for Pregnant Women and Children
120.12 Healthy Start – Medicaid Presumptive Eligibility Program ~~for~~ For Pregnant Women
120.14 Presumptive Eligibility for Children
120.20 MANG(AABD) Income Standard
120.30 MANG(C) Income Standard
120.31 MANG(P) Income Standard
120.32 FamilyCare Assist
120.34 FamilyCare Share and FamilyCare Premium Level 1 (Repealed)
120.40 Exceptions To Use Of MANG Income Standard (Repealed)
120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section

120.60 Community Cases
120.61 Long Term Care
120.62 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings Under 89 Ill. Adm.
Code 140.643 (Repealed)
120.63 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings (Repealed)
120.64 Determination of Eligibility for Cases Subject to Modified Adjusted Gross

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- 120.65 Income (MAGI) Methodology
Department of Mental Health and Developmental Disabilities (DMHDD)
Licensed Community – Integrated Living Arrangements (Repealed)

SUBPART D: MEDICARE PREMIUMS

- Section
120.70 Supplementary Medical Insurance Benefits (SMIB) Buy-In Program
120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)
120.73 Eligibility for Payment of Medicare Part B Premiums for Specified Low-Income
Medicare Beneficiaries (SLIBs) and Qualified Individuals-1 (QI-1)
120.74 Qualified Medicare Beneficiary (QMB) Income Standard
120.75 Specified Low-Income Medicare Beneficiaries (SLIBs) and Qualified
Individuals-1 (QI-1) Income Standards
120.76 Hospital Insurance Benefits (HIB)

SUBPART E: RECIPIENT RESTRICTION PROGRAM

- Section
120.80 Recipient Restriction Program

SUBPART F: MIGRANT MEDICAL PROGRAM

- Section
120.90 Migrant Medical Program (Repealed)
120.91 Income Standards (Repealed)

SUBPART G: AID TO THE MEDICALLY INDIGENT

- Section
120.200 Elimination Of Aid To The Medically Indigent
120.208 Client Cooperation (Repealed)
120.210 Citizenship (Repealed)
120.211 Residence (Repealed)
120.212 Age (Repealed)
120.215 Relationship (Repealed)
120.216 Living Arrangement (Repealed)
120.217 Supplemental Payments (Repealed)
120.218 Institutional Status (Repealed)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

120.224	Foster Care Program (Repealed)
120.225	Social Security Numbers (Repealed)
120.230	Unearned Income (Repealed)
120.235	Exempt Unearned Income (Repealed)
120.236	Education Benefits (Repealed)
120.240	Unearned Income In-Kind (Repealed)
120.245	Earmarked Income (Repealed)
120.250	Lump Sum Payments and Income Tax Refunds (Repealed)
120.255	Protected Income (Repealed)
120.260	Earned Income (Repealed)
120.261	Budgeting Earned Income (Repealed)
120.262	Exempt Earned Income (Repealed)
120.270	Recognized Employment Expenses (Repealed)
120.271	Income From Work/Study/Training Program (Repealed)
120.272	Earned Income From Self-Employment (Repealed)
120.273	Earned Income From Roomer and Boarder (Repealed)
120.275	Earned Income In-Kind (Repealed)
120.276	Payments from the Illinois Department of Children and Family Services (Repealed)
120.280	Assets (Repealed)
120.281	Exempt Assets (Repealed)
120.282	Asset Disregards (Repealed)
120.283	Deferral of Consideration of Assets (Repealed)
120.284	Spend-down of Assets (AMI) (Repealed)
120.285	Property Transfers (Repealed)
120.290	Persons Who May Be Included in the Assistance Unit (Repealed)
120.295	Payment Levels for AMI (Repealed)

SUBPART H: MEDICAL ASSISTANCE – NO GRANT (MANG) ELIGIBILITY FACTORS

Section	
120.308	Client Cooperation
120.309	Caretaker Relative
120.310	Citizenship
120.311	Residence
120.312	Age
120.313	Blind
120.314	Disabled
120.315	Relationship

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- 120.316 Living Arrangements
- 120.317 Supplemental Payments
- 120.318 Institutional Status
- 120.319 Assignment of Rights to Medical Support and Collection of Payment
- 120.320 Cooperation in Establishing Paternity and Obtaining Medical Support
- 120.321 Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
- 120.322 Proof of Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
- 120.323 Suspension of Paternity Establishment and Obtaining Medical Support Upon Finding Good Cause
- 120.324 Health Insurance Premium Payment (HIPP) Program
- 120.325 Health Insurance Premium Payment (HIPP) Pilot Program
- 120.326 Foster Care Program
- 120.327 Social Security Numbers
- 120.328 Compliance with Employment and Work Activity Requirements (Suspended; Repealed)
- 120.329 Compliance with Non-Economic Eligibility Requirements of Article IV (Suspended; Repealed)
- 120.330 Unearned Income
- 120.332 Budgeting Unearned Income
- 120.335 Exempt Unearned Income
- 120.336 Education Benefits
- 120.338 Incentive Allowance
- 120.340 Unearned Income In-Kind
- 120.342 Child Support and Spousal Maintenance Payments
- 120.345 Earmarked Income
- 120.346 Medicaid Qualifying Trusts
- 120.347 Treatment of Trusts and Annuities
- 120.350 Lump Sum Payments and Income Tax Refunds
- 120.355 Protected Income
- 120.360 Earned Income
- 120.361 Budgeting Earned Income
- 120.362 Exempt Earned Income
- 120.363 Earned Income Disregard – MANG(C)
- 120.364 Earned Income Exemption
- 120.366 Exclusion From Earned Income Exemption
- 120.370 Recognized Employment Expenses
- 120.371 Income From Work/Study/Training Programs

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120.372	Earned Income From Self-Employment
120.373	Earned Income From Roomer and Boarder
120.375	Earned Income In-Kind
120.376	Payments from the Illinois Department of Children and Family Services
120.379	Provisions for the Prevention of Spousal Impoverishment
120.380	Resources
120.381	Exempt Resources
120.382	Resource Disregard
120.383	Deferral of Consideration of Assets
120.384	Spenddown of Resources
120.385	Factors Affecting Eligibility for Long Term Care Services
120.386	Property Transfers Occurring On or Before August 10, 1993
120.387	Property Transfers Occurring On or After August 11, 1993 and Before January 1, 2007
120.388	Property Transfers Occurring On or After January 1, 2007
120.390	Persons Who May Be Included In the Assistance Unit
120.391	Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG And Children Born October 1, 1983, or Later
120.392	Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393	Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395	Payment Levels for MANG (Repealed)
120.399	Redetermination of Eligibility
120.400	Twelve Month Eligibility for Persons under Age 19

SUBPART I: SPECIAL PROGRAMS

Section	
120.500	Health Benefits for Persons with Breast or Cervical Cancer
120.510	Health Benefits for Workers with Disabilities
120.520	SeniorCare (Repealed)
120.530	Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21
120.540	Illinois Healthy Women Program
120.550	Asylum Applicants and Torture Victims

120.TABLE A Value of a Life Estate and Remainder Interest

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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120.TABLE B Life Expectancy (Repealed)

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13] and implementing the federal Deficit Reduction Act of 2005.

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days;

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peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; peremptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg.

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13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003,

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effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. 4701, effective March 3, 2004; amended at 28 Ill. Reg. 6139, effective April 1, 2004; emergency amendment at 28 Ill. Reg. 6610, effective April 19, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 7152, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11149, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12921, effective September 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13621, effective September 28, 2004; amended at 28 Ill. Reg. 13760, effective October 1, 2004; amended at 28 Ill. Reg. 14541, effective November 1, 2004; amended at 29 Ill. Reg. 820, effective January 1, 2005; amended at 29 Ill. Reg. 10195, effective June 30, 2005; amended at 29 Ill. Reg. 14939, effective September 30, 2005; emergency amendment at 30 Ill. Reg. 521, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10314, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 15029, effective September 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 2629, effective January 28, 2007; emergency amendment at 31 Ill. Reg. 7323, effective May 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11667, effective August 1, 2007; amended at 31 Ill. Reg. 12756, effective August 27, 2007; emergency amendment at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days; emergency rule suspended at 31 Ill. Reg. 16060, effective November 13, 2007; emergency rule repealed, effective May 10, 2008; peremptory amendment at 32 Ill. Reg. 7212, effective April 21, 2008; peremptory amendment suspended at 32 Ill. Reg. 8450, effective May 20, 2008; peremptory amendment repealed under Section 5-125 of the Illinois Administrative Procedure Act, effective November 16, 2008; amended at 32 Ill. Reg. 17428, effective November 1, 2008; peremptory amendment at 32 Ill. Reg. 18889, effective November 18, 2008; peremptory amendment suspended at 32 Ill. Reg. 18906, effective

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November 19, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 33 Ill. Reg. 6551, effective April 28, 2009; preemptory amendment repealed by emergency rulemaking at 33 Ill. Reg. 6712, effective April 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 1681, effective February 1, 2009; amended at 33 Ill. Reg. 2289, effective March 1, 2009; emergency amendment at 33 Ill. Reg. 5802, effective April 2, 2009, for a maximum of 150 days; emergency expired August 29, 2009; emergency amendment at 33 Ill. Reg. 10785, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 12703, effective September 7, 2009; amended at 33 Ill. Reg. 15707, effective November 2, 2009; amended at 33 Ill. Reg. 17070, effective December 2, 2009; amended at 34 Ill. Reg. 889, effective December 30, 2009; emergency rulemaking at 34 Ill. Reg. 13538, effective September 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. 379, effective December 27, 2010; amended at 35 Ill. Reg. 979, effective January 1, 2011; amended at 35 Ill. Reg. 18645, effective January 1, 2012; amended at 36 Ill. Reg. 4133, effective March 1, 2012; amended at 36 Ill. Reg. 9095, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013; amended at 36 Ill. Reg. 17044, effective November 26, 2012; emergency amendment at 36 Ill. Reg. 17549, effective December 3, 2012 through June 30, 2013; amended at 37 Ill. Reg. 10208, effective June 27, 2013; emergency amendment at 37 Ill. Reg. 15976, effective October 1, 2013, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 1139, effective January 1, 2014, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 2925, effective January 10, 2014, for a maximum of 150 days; emergency amendments effective January 1 and January 10, 2014 repealed by emergency rule at 38 Ill. Reg. 7368, effective March 24, 2014, for the remainder of the 150 day effective periods of each of the emergency rules; amended at 38 Ill. Reg. 5967, effective February 26, 2014; emergency amendment at 38 Ill. Reg. 7650, effective March 24, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 15646, effective July 7, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 16214, effective July 17, 2014; amended at 38 Ill. Reg. 18432, effective August 19, 2014.

SUBPART B: ASSISTANCE STANDARDS

Section 120.10 Eligibility for Medical Assistance

- a) Eligibility for medical assistance exists when a person meets the non-financial requirements of the program and the person's countable nonexempt income (see Sections 120.64, 120.330 and 120.360) is equal to or less than the applicable Medical Assistance – No Grant (MANG) standard and, for AABD MANG, countable nonexempt resources are not in excess of the applicable resource disregards (Section 120.382). Persons receiving basic maintenance grants under Article III or IV of the Public Aid Code are eligible for medical assistance.

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Financial eligibility for medical assistance for other persons living in the community is determined according to Section 120.60, unless otherwise specified. Financial eligibility for medical assistance for persons receiving long-term care services, as defined in Section 120.61(a), is determined according to that Section, unless otherwise specified.

- b) For AABD MANG, a person's countable income and resources include the person's countable income and resources and the countable income and resources of all persons included in the Medical Assistance standard. The person's responsible relatives living with the child must be included in the standard. The person has the option to request that a dependent child under age 18 in the home who is not included in the MANG unit be included in the MANG standard.
- c) For applications received on or after October 1, 2013, eligibility for pregnant women and children, as set forth in Section 120.11, 120.12 and 120.14, and parents and other caretaker relatives, as set forth in Section 120.32, shall be determined as set forth in Section 120.64.
- d) For AABD MANG, if a person's countable nonexempt income is greater than the applicable MANG standard and/or countable nonexempt resources are over the applicable resource disregard, the person must meet the spenddown obligation determined for the applicable time period before becoming eligible to receive medical assistance.
- e) Effective January 1, 2014, for pregnant women and children, if countable nonexempt income is greater than the applicable standard, [a child or pregnant woman](#)~~the person~~ must meet the spenddown obligation determined for the applicable time period before becoming eligible to receive medical assistance.
- f) A one month eligibility period is used for persons receiving long-term care services (as defined in Section 120.61(a)). Nonexempt income and nonexempt resources over the resource disregard are applied toward the cost of care on a monthly basis, as provided in Section 120.61.
- g) Newborns
 - 1) When the Department becomes aware of the birth of a child to a recipient of medical assistance, the child shall be deemed to have applied for medical assistance, without written request, if the mother had been

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receiving medical assistance on the date of birth of the child.

- 2) The newborn shall be eligible to receive medical assistance for a period of time as determined in Section 120.400.
- h) **ACA Adults**
Persons not otherwise eligible under this Section, who are no younger than age 19 and no older than age 64 in households with income that is at or below 133 [percent%](#) of the Federal Poverty Level (FPL) are eligible for medical assistance. Eligibility under this subsection (h) shall be determined as set forth in Section 120.64, except that no coverage for medical services under this subsection (h) shall begin prior to January 1, 2014. [Notwithstanding any other provision of this Title 89, effective January 1, 2014, a person may not spend down to become eligible under this subsection \(h\).](#)
- i) **Former Foster Care**
Persons older than age 18 and younger than age 26 who reside in Illinois, who are not eligible under subsections (a), (b), (c), (f) and (g), who were in foster care under the responsibility of the State of Illinois on the date of attaining age 18 or on the date of attaining age 21 for whom a court has continued wardship for good cause and who received medical assistance under the Illinois Medicaid State Plan or State Plan waiver while in foster care are eligible for medical assistance. No coverage for medical services under this subsection (i) shall begin prior to January 1, 2014. [Notwithstanding any other provision of this Title 89, effective January 1, 2014, a person may not spend down to become eligible under this subsection \(i\).](#)

(Source: Amended at 38 Ill. Reg. 18432, effective August 19, 2014.)

Section 120.12 Healthy Start – Medicaid Presumptive Eligibility ~~for~~ For Pregnant Women

The purpose of the Healthy Start – Medicaid Presumptive Eligibility (MPE) Program is to encourage early and continuous prenatal care to low income pregnant women who otherwise may postpone or do without such care. Presumptively eligible pregnant women shall receive ambulatory prenatal care before completing an application for medical assistance.

- a) **Eligibility:** To be eligible for the Healthy Start-Medicaid Presumptive Eligibility, effective October 1, 2013, the woman must have family income not exceeding 200% of FPL as determined pursuant to Section 120.64.

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- b) Qualified providers shall make all determinations as to eligibility in the MPE Program (42 USC 1396).
- c) The presumptive eligibility period shall be the period that:
 - 1) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income does not exceed 200% of FPL as determined pursuant to Section 120.64; and
 - 2) ends with (and includes) the earlier of:
 - A) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State Plan; or
 - B) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination, the last day.
- d) Duties of the State Agency, Qualified Providers, and Presumptively Eligible Pregnant Women
 - 1) The Department shall provide qualified providers with:
 - A) such forms [or information on other allowable application methods as described in 89 Ill. Adm. Code 110.5](#) as are necessary for a pregnant woman to make application for medical assistance under the State Plan; and
 - B) information on how to assist pregnant women in completing and filing the forms.
 - 2) A qualified provider who determines that a pregnant woman is presumptively eligible for medical assistance under a State Plan shall:
 - A) notify the Department of the determination within 5 working days after the date on which the determination is made;
 - B) inform the woman at the time the determination is made that she is

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required to make application for medical assistance under the State Plan by no later than the last day of the month following the month during which the determination is made; and

- C) assist the woman to apply for medical assistance.
- 3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State Plan shall make application for medical assistance under the State Plan by no later than the last day of the month following the month during which the determination is made.
- e) Ambulatory prenatal care consists of all outpatient medical care covered by the State Plan.

(Source: Amended at 38 Ill. Reg. 18432, effective August 19, 2014)

Section 120.32 FamilyCare Assist

- a) A caretaker relative (see Section 120.390) who is 19 years of age or older qualifies for medical assistance when countable income is at or below the appropriate income standard.
- b) The appropriate income standard is 133 percent% of the Federal Poverty Level (FPL) for the appropriate family size.
- c) For applications received on or after October 1, 2013, eligibility under this Section shall be determined as set forth in Section 120.64.
- d) Notwithstanding any other provision of this Title 89, effective January 1, 2014, a person may not spend down to become eligible under this Section.

(Source: Amended at 38 Ill. Reg. 18432, effective August 19, 2014)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section 120.64 Determination of Eligibility for Cases Subject to Modified Adjusted Gross Income (MAGI) Methodology

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- a) The eligibility period for a client shall begin with:
 - 1) the first day of the month of application; or
 - 2) the first day of any month prior to the month of application, if the client so desires, up to three months prior to the month of application; or
 - 3) the first day of the month after the month of application; or
 - 4) the first day of a month a pregnant woman and/or child under age 19 meets the requirements of Sections 120.11 and 120.31.
- b) The pregnant woman shall be eligible to receive medical assistance until 60 days following the last day of pregnancy. The 60 day medical coverage continues through the last day of the calendar month in which the 60 day period ends. The 60 day medical coverage period shall be provided for all women determined eligible for medical assistance under Section 120.11(a)(1), including women who are no longer pregnant at the time of application because the woman gave birth or had a miscarriage or an abortion, and including women who signed an adoption agreement.
- c) Children shall be eligible to receive medical assistance as determined pursuant to Section 120.400.
- d) Covered services received during the entire eligibility period will be paid by the Department (see 89 Ill. Adm. Code 140.3).
- e) A redetermination of eligibility will be made every 12 months.
- f) The client is responsible to report any changes that occur during the eligibility period that might affect eligibility for medical assistance. If changes in income or family composition occur that would make the client ineligible for medical assistance, appropriate action shall be taken by the Department, including evaluation of eligibility for other programs or termination of eligibility for medical assistance. Income changes occurring after a pregnant woman is determined eligible for coverage are not considered through the 60 day postpartum period following the last day of pregnancy.
- g) A review of case eligibility will be conducted for a pregnant woman during the

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second month of the 60 day extended medical coverage period. If eligible, the case shall be transferred by the Department to the appropriate program without interruption in benefit eligibility. If ineligible, the Department shall notify the client in writing.

- h) A review of case eligibility will be conducted when a child is determined ineligible for medical assistance as a child. If the child is otherwise eligible for medical assistance, the case shall be transferred by the Department without interruption in benefit eligibility. If ineligible, written notification shall be provided to the client.
- i) For applications received on or after October 1, 2013, the determination of eligibility under this Section shall comply with the Modified Adjusted Gross Income (MAGI) methodology established at section 1902(e)(14) of the Social Security Act (42 USC 1396a(e)(14)) and federal regulations established at 42 CFR 435.110 ([77 FR 17204, March 3, 2012, as amended at 78 FR 42302, July 15, 2013](#)) regarding parents and other caretaker relatives, 42 CFR 435.116 ([77 FR 17204, March 23, 2012, as amended at 78 FR 42302, July 15, 2013](#)) regarding pregnant women, 42 CFR 435.118 ([77 FR 17205, March 23, 2012](#)) regarding infants and children under age 19, 42 CFR 435.119 ([77 FR 17205, March 23, 2012, as amended at 78 FR 42302, July 15, 2013](#)) regarding ACA adults, and 42 CFR 435.603 ([77 FR 17206, March 23, 2012, as amended at 78 FR 42302, July 15, 2013](#)) regarding application of MAGI methodologies .
 - 1) For the purpose of determining whether a person is a parent or caretaker relative of a "dependent child", a "dependent child" means a child who is younger than age 18.
 - 2) For purposes of determining household size:
 - A) the total number of children a pregnant woman is expected to deliver shall be counted in the determination of the household size of any person in the household seeking benefits (42 CFR 435.603(b)).
 - B) For applicants who expect to file a tax return and who are not claimed as a dependent, household size shall be determined in accordance with 42 CFR 435.603(f)(1).

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- C) For applicants who expect to be claimed as a tax dependent and who do not meet an exception under 42 CFR 435.603(f)(2), household size shall be determined in accordance with 42 CFR 435.603(f)(2).
- D) For applicants who do not file a tax return nor expect to be claimed as a tax dependent, or who are tax dependents who meet an exception under 42 CFR 435.603(f)(2), household size shall be determined in accordance with 42 CFR 435.603(f)(3).
- E) For purposes of determining household size in accordance with 42 CFR 435.603(f)(3), the specified age is 19.
- j) This Section 120.64 shall apply to the initial determination of eligibility and, for renewals effective April 1, 2014, and later pursuant to 42 CFR 435.603(a)(3), for persons eligible under Section 5-2(5), (6)(a), ~~(7)~~, (8), (15), (17) and (18) of the Public Aid Code.
- k) The provisions in this subsection are intended to comport with federal requirements related to eligibility for long term care, in particular, requirements under 42 USC 1396p (section 1917 of the Social Security Act), federal regulations and guidance from the US Department of Health and Human Services related to those statutory requirements for cases under this Section 120.64. Interpretation and application of this subsection shall be made in light of those requirements. Effective January 1, 2014, for the purposes of determining long term care eligibility for cases under this Section 120.64, the following provisions shall apply: 89 Ill. Adm. Code 120.61, except Section 120.61(e) and (f) until such time as federal rules are promulgated expanding post-eligibility treatment of income to cases under this Section, and those Sections of Subpart H relating to long term care eligibility, including Sections 120.346, 120.347, 120.379, 120.385 and 120.388.

(Source: Amended at 38 Ill. Reg. 18432, effective August 19, 2014)

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- 1) Heading of the Part: Children's Health Insurance Program
- 2) Code Citation: 89 Ill. Adm. Code 125
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
125.110	Amendment
125.200	Amendment
125.220	Amendment
125.225	Amendment
125.250	Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Rule: August 19, 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*: April 25, 2014; 38 Ill. Reg. 8698
- 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 rule currently in effect? Yes
- 14) Are there any other rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The rulemaking implements Article 7 of PA 98-104 by clarifying the effective date for consideration of the new financial eligibility methodology mandated by the Affordable Care Act (ACA) for the Children's Health Insurance Program and clarifying federal regulatory citations.

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- 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 Amendments begins on the next page:

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NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 125

CHILDREN'S HEALTH INSURANCE PROGRAM

SUBPART A: GENERAL PROVISIONS

Section

- 125.100 General Description
- 125.110 Definitions

SUBPART B: GENERAL ELIGIBILITY AND ENROLLMENT

Section

- 125.200 Eligibility for Children's Health Insurance Program
- 125.205 Eligibility Exclusions and Terminations
- 125.220 Application Process
- 125.225 Presumptive Eligibility for Children
- 125.230 Determination of Financial Eligibility Using Modified Adjusted Gross Income (MAGI)
- 125.240 Eligibility Determination and Enrollment Process
- 125.245 Appeals
- 125.250 Annual Renewals
- 125.260 Adding Children to the Program and Changes in Participation
- 125.265 Adding Eligible Adults to the Program and Changes in Participation (Repealed)

SUBPART C: ALL KIDS HEALTH PLAN

Section

- 125.300 Covered Services
- 125.305 Service Exclusions
- 125.310 Copayments
- 125.320 Premium Requirements
- 125.330 Non-payment of Premium
- 125.340 Provider Reimbursement

SUBPART D: ALL KIDS REBATE

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Section

- 125.400 Minimum Coverage Requirements (Repealed)
- 125.420 Coverage Verification Process (Repealed)
- 125.430 Provision of Policyholder's Social Security Number (Repealed)
- 125.440 All Kids Rebate (Repealed)
- 125.445 Rebate Overpayments

AUTHORITY: Implementing and authorized by the Children's Health Insurance Program Act [215 ILCS 106] and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 15706, effective August 12, 1998, for a maximum of 150 days; adopted at 23 Ill. Reg. 543, effective December 24, 1998; emergency amendment at 24 Ill. Reg. 4217, effective March 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11822, effective July 28, 2000; amended at 26 Ill. Reg. 12313, effective July 26, 2002; emergency amendment at 26 Ill. Reg. 15066, effective October 1, 2002, for a maximum of 150 days; amended at 27 Ill. Reg. 4723, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10807, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18623, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 7163, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13632, effective September 28, 2004; emergency amendment at 30 Ill. Reg. 535, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10328, effective May 26, 2006; emergency amendment at 36 Ill. Reg. 10298, effective July 1, 2012 through June 30, 2013; emergency amendment at 37 Ill. Reg. 5049, effective April 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 10253, effective June 27, 2013; emergency amendment at 37 Ill. Reg. 15997, effective October 1, 2013, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 1153, effective January 1, 2014, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 2943, effective January 10, 2014, for a maximum of 150 days; emergency amendment effective January 10, 2014 repealed by emergency rulemaking at 38 Ill. Reg. 8454, effective April 15, 2014, for the remainder of the 150 days; amended at 38 Ill. Reg. 6006, effective February 26, 2014; emergency amendment at 38 Ill. Reg. 9110, effective April 15, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 18451, effective August 19, 2014.

SUBPART A: GENERAL PROVISIONS

Section 125.110 Definitions

For the purpose of this Part, the following terms shall be defined as follows:

"Act" means the Children's Health Insurance Program Act [215 ILCS 106].

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"All Kids Health Plan" means the health benefits coverage containing cost sharing features that is available to eligible children under the Act and includes All Kids Share (no premium required) and All Kids Premium Level 1 (premium required).

"All Kids Rebate" means the program available under the Act until December 31, 2013, for which the Department, on behalf of an eligible child, made rebate payments to offset a family's cost of insuring that child under privately sponsored or employer-based health insurance.

"Caretaker Relative" means a relative as specified in this definition, with whom the child lives, who is providing care, supervision and a home for the child. Caretaker relatives include:

Blood or adoptive relatives within the fifth degree of kinship:

father and mother

brother and sister

grandmother and grandfather (including up to great-great-great)

uncle and aunt (including up to great-great)

nephew and niece (including up to great-great)

first cousin

first cousin once removed (child of first cousin)

second cousin (child of great-aunt/uncle)

Step relatives:

step-father and step-mother

step-brother and step-sister

A person who is or has been married to one of the above relatives.

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"Department" means the Department of Healthcare and Family Services and any successor agencies.

"Family" means the child applying for the Program and the following individuals who live with the child:

The child's parents

The spouse of the child's parent

Children under 19 years of age of the parents or the parent's spouse

The spouse of the child

The children of the child

If any of the above is pregnant, the unborn children.

"FamilyCare Premium" means coverage of parents and caretaker relatives in families with income above 150% of FPL. The FamilyCare Premium program ceased effective June 30, 2012, but unpaid premiums may be relevant to children's eligibility under this Part.

"Federal Poverty Level" or "FPL" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services. These guidelines set poverty levels by family size.

"MAGI Methodology" means the method of determining income eligibility using Modified Adjusted Gross Income established at section 2102(b)(1)(v) of the Social Security Act (42 USC 1397bb(b)(1)(v)) and federal regulations at 42 CFR 457.315 ([77 FR 17214](#), 2012).

"Medical Assistance" means the services and programs reimbursed under the Public Aid Code.

"Practitioner" means a physician (including a hospital billing a physician office visit), osteopath, podiatrist, optometrist, chiropractor, advanced practice nurse, Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC) or

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Encounter Rate Clinic (ERC).

"Program" means the program created under the Children's Health Insurance Program Act and this Part.

"REV" means the Recipient Eligibility Verification system through which medical providers can obtain eligibility and claim status information electronically.

(Source: Amended at 38 Ill. Reg. 18451, effective August 19, 2014)

SUBPART B: GENERAL ELIGIBILITY AND ENROLLMENT

Section 125.200 Eligibility for Children's Health Insurance Program

Effective July 1, 2012, a child may be eligible under the Program provided that all of the following eligibility criteria are met:

- a) The child is not eligible for Medical Assistance, including 89 Ill. Adm. Code 120.
- b) The child is under 19 years of age.
- c) [Effective October 1, 2013, aA](#) child is a member of a family whose monthly countable income is above 133% of FPL and at or below 200% of FPL as determined using the MAGI methodology.
- d) The individual is a resident of the State of Illinois.
- e) The individual is either a United States citizen or included in one of the following categories of non-citizens:
 - 1) United States veterans honorably discharged or individuals on active military duty, or the spouse or unmarried dependent children of those persons.
 - 2) Refugees under section 207 of the Immigration and Nationality Act (8 USC 1157).
 - 3) Asylees under section 208 of the Immigration and Nationality Act.

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- 4) Individuals for whom deportation has been withheld under section 243(h) of the Immigration and Nationality Act.
 - 5) Individuals granted conditional entry under section 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980.
 - 6) Individuals lawfully admitted for permanent residence under the Immigration and Nationality Act.
 - 7) Parolees, for at least one year, under section 212(d)(5) of the Immigration and Nationality Act.
 - 8) Nationals of Cuba or Haiti.
 - 9) Individuals identified by the Federal Office of Refugee Resettlement (ORR) as victims of trafficking.
 - 10) Amerasians from Vietnam.
 - 11) Members of the Hmong or Highland Laotian tribe when the tribe helped United States personnel by taking part in military or rescue operations.
 - 12) American Indians born in Canada.
 - 13) Individuals who are a spouse, widow or child of a United States citizen or a spouse or a child or a legal permanent resident (LPR) who have been battered or subjected to extreme cruelty by the United States citizen or LPR or a member of that relative's family who lived with them, who no longer live with the abuser or plan to live separately within one month after assistance and whose need for assistance is due, at least in part, to the abuse.
- f) The individual's Social Security Number (SSN) is provided to the Department or, if it has not been issued or is not known, proof that application has been made for an SSN is provided.

(Source: Amended at 38 Ill. Reg. 18451, effective August 19, 2014)

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Section 125.220 Application Process

- a) An application may be made for the Program using any of the methods established at 89 Ill. Adm. Code 110.5.
- b) The application will meet all requirements found at 89 Ill. Adm. Code 110.10.
- c) Applicants are obligated to provide truthful and accurate information for determining eligibility and to report promptly to the Department any change in non-financial information provided on the application.
- d) The Department may cease accepting or processing applications if enrollment in the Program is closed due to limited appropriations.
- e) The Department shall send a notification of its determination within 45 calendar days after the date the application was received.
- f) The 45 calendar days may be extended when a decision cannot be reached because:
 - 1) information necessary for a determination is available only from a third party and the party fails to respond or delays his or her response to the request for the information; or
 - 2) additional information is needed from the applicant.
- g) Notwithstanding any other provision of this Part, no application for All Kids Rebate shall be accepted after September 30, 2013.
- h) [Effective October 1, 2013, the](#)The application review process will comply with 89 Ill. Adm. Code 110.20 and 110.40.

(Source: Amended at 38 Ill. Reg. 18451, effective August 19, 2014)

Section 125.225 Presumptive Eligibility for Children

- a) A child younger than 19 years of age may be presumed eligible for an All Kids Health Plan under this Part if all of the following apply:

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- 1) an application for medical benefits has been made on behalf of the child;
 - 2) the child is a resident of Illinois;
 - 3) the child is not an inmate of a public institution as described in Section 125.205(a)(1);
 - 4) [effective October 1, 2013](#), the child is a member of a family whose monthly countable income, as stated on the application, is above 133% of FPL and at or below 200% of FPL as determined using the MAGI methodology;
 - 5) the State employee who registers the application has no information that the child is not a U.S. citizen or a qualified non-citizen as described in 89 Ill. Adm. Code 125.200(e) or 89 Ill. Adm. Code 118.500; and
 - 6) the child has not been presumed eligible under this Part 125 or 89 Ill. Adm. Code 118 or 120 within the past 12 months.
- b) Entities qualified to make a determination of presumptive eligibility include State employees involved in enrolling children in programs under this Part 125 or 89 Ill. Adm. Code 118 or 120.
 - c) The presumptive eligibility period begins on the date of application.
 - d) The presumptive eligibility period ends on the date the State's determination of the child's eligibility under this Part 125 or 89 Ill. Adm. Code 118 or 120 is updated in the data system.
 - e) No copayment or premium requirements apply during the period of presumptive eligibility.

(Source: Amended at 38 Ill. Reg. 18451, effective August 19, 2014)

Section 125.250 Annual Renewals

- a) Eligibility shall be reviewed by the Department, or its authorized agent, at least annually following the process set forth in Sections 11-5.1 through 11-5.3 of the Public Aid Code.

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- b) Annual renewals shall be subject to all eligibility requirements set forth in Sections 125.200 and 125.205.
- c) MAGI methodology will be used to determine eligibility effective April 1, 2014, pursuant to 42 CFR 457.315 ([77 FR 17214](#), 2012).

(Source: Amended at 38 Ill. Reg. 18451, effective August 19, 2014)

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- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Numbers: Proposed Action:
 140.12 Amendment
 140.440 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Effective Date of Rule: August 19, 2014
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule 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*: December 20, 2013; 37 Ill. Reg. 19971
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No
- 11) Differences Between Proposal and Final Version: Nonsubstantive technical changes
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any other rulemakings pending on this Part? Yes

<u>Sections:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
140.80	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.82	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.84	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.86	New Section	38 Ill. Reg. 14658; July 18, 2014
140.420	Amendment	38 Ill. Reg. 14658; July 18, 2014

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140.421	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.425	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.442	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.457	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.458	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.472	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.485	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.488	Amendment	38 Ill. Reg. 14658; July 18, 2014
140.Table D	Repeal	38 Ill. Reg. 14658; July 18, 2014
140.20	Amendment	38 Ill. Reg. 16096; August 1, 2014
140.25	Amendment	38 Ill. Reg. 16096; August 1, 2014
140.413	Amendment	38 Ill. Reg. 16468; August 8, 2014
140.462	Amendment	38 Ill. Reg. 16468; August 8, 2014
140.418	Amendment	38 Ill. Reg. 17533; August 22, 2014

- 15) Summary and Purpose of Rulemaking: The proposed amendments delay the requirement that contract pharmacies participate in the 340B program. Further, excludes contract pharmacies from the requirement that 340B covered entities, bill the Department using 340B inventory and that the covered entities charge the 340B actual acquisition cost. The contract pharmacies can continue to bill non-340B drugs for Medicaid patients.
- 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
HFS.Rules@illinois.gov

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER d: MEDICAL PROGRAMS

PART 140

MEDICAL PAYMENT

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Section

- 140.1 Incorporation By Reference
- 140.2 Medical Assistance Programs
- 140.3 Covered Services Under Medical Assistance Programs
- 140.4 Covered Medical Services Under AFDC-MANG for non-pregnant persons who are 18 years of age or older (Repealed)
- 140.5 Covered Medical Services Under General Assistance
- 140.6 Medical Services Not Covered
- 140.7 Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Eight
- 140.8 Medical Assistance For Qualified Severely Impaired Individuals
- 140.9 Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-MANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
- 140.10 Medical Assistance Provided to Persons Confined or Detained by the Criminal Justice System

SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section

- 140.11 Enrollment Conditions for Medical Providers
- 140.12 Participation Requirements for Medical Providers
- 140.13 Definitions
- 140.14 Denial of Application to Participate in the Medical Assistance Program
- 140.15 Suspension and Denial of Payment, Recovery of Money and Penalties
- 140.16 Termination, Suspension or Exclusion of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.17 Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.18 Effect of Termination, Suspension, Exclusion or Revocation on Persons

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- Associated with Vendor
- 140.19 Application to Participate or for Reinstatement Subsequent to Termination, Suspension, Exclusion or Barring
- 140.20 Submittal of Claims
- 140.21 Reimbursement for QMB Eligible Medical Assistance Recipients and QMB Eligible Only Recipients and Individuals Who Are Entitled to Medicare Part A or Part B and Are Eligible for Some Form of Medicaid Benefits
- 140.22 Magnetic Tape Billings (Repealed)
- 140.23 Payment of Claims
- 140.24 Payment Procedures
- 140.25 Overpayment or Underpayment of Claims
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- 140.27 Assignment of Vendor Payments
- 140.28 Record Requirements for Medical Providers
- 140.30 Audits
- 140.31 Emergency Services Audits
- 140.32 Prohibition on Participation, and Special Permission for Participation
- 140.33 Publication of List of Sanctioned Entities
- 140.35 False Reporting and Other Fraudulent Activities
- 140.40 Prior Approval for Medical Services or Items
- 140.41 Prior Approval in Cases of Emergency
- 140.42 Limitation on Prior Approval
- 140.43 Post Approval for Items or Services When Prior Approval Cannot Be Obtained
- 140.44 Withholding of Payments Due to Fraud or Misrepresentation
- 140.45 Withholding of Payments Upon Provider Audit, Quality of Care Review, Credible Allegation of Fraud or Failure to Cooperate
- 140.55 Electronic Data Interchange Service
- 140.71 Reimbursement for Medical Services Through the Use of a C-13 Invoice Voucher Advance Payment and Expedited Payments
- 140.72 Drug Manual (Recodified)
- 140.73 Drug Manual Updates (Recodified)

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- 140.80 Hospital Provider Fund
- 140.82 Developmentally Disabled Care Provider Fund
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	Fund/Medicaid Long Term Care Provider Participation Fee Trust Fund
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140.116	Payment for Inpatient Services for GA (Recodified)
140.117	Hospital Outpatient and Clinic Services (Recodified)
140.200	Payment for Hospital Services During Fiscal Year 1982 (Recodified)
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140.202	Payment for Hospital Services During Fiscal Year 1983 (Recodified)
140.203	Limits on Length of Stay by Diagnosis (Recodified)
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- 140.391 Definitions (Recodified)
- 140.392 Types of Subacute Alcoholism and Substance Abuse Services (Recodified)
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- 140.403 Telehealth Services
- 140.405 Non-Institutional Rate Reductions
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- 140.411 Covered Services By Physicians
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- 140.420 Dental Services
- 140.421 Limitations on Dental Services
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- 140.425 Podiatry Services
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- 140.427 Requirement for Prescriptions and Dispensing of Pharmacy Items – Podiatry (Repealed)
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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 and VI and 12-13].

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a

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maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.Table H and 140.Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.Table A and 147.Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940

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thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990;

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amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; Notice of Corrections to Adopted Amendment at 15 Ill. Reg. 1174; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired January 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10050, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30, 1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16 Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment

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suspended at 17 Ill. Reg. 18902, effective October 12, 1993; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended at 18 Ill. Reg. 17286, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 20 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. Reg. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective May 23, 1997; amended at 21 Ill. Reg. 9763, effective July 15, 1997; amended at 21 Ill. Reg. 11569, effective August 1, 1997; emergency amendment at 21 Ill. Reg. 13857, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 1416, effective December 29, 1997; amended at 22 Ill. Reg. 4412, effective February 27, 1998; amended at 22 Ill. Reg. 7024, effective April 1, 1998; amended at 22 Ill. Reg. 10606, effective June 1, 1998; emergency amendment at 22 Ill. Reg. 13117, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16302, effective August 28, 1998; amended at 22 Ill. Reg. 18979, effective

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September 30, 1998; amended at 22 Ill. Reg. 19898, effective October 30, 1998; emergency amendment at 22 Ill. Reg. 22108, effective December 1, 1998, for a maximum of 150 days; emergency expired April 29, 1999; amended at 23 Ill. Reg. 5796, effective April 30, 1999; amended at 23 Ill. Reg. 7122, effective June 1, 1999; emergency amendment at 23 Ill. Reg. 8236, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9874, effective August 3, 1999; amended at 23 Ill. Reg. 12697, effective October 1, 1999; amended at 23 Ill. Reg. 13646, effective November 1, 1999; amended at 23 Ill. Reg. 14567, effective December 1, 1999; amended at 24 Ill. Reg. 661, effective January 3, 2000; amended at 24 Ill. Reg. 10277, effective July 1, 2000; emergency amendment at 24 Ill. Reg. 10436, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15086, effective October 1, 2000; amended at 24 Ill. Reg. 18320, effective December 1, 2000; emergency amendment at 24 Ill. Reg. 19344, effective December 15, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 3897, effective March 1, 2001; amended at 25 Ill. Reg. 6665, effective May 11, 2001; amended at 25 Ill. Reg. 8793, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 8850, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 11880, effective September 1, 2001; amended at 25 Ill. Reg. 12820, effective October 8, 2001; amended at 25 Ill. Reg. 14957, effective November 1, 2001; emergency amendment at 25 Ill. Reg. 16127, effective November 28, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 16292, effective December 3, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 514, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 663, effective January 7, 2002; amended at 26 Ill. Reg. 4781, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 5984, effective April 15, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 7285, effective April 29, 2002; emergency amendment at 26 Ill. Reg. 8594, effective June 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 11259, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 12461, effective July 29, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16593, effective October 22, 2002; emergency amendment at 26 Ill. Reg. 12772, effective August 12, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13641, effective September 3, 2002; amended at 26 Ill. Reg. 14789, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 15076, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16303, effective October 25, 2002; amended at 26 Ill. Reg. 17751, effective November 27, 2002; amended at 27 Ill. Reg. 768, effective January 3, 2003; amended at 27 Ill. Reg. 3041, effective February 10, 2003; amended at 27 Ill. Reg. 4364, effective February 24, 2003; amended at 27 Ill. Reg. 7823, effective May 1, 2003; amended at 27 Ill. Reg. 9157, effective June 2, 2003; emergency amendment at 27 Ill. Reg. 10813, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 13784, effective August 1, 2003; amended at 27 Ill. Reg. 14799, effective September 5, 2003; emergency amendment at 27 Ill. Reg. 15584, effective September 20, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16161, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18629, effective

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November 26, 2003; amended at 28 Ill. Reg. 2744, effective February 1, 2004; amended at 28 Ill. Reg. 4958, effective March 3, 2004; emergency amendment at 28 Ill. Reg. 6622, effective April 19, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7081, effective May 3, 2004; emergency amendment at 28 Ill. Reg. 8108, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9640, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10135, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11161, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12198, effective August 11, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13775, effective October 1, 2004; amended at 28 Ill. Reg. 14804, effective October 27, 2004; amended at 28 Ill. Reg. 15513, effective November 24, 2004; amended at 29 Ill. Reg. 831, effective January 1, 2005; amended at 29 Ill. Reg. 6945, effective May 1, 2005; emergency amendment at 29 Ill. Reg. 8509, effective June 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12534, effective August 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 14957, effective September 30, 2005; emergency amendment at 29 Ill. Reg. 15064, effective October 1, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 15985, effective October 5, 2005, for the remainder of the 150 days; emergency amendment at 29 Ill. Reg. 15610, effective October 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 16515, effective October 5, 2005, for a maximum of 150 days; amended at 30 Ill. Reg. 349, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 573, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 796, effective January 1, 2006; amended at 30 Ill. Reg. 2802, effective February 24, 2006; amended at 30 Ill. Reg. 10370, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 12376, effective July 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 13909, effective August 2, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 14280, effective August 18, 2006; expedited correction at 31 Ill. Reg. 1745, effective August 18, 2006; emergency amendment at 30 Ill. Reg. 17970, effective November 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18648, effective November 27, 2006; emergency amendment at 30 Ill. Reg. 19400, effective December 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 388, effective December 29, 2006; emergency amendment at 31 Ill. Reg. 1580, effective January 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 2413, effective January 19, 2007; amended at 31 Ill. Reg. 5561, effective March 30, 2007; amended at 31 Ill. Reg. 6930, effective April 29, 2007; amended at 31 Ill. Reg. 8485, effective May 30, 2007; emergency amendment at 31 Ill. Reg. 10115, effective June 30, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 14749, effective October 22, 2007; emergency amendment at 32 Ill. Reg. 383, effective January 1, 2008, for a maximum of 150 days; preemptory amendment at 32 Ill. Reg. 6743, effective April 1, 2008; preemptory amendment suspended at 32 Ill. Reg. 8449, effective May 21, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 32 Ill. Reg. 18323, effective November 12, 2008; preemptory amendment repealed by emergency rulemaking at 32 Ill. Reg. 18422, effective November 12, 2008, for a maximum of 150 days;

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emergency expired April 10, 2009; preemptory amendment repealed at 33 Ill. Reg. 6667, effective April 29, 2009; amended at 32 Ill. Reg. 7727, effective May 5, 2008; emergency amendment at 32 Ill. Reg. 10480, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 32 Ill. Reg. 17133, effective October 15, 2008; amended at 33 Ill. Reg. 209, effective December 29, 2008; amended at 33 Ill. Reg. 9048, effective June 15, 2009; emergency amendment at 33 Ill. Reg. 10800, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 11287, effective July 14, 2009; amended at 33 Ill. Reg. 11938, effective August 17, 2009; amended at 33 Ill. Reg. 12227, effective October 1, 2009; emergency amendment at 33 Ill. Reg. 14324, effective October 1, 2009, for a maximum of 150 days; emergency expired February 27, 2010; amended at 33 Ill. Reg. 16573, effective November 16, 2009; amended at 34 Ill. Reg. 516, effective January 1, 2010; amended at 34 Ill. Reg. 903, effective January 29, 2010; amended at 34 Ill. Reg. 3761, effective March 14, 2010; amended at 34 Ill. Reg. 5215, effective March 25, 2010; amended at 34 Ill. Reg. 19517, effective December 6, 2010; amended at 35 Ill. Reg. 394, effective December 27, 2010; amended at 35 Ill. Reg. 7648, effective May 1, 2011; amended at 35 Ill. Reg. 7962, effective May 1, 2011; amended at 35 Ill. Reg. 10000, effective June 15, 2011; amended at 35 Ill. Reg. 12909, effective July 25, 2011; amended at 36 Ill. Reg. 2271, effective February 1, 2012; amended at 36 Ill. Reg. 7010, effective April 27, 2012; amended at 36 Ill. Reg. 7545, effective May 7, 2012; amended at 36 Ill. Reg. 9113, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 11329, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 140.442(e)(4) suspended at 36 Ill. Reg. 13736, effective August 15, 2012; suspension withdrawn from Section 140.442(e)(4) at 36 Ill. Reg. 14529, September 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.442(e)(4) at 36 Ill. Reg. 14820, effective September 21, 2012 through June 30, 2013; emergency amendment to Section 140.491 suspended at 36 Ill. Reg. 13738, effective August 15, 2012; suspension withdrawn by the Joint Committee on Administrative Rules from Section 140.491 at 37 Ill. Reg. 890, January 8, 2013; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.491 at 37 Ill. Reg. 1330, effective January 15, 2013 through June 30, 2013; amended at 36 Ill. Reg. 15361, effective October 15, 2012; emergency amendment at 37 Ill. Reg. 253, effective January 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 846, effective January 9, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 1774, effective January 28, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 2348, effective February 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 3831, effective March 13, 2013; emergency amendment at 37 Ill. Reg. 5058, effective April 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 5170, effective April 8, 2013 through June 30, 2013; amended at 37 Ill. Reg. 6196, effective April 29, 2013; amended at 37 Ill. Reg. 7985, effective May 29, 2013; amended at 37 Ill. Reg. 10282, effective June 27, 2013; amended at 37 Ill. Reg. 12855, effective July 24, 2013; emergency amendment at 37 Ill. Reg. 14196, effective August 20, 2013, for a maximum of 150 days; amended at 37 Ill. Reg. 17584, effective October 23,

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2013; amended at 37 Ill. Reg. 18275, effective November 4, 2013; amended at 37 Ill. Reg. 20339, effective December 9, 2013; amended at 38 Ill. Reg. 859, effective December 23, 2013; emergency amendment at 38 Ill. Reg. 1174, effective January 1, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 4330, effective January 29, 2014; amended at 38 Ill. Reg. 7156, effective March 13, 2014; amended at 38 Ill. Reg. 12141, effective May 30, 2014; amended at 38 Ill. Reg. 15081, effective July 2, 2014; emergency amendment at 38 Ill. Reg. 15673, effective July 7, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 18167, effective August 18, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 18462, effective August 19, 2014.

SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section 140.12 Participation Requirements for Medical Providers

The provider shall agree to:

- a) Verify eligibility of recipients prior to providing each service;
- b) Allow recipients the choice of accepting or rejecting medical or surgical care or treatment;
- c) Provide supplies and services in full compliance with all applicable provisions of State and federal laws and regulations pertaining to nondiscrimination and equal employment opportunity including but not limited to:
 - 1) Full compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
 - 2) Full compliance with Section 504 of the Rehabilitation Act of 1973 and 45 CFR 84, which prohibit discrimination on the basis of handicap; and
 - 3) Without discrimination on the basis of religious belief, political affiliation, sex, age or disability;
- d) Comply with the requirements of applicable federal and State laws and not engage in practices prohibited by such laws;
- e) Provide, and upon demand present documentation of, education of employees, contractors and agents regarding the federal False Claims Act (31 USC 3729-

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3733) that complies with all requirements of 42 USC 1396a(a)(68). Providers subject to this requirement include a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, that receives or makes payments totaling at least \$5 million annually;

- f) Hold confidential, and use for authorized program purposes only, all Medical Assistance information regarding recipients;
- g) Furnish to the Department, in the form and manner requested by it, any information it requests regarding payments for providing goods or services, or in connection with the rendering of goods or services or supplies to recipients by the provider, his agent, employer or employee;
- h) Make charges for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges and in the same quality and mode of delivery as are provided to the general public;
- i) Accept as payment in full the amounts established by the Department.
 - 1) If a provider accepts an individual eligible for medical assistance from the Department as a Medicaid recipient, such provider shall not bill, demand or otherwise seek reimbursement from that individual or from a financially responsible relative or representative of the individual for any service for which reimbursement would have been available from the Department if the provider had timely and properly billed the Department. For purposes of this subsection, "accepts" shall be deemed to include:
 - A) an affirmative representation to an individual that payment for services will be sought from the Department;
 - B) an individual presents the provider with his or her medical card and the provider does not indicate that other payment arrangements will be necessary; or
 - C) billing the Department for the covered medical service provided an eligible individual.

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- 2) If an eligible individual is entitled to medical assistance with respect to a service for which a third party is liable for payment, the provider furnishing the service may not seek to collect from the individual payment for that service if the total liability of the third party for that service is at least equal to the amount payable for that service by the Department.
- j) Accept assignment of Medicare benefits for public aid recipients eligible for Medicare, when payment for services to such persons is sought from the Department;
- k) Complete an MCH (Maternal and Child Health) Primary Care Provider Agreement in order to participate in the Maternal and Child Health Program (see Section 140.924(a)(1)(D)); and
- l) In the case of long term care providers, assume liability for repayment to the Department of any overpayment made to a facility regardless of whether the overpayment was incurred by a current owner or operator or by a previous owner or operator. Liability of current and previous providers to the Department shall be joint and several. Recoveries by the Department under this Section may be made pursuant to Sections 140.15 and 140.25. A current or previous owner or lessee may request from the Department a list of all known outstanding liabilities due the Department by the facility and of any known pending Department actions against a facility that may result in further liability. For purposes of this Section, "overpayment" shall include, but not be limited to:
 - 1) Amounts established by final administrative decisions pursuant to 89 Ill. Adm. Code 104;
 - 2) Overpayments resulting from advance C-13 payments made pursuant to Section 140.71;
 - 3) Liabilities resulting from nonpayment or delinquent payment of assessments pursuant to Sections 140.82, 140.84 and 140.94; and
 - 4) Amounts identified during past, pending or future audits that pertain to audit periods prior to a change in ownership and are conducted pursuant to Sections 140.30 and 140.590. Liability of current owners or operators for amounts identified during such audits shall be as follows:

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- A) For past audits (audits completed before changes in ownership), liability shall be the amount established by final administrative decision.
- B) For pending audits (audits initiated, but not completed prior to the change in ownership), liability shall be limited to the lesser of the amounts established by final administrative decision or two months of service revenue. Two months of service revenue is defined as the most recent two months of Medicaid patient days multiplied by the total Medicaid rate in effect on the date the new owner or operator is enrolled in the Program as a provider by the Department. The Medicaid rate in effect on the date of enrollment shall be used even if that rate is subsequently changed.
- C) For future audits (audits initiated after the change in ownership but pertaining to an audit period prior to a change in ownership), liability shall be limited as described in subsection (1)(4)(B) of this Section.
- m) A provider that is eligible to participate in the 340B federal Drug Pricing Program under section 340B of the federal Public Health Service Act (47 USC 201 et seq.), shall enroll in that program. No entity participating in the federal Drug Pricing Program under section 340B of the federal Public Health Services Act may exclude Medicaid from their participation in that program. A provider enrolled in the 340B federal Drug Pricing Program must charge the Department no more than its actual acquisition cost for the drug product, plus the Department established dispensing fee. This requirement is effective October 1, 2012 for 340B providers who own and/or operate a pharmacy that bills the Department for drugs, unless the 340B provider is a Hemophilia Treatment Center (HTC); July 1, 2013 for providers who are eligible to participate in the 340B program as ~~Hemophilia Treatment Centers (HTCs) and for 340B providers for drugs billed to the Department by a contract pharmacy~~; and January 1, 2013 for all other 340B-eligible providers who bill the Department for drugs. Contract pharmacies are exempt from the requirements of this subsection (m).

(Source: Amended at 38 Ill. Reg. 18462, effective August 19, 2014)

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

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Section 140.440 Pharmacy Services

- a) Payment shall be made only to pharmacies.
- b) The following conditions apply to pharmacy participation:
 - 1) The pharmacy must hold a current Drug Enforcement Administration (DEA) registration issued by the United States Drug Enforcement Administration (see 21 CFR 1301 et seq.), as well as a current controlled substances license issued by the Illinois Department of Financial and Professional Regulation (see Controlled Substances Act [720 ILCS 570]) prior to enrolling with the Department.
 - 2) Licensed Pharmacy Requirements
 - A) A licensed pharmacy located in and/or administratively associated with a group practice or long-term facility must:
 - i) provide the same scope of general pharmacy and professional services as a pharmacy not so affiliated; and
 - ii) be retail in nature, open and accessible to the general public.
 - B) The pharmacy shall not limit prescriptions filled to those written by practitioners connected with the group or facility for persons receiving care or services from the group or facility.
 - 3) A hospital pharmacy that provides pharmaceutical services and supplies for inpatients, outpatient clinic patients and emergency room patients of the hospital may not enroll as a participating pharmacy unless licensed to provide pharmaceutical services to the general public (Division 5 license).
 - 4) Effective August 1, 2012, in order to dispense blood factor, a pharmacy must sign a standards of care agreement with the Department.
 - 5) A pharmacy billing the Department for 340B-purchased drugs shall charge the Department no more than ~~its~~the 340B entity's actual acquisition cost (AAC) for the drug product plus the Department's established dispensing

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fee, unless the Department has calculated an allowable amount specific to 340B-purchased drugs for that drug. In that case, the pharmacy may bill the Department its usual and customary charges. For a pharmacy provider owned or operated by a Hemophilia Treatment Center, this requirement does not become effective until July 1, 2013.

- c) The Department shall pay for the dispensing of pharmacy items, subject to the provisions of subsection (d) and Section 140.443, which are prescribed by a physician, dentist or podiatrist within the scope of their professional practice.
- d) Beginning with drugs dispensed on or after April 1, 1991, Department coverage shall be limited to those drug manufacturers having rebate agreements in effect as provided under Section 1927 of Title XIX of the Social Security Act (42 USC 1396s). The Department shall provide all interested parties with an updated list of drug manufacturers having rebate agreements in effect.
- e) The Department may require approval for the reimbursement of any drug except as provided in Section 140.442. When reviewing requests for prior authorization, approval decisions shall be medically based. The Department's electronic claims processing system shall be the mechanism for identification of whether a prescribed drug requires prior authorization to dispensing pharmacists. A printed listing of prescribed drugs available without prior approval shall be provided to other interested parties upon request.
- f) An approved request does not guarantee payment. The recipient for whom the services/items are approved must be eligible at the time they are provided. In addition, a valid, current prescription for the requested medication must be on file and maintained by the pharmacy in accordance with the Pharmacy Practice Act of 1987 [225 ILCS 85].
- g) For purposes of Sections 140.440 through 140.448, pertaining to reimbursement for drugs, the following definitions apply:
 - 1) Nursing facility means any facility that provides medical group care services as defined in Section 140.500.
 - 2) Generic drug means those legend drugs that are multiple source drugs marketed or sold by two or more labelers, marketed or sold by the same labeler under two or more different proprietary names or marketed both

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under a proprietary name and without such a name.

- 3) Brand name drug means single-source innovator drugs and innovator multiple-source drugs when prior authorization has been obtained for reimbursing the innovator product.

(Source: Amended at 38 Ill. Reg. 18462, effective August 19, 2014)

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- 1) Heading of the Part: Child Care
- 2) Code Citation: 89 Ill. Adm. Code 50
- 3) Section Number: 50.430 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13] and PA. 98-61
- 5) Effective Date of Rule: August 22, 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 rulemaking, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: March 28, 2014; 38 Ill. Reg. 7018
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: There were only non-substantive changes made to the proposed version.
- 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 rules pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
50.105	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.110	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.210	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.230	Amendment	37 Ill. Reg.; 17140; November 1, 2013

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50.235	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.250	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.310	Amendment	37 Ill. Reg.; 17140; November 1, 2013
50.105	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.510	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.520	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.530	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.540	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.550	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.560	Repeal	38 Ill. Reg.; 18067; August 29, 2014
50.570	Amendment	38 Ill. Reg.; 18067; August 29, 2014
50.580	Amendment	38 Ill. Reg.; 18067; August 29, 2014

- 15) Summary and Purpose of Rulemaking: Public Act 98-61 amends the Juvenile Court Act of 1987 by changing the definition of delinquent minor to include a person who was under 18 (rather than 17) years of age when he or she committed an offense classified as a felony. This Act also changes the age concerning confidentiality of juvenile records. As a result, this rulemaking establishes that provider fingerprint-based criminal history record checks will only be conducted for persons 18 years of age or older.

- 16) Information and questions regarding this adopted rule 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 amendment 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 Amendment begins on the next page:

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50
CHILD CARE

SUBPART A: GENERAL PROVISIONS

Section	
50.101	Incorporation by Reference
50.105	Definitions
50.110	Participant Rights and Responsibilities
50.120	Notification of Available Services
50.130	Child Care Overpayments and Recoveries

SUBPART B: APPLICABILITY

Section	
50.210	Child Care
50.220	Method of Providing Child Care
50.230	Child Care Eligibility
50.235	Income Eligibility Criteria
50.240	Qualified Provider (Repealed)
50.250	Additional Service to Secure or Maintain Child Care
50.260	Job Search (Repealed)

SUBPART C: PAYMENT FEES

Section	
50.310	Fees for Child Care Services
50.320	Maximum Monthly Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Full-time Care

SUBPART D: PROVIDER REQUIREMENTS

Section	
50.400	Purpose
50.410	Qualified Provider

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- 50.420 Provider Registration and Certification Requirements
- 50.430 Provider Background Checks
- 50.440 Payment for Child Care Services

SUBPART E: GREAT START PROGRAM

- Section
- 50.510 Great START Program
- 50.520 Method of Providing the Wage Supplement
- 50.530 Eligibility
- 50.540 Employer Responsibility
- 50.550 Notification of Eligibility
- 50.560 Phase-in of Wage Supplement Scale
- 50.570 Wage Supplement Scale
- 50.580 Evaluation

SUBPART F: CHILD CARE COLLABORATION PROGRAM

- Section
- 50.610 Child Care Collaboration Program
- 50.620 Approvable Models of Collaboration
- 50.630 Requirements for Approval in the Child Care Collaboration Program
- 50.640 Notification of Eligibility
- 50.650 Rules and Reporting for the Child Care Collaboration Program

SUBPART G: GATEWAYS TO OPPORTUNITY CREDENTIALS

- Section
- 50.710 Gateways to Opportunity, the Illinois Professional Development System
- 50.720 Gateways to Opportunity Credentials
- 50.730 Application for Credentials
- 50.740 Framework for Gateways to Opportunity Credentials
- 50.750 Professional Knowledge
- 50.760 Gateways to Opportunity Registry

AUTHORITY: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

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SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. 10875, effective August 20, 1999, for maximum of 150 days; amended at 24 Ill. Reg. 1058, effective January 10, 2000; emergency amendment at 24 Ill. Reg. 6604, effective April 5, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13987, effective September 1, 2000; amended at 24 Ill. Reg. 15423, effective October 10, 2000; emergency amendment at 25 Ill. Reg. 2735, effective February 5, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 8176, effective June 23, 2001; emergency amendment at 25 Ill. Reg. 8443, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 14854, effective October 31, 2001; emergency amendment at 25 Ill. Reg. 16116, effective December 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7113, effective April 25, 2002; amended at 27 Ill. Reg. 12090, effective July 14, 2003; amended at 27 Ill. Reg. 18411, effective November 24, 2003; amended at 28 Ill. Reg. 6895, effective April 23, 2004; emergency amendment at 28 Ill. Reg. 10121, effective July 1, 2004, for a maximum of 150 days; emergency expired November 27, 2004; amended at 29 Ill. Reg. 2687, effective February 4, 2005; emergency amendment at 29 Ill. Reg. 13253, effective August 11, 2005, for a maximum of 150 days; emergency expired January 7, 2006; amended at 30 Ill. Reg. 11190, effective June 6, 2006; amended at 31 Ill. Reg. 12584, effective August 20, 2007; emergency amendment at 31 Ill. Reg. 13350, effective September 10, 2007, for a maximum of 150 days; emergency expired February 6, 2008; amended at 32 Ill. Reg. 6048, effective March 31, 2008; emergency amendment at 32 Ill. Reg. 6652, effective April 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 9604, effective June 20, 2008; amended at 32 Ill. Reg. 14742, effective August 28, 2008; amended at 33 Ill. Reg. 8195, effective June 8, 2009; emergency amendment at 33 Ill. Reg. 15889, effective November 1, 2009, for a maximum of 150 days; emergency amendment at 33 Ill. Reg. 16517, effective November 1, 2009, for a maximum of 150 days; emergency expired March 30, 2010; amended at 34 Ill. Reg. 5275, effective March 29, 2010; emergency amendment at 34 Ill. Reg. 8619, effective June 16, 2010, for a maximum of 150 days; emergency expired on November 12, 2010; amended at 34 Ill. Reg. 10512, effective July 8, 2010; amended at 34 Ill. Reg. 19539, effective December 6, 2010; amendment at 35 Ill. Reg. 1397, effective January 6, 2011; amended at 35 Ill. Reg. 3993, effective February 25, 2011; emergency amendment at 35 Ill. Reg. 6583, effective April 1, 2011, for a maximum of 150 days; emergency expired August 28, 2011; amended at 35 Ill. Reg. 8878, effective May 25, 2011; amended at 36 Ill. Reg. 1564, effective January 17, 2012; amended at 36 Ill. Reg. 12104, effective July 10, 2012; amended at 36 Ill. Reg. 14513, effective September 12, 2012; amended at 36 Ill. Reg. 16085, effective October 29, 2012; amended at 38 Ill. Reg. 18490, effective August 22, 2014.

SUBPART D: PROVIDER REQUIREMENTS

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Section 50.430 Provider Background Checks

- a) **Child Abuse/Neglect**
As a condition of eligibility to receive a State subsidy for providing child care services to eligible families, all license exempt child care providers under the Child Care Act of 1969 [225 ILCS 10] must agree, in writing, to a [Child Abuse and Neglect Tracking System \(CANTS\)](#) check in the Central Register as defined in the Abused and Neglected Child Reporting Act [325 ILCS 5].
- 1) Providers subject to the CANTS check include:
 - A) Child care centers exempt from licensing ([89 Ill. Adm. Code 377](#));
 - B) Child care homes exempt from licensing ([89 Ill. Adm. Code 377](#));
 - C) Relative child care in the home of the relative ([see Section 50.410](#));
 - D) Non-relative child care in the home of the child ([see Section 50.410](#)); and
 - E) Relative child care in the home of the child ([see Section 50.410](#)).
 - 2) All staff at a child care center exempt from licensing and all persons age 13 and older residing in a child care home exempt from licensure are subject to CANTS check.
 - 3) **Limitations on Perpetrators of Child Abuse/Neglect**
Persons who have been indicated as the perpetrator of any of the child abuse/neglect allegations identified in 89 Ill. Adm. Code 385.50 shall be disqualified from participating in the child care assistance program.
- b) **Sex Offender Registry**
All persons subject to CANTS checks pursuant to this Part shall be screened for inclusion in the Illinois and National Sex Offender Registries [[730 ILCS 150](#)].
- c) **Criminal History**

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- 1) As a condition of eligibility to receive a State subsidy for providing child care services to eligible families, all license exempt child care providers, except a provider who is related to the child, shall complete and sign authorizations for a State and Federal Bureau of Investigation (FBI) fingerprint-based criminal history record check and submit to fingerprinting, if required, to determine if the child care provider has prior criminal convictions or pending criminal charges. Provider types subject to a fingerprint-based criminal history record check include:
 - A) Child care centers exempt from licensing ([89 Ill. Adm. Code 377](#));
 - B) Child care homes exempt from licensing ([89 Ill. Adm. Code 377](#)); and
 - C) Non-relatives who provide care in the child's home ([see Section 50.410](#)).
- 2) Persons subject to a background check include:
 - A) an employee of a license exempt child care center whose duties require the employee to be present during the hours children are present in the facility. In addition, any person who is permitted to be alone with children receiving care in the facility is subject to the background check requirement. This applies to all current and conditional employees as well as any individual used as replacement or supplemental staff in the direct care and supervision of children.
 - B) All persons age ~~18~~17 and over who reside in a child care home exempt from licensing even if those household members are not usually present in the home during the hours the children are present. This shall also apply to a person age 13 and over who has been tried as an adult and convicted of any crime identified in 89 Ill. Adm. Code 385.
- 3) Fingerprints shall be submitted to the Illinois State Police via the fingerprint vendor stipulated by [Department of Children and Family Services \(DCFS\)](#) for criminal history checks.

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- 4) Fingerprints for the following persons shall be submitted to the FBI for a search of its records:
 - A) persons who have resided outside the State of Illinois for any part of the preceding three years; and
 - B) persons who have a record of criminal activity that may impact their suitability for employment as evidenced either by their own acknowledgment or according to the records of the Illinois State Police.
 - 5) Persons subject to criminal background checks shall make themselves available for fingerprinting when scheduled by ~~DCFS~~[the Department](#) or its authorized representatives. Persons subject to criminal background checks who fail to appear for scheduled fingerprinting will be disqualified as a child care provider.
 - 6) Persons who have been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A (Background Checks) will be disqualified as a child care provider.
 - 7) A copy of the criminal history record check shall be provided to the subject of the criminal history record.
 - 8) Any information concerning convictions is confidential and may not be transmitted outside ~~DCFS~~[the Department](#) or to anyone within ~~DCFS,~~[the Department](#) except as needed for the purposes of determining participation in the child care assistance program.
 - 9) There is no charge to any person subject to background checks required by this Part.
 - 10) Any person who fails to provide written authorization for a background check pursuant to this Part shall be disqualified from participating in the child care assistance program.
- d) Convictions that Disqualify Persons for Employment or Residence in a Child Care Facility that Allows Access to Children

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A person who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A or who has been convicted of committing or attempting to commit any of the offenses identified in this subsection (d) shall be disqualified from participation in the child care assistance program. In addition, no person who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A or who has been convicted of committing or attempting to commit any of the offenses listed in this subsection (d) shall either be employed in a license exempt child care facility in a position that allows access to children or reside in a family home in which a licensed-exempt child care facility operates. This includes persons who have been:

- 1) declared sexually dangerous persons under the Sexually Dangerous Persons Act [725 ILCS 205] or identified as sex offenders in the Illinois Sex Offender Registry [[730 ILCS 150](#)] operated by the Illinois State Police; or
 - 2) convicted of committing or attempting to commit any of the offenses specified in 89 Ill. Adm. Code 385.Appendix A that are defined by the Criminal Code of 1961 [720 ILCS 5] or any earlier Illinois criminal law or code (see Section 4.2 of the Child Care Act of 1969 [225 ILCS 10/4.2]); or
 - 3) convicted of committing or attempting to commit an offense in another state, the elements of which are similar and bear a substantial relationship to any of the criminal offenses specified in 89 Ill. Adm. Code 385.Appendix A.
- e) **Assessment of Indicated Reports of Abuse or Neglect and Criminal Convictions**
A person who is disqualified from participating in the child care assistance program as a license exempt child care provider who has an indicated report of abuse or neglect or who has been convicted of certain serious crimes identified in 89 Ill. Adm. Code 385.Appendix A may only receive payment through the child care assistance program if the individual obtains a license from DCFS in which a review and assessment of the allegations and criminal charges will be made pursuant to 89 Ill. Adm. Code 385.
- f) **Pending Criminal Charges**
A person who has criminal charges pending will not be disqualified from participating in the child care assistance program as a license exempt child care provider.

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(Source: Amended at 38 Ill. Reg. 18490, effective August 22, 2014)

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- 1) Heading of the Part: Employee Classification
- 2) Code Citation: 56 Ill. Adm. Code 240
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u>
240.110	Amendment
240.120	Amendment
240.200	Amendment
240.210	Amendment
240.300	Amendment
240.310	Amendment
240.400	Amendment
240.405	New Section
240.500	Amendment
240.510	Amendment
240.520	Amendment
240.570	New Section
- 4) Statutory Authority: Implementing and authorized by the Employee Classification Act [820 ILCS 185]
- 5) Effective Date of Amendments: August 21, 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. 3298; January 31, 2014
- 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? Yes

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- 13) Will this rulemaking replace any emergency rule in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Amendments are necessary due to the passage of PA 98-106 and PA 98-105 which amended the Employee Classification Act (ECA). PA 98-106 added a formal hearing process allowing the Department to adjudicate claims at the Department level and provide for individual liability for those contractors who violate the Act. The amendments to the rules include adding formal hearing procedures, clarifying definitions and streamlining the investigative process in order to comply with the statutory changes. The rules also include the addition of a contractor reporting requirement added to the ECA by PA 98-105 which requires contractors who do not classify their workers as employees, to annually report to the Department all payments made to those individuals not classified as employees.
- 16) Information and questions regarding this adopted rule shall be directed to:

Jim Preckwinkle
Illinois Department of Labor
900 S. Spring St.
Springfield IL 62704

217/558-1270
217/782-0596 (fax)

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

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TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 240
EMPLOYEE CLASSIFICATION

SUBPART A: GENERAL PROVISIONS

Section	
240.100	Purpose and Scope
240.110	Definitions
240.120	Application of the Act
240.130	Jurisdiction
240.140	Waivers

SUBPART B: COMPLAINTS

Section	
240.200	Persons Who May File a Complaint
240.210	Contents and Filing of a Complaint
240.220	Review of Complaints and Dismissals
240.230	Incomplete Complaint

SUBPART C: INVESTIGATION PROCEDURES

Section	
240.300	Investigation
240.310	Fact-Finding Conference
240.320	Independent Contractor Test

SUBPART D: CONTRACTOR RECORD KEEPING ~~AND NOTICE REQUIREMENTS~~

Section	
240.400	Record Keeping

SUBPART E: CONTRACTOR REPORTING REQUIREMENTS AND NOTICES
FINAL DETERMINATIONS

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<u>Section</u>	
<u>240.405</u>	<u>Reporting Requirements</u>
240.410	Notices

SUBPART F: FINAL DETERMINATIONS

Section	
240.500	Decision and Notice Following Investigation
240.510	Remedies Upon Finding of a Violation
240.520	Civil Penalties
240.530	Debarments
240.540	Criminal Penalties
240.550	Retaliation
240.560	Referral to Other Agencies
<u>240.570</u>	<u>Hearing Procedures</u>

AUTHORITY: Implementing and authorized by the Employee Classification Act [820 ILCS 185].

SOURCE: Emergency rule adopted at 32 Ill. Reg. 574, effective December 27, 2007, for a maximum of 150 days; emergency rule expired May 24, 2008; adopted at 32 Ill. Reg. 13504, effective July 31, 2008; amended at 38 Ill. Reg. 18500, effective August 21, 2014.

SUBPART A: GENERAL PROVISIONS

Section 240.110 Definitions

"Act" means the Employee Classification Act [820 ILCS 185].

"Construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise.

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Construction shall also include moving construction related materials on the job site to or from the job site. [\[820 ILCS 185/5\]](#)

"Contractor" means any [individual](#), sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity permitted by law to do business within the State of Illinois who engages in construction as defined in the Act. Contractor includes a general contractor and a subcontractor. [\[820 ILCS 185/5\]](#)

["Day" means calendar day.](#)

"Department" means the Department of Labor. [\[820 ILCS 185/5\]](#)

"Director" means the Director of the Department of Labor or an authorized representative. [\[820 ILCS 185/5\]](#)

["Employee" means an individual who meets the definition of an "employee" in the Act and that individual shall be an employee for purposes of all applicable laws relating to wages and the payment of wages contained in 820 ILCS.](#)

"Employer" means any contractor that employs individuals deemed employees under Section 10 of the Act; however, "employer" does not include:

the State of Illinois or its officers, agencies, or political subdivisions; or

the federal government. [\[820 ILCS 185/5\]](#)

"Entity" means any contractor for which an individual is performing services and is not classified as an employee under Section 10 of the Act; however, "entity" does not include:

the State of Illinois or its officers, agencies, or political subdivisions; or

the federal government. [\[820 ILCS 185/5\]](#)

"Individual performing services" does not include a bona fide corporation nor a limited liability company (LLC). In determining whether a corporation is bona fide for purposes of the Act, the Department shall consider, among other factors, whether:

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the corporation is capitalized;

the corporation has issued corporate stock;

the corporation maintains a corporate bank account;

there is an intermingling of corporate and personal accounts or funds;

the corporation holds itself out as a corporation;

the corporation maintains corporate books and records, including corporate meeting minutes, and files corporate tax returns that are current and complete; ~~and~~

~~articles~~ Articles of ~~incorporation~~ Incorporation have been filed and the corporation is in good standing, in the case of Illinois corporations, with the Illinois Secretary of State or, in the case of foreign corporations, as directed by the laws of that jurisdiction; ~~;~~

the corporation carries out its daily activities in a manner consistent with the operations of a corporate entity;

the corporation employs employees to carry out its corporate purposes and principal activities; and

the corporation carries appropriate workers' compensation insurance coverage for its employees and has registered with the Illinois Department of Employment Security for unemployment insurance coverage.

In determining whether ~~an a limited liability company (LLC)~~ is bona fide for purposes of the Act, the Department shall consider, among other factors, whether:

the LLC has assets;

the LLC maintains a company bank account;

there is an intermingling of company and personal accounts or funds;

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the LLC holds itself out as an LLC;

the LLC makes necessary tax filings that are current and complete; ~~and~~

~~articles~~Articles of ~~organization~~Organization have been filed and the LLC is in good standing, in the case of Illinois LLCs, with the Illinois Secretary of State or, in the case of foreign LLCs, as directed by the laws of that jurisdiction;:-

the LLC carries out its daily activities in a manner consistent with the operations of an LLC;

the LLC employs employees to carry out its purposes and principal activities;

the LLC carries appropriate workers' compensation insurance coverage for its employees and has registered with the Illinois Department of Employment Security for unemployment insurance coverage.

"Interested party" means a person with an interest in compliance with the Act.
[820 ILCS 185/5]

"Performing services" means the performance of any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Construction shall also include moving construction related materials on the job site to or from the job site. [820 ILCS 185/5]

"Permitted by law to do business within the State of Illinois" means located, operating, transacting business, or performing services within the State of Illinois.

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"Person" means any individual, partnership, corporation, LLC, association, governmental subdivision, or public or private organization of any character.

"Responsible bidder" has the meaning ascribed to that term in Section 30-22 of the Illinois Procurement Code [30 ILCS 500/30-22].

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.120 Application of the Act

- a) Any individual performing services for a contractor ~~on or after January 1, 2008~~ is covered by the Act.
- b) Construction services performed on or after January 1, 2008 are covered by the Act. The misclassification of an employee as an independent contractor prior to January 1, 2008 shall not serve as the basis for a violation under the Act.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

SUBPART B: COMPLAINTS

Section 240.200 Persons Who May File a Complaint

Any ~~person interested party or the Department~~ may file a complaint alleging a violation of the Act. The Department can initiate an investigation upon its own motion.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.210 Contents and Filing of a Complaint

- a) A complaint shall be filed on a form to be supplied by the Department. ~~A complaint should be in such detail as to substantially apprise the Department of the dates, locations and facts with respect to the alleged violation of the Act.~~ Each complaint shall contain the following information:
 - 1) the full name and address of the complainant;
 - 2) the full name and address of the contractor;

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- 3) a statement or reflection of the complainant's basis of knowledge of the essential facts constituting the alleged violation, including the dates and locations of the alleged violation and the nature of the contractor's business;
 - 4) the complainant's signature, including date of signing; and
 - 5) a statement as to any other action, civil or criminal, instituted by the complainant or that the complainant has knowledge of, in any other forum based on the same violation as alleged in the complaint, together with a statement as to the status or disposition of the other action.
- b) Complaints must be filed within ~~365~~¹⁸⁰ days from the date of the alleged violation. If another State or federal agency is investigating a similar complaint regarding misclassification, the filing period with the Department is tolled until that agency renders a decision in the matter. A complaint is deemed timely if filed within 365 days after the date of that agency's decision.
- c) Any complaint that fails to meet the requirements set forth in subsection (a) ~~of this Section~~ may be accepted by the Department if it otherwise contains the information determined by the Department to be necessary for a proper investigation and review of the alleged violation contained in the complaint.
- d) All complaints ~~should be filed with the Department's Springfield office and will be considered filed upon receipt. Complaints shall not be accepted by facsimile or other electronic transmission.~~

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

SUBPART C: INVESTIGATION PROCEDURES

Section 240.300 Investigation

The Department shall conduct an investigation to ascertain the facts relating to the ~~violations~~^{violation} alleged in the complaint and determine whether a ~~violation~~^{violation} under the Act has occurred. The investigation may be made by written or oral inquiry, field visit, conference or any method or combination of methods deemed suitable at the discretion of the Department. The Department shall notify the contractor in writing, within 120 days after the

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filing of a complaint, of the filing of a complaint and provide the employer the locations of the projects, approximate dates of the projects, affected contractors and the nature of the allegations being investigated. The Department shall provide the contractor~~investigation shall include a written notice to the contractor of the substance of the complaint and~~ an opportunity to present any information the contractor wishes the Department to consider in reaching its determination.

- a) During the investigation, if a contractor refuses to cooperate, the Department may make a finding that the Act has been violated based upon the evidence available to the Department.
- b) ~~Complainants must provide the Department a notice of address change, telephone change or any prolonged absence from the current address so that the Department can fully investigate the complaint. All complainants must cooperate with the Department, provide necessary information and be available for interviews and conferences upon reasonable notice or request by the Department. If a complainant cannot be located or does not respond to reasonable requests by the Department, the Department shall dismiss the individual from the complaint pursuant to Section 240.220.~~
- be) ~~After a timely complaint has been filed, the~~The Department may investigate alleged violations that may have occurred within the 3~~for up to three~~ years preceding the date the complaint was filed; ~~however, in no instance shall the Department investigate complaints for alleged violations that occurred prior to January 1, 2008.~~
- c) Before making a final determination of a violation, the Department shall notify the contractors of the substance of the Department's investigation and afford the contractors an opportunity to present any written information, within 30 calendar days, for the Department to consider in reaching its determination.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.310 Fact-Finding Conference

As part of its investigation, the Department may convene a fact-finding conference in person or by telephone for the purpose of obtaining additional information or evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conferences will be limited to those issues the Department believes to be relevant.

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- a) Notice of the conference shall be given to all parties at least 15 calendar days prior to the conference and shall identify the individuals requested to attend on behalf of each party.
- b) A party may be accompanied at a fact-finding conference by the party's attorney or other representative and by a translator if necessary.
- c) A Department investigator shall conduct the conference and control the proceedings. No tape recordings, stenographic report or other verbatim record of the conference shall be made. If any person fails to cooperate at the conference and becomes so disruptive or abusive that a full and fair conference cannot be conducted, the Department investigator shall exclude the person from the conference.
- d) A party who appears at the conference exclusively through an attorney or other representative unfamiliar with the events at issue shall be deemed to have refused to attend, unless, with respect to a contractor, the contractor establishes that it does not employ or control any person with knowledge of the events at issue. A complainant who refuses to attend a fact-finding conference may be dismissed from the complaint pursuant to Section 240.220. If a contractor or complainant refuses to attend a fact-finding conference, the Department shall make a determination based upon the evidence provided to the Department.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

SUBPART D: CONTRACTOR RECORD KEEPING ~~AND NOTICE REQUIREMENTS~~**Section 240.400 Record Keeping**

- a) Every contractor, including subcontractors, shall maintain records for all individuals performing services for that contractor or subcontractor, regardless of how those individuals are classified. These records shall be maintained for a period of three years unless the records relate to an ongoing investigation or enforcement action under the Act, in which case the records must be maintained until their destruction is authorized by the Department or by court order.
- b) Records to be maintained by the contractor shall include all documents related to, or tending to establish the nature of, the relationship between the contractor and

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individuals performing services. Records that must be maintained for each individual performing services for the contractor include, but are not limited to:

- 1) name, address, phone number, their names, addresses, phone numbers, Social Security numbers, Individual Tax Identification NumberNumbers and Federal Employer Identification NumberNumbers;
- 2) the type of work performed and the total number of days and hours worked;
- 3) the method, frequency and basis on which wages were paid or payments were made;
- 4) all invoices, billing statements or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made;
- 5) copies of all contracts, agreements, applications and policy or employment manuals; and
- 6) any federal and State tax documents.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

SUBPART E: CONTRACTOR REPORTING REQUIREMENTS AND NOTICES
FINAL DETERMINATIONS

Section 240.405 Reporting Requirements

- a) Any contractor, other than a person meeting the responsible bidder requirements of Section 30-22 of the Illinois Procurement Code [30 ILCS 500/30-22], for which either an individual, sole proprietor or partnership is performing construction service, shall report all payments made to that individual, sole proprietor or partnership if the recipient of payment is not classified as an employee.
- b) The report shall be submitted to the Department annually on or before January 31 following the taxable year in which the payment was made on forms prepared by the Department. The report, which may be submitted electronically, must include:

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- 1) the contractor name, address and business identification number;
 - 2) the individual, sole proprietor or partnership name, address and federal employer identification number; and
 - 3) the total amount the contractor paid to the individual, sole proprietor or partnership performing services in the taxable year, including payments for services and for any materials and equipment that was provided along with the services.
- c) If the Department, upon investigation, finds that a contractor has failed to file a report or has filed an incomplete report in violation of this Section, the Department shall notify the contractor, in writing, of its finding and shall assess a civil penalty as provided in Section 40 of the Act.
- d) These reporting requirements do not apply to a business primarily engaged in the sale of tangible personal property or a contractor doing work for a business primarily engaged in the sale of tangible personal property.

(Source: Added at 38 Ill. Reg. 18500, effective August 21, 2014)

SUBPART F: FINAL DETERMINATIONS**Section 240.500 Decision and Notice Following Investigation**

- a) If, at the conclusion of an investigation, the Department determines that no violation of the Act or this Part has occurred, the complaint shall be dismissed.
- b) If, at the conclusion of the investigation, the Department determines that a violation of the Act or this Part has occurred, the Department may seek a voluntary settlement agreement that eliminates the unlawful practice and provides appropriate relief, including, but not limited to, the remedies as set forth in Section 240.510.
- c) Whenever a decision is made under this Section, the Department shall provide a written notice to all parties. The notice shall include a statement of the right to bring a civil action as provided for in Section 60 of the Act.

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- d) The Department will seek voluntary compliance by the contractor for any violations of the Act. If the contractor fails ~~to pay the penalties or comply with~~ to voluntarily resolve the remedies specified in the notice within 30 calendar days, the matter, the Department shall set the matter for a formal hearing in accordance with the provisions of Section 240.570 ~~the Department may within 180 days refer the matter to the Attorney General for enforcement.~~
- e) As part of the settlement process, the Department may convene an informal settlement conference that the contractor must attend. ~~Either party may seek review of the Department's final determination by filing with the Director a written request for an informal conference. The request must be received by the Director within 15 calendar days after the issuance of the final determination.~~
- 1) ~~The informal conference will be conducted by the Director and/or the Department's Chief Legal Counsel. During that conference, the party seeking review may present written or oral information and arguments as to why the Department's final determination should be amended or reconsidered.~~
- 2) ~~The Director and/or the Department's Chief Legal Counsel shall consider the information and arguments presented and shall issue a written decision advising all parties of the outcome of the informal conference.~~

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.510 Remedies Upon Finding of a Violation

- a) An Administrative Law Judge (ALJ), as part of any final decision finding ~~When the Department concludes, based upon its investigation, that a violation of the Act or this Part has occurred, the Department may:~~
- 1a) order the contractor to eliminate ~~Seek a voluntary settlement agreement that eliminates the unlawful practice and provides appropriate relief;~~
- b) ~~Recommend the commencement of a civil action;~~
- 2e) issue ~~Issue~~ a cease and desist order;
- 3d) assess ~~Assess~~ civil penalties as set forth in Section 40 of the Act;

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- 4e) ~~collect~~Collect the amount of any wages, salary, employment benefits or compensation denied or lost to the individual;
- 5f) ~~place~~Place the contractor on the debarment list pursuant to Section 42 of the Act; and/or
- 6g) ~~take~~Take any other reasonable action to eliminate the unlawful practice and/or remedy the effect of the violation.
- b) If an ALJ finds that an employee has been misclassified under the Act, the misclassified employee is entitled to all rights and benefits to which an employee is otherwise entitled under other applicable State laws by virtue of being an employee, including but not limited to all lost wages resulting from not being paid the minimum wage or overtime. An ALJ shall not make a separate finding of employee status under other applicable laws. In addition, an ALJ can order a contractor to reimburse the person for improper deductions, such as lost unemployment or workers' compensation benefits resulting from being misclassified, or order the contractor to make contributions on the employee's behalf.
- c) An ALJ may hold, in addition to an individual who is an employer as defined by Section 5 of the Act, any officer or agent of a corporation who knowingly permits the employer to violate the Act individually liable for all violations and penalties assessed under the Act. This subsection shall not apply to an individual who is an officer or agent of a corporation that, on the project under investigation, satisfies the responsible bidder requirements set forth in Section 30-22 of the Illinois Procurement Code [30 ILCS 500/30-22].
- d) In determining whether an officer or agent knowingly permits violations of the Act under subsection (c), one of the factors to be considered is the extent and nature of the misclassifications and whether the officer or agent is responsible for the corporation conducting, and/or knowingly allowing the corporation to conduct, its regular course of business activities using a business model of misclassifying employees as independent contractors or has knowledge of that business model and does not take any steps to cause it to cease. An isolated incident of misclassification when the corporation otherwise operates with its own employees, or when a clerical mistake is made, is in and of itself insufficient to establish a knowing violation sufficient to impose individual liability.

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(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.520 Civil Penalties

- a) A contractor that violates any of the provisions of the Act or this Part shall be subject to a civil penalty not to exceed \$~~10001,500~~ for each violation found in the first audit by the Department. Following a first audit, a contractor shall be subject to a civil penalty not to exceed \$~~20002,500~~ for each repeat violation found by the Department within a five-year period.
- b) Each violation of the Act, for each person and for each day the violation continues, shall constitute a separate and distinct violation.

(Source: Amended at 38 Ill. Reg. 18500, effective August 21, 2014)

Section 240.570 Hearing Procedures

- a) The Department shall issue a complaint and notice of hearing. The complaint shall set forth the allegations of the Department regarding its findings and the relief the Department is requesting.
- b) The contractor shall file its answer within 28 calendar days from the date of the complaint and specifically admit, deny or explain each of the facts alleged in the complaint. However, if the respondent is without knowledge, the respondent shall so state and that statement operates as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the answer states that the contractor is without knowledge, shall be deemed to be admitted to be true and shall be so found by the ALJ.
- c) An original and one copy of the answer shall be filed with the ALJ. Immediately upon the filing of his or her answer, the contractor shall serve a copy on the Director and other parties. An answer of a party represented by counsel or non-attorney party representative shall be signed by at least one attorney or non-attorney party representative of record in his or her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney party representative shall sign his or her answer and state his or her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party representative constitutes a certificate by him or her that he or she has read the

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answer; that, to the best of his or her knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this Section, it may be stricken as a sham and false and the action may proceed as though the answer had not been served. For a willful violation of this Section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

- d) The ALJ before whom the hearing is scheduled may by written order extend the time within which the answer shall be filed.

- e) If a contractor fails to answer and the ALJ grants a motion for summary judgment and enters a final order based upon the failure to answer and an admission of all the facts as true and, if within 30 days after the final decision issued by the ALJ, the contractor files a motion to vacate the ALJ's final decision demonstrating good cause shown for failing to answer the Department's allegations, and the ALJ thereafter grants the motion, the contractor shall be afforded an opportunity to answer and the matter shall proceed as if an original answer to the Department's findings had been filed.

- f) Except as provided for in this Section, the Department's rules for formal hearings set forth in the Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120) shall apply.

(Source: Added at 38 Ill. Reg. 18500, effective August 21, 2014)

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- 1) Heading of the Part: Payment and Collection of Wages or Final Compensation
- 2) Code Citation: 56 Ill. Adm. Code 300
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
300.440	Amendment
300.450	Amendment
300.500	Amendment
300.510	Amendment
300.520	Amendment
300.530	New Section
300.540	New Section
300.600	Amendment
300.620	Amendment
300.630	Amendment
300.720	Amendment
300.920	Amendment
300.930	Amendment
300.940	Amendment
300.941	Amendment
300.942	Amendment
300.950	Repealed
300.960	Repealed
300.970	Repealed
300.980	Repealed
300.990	Repealed
300.1020	Repealed
300.1028	New Section
300.1030	New Section
300.1040	Amendment
300.1050	Amendment
300.1060	Amendment
300.1070	Amendment
300.1080	Amendment
300.1090	Amendment
300.1100	Amendment
300.1110	Amendment
300.1120	Amendment
300.1130	Amendment

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300.1140	Repealed
300.1150	Amendment
300.1160	Amendment
300.1180	Amendment
300.1190	Amendment
300.1200	Amendment
300.1210	Amendment
300.1220	New Section

- 4) Statutory Authority: Implementing and authorized by the Illinois Wage Payment and Collection Act [820 ILCS 115]
- 5) Effective Date of Rule: August 22, 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. 7052; March 28, 2014
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Section 300.450, added a new definition as follows:

"Location readily available" means a location within reasonable proximity to an employee's home or place of work and can be easily accessed.

Section 300.600(a) reads:

All wages owed to an employee shall be paid at the discretion of the employer, in lawful money of the United States, by a check redeemable only upon demand and without discount at a bank or other financial institution readily available to the employee, or at the discretion of the employee, by an employee's voluntary acceptance of direct deposit of funds in any bank or other financial institution designated by the employee, or by an employee's voluntary acceptance of a payroll card authorized by Section 14.5 of the Act and that meets the requirements

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of that Section. An employer is not permitted to offer employees only the choice between two voluntary methods of payment. Because payment by either payroll card or direct deposit must be voluntary, an employer offering either or both of these payment methods must also provide an additional choice of payment by cash or check, in accordance with Section 4 of the Act. Notwithstanding the method of payment, the employer must provide the employee with a written receipt statement that shows hours worked, rate of pay, overtime pay and overtime hours, gross wages, an itemization of all deductions, wages and deductions year to date. When an employer offers to any of its employees alternative options for receipt of payment of wages, all employees must be afforded the same options. Where an employer elects to pay employees in cash, the employer must obtain signed receipts from the employee indicating date of payment and amount received.

Section 300.600(b), after "institution", struck the period and added ", and an employer shall not require an employee to accept a payroll card of payment of wages, unless the employer obtains the employee's voluntary written or electronic consent to receive wages by payroll card."

Section 300.600(c) outlining payroll card requirements was deleted.

The title of Section 300.620 reads: "Officers, Agents, or Other Persons."

Section 300.620(a), after "compensation", added:

For example, any person, including corporate officers and agents, acting directly or indirectly in the interest of an employer, includes but is not limited to, actions such as being a signatory to an employment or union contract, or otherwise maintaining a decision-making role with regards to employment decisions and/or payment of employees. In evaluating whether any person, including officers and agents, are individually liable under the Act, the "economic realities test" is the appropriate standard, and although no one factor is dispositive, the relevant inquiry is whether the person:

held significant ownership interest in the corporation or entity;

exercised operational control over significant aspects of the corporation and/or entity's day-to-day functions, including the compensation of employees, or had supervisory authority over employees and was

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responsible in whole or in part for the alleged violation; and was personally involved in the decision to continue operations despite financial adversity during the period of nonpayment.

In Section 300.620(b), after "whom", added "or what entity" and deleted "throughout a" and replaced with "during the" and ended the subsection after "period".

Section 300.941(a) ends "the date of mailing or other service of the notice of claim under Section 300.940 (c) and (d).

Section 300.941(c), after the word "claim", added "as required in Sections (a) and (b)" and after the word "true" deleted the period and added "as of the 21st day following the notice of claim."

Section 300.941(d) struck "are" and replaced with "may be" and, after "whether" added "there is sufficient evidence to proceed to a formal administrative hearing.", and struck "the Act has been violated", struck "reason to believe the Act has not been violated" and replaced with "insufficient evidence to proceed to hearing", struck "that there is reason to believe" and replaced with "sufficient evidence" and struck "has" and replaced with "may have".

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Amendments are necessary due to PA 98-527 which amended the Illinois Wage Payment and Collection Act. The amendments eliminate the \$3,000 mandatory claim cap allowing all parties access to the expedited formal hearing process. The rulemaking amendments address proper notice, service and hearing procedures before the administrative law judges. The amendments also include updates to issues such as bonus pay, vacation, commissions and the use of pay cards for the payment of wages.
- 16) Information and questions regarding this adopted rule shall be directed to:

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Jim Preckwinkle
Illinois Department of Labor
900 S. Spring St.
Springfield IL 62704

217/558-1270
fax: 217/782-0596

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

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TITLE 56: LABOR AND EMPLOYMENT

CHAPTER I: DEPARTMENT OF LABOR

SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 300

PAYMENT AND COLLECTION OF WAGES OR FINAL COMPENSATION

Section

300.100	Cash or Inventory Shortages (Repealed)
300.110	Failure to Follow Credit Card, Check-Cashing, Accounts Receivable Procedures (Repealed)
300.120	Acceptance of Disputed Paycheck (Repealed)
300.200	Cash Advance Repayment Agreement (Repealed)
300.210	Deduction Limit (Repealed)
300.220	Balance Due at Termination (Repealed)
300.230	Acceptance of Disputed Paycheck (Repealed)
300.300	Damaged Property (Repealed)
300.310	Acceptance of Disputed Paycheck (Repealed)
300.400	Return of Employer's Property (Repealed)
300.410	Deposit (Repealed)
300.420	Conditions of Return of Deposit (Repealed)
300.430	Time for Return of Deposit (Repealed)

SUBPART A: GENERAL PROVISIONS

Section

300.440	Jurisdiction Application
300.450	Definitions
300.460	Independent Contractor Exemption

SUBPART B: WAGES OR FINAL COMPENSATION

Section

300.500	Earned Bonuses
300.510	Earned Commissions
300.520	Earned Vacations
300.530	Severance
300.540	Expenses

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SUBPART C: PAYMENT OF WAGES OR FINAL COMPENSATION

Section

- 300.600 [Payment of Wages](#)~~Direct Deposit~~
- 300.610 Gratuitous Payments at Separation
- 300.620 [Individual](#)~~Personal~~ Liability of Officers, ~~and~~ Agents [or Other Persons](#)
- 300.630 Records and Notice Requirements
- 300.640 Refusal to Pay Wages or Final Compensation

SUBPART D: DEDUCTION FROM WAGES OR FINAL COMPENSATION

Section

- 300.700 Scope of Subpart D
- 300.710 Burden of Proof
- 300.720 Written Agreement Authorizing Deductions
- 300.730 Cash or Inventory Shortages
- 300.740 Failure to Follow Credit Card, Cash Checking, or Accounts Receivable Procedures
- 300.750 Cash Advance Repayment Agreement
- 300.760 Advanced Vacation Pay
- 300.770 Tuition Reimbursement
- 300.780 Training and Educational Expenses
- 300.790 Cash Advance Exception
- 300.800 Deduction Limit
- 300.810 Balance Due at Termination
- 300.820 Damaged Property
- 300.830 Return of Employer's Property
- 300.840 Uniforms Required by an Employer
- 300.850 Equipment Required by an Employer
- 300.860 Medical Examinations and Records
- 300.870 Deposit
- 300.880 Conditions of Return of Deposit
- 300.890 Time for Return of Deposit
- 300.900 Overpayment
- 300.910 Deductions From Bank Accounts
- 300.920 Acceptance of Disputed Paycheck
- 300.930 Notice of Disputed Deductions

SUBPART E: FILING OF A CLAIM FOR WAGES OR FINAL COMPENSATION

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Section

- 300.940 Filing of a Claim [and Service](#)
300.941 Employer ~~and Employee~~ Response [and Investigation](#)
300.942 Withdrawal of a Claim

SUBPART F: INFORMAL INVESTIGATIVE HEARING

- 300.950 Scheduling and Notice of an Informal Investigative Hearing ([Repealed](#))
300.960 Continuances ([Repealed](#))
300.970 Application of the Rules of Evidence, Pleadings and Procedures in an Informal Investigative Hearing ([Repealed](#))
300.980 Participants at Informal Investigative Hearings ([Repealed](#))
300.990 Contumacious Conduct at Informal Investigative Hearings ([Repealed](#))
300.1000 Informal Telephone Hearings
300.1010 Issuance of Administrative Subpoena
300.1020 Review of Hearing Officer Determination ([Repealed](#))

SUBPART G: FORMAL ~~DEFAULT~~ HEARINGS

Section

- [300.1028](#) [Applicability](#)
[300.1030](#) [Consolidation/Severance/Class Actions](#)
300.1040 Scheduling and Notice of a Formal ~~Default~~ Hearing
300.1050 Manner and Service of Notice
300.1060 Formal ~~Default~~ Hearing Continuances
300.1070 Application of the Rules of Evidence, Pleadings and Procedures in a Formal ~~Default~~ Hearing
300.1080 Participants at a Formal ~~Default~~ Hearing
300.1090 Conduct in a Formal ~~Default~~ Hearing
300.1100 Telephone Hearing for a Formal ~~Default~~ Hearing
300.1110 Subpoenas [for Investigation and Testimony at Hearing](#)
300.1120 Ex Parte (One Party Only) Communications
300.1130 Disqualification of [an Administrative Law Judgea Hearing Officer](#)
300.1140 Consolidation/Severance ([Repealed](#))
300.1150 Failure of a Party to Appear at a Formal ~~Default~~ Hearing
300.1160 Notice and Appeal of Department's ~~Default~~ Order

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SUBPART H: DAMAGES, PENALTIES AND FEES

Section

300.1180	Non-Waivable Administrative Fee to the Department
300.1190	Statutory Damages Due to the Employee
300.1200	Additional Penalties Due to the Department and Employee
300.1210	Payment of Demands or Final Orders; Penalties and Fees

SUBPART I: COMPLAINTS FOR RETALIATIONSection300.1220 Filing of a Complaint, Investigation and Service

AUTHORITY: Implementing and authorized by Section 9 of the Illinois Wage Payment and Collection Act [820 ILCS 115/9].

SOURCE: Filed October 16, 1975, effective October 26, 1975; codified at 8 Ill. Reg. 18488; amended at 16 Ill. Reg. 13828, effective September 1, 1992; emergency amendment at 35 Ill. Reg. 3805, effective February 22, 2011, for a maximum of 150 days; amended at 35 Ill. Reg. 12933, effective July 20, 2011; amended at 38 Ill. Reg. 18517, effective August 22, 2014.

SUBPART A: GENERAL PROVISIONS

Section 300.440 JurisdictionApplication

The Department will review aassist an individual in his/her claim for wages or final compensation and determine whether the Department can assert jurisdiction over the claim.when:

- a) The phrase "in this State" as used in the Act does not exclude entities physically situated outside the State of Illinois. An employer or employee, to be "in this State", need not have residency in this State. An officer or agent need not be physically present in order to be regarded as "in this State" for purposes of jurisdiction under the Act.
- ba) The Department will assert jurisdiction over a claim when the work was performed in Illinois for an Illinois employer, regardless of where the employee resides. The claim concerns work performed within the State of Illinois, but not when the claim concerns sporadic work performed in Illinois for an employer

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~~located outside of Illinois.~~

- ~~c)~~ The Department will assert jurisdiction over a claim when the work was performed in Illinois for an employer that may have residency outside the State if the employer has sufficient contacts in the State, such as performing substantial business in the State, maintaining a principal place of business in the State, marketing its services in the State or maintaining a registered agent within the State. The claim concerns work performed outside the State of Illinois if the specified employer is located within Illinois or the contract for hire was entered into in this state, but not when the claim is filed by an employee whose permanent work station was outside the State of Illinois and who performed a substantial portion of his/her duties outside Illinois.
- ~~d)~~ If the work is performed outside the State of Illinois, the employer must be located in Illinois in order for the Department to assert jurisdiction over the claim. The claim is filed by an employee whose permanent work station and employer is outside the State of Illinois and who performed a substantial portion of his/her duties outside of Illinois when the claim is within the jurisdiction of a state that has a reciprocal agreement with the Department in accordance with Section 7 of the Act.
- e) The Department will exercise personal jurisdiction over a nonresident individual when the person is an officer, director or agent of a corporation organized under Illinois law having a principal place of business or presence in the State and when there are sufficient contacts within the State.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.450 Definitions

Except for the terms set forth in Section 2 of the Act, all other terms used in this Part shall have the meanings set forth in this Section.

- a) "Act" means the Illinois Wage Payment and Collection Act [820 ILCS 115].
- b) "Administrative ~~Employee~~employee" means an employee as defined by 29 CFR 541, ~~as it existed on~~ (March 30, 2003).

"Administrative Law Judge" or "ALJ" means an individual authorized by the

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Department to determine the merits of claims alleging violations of the Act.

"Agreement" means the manifestation of mutual assent on the part of two or more persons. An agreement is broader than a contract and an exchange of promises or any exchange is not required for an agreement to be in effect. An agreement may be reached by the parties without the formalities and accompanying legal protections of a contract and may be manifested by words or by any other conduct, such as past practice. Company policies and policies in a handbook create an agreement even when the handbook or policy contains a general disclaimer such as a provision disclaiming the handbook from being an employment contract, a guarantee of employment or an enforceable contract. While a disclaimer may preclude a contract from being in effect, it does not preclude an agreement by two or more persons regarding terms set forth in the handbook relating to compensation to which both have otherwise assented. An agreement exists even if does not include a specific guarantee as to the duration of the agreement or even if one or either party reserves the right to change the terms of the agreement.

- e) "Claim" means a signed application alleging a violation of the Act, accompanied by supporting documentation required by the Department.
- f) "Claimant" means any person who submits a claim.
- e) "Compensation" means remuneration or compensation an employee receives in return for services rendered to an employer. The remuneration for services rendered includes hourly wages, overtime wages, commissions, piece rate work, salary, bonuses, expense reimbursements, or any other basis of calculation for services performed. Compensation does not include future wages to be paid pursuant to a terminated employment contract.
- e) "Day" means a calendar day.
- f) "Department" means the Illinois Department of Labor, its Director, and his or /her authorized representatives.
- g) "Executive ~~Employee~~employee" means an employee as defined by 29 CFR 541; ~~as it existed on~~ (March 30, 2003).
- h) ~~"Hearing Officer" means an individual authorized by the Department to determine~~

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~~the merits of claims alleging violations of the Act.~~

"Location readily available" means a location within reasonable proximity to an employee's home or place of work that can be easily accessed.

- i) "Other ~~Representative~~representative" means any person with a direct relationship to the party, who is not an attorney or legal representative, who can address the substance of the claim, including a spouse, relative or friend who can provide further clarification on the issues being considered or assist with translation for the party he or she represents.
- j) "Party" means a claimant and any employer whose payment of wages or final compensation is in question.
- k) "Professional ~~Employee~~employee" means an employee as defined by 29 CFR 541, ~~as it existed on~~ (March 30, 2003).

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART B: WAGES OR FINAL COMPENSATION

Section 300.500 Earned Bonuses

A bonus is compensation given in addition to the required compensation for services performed. The Department does not maintain jurisdiction over discretionary or gratuitous bonuses. In order to receive compensation under the Act, the bonus must be earned.

- a) An employee has a right to an earned bonus when there is an unequivocal promise by the employer and the employee has performed the requirements set forth in the bonus agreement between the parties and all of the required conditions for receiving the bonus set forth in the bonus agreement have been met. Unless one of the conditions for the bonus is that the employee be on the payroll at the time of the bonus payout, the bonus is due and owing to the employee at the time of separation.~~A claim for an earned bonus arises when an employee performs the requirements for a bonus set forth in a contract or an agreement between the parties.~~
- b) A former employee shall be entitled to a proportionate share of a bonus earned by length of service, regardless of any provision in the contract or agreement

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conditioning payment of the bonus upon employment on a particular date, when the employment relationship was terminated by mutual consent of the parties or by an act of the employer through no fault of the former employee.

- c) A gratuitous bonus does not obligate the employee to do or forgo something in return for the bonus and the employee has no right to make a demand for the bonus.
- d) A discretionary bonus is when the terms associated with the earning of the bonus are indefinite or uncertain, such as bonus being upon a positive evaluation of the "employee's performance" and not when the earning of a bonus is based on objective factors such as length of service, attendance or sign-on or relocation incentives.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.510 Earned Commissions

A commission is the compensation for services performed pursuant to an employment contract or agreement between the two parties. In order to be entitled to receive compensation for a commission under the Act, the commission must be earned under the terms of the agreement or contract.

- a) A separated employee has a right to an earned commission when the conditions regarding entitlement to the commission have been satisfied~~Absent an express agreement to the contrary an employee who is the procuring cause of a sale or other transaction is entitled to commission~~, notwithstanding the fact that, due to the employee's separation from employment, the sale or other transaction was consummated by the principal personally or through another agent.
- b) When the employer and employee agree that the employee is to be ~~paid~~advanced a commission on the basis in anticipation of a particular sale, and the sale is subsequently voided, the employer may ~~not~~ deduct from the employee's wages or final compensation ~~any amount greater than~~ the amount of the commission previously ~~paid~~advanced on that particular sale.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.520 Earned Vacations

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- a) Whenever an employment contract or an employment policy provides for paid vacation earned by length of service, vacation time is earned pro rata as the employee renders service to the employer.
- b) Oral promises, handbooks, memoranda, and uniform patterns of practice may create a duty to pay the monetary equivalent of earned vacation.
- c) Claims for vacation pay must be brought to the Department within 3 years from the date the vacation is earned.
- d) Nothing in this Section shall be construed to reduce or impair the right of the claimant to maintain a civil action to recover additional vacation pay found due by a court.
- e) An employment contract or an employer's policy may require an employee to take vacation by a certain date or lose the vacation, provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of the contract or policy provision.
- f) The Department recognizes policies under which:
 - 1) no vacation is earned during a limited period at the commencement of employment. The employer must demonstrate that the policy is not a subterfuge to avoid payment of vacation actually earned by length of service and, in fact, no vacation is implicitly earned or accrued during that period.
 - 2) vacation is earned and accrues at an accelerating rate during the year. The policy is acceptable when the acceleration period and the changes in accrual rates are reasonable, and the policy is uniformly applied.
 - 3) the employer does not have separate arrangements for vacation and sick leave. Under the policy, employees earn a certain amount of "paid time off" that they can use for any purpose, including vacation and sick leave. Because employees have an absolute right to take this time off (unlike traditional sick leave in which using sick leave is contingent upon illness), the Department will treat "paid time off" as earned vacation days.

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- g) Any employer that provides paid vacation to its employees must maintain true and accurate records of the number of vacation days earned for each year and the dates on which vacation days were taken and paid.
- h) An employer cannot effectuate a forfeiture of earned vacation by a written employment policy or practice of the employer.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.530 Severance

Severance is a payment that an employee is entitled to be paid upon separation from employment pursuant to an agreement between the parties or established practice of the employer.

(Source: Added at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.540 Expenses

Expenses incurred related to services performed for the employer are included in final compensation owed to an employee.

(Source: Added at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART C: PAYMENT OF WAGES OR FINAL COMPENSATION

Section 300.600 Payment of Wages~~Direct Deposit~~

- a) All wages owed to an employee shall be paid at the discretion of the employer, in lawful money of the United States, by a check redeemable only upon demand and without discount at a bank or other financial institution readily available to the employee, or at the discretion of the employee, by an employee's voluntary acceptance of direct deposit of funds in any bank or other financial institution designated by the employee, or by an employee's voluntary acceptance of a payroll card authorized by Section 14.5 of the Act and that meets the requirements of that Section. An employer is not permitted to offer employees only the choice between two voluntary methods of payment. Because payment by either payroll card or direct deposit must be voluntary, an employer offering either or both of these payment methods must also provide an additional choice of payment by cash or check, in accordance with Section 4 of the Act. Notwithstanding the

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method of payment, the employer must provide the employee with a written receipt that shows hours worked, rate of pay, overtime pay and overtime hours, gross wages, an itemization of all deductions, wages and deductions year to date. When an employer offers to any of its employees alternative options for receipt of payment of wages, all employees must be afforded the same options. When an employer elects to pay employees in cash, the employer must obtain signed receipts from the employee indicating date of payment and amount received.

- b) An employer shall not require an employee to enroll in a direct deposit arrangement or make payment of wages or final compensation by direct deposit unless the employee voluntarily accepts this form of payment and voluntarily designates a bank or a financial institution, and an employer shall not require an employee to accept a payroll card as payment of wages, unless the employer obtains the employee's voluntary written or electronic consent to receive wages by payroll card. It is not voluntary in fact if the employee is given to understand, or led to believe, that it is a condition for hire or maintenance of his or her present working conditions, or if continuance of his or her employment would be adversely affected by non-acceptance.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.620 Individual~~Personal~~ Liability of Officers, Agents or Other Persons~~Officers and Agents~~

- a) As a result of PA 96-1407, any person, including corporate officers, agents or any person who acts directly or indirectly in the interest of an employer in relation to an employee is an employer under Section 2 of the Act and may be held individually liable for wages and final compensation. For example, any person, including corporate officers and agents, acting directly or indirectly in the interest of an employer, includes, but is not limited to, actions such as being a signatory to an employment or union contract, or otherwise maintaining a decision-making role with regards to employment decisions and/or payment of employees. In evaluating whether any person, including officers and agents, are individually liable under the Act, the "economic realities test" is the appropriate standard and, although no one factor is dispositive, the relevant inquiry is whether the person:
- 1) held significant ownership interest in the corporation or entity;

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- 2) exercised operational control over significant aspects of the corporation's and/or entity's day-to-day functions, including the compensation of employees, or had supervisory authority over employees and was responsible in whole or in part for the alleged violation; and
 - 3) was personally involved in the decision to continue operations despite financial adversity during the period of nonpayment.
- ba) In addition to an individual who is deemed to be an employer pursuant to Section 2 of the Act, Section 13 of the Act allows for a separate and independent basis for liability for any officers of a corporation or agents of an employer who knowingly permit the employer to violate the provisions of the Act. Such a person may be deemed to be an employer employers of the employees of the corporation and shall be individually personally liable for a claimant's wages or final compensation under Section 13 of the Act. For example, individual liability would attach when an individual exercises sufficient control to allocate to whom or what entity the funds would be paid and in what amount (i.e., no paychecks, full paychecks or partial paychecks) during the relevant time period.
- cb) As used in subsection (b) ~~Subpart A of this Part:~~
- 1) "Knowingly" means knowledge of the existence of facts constituting the alleged violation, rather than a knowledge of the unlawfulness of the act or omission.
 - 2) "Permit" means to allow to happen or to fail to prevent, regardless of the corporation's ability to pay.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.630 Records and Notice Requirements

- a) Regardless of an employee's status as either an exempt administrative employee, executive or professional, every Every employer shall make and maintain, for a period of not less than 3 years, the following true and accurate records for each employee: the name and address, the hours worked each day in each work week, the rate of pay, copies of all notices provided to the employee as required by subsection (d), the amount paid each pay period and all deductions made from wages or final compensation. Additionally, any employer that provides paid

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vacation to its employees must maintain, for a period of not less than 3 years, true and accurate records of the number of vacation days earned for each year and the dates on which vacation days were taken and paid.

- b) In the absence of employer records, a claimant may not be denied recovery of wages or final compensation on the basis that the employee is unable to prove the precise extent of uncompensated work or final compensation. An employee need only produce sufficient evidence to demonstrate the amount and extent of work or time earned as a just and reasonable inference. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under subsection (a) shall not preclude a finding based on the information available that wages or final compensation are due, even though the award may be only approximate.
- c) Every employer shall furnish in writing to each employee ~~with~~ an itemized statement of deductions made from wages for each pay period.
- d) An employer is required to notify an employee in writing, at the time of hiring, of the rate of pay. An employee commencing work shall reflect mutual assent to the rate of pay. An employer shall not change an agreement regarding the payment of wages and compensation without first notifying the employee prior to the effective date of the change. The employer shall place the arrangement in writing at the time of the change and present the change to the employee unless impossible to do so. Because of extraordinary circumstances, the immediate placement in writing may not be able to be accomplished, but this inability to do so must be immediately rectified. An employer cannot rely upon an employee's continued employment as affirmation that the employee consented to an adverse modification of the employee's rate of compensation when the employee was not notified in writing of the modification prior to its effective date. However, when the employee continues to work after being notified of a change in writing, the employee shall be presumed to have assented to the change, absent evidence to the contrary. An employer may not retroactively adversely affect the wages earned by an employee. In every employment relationship, it is presumed that the employer will pay for all hours worked, as defined in 56 Ill. Adm. Code 210.110. An employee who has not been paid for all hours worked is not presumed by reason of the employee's continuing to work to have assented to work without compensation for the hours worked at the agreed rate of compensation or to have assented to the non-payment of required or promised overtime pay.

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- e) The employer shall bear the burden of showing that it was not possible to notify the employee in writing, at the time of hiring, of the rate of pay and of the time and place of payment. "Rate of pay" shall include a description of all wages or final compensation, as defined by Section 2 of the Act and this Part.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART D: DEDUCTION FROM WAGES OR FINAL COMPENSATION

Section 300.720 Written Agreement Authorizing Deductions

- a) Any written agreement between employer and claimant permitting or authorizing deductions from wages or final compensation must be given freely at the time the deduction is made. In the case of cash advances, the agreement may be made either at the time of the deduction or at the time of the advance itself.
- b) When a deduction is to continue over a period of time and the written agreement provides for that period of time, provides for the same amount of deduction each period and allows for voluntary withdrawal for the deduction, the agreement shall be considered to be given freely at the time the deduction is made.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.920 Acceptance of Disputed Paycheck

Acceptance by an employee of a disputed paycheck will not be ~~considered~~ evidence that the employee has released all claims~~agreed to the deduction in question.~~

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.930 Notice of Disputed Deductions

- a) Notice by an employer of disputed deductions from wages under Section 9 of the Act shall be either typewritten or clearly handwritten and shall include: the name and last known address of the employee from whose wages or final compensation the deduction is being made; the amount that is being withheld; the reason for which the deduction is being made; the date on which payment would have been made; ~~and~~ the name, business address and telephone number of the employer and

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any officer or agent of the employer who will present the employer's position to the Department during its investigation of the deduction; and any supporting documentation. The notice shall be prominently marked "NOTICE OF DISPUTED DEDUCTION~~Notice of Disputed Deduction~~" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office at 160 N. LaSalle, C-1300, Chicago IL 60601 on or before the day the money is due to the employee.

- b) The Department will notify the employee of the proposed deduction and provide an opportunity for the employee to contest the deduction. The employee's response shall be typewritten or clearly handwritten and shall state the reasons why the employee contests the deduction. The response shall be prominently marked "DISPUTED DEDUCTION RESPONSE" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office. If the employee does not respond within 10 days after receipt of the Department's notice, the deduction shall be permitted and the Department will take no further action. Acceptance of late responses by the employee shall be at the sole discretion of the Department.
- c) The Department may permit a deduction when an employer can establish by clear and convincing evidence that:
 - 1) the employee is indebted to the employer in an amount equal to or greater than the amount sought to be withheld; and
 - 2) it would be inequitable to require the employer to make payment to the employee prior to the employee satisfying his or /her obligation to the employer.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART E: FILING OF A CLAIM FOR WAGES OR FINAL COMPENSATION

Section 300.940 Filing of a Claim and Service

- a) An employee or an employee's representative may file a complaint with the Department alleging violations of the Act by submitting ~~2 signed copies of~~ a completed wage claim application on the form provided by the Department and by submitting ~~2 copies of~~ all supporting documentation. Complaints shall be filed

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within one year after the wages or final compensation were due.

- b) Applications shall be reviewed by the Department to determine whether there is cause for investigation. The Department will limit its investigation to reviewing the 3 years prior to the date the complaint was filed.
- c) Service of any document upon any person may be made by personal delivery, certified mail with the return receipt signed by the person or its agent, US regular mail with postage prepaid, electronic mail (e-mail) when agreed to by the employer or claimant, or any other verifiable means, such as private carrier, to the following:~~The Department will seek to verify the accuracy of the employer's address, as provided by the claimant, using one or more of the following:~~
 - 1) address on file with the Department;
 - 2) address on file with the Secretary of State;
 - 3) address on file with any other State agency with which the employer has the duty to maintain a current address; or
 - 4) any other address, including e-mail address, the Department reasonably calculates to be a true and current address for the employer.
- d) The Department will notify the employer of the existence of the claim.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.941 Employer ~~and Employee~~ Response and Investigation

- a) The employer must remit payment of all undisputed amounts and submit a written explanation of all the amounts remaining in dispute within 2015 days ~~after from~~ the date of mailing or other service of the Department's notice of claim under Section 300.940(c) and (d).
- b) The employer's response shall include the reasons for non-payment and any business records and other documentation necessary for the Department's investigation of the claim~~to support the employer's position. Two copies of all supporting documentation shall be provided to the Department.~~

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- c) If an employer fails to answer the claim as required in subsections (a) and (b) or fails to answer all material allegations contained in the claim, any unanswered allegations shall be deemed admitted to be true as of the 21st day following the notice of claim.
- e) ~~Upon receipt of an employer's response, the Department may send a copy of the employer's response to the claimant.~~
- d) ~~Within 15 days after receiving the employer's response from the Department, the employee must submit a response to the Department in order to continue the Department's investigation. If the employee fails to submit a written response, the Department may dismiss the claim.~~
- e) ~~If the employer fails to respond to the Department's notice, the claim is \$3000 or less per employee and the Department can verify the accuracy of the employer's address consistent with Section 300.940(e), a formal default hearing will be conducted in accordance with Subpart G.~~
- df) The~~If the employer fails to respond within the prescribed deadlines, the~~ Department will review the information provided by the parties~~offered by the~~ employee in order to determine whether wages or final compensation may be~~are~~ due and shall~~may~~ make a determination whether there is sufficient evidence to proceed to a formal administrative hearing~~that the Act has been violated based upon the evidence available to the Department. If the review demonstrates there is insufficient evidence to proceed to hearing, the claim will be dismissed. If the review demonstrates sufficient evidence the Act may have been violated, the matter will be set for a formal administrative hearing.~~ The Department will notify both parties of its determination and may issue appropriate orders.
- eg) The Department may consider untimely submissions by either party, upon written request by the party within a reasonable period of time, if there is a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.942 Withdrawal of a Claim

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An employee may voluntarily withdraw his or her claim by submitting a written statement to the Department or making a verbal statement on the record during the hearing or at any time prior to the issuance of the ~~ALJ's Hearing Officer's~~ decision. The Department will provide written notice to all parties of the withdrawal of the claim.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART F: INFORMAL INVESTIGATIVE HEARING

Section 300.950 Scheduling and Notice of Investigative Hearing (Repealed)

- a) ~~When the Department is unable to resolve a dispute upon review of the information submitted by the parties, the Department may schedule an informal investigative hearing before a Hearing Officer. The Department conducts hearings to obtain further information; to determine if any violation of the Act exists; to attempt to resolve the matter equitably; and to decide whether there is sufficient evidence to recommend court action.~~
- b) ~~A written notice of hearing shall be sent to the parties not less than 10 days prior to the date of the hearing.~~
- e) ~~On the day of a scheduled in-person hearing, the parties may be given a grace period of an additional 10 minutes to arrive at the hearing.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.960 Continuances (Repealed)

~~Parties shall be prepared to proceed at the informal hearing. Absent an emergency, all requests for continuances must be made in writing to the Hearing Officer prior to the scheduled informal hearing and will be granted only upon a showing of good cause. Examples of good cause include the non-receipt or delayed receipt of mail or the unavailability of a witness or a party due to accident, illness or other circumstances beyond the party's control. The Department may also cancel and continue a hearing due to an emergency or the unavailability of a Hearing Officer. If granted, the Department will provide the parties with notice of the continuance of the hearing.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.970 Application of the Rules of Evidence, Pleadings and Procedures in an

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Investigative Hearing (Repealed)

~~When a Hearing Officer makes an investigation or conducts a hearing, the Hearing Officer is not bound either by the rules of evidence or by any technical or formal rules of pleading or procedure.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.980 Participants at Informal Investigative Hearings (Repealed)

- a) ~~A party may be accompanied at an informal investigative hearing by his/her attorney or other representative. The participation of the other representative in the informal hearing shall be limited to fact finding and support functions. Other representatives shall not be permitted to engage in any conduct or function that constitutes or reasonably approximates the practice of law. Other representatives shall not: examine or cross-examine any party or witness; offer any documents or other exhibits into evidence; make evidentiary, procedural or other legal objections; cite, file or interpret case law, statutes, administrative rulings or other legal authority; make legal arguments or interpretations; or give legal advice or opinions to parties or witnesses. Other representatives must provide to the represented party for signature a written disclosure document that explicitly states that the representative is not an attorney and that the representative is not permitted to present legal arguments or otherwise engage in any function that reasonably approximates the practice of law as described in this subsection (a). The document shall be signed by both the representative and the represented party.~~
- b) ~~The parties may bring witnesses to the hearing, and the Hearing Officer shall hear witnesses with information related to the claim. The Hearing Officer shall determine the order in which the witnesses are to be heard and shall limit testimony to that which is relevant, not cumulative in nature, not unduly repetitious and material to the claim. In deciding whether to permit a witness to testify, the Hearing Officer may consider the relevance and materiality of the testimony. The Hearing Officer may exclude witnesses from the hearing when they are not giving testimony. The Hearing Officer shall conduct and control the proceedings. No tape recordings, stenographic report or other verbatim record of the hearing shall be made. The Department will provide translation services for the proceedings as necessary.~~

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(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.990 Contumacious Conduct at Informal Investigative Hearings (Repealed)

~~If any person becomes so disruptive or abusive that a full and fair informal investigative hearing cannot be conducted, the Hearing Officer shall exclude the person from the hearing. The Hearing Officer, in his/her discretion, may take any of the following actions: continue the hearing without the participation of the excluded individual; render a decision based upon the evidence previously presented; dismiss the employee's claim; or strike the employer's response.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1020 Review of Hearing Officer Determination (Repealed)

- a) ~~Requests for review of a Hearing Officer's determination must be made in writing to the Department's Chicago office, within 15 days after the date of the Department's determination. The request shall be prominently marked "REQUEST FOR REVIEW" on both the letter and the envelope. The request must set forth~~
- ~~1) the reasons why the party believes the Hearing Officer misconstrued the evidence or misapplied the law to the facts, and~~
 - ~~2) any newly discovered evidence the party could not have discovered by the hearing date or,~~
 - ~~3) if applicable, why the party failed to attend the informal hearing.~~
- b) ~~The Department may consider untimely submissions by either party upon written request by the party, made within a reasonable period of time, if there is a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART G: FORMAL ~~DEFAULT~~ HEARINGS**Section 300.1028 Applicability**

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Subpart G is effective for retaliation complaints as well as wage claim applications filed regardless of the amount of the claim. This Subpart shall supersede the Department's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120) for formal hearings conducted under this Subpart.

(Source: Added at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1030 Consolidation/Severance/Class Actions

- a) The Department may, on its own or at the request of a party, consolidate hearings if it believes a common question of law or fact is involved, consolidation will expedite the hearings, and no right of any party will be prejudiced.
- b) All parties will be given an opportunity to be heard on the issue of consolidation and may be severed from the proceeding if the factors in subsection (a) are not satisfied.
- c) The Department may assist a class of employees and process cases on those employees' behalf in a class action. An action may be maintained as a class when:
 - 1) The number of parties is so numerous that joinder of all parties is impracticable;
 - 2) There are questions of fact or law common to the class that predominate over any questions affecting only individual members;
 - 3) The representative parties will fairly and adequately protect the interest of the class; and
 - 4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

(Source: Added at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1040 Scheduling and Notice of a Formal ~~Default~~ Hearing

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- a) ~~If the employer does not timely respond to the written notice of claim issued by the Department in accordance with Section 300.941 and the claim is for wages or final compensation totaling \$3000 or less per employee, and the Department can verify the accuracy of the employer's address consistent with Section 300.940(c), the Department will schedule a formal default hearing before a Hearing Officer pursuant to this Subpart.~~

b) A written notice of the formal ~~default~~ hearing shall be served on the parties not less than 21 days prior to the date of the hearing. The notice shall advise all parties that a failure to appear at the ~~default~~ hearing may result in the entry of an enforceable judgment or dismissal against a party not appearing. ~~The notice shall further advise all parties that, should the employer appear at the default hearing, the Hearing Officer may terminate the formal default hearing pursuant to this Subpart and conduct the matter as an informal investigative hearing in accordance with Subpart F.~~

- e) ~~On the day of the scheduled in-person default hearing, the parties may be given a grace period of an additional 10 minutes to arrive at the hearing.~~

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1050 Manner and Service of Notice

- a) Service of notice of a formal ~~default~~ hearing shall be complete when the notice of hearing is:
- 1) Personally served; or
 - 2) Sent not less than 21 days prior to the date designated for the ~~default~~ hearing by:
 - A) Regular US mail, postage prepaid, to the parties' addresses; ~~or~~
 - B) Certified US mail, postage prepaid, to the parties' addresses; ~~or~~
 - C) E-mail, if the employer or claimant has agreed to service by those means; or
 - D) Other verifiable means, such as private carrier.

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- b) For purposes of subsection (a), notice of a formal ~~default~~ hearing shall be deemed properly served if sent to the parties at an address:
- 1) On file with the Department;
 - 2) On file with the Illinois Secretary of State;
 - 3) On file with any other State agency with which the party has a duty to maintain a current address; or
 - 4) The Department reasonably calculates to be a true and current address for the party.
- c) The notice of a formal ~~default~~ hearing under this Subpart G shall include:
- 1) The time, place and nature of the hearing;
 - 2) A copy of the claim;
 - 3) The legal authority and jurisdiction under which the hearing is to be held;
 - 4) ~~Notice that, upon appearance by the employer, the formal default hearing may be terminated and converted to an informal investigative hearing conducted in accordance with Subpart F;~~
 - 45) Instructions for all parties to bring all evidence and/or witnesses that support or dispute the employee claims;
 - 56) A description of the procedure to request a continuance or to appear at the hearing telephonically; and
 - 67) A designation and address of an ALJ Hearing Officer to preside over the ~~default~~ hearing ~~and the address of the Hearing Officer~~.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1060 Formal ~~Default~~ Hearing Continuances

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Parties shall be prepared to proceed at the hearing. Absent an emergency, all requests for a continuance must be made in writing to the ALJ at least 10 days ~~Hearing Officer~~ prior to the scheduled ~~default~~ hearing and will be granted only upon a showing of good cause. Copies of all continuance requests shall be served on the other party. Examples of good cause include the non-receipt or delayed receipt of mail or the unavailability of a witness or a party due to accident, illness or other circumstances beyond the party's control. When a hearing has been scheduled and a subsequent conflict arises in a schedule of a party's attorney, such as an appointment with a client, court appearance or comparable matter scheduled for the same time, those factors shall not be considered good cause shown. The Department may also cancel and continue a hearing due to an emergency or the unavailability of an ALJ ~~Hearing Officer~~. If granted, the Department will provide the parties with notice of the continuance of the hearing.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1070 Application of the Rules of Evidence, Pleadings and Procedures in a Formal ~~Default~~ Hearing

- a) Technical rules of evidence do not apply in a ~~default~~ hearing before an ALJ ~~Hearing Officer~~. The decision of the ALJ ~~Hearing Officer~~ will be based upon the evidence and testimony. The ALJ ~~Hearing Officer~~ may rely upon evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. Absence of employer records required to be made and kept by an employer pursuant to Section 300.630 and Section 10 of the Act shall not deny a claimant recovery of wages or final compensation on the basis that the employee is unable to prove the precise extent of uncompensated work or final compensation. An employee need only produce sufficient evidence to demonstrate the amount and extent of work or time earned as a just and reasonable inference. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under Section 300.630 shall not preclude a finding based on the information available that wages or final compensation are due, even though the award may be only approximate.
- b) A complete record of all proceedings before the ALJ ~~Hearing Officer~~ at the ~~default~~ hearing shall be maintained. The record will consist of: a verbatim record of the parties and witnesses; all pleadings, motions, rulings, evidence received, matters officially noticed, offers of proof, objections and rulings on objections ~~thereon~~; decision and findings of fact; and any ex parte communications.

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- c) The testimony of a party or witness shall be sworn or affirmed. If a party or witness refuses to consent to the recording of the ~~default~~ hearing by the ~~ALJ Hearing Officer~~ or refuses to take the oath or affirmation when requested, the participation of that individual in the ~~default~~ hearing shall be terminated, and the ~~default~~ hearing shall be conducted as if the individual failed to appear.
- d) Any document a party intends to introduce into evidence should be served by the party on the other party at least five days prior to the hearing. Documents previously submitted to the other party during the investigation need not be resubmitted. If the ALJ finds any document was not served or received, the ALJ may proceed or not proceed with the hearing or take such other action as the ALJ deems appropriate. No other written or oral discovery shall be allowed, except in extraordinary circumstances to facilitate or expedite the proceedings, but shall be limited to the specific issue or amount of the claim, as the ALJ deems appropriate.
- e) The claimant has the burden of proving by a preponderance of the evidence the merits of the claim.
- f) Upon the ALJ's own motion or upon good cause shown by a party, the ALJ may direct the parties or their counsel to meet with the ALJ for a prehearing conference.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1080 Participants at a Formal ~~Default~~ Hearing

- a) A party may be accompanied at a formal ~~default~~ hearing by his or her attorney or other representative. The participation of the other representative in the ~~default~~ hearing shall be limited to fact-finding and support functions. Other representatives shall not be permitted to engage in any conduct or function that constitutes or reasonably approximates the practice of law. Other representatives shall not: examine or cross-examine any party or witness; offer any documents or other exhibits into evidence; make evidentiary, procedural or other legal objections; cite, file or interpret case law, statutes, administrative rulings or other legal authority; make legal arguments or interpretations; or give legal advice or opinions to parties or witnesses. Other representatives must provide to the represented party for signature a written disclosure document that explicitly states that the representative is not an attorney and that the representative is not

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permitted to present legal arguments or otherwise engage in any function that reasonably approximates the practice of law as described in this subsection (a). The document shall be signed by both the representative and the represented party.

- b) The parties may bring witnesses to the ~~default~~ hearing and the ALJHearing Officer shall determine the order in which the witnesses are to be heard and shall limit testimony to that which is relevant, not cumulative in nature, not unduly repetitious and material to the claim. In deciding whether to permit a witness to testify, the ALJHearing Officer may consider the relevance and materiality of the testimony. The ALJHearing Officer may exclude witnesses when they are not giving testimony. The Department will provide translation services for the ~~default~~ hearing as necessary.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1090 Conduct in a Formal ~~Default~~ Hearing

- a) The ALJHearing Officer shall conduct and control the ~~default~~ hearing, which will be confined to the factual and/or legal issues of the claim. The ALJHearing Officer will ensure that all parties who have appeared have a reasonable opportunity to present all relevant evidence and testimony regarding the issues.
- b) ~~Witnesses~~ Following examination of each witness by the Hearing Officer, that witness may be questioned and cross-examined by any ~~other party~~ or that party's attorney, except the other representative, and further questioned by the ALJHearing Officer, if necessary, to ensure clarity and completeness of the issues and of the record.
- c) If any person becomes abusive or disruptive so that a full and fair hearing cannot be conducted, the ALJHearing Officer shall exclude that person from the hearing. The ALJHearing Officer shall then move forward with the hearing without the participation of the excluded individual and will render a decision based on the evidence in the record.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1100 Telephone Hearing for a Formal ~~Default~~ Hearing

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- a) Written requests to participate via telephone must be received by the Department's Chicago office, 160 N. LaSalle, C-1300, Chicago IL 60601, no later than seven~~7~~ days prior to the hearing date. The request shall be prominently marked "REQUEST FOR TELEPHONE HEARING" on both the letter and envelope. The request shall be in writing and contain a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
- b) On its own initiative, the Department may also schedule a matter for telephone hearing without regard to the seven~~7~~ day notice requirement.
- c) The Department may consider untimely requests for telephone hearings by the party upon a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.
- d) A party shall not consider the request granted unless the participant receives notice of the Department's approval prior to the hearing date by telephone or in writing.
- e) A party appearing by telephone shall submit to the ALJ and the other party, no less than five days prior to the hearing, any documents the party intends to introduce at the hearing. Any documents previously submitted to a party during the investigation need not be resubmitted. If the ALJ finds that any document was not submitted or received, the ALJ may exercise discretion to proceed or not proceed with the hearing or take other action as the ALJ deems appropriate.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1110 Subpoenas for Investigation and Testimony at Hearing

- a) The Department may issue an administrative subpoena to compel the attendance of a witness and/or the production of documents upon the Department's determination that the information to be produced by a subpoena is necessary and relevant to the Department's adjudication of the claim and cannot be obtained by any other reasonable means. The parties may also request that subpoenas be issued for documents and testimony at hearing.

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- b) Application by a party for a subpoena may be made ex parte and the party requesting the subpoena shall be responsible for service. The subpoena shall on its face show the name and address of the party at whose request the subpoena was issued. Service may be made by personal delivery, certified mail with return receipt signed by the person or its agent, U.S. regular mail, postage prepaid, or private carrier.
- c) If a party or organization within control of a party fails to obey a subpoena and the ALJ finds the subpoena to have been validly served and the material requested to be relevant and material, the ALJ may impose such sanctions as are appropriate, including, but not limited to, prohibiting testimony by the party who has refused to comply on the subject matter encompassed by the subpoena, drawing an adverse inference against the party refusing to comply, or allowing the evidence required by the subpoena but not produced as establishing the truth of the position of the party who subpoenaed the documents. If a non-party fails to obey a subpoena, the party seeking enforcement shall be responsible for preparing an application for enforcement and filing in a court of appropriate jurisdiction.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1120 Ex Parte (One Party Only) Communications

- a) An ALJA Hearing Officer may not engage in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. If the ALJ Hearing Officer receives any ex parte communication, including any documents, the ALJ Hearing Officer shall inform the parties of the substance of any such communication and provide copies of any written communication or documents. The other party shall be given an opportunity to review any ex parte communication.
- b) Nothing shall prevent the ALJ Hearing Officer from communicating ex parte about routine matters, such as requests for continuances or opportunities to inspect the file, as long as the parties are informed of the substance of the ex parte communication. The date and type of communication, the persons involved and the results of those routine communications shall be part of the record.
- c) When a party fails to appear at the default hearing, the other parties' participation at the hearing shall not be considered ex parte communication.

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(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1130 Disqualification of ~~an Administrative Law Judge~~ ~~Hearing Officer~~

At any time prior to the issuance of a substantive ruling by ~~an ALJ~~ ~~Hearing Officer~~, a party may move to disqualify the ~~ALJ~~ ~~Hearing Officer~~ on the grounds of bias or conflict of interest. The motion shall be made in writing to the General Counsel ~~or Chief Administrative Law Judge~~, with a copy to the Director and the ~~ALJ~~ ~~Hearing Officer~~, setting forth the specific instances of bias or conflict of interest. The Director and/or her ~~or~~ ~~his~~ designee will assign the matter for a determination to ~~an ALJ~~ ~~Hearing Officer~~ not challenged in the motion. An adverse decision or ruling, in and of itself, is not grounds for disqualification. The ~~ALJ's~~ ~~Hearing Officer's~~ employment or contract as ~~an ALJ~~ ~~Hearing Officer~~ by the Department is not, in and of itself, a conflict of interest. The case shall be suspended until the neutral ~~ALJ~~ ~~Hearing Officer~~ rules on the motion. The neutral ~~ALJ~~ ~~Hearing Officer~~ may decline to disqualify the presiding ~~ALJ~~ ~~Hearing Officer~~ or appoint another ~~ALJ~~ ~~Hearing Officer~~ to hear the case.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1140 Consolidation/Severance ~~(Repealed)~~

- a) ~~The Department may, on its own or at the request of a party, consolidate hearings if it believes a common question of fact or law is involved, consolidation will expedite the hearings and no right of any party will be prejudiced.~~
- b) ~~All parties will be given an opportunity to be heard on the issue of consolidation and may be severed from the proceeding upon a showing of good cause.~~

(Source: Repealed at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1150 Failure of a Party to Appear at a Formal ~~Default~~ Hearing

- a) Failure of a claimant to appear at a scheduled formal ~~default~~ hearing may result in dismissal of the claim. If the hearing or any party's appearance is by telephone, failure of that party to inform the ~~ALJ~~ ~~Hearing Officer~~ of the telephone number at which he or she can be reached, or failure to answer the telephone at the scheduled time, may result in dismissal of the claim.
- b) Failure of the employer to appear at a scheduled formal ~~default~~ hearing shall cause the ~~ALJ~~ ~~Hearing Officer~~ to issue a decision based on the evidence

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introduced and the evidence of record. If the hearing or the employer's appearance is by telephone, failure of the employer to inform the ~~ALJ Hearing Officer~~ of the telephone number at which the employer can be reached, or failure to answer the telephone at the scheduled time, shall cause the ~~ALJ Hearing Officer~~ to issue a decision based on the evidence introduced and the evidence of the record. ~~Failure of the employer to appear may also result in an entry of default judgment against the employer.~~

- e) ~~Failure of any witness to appear at a scheduled formal default hearing shall cause the Hearing Officer to conduct the hearing with those parties and witnesses who have appeared, and to issue a decision based on the evidence introduced and the evidence of record. If the hearing or the witness' appearance is by telephone, failure of that witness to inform the Hearing Officer of the telephone number at which he or she can be reached, or failure to answer the telephone at the scheduled time, shall cause the Hearing Officer to conduct the hearing with those parties and witnesses who have appeared and to issue a decision based on the evidence introduced and the evidence of record.~~

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1160 Notice and Appeal of Department's ~~Default~~ Order

- a) Following the entry of a final ~~default~~ order, the Department will send written notice of its order to the parties by regular U.S. mail, setting forth the amount of the judgment, if any, including all damages, administrative fees and penalties, as well as the parties' appeal rights. Service shall be presumed to be accomplished upon mailing.
- b) A party may file a motion to reconsider with the Department within 15 days ~~after~~ of the Department's order and ~~the~~ such motion will only be considered by the Department for procedural issues. A motion to reconsider should be sent to ~~the~~ Chief Administrative Law Judge at the Department's Chicago office, 160 N. LaSalle, C-1300, Chicago IL 60601. The Department will issue a written decision on any motions to reconsider and serve ~~that~~ such decision on all parties via regular US mail. No further appeal process or administrative remedies may be sought at the Department level.
- c) Any party may appeal the Department's order or dismissal to the circuit court within 35 days in accordance with the provisions of the Administrative Review

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Law [735 ILCS 5/Art. III]. If a motion to reconsider is filed with the Department, the time period to appeal to the circuit court shall begin when the Department issues its written decision on any motion to reconsider via regular US mail.

- d) If a party seeks judicial review of a Department order or dismissal, that party will pay the actual cost to the Department of preparing the administrative record and filing the record in court. Payment shall be by certified check made payable to the Illinois Department of Labor.
- e) Actions for judicial review shall be filed where the hearing proceeding took place, which is either the circuit court of Cook County or Sangamon County.
- f) The order of the Department will become final and enforceable if no appeals are filed within 35 days after the Department's order or after all appeals are exhausted.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART H: DAMAGES, PENALTIES AND FEES

Section 300.1180 Non-Waivable Administrative Fee to the Department

If the Department determines that an employer owes wages or final compensation to the claimant, it shall assess the appropriate ~~\$250~~ non-waivable administrative fee per employee as provided for by the Act payable to the Department and make the administrative fee against the employer a part of the determination. The administrative fee shall be due to the Department within 15 days after the ~~demand or~~ order becomes final.

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1190 Statutory Damages Due to the Employee

If the Department determines that an employer owes wages or final compensation to the claimant, statutory damages shall be assessed at 2% of the amount owed, multiplied by the number of months that elapse between the time of initial underpayment and the time the ~~demand or~~ order is paid. The total amount due to the employee, including the unpaid wages and/or final compensation plus statutory damages, shall be due to the employee within 15 days after the ~~demand or~~ order becomes final.

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(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1200 Additional Penalties Due to the Department and Employee

If an employer fails to comply with the ~~demand or~~ order within 15 days after the ~~demand or~~ order becomes final, the employer shall also be liable to the Department for a statutory penalty in the amount of 20% of the amount owed and shall be additionally liable to the claimant for a statutory penalty in the amount of 1% per day of the amount owed for each day that payment is delayed. ~~The Department may periodically seek to amend the demand or final order to incorporate these penalties.~~

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

Section 300.1210 Payment of ~~Demands or~~ Final Orders; Penalties and Fees

An employer shall mail 2 separate checks or money orders to pay the amount of a ~~demand or~~ final order to the office location designated by the Department. ~~One check or money order, one shall be~~ for the amount of any wages or final compensation, less all required deductions for federal and State taxes and social security, statutory damages and statutory penalties owed to the employee, made payable to the "(employee name) or Illinois Department of Labor". ~~The second check or money order shall be~~ for the amount of any penalties and fees owed to the Department made payable to the "Illinois Department of Labor".

(Source: Amended at 38 Ill. Reg. 18517, effective August 22, 2014)

SUBPART I: COMPLAINTS FOR RETALIATION**Section 300.1220 Filing of a Complaint, Investigation and Service**

- a) An employee or an employee's representative may file a complaint with the Department alleging unlawful retaliation by submitting a complaint on a form provided by the Department. Complaints shall be filed within one year from the date of the alleged discriminatory action.
- b) The Department will notify the employer of the existence of the complaint and provide the employer an opportunity to submit a response to the complaint along with any documentation necessary for the Department's investigation of the complaint.

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- c) If an employer fails to answer the complaint or fails to answer all material allegations contained in the complaint, any unanswered allegations shall be deemed admitted to be true.
- d) The Department will review the information provided by the parties in order to determine whether unlawful retaliation has occurred. If the review demonstrates there is reason to believe the Act has not been violated, the complaint will be dismissed. If the review demonstrates that there is reason to believe the Act has been violated, the matter will be set for a formal administrative hearing. The Department will notify both parties of its determination and may issue appropriate orders.
- e) Service of any document under this Section shall be in accordance with Section 300.940(c).
- f) All hearings held under this Section shall be conducted pursuant to Subpart G.

(Source: Added at 38 Ill. Reg. 18517, effective August 22, 2014)

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- 1) Heading of the Part: Medication
- 2) Code Citation: 11 Ill. Adm. Code 603
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
603.60	Amendment
603.75	Amendment
603.160	Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Rule: August 25, 2014
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporation by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's central office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 38 Ill. Reg. 8783, April 25, 2014.
- 10) Has JCAR issued a Statement of Objection to this rule? No
- 11) Differences between Proposal and Final Version: The Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances was updated from December 2013 version 6.00 to January 2014 version 7:00.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? Yes, 38 Ill. Reg. 9121 effective April 10, 2014
- 14) Are there any other proposed rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Oxyphenbutazone, a metabolite of phenylbutazone, is being removed from Section 603.60. There are no commercial manufacturers of oxyphenbutazone so its use by compounders to produce a product for

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use in horses is highly unlikely. Therefore, the need for a threshold for oxyphenbutazone no longer exists. For this reason, the ARCI removed the threshold for oxyphenbutazone from its model rules. A finding of oxyphenbutazone by itself (i.e., no detectable phenylbutazone in the blood sample) will be treated as a rule violation because such a finding would suggest that oxyphenbutazone had been administered to the horse. Scientists and regulators have learned more about the pharmacokinetics of oxyphenbutazone since the original threshold was adopted. A finding of oxyphenbutazone at a concentration greater than that of phenylbutazone is an expected finding in samples collected more than 24 hours after dose administration. Therefore, findings being reported by the Board's laboratory are entirely consistent with the administration of phenylbutazone 27-32 hours before sample collection. These findings were never intended to be considered rule violations, particularly because they are indicative of compliance with the rules regarding the timing of phenylbutazone administrations.

Sections 603.60, 603.75, and 603.160 are being amended to reflect the most recent version of the ARCI drug guidelines, January 2014 version 7.00.

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

Mickey Ezzo
Illinois Racing Board
100 West Randolph, Suite 5-700
Chicago IL 60601

312/814-5017

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER c: RULES APPLICABLE TO ALL OCCUPATION LICENSEES

PART 603
MEDICATION

Section

603.10	Pre-Race Saliva Tests
603.20	Racing Soundness Exam
603.30	Foreign Substances and Pharmaceutical Aids Banned
603.40	Twenty-four Hour Ban
603.50	Trainer Responsibility
603.55	Prima Facie Evidence
603.60	Permitted Use of Foreign Substances and Threshold Levels
603.70	Furosemide
603.75	Environmental Contaminants
603.80	Needles, Syringes and Injectables
603.90	Drugs, Chemicals and Prescription Items
603.100	Detention Barn
603.110	Test Samples
603.120	Referee Samples
603.130	Laboratory Findings and Reports
603.140	Distribution of Purses
603.150	Post Mortems
603.160	Penalties
603.170	Veterinarian's Records
603.180	Carbon Dioxide Tests
603.190	Erythropoietin and Darbepoietin Antibody Testing Program
603.200	Out of Competition Testing
603.210	Androgenic-Anabolic Steroids (AAS)

AUTHORITY: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 21 Ill. Reg. 3232, effective March 4, 1997; amended at 22 Ill. Reg. 2217, effective January 1, 1998; amended at 22 Ill. Reg. 3594, effective February 1, 1998; amended at 25 Ill. Reg. 15611, effective December 1, 2001; amended at 26 Ill. Reg. 12360, effective August

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1, 2002; amended at 27 Ill. Reg. 5027, effective March 7, 2003; amended at 27 Ill. Reg. 7331, effective April 15, 2003; amended at 28 Ill. Reg. 1374, effective January 19, 2004; amended at 28 Ill. Reg. 4751, effective March 1, 2004; emergency amendment at 28 Ill. Reg. 7565, effective May 11, 2004, for a maximum of 150 days; emergency expired October 7, 2004; amended at 28 Ill. Reg. 11250, effective August 1, 2004; amended at 28 Ill. Reg. 15790, effective December 1, 2004; emergency amendment at 29 Ill. Reg. 2779, effective February 22, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 4116, effective February 25, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5726, effective April 8, 2005; amended at 29 Ill. Reg. 12265, effective July 24, 2005; amended at 29 Ill. Reg. 14038, effective September 1, 2005; emergency amendment at 30 Ill. Reg. 14371, effective August 21, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18729, effective November 20, 2006; amended at 31 Ill. Reg. 1478, effective January 1, 2007; emergency amendment at 31 Ill. Reg. 6680, effective April 23, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 12982, effective September 1, 2007; amended at 32 Ill. Reg. 7397, effective May 1, 2008; amended at 33 Ill. Reg. 12571, effective August 25, 2009; expedited correction at 34 Ill. Reg. 9551, effective August 25, 2009; emergency amendment at 35 Ill. Reg. 265, effective December 17, 2010, for a maximum of 150 days; emergency amendment at 35 Ill. Reg. 2810, effective February 1, 2011, for a maximum of 150 days; amended at 35 Ill. Reg. 7400, effective April 25, 2011; amended at 35 Ill. Reg. 8485, effective May 23, 2011; emergency amendment at 35 Ill. Reg. 15296, effective September 6, 2011, for a maximum of 150 days; emergency rule repealed by emergency amendment at 35 Ill. Reg. 18434, effective October 24, 2011, for the remainder of the 150 days; emergency amendment at 35 Ill. Reg. 18959, effective October 25, 2011, for a maximum of 150 days; amended at 36 Ill. Reg. 330, effective January 1, 2012; emergency amendment at 36 Ill. Reg. 3290, effective February 15, 2012, for a maximum of 150 days; emergency amendment at 36 Ill. Reg. 6057, effective April 6, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 8967, effective June 1, 2012; amended at 36 Ill. Reg. 12815, effective August 1, 2012; amended at 36 Ill. Reg. 17078, effective November 28, 2012; emergency amendment at 36 Ill. Reg. 17131, effective November 28, 2012, for a maximum of 150 days; amended at 37 Ill. Reg. 4993, effective April 1, 2013; emergency amendment at 38 Ill. Reg. 9121, effective April 10, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 18555, effective August 25, 2014.

Section 603.60 Permitted Use of Foreign Substances and Threshold Levels

- a) Non-Steroidal Anti-Inflammatories (NSAID): Threshold Levels
 - 1) Only one non-steroidal anti-inflammatory drug (NSAID) may be present in a horse's body while it is participating in a race. The presence of more than one NSAID, greater than the threshold level, is forbidden and will result in the purse being redistributed.

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- 2) Subject to the prohibition contained in Section 603.40 (24 hour ban), the only foreign substances that now meet the criteria established in Section 603.80 are phenylbutazone ~~(or its metabolite oxyphenylbutazone)~~, flunixin, pyrilamine, isoxsuprine and ketoprofen.
- 3) The threshold level of phenylbutazone ~~or oxyphenylbutazone~~ is 2 micrograms (mcg) per milliliter (ml) of serum or plasma. The level of phenylbutazone ~~or oxyphenylbutazone~~ shall be less than 2 mcg/ml of serum or plasma.
 - A) In the event a post-race sample from a horse contains an amount of phenylbutazone ~~or oxyphenylbutazone~~ greater than or equal to 2 mcg/ml but less than 5 mcg/ml of serum or plasma, the trainer and any other responsible party shall be subject to the following penalties:
 - i) first offense within a 365 day period, minimum penalty of a written warning to a maximum fine of \$500;
 - ii) second offense within a 365 day period, minimum penalty of a written warning to a maximum fine of \$750 and the owner shall be notified;
 - iii) third or subsequent offense within a 365 day period, minimum fine of \$500 to a maximum fine of \$1,000 and the purse shall be redistributed.
 - B) In the event a post-race sample from a horse contains an amount of phenylbutazone ~~or oxyphenylbutazone~~ greater than or equal to 5 mcg/ml of serum or plasma, the trainer and any other responsible party shall be subject to the following penalties absent mitigating circumstances:
 - i) first offense within a 365 day period, minimum fine of \$1,000; and the purse shall be redistributed;

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- ii) second offense within a 365 day period, minimum fine of \$1,500, a 15 day suspension and the purse shall be redistributed;
 - iii) third or subsequent offense within a 365 day period, minimum fine of \$2,500, a 30 day suspension, the purse shall be redistributed and the owner shall be fined a minimum of \$5,000.
- C) A finding by the Board's laboratory of any amount of oxyphenbutazone in the absence of phenylbutazone shall be treated as a Class 4 drug, as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 1510 Newtown Pike, Suite 210, Lexington KY 40511; January 2014 version 7.00; this incorporation includes no later amendments or editions).
- 4) The threshold level of flunixin shall be less than 20 ng/ml of serum or plasma and the threshold level of ketoprofen shall be less than 10 ng/ml of serum or plasma. In the event a post-race sample from a horse contains an amount of:
- A) flunixin greater than or equal to 20 ng/ml but less than 100 ng/ml or ketoprofen greater than or equal to 10 ng/ml but less than 50 ng/ml, the trainer shall be subject to the following penalties, absent mitigating circumstances:
 - i) first offense within a 365 day period, minimum penalty of a written warning to a maximum fine of \$500;
 - ii) second offense within a 365 day period, minimum penalty of a written warning to a maximum fine of \$750 and the owner shall be notified;
 - iii) third or subsequent offense within a 365 day period, minimum fine of \$500 to a maximum fine of \$1,000 and the purse shall be redistributed.

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- B) flunixin greater than or equal to 100 ng/ml or ketoprofen greater than or equal to 50 ng/ml, the trainer shall be subject to the following penalties, absent mitigating circumstances:
- i) first offense within a 365 day period, minimum fine of \$1,000 and the purse shall be redistributed;
 - ii) second offense within a 365 day period, minimum fine of \$1,500, a 15 day suspension and the purse shall be redistributed;
 - iii) third or subsequent offense within a 365 day period, minimum fine of \$2,500, a 30 day suspension, the purse shall be redistributed and the owner shall be fined a minimum of \$5,000.
- 5) If the phenylbutazone, ~~oxyphenylbutazone~~, flunixin or ketoprofen overage is due to the negligence of the veterinarian attending the horse, the veterinarian shall be subject to the same penalties as are set forth in subsections (a)(3)(A) and (B) and (a)(4)(A) and (B).
- ~~6) To help horsemen determine the test levels of phenylbutazone, oxyphenylbutazone, flunixin, pyrilamine, isoxsuprine and ketoprofen, the Board laboratory will test, for the actual cost of processing the sample, all equine serum or plasma samples submitted to it that are accompanied by an affidavit indicating time, method, and route of administration.~~
- ~~67)~~ Penalties for violations of this Section shall be based on the following criteria:
- A) previous warnings and rulings for violations of this Section;
 - B) the age and experience of the violator;
 - C) whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;
 - D) what action, if any, was taken to avoid the violation;

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- E) the purse of the race.

- b) The following foreign substances may be administered externally to a horse entered to a race: Leg paints and liniment that do not contain any "caine" derivatives, pharmacodynamic and/or chemotherapeutic agents, and that can be applied topically without penetrating the skin.

- c) Subject to the prohibition contained in Section 603.40 (24-hour ban), the following foreign substances, commonly referred to as anti-bacterial, anti-fungal, anti-protozoal or anti-ulcer drugs, may be present in the body of a horse participating in a race.
 - 1) Anti-Bacterials
 - Amikacin
 - Ampicillin
 - Ampicillin sodium
 - Azolsulfamide
 - Chloramphenicol
 - Doxycycline
 - Enrofloxacin (Baytril)
 - Erythromycin sulfate
 - Gentamicin sulfate
 - Kanamycin sulfate
 - Methenamine
 - Metronidazole
 - Neomycin sulfate
 - Nitrofurantoin
 - Oxytetracycline
 - Penicillin G. Benzathine
 - Penicillin G. Potassium
 - Sulfadimethozine
 - Sulfadimethoxine
 - Sulfamethoxazole
 - Sulfametranidazole
 - Sulfapyridine
 - Sulfathiazole
 - Tetracycline
 - Trimethoprim

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- 2) Anti-Fungals
 - Amphotericin B
 - Griseofulvin
 - Neomycin Undecyclenate
 - Nystatin
- 3) Anti-Protozoals
 - Nitazoxanide (Navigator)
 - Ponazuril (Marquis)
 - Pyrimethamine (Daraprim)
- 4) Anti-Ulcers
 - Cimetidine (Tagamet)
 - Omeprazole (Prilosec or GastroGard)
 - Ranitidine (Zantac)
- d) This listing of anti-bacterial, anti-fungal, anti-protozoal and anti-ulcer drugs is all inclusive and shall not include any other anti-bacterial, anti-fungal, anti-protozoal or anti-ulcer drug.
- e) A foreign substance of accepted therapeutic value may be administered as prescribed by a veterinarian when threshold levels and guidelines for its use have been approved by the Board and this Part has been duly amended. The Board shall give due consideration to threshold levels and guidelines, when making additions to the permitted list, that have been established by the [Quality Assurance Program Committee of the Association of Racing Commissioners International \(ARCI, 1510 Newtown Pike, Suite 210, Lexington KY 40511; January 2014 version 7.00 December 2012 version 5.00](#); this incorporation includes no later amendments or editions).
- f) Official test samples may contain the following drug substance, or its metabolites, in an amount that does not exceed the threshold level:
 - 1) The threshold level of isoxsuprine shall be less than 1,000 ng/ml in urine.

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- 2) The threshold level of O-desmethyl pyrilamine shall be less than 50 ng/ml in urine.
- g) The provisions of this Section shall be applied retroactively when substantively applicable, including all actions pending before the Board without regard to when the cause of action accrued; provided, however, that this subsection shall not operate to affect rights of individuals that have fully vested.
- h) To help horsemen determine the test levels of substances contained in this Section, the Board laboratory will test, for the actual cost of processing the sample, all equine serum or plasma samples submitted to it that are accompanied by an affidavit indicating time, method and route of administration.

(Source: Amended at 38 Ill. Reg. 18555, effective August 25, 2014)

Section 603.75 Environmental Contaminants

The following drugs are recognized as substances that unavoidably become part of the food supply or environment of the horse.

- a) Benzoyllecgonine (a metabolite of cocaine):
 - 1) Each time the laboratory reports benzoyllecgonine less than 150 ng/ml, the Stewards shall conduct an inquiry. The presence of benzoyllecgonine in the horse shall be considered reasonable cause to order a drug screen on the trainer, groom or any other licensed person who cares for the horse pursuant to Section 508.50.
 - 2) Laboratory reports of benzoyllecgonine, greater than or equal to 150 ng/ml, shall be treated as a Class 1 drug, as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 1510 Newtown Pike, Suite 210, Lexington KY 40511; January 2014 version 7.00~~December 2012 version 5.00~~; this incorporation includes no later amendments or editions).
- b) Dimethyl Sulfoxide (DMSO):

The test level of DMSO, greater than or equal to 500 mcg/ml, in urine shall be considered a violation of Section 603.50 and the trainer shall receive a fine of not less than \$500 and the purse shall be redistributed.

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- c) Caffeine:
Laboratory reports of caffeine greater than or equal to 100 ng/ml in urine shall be treated as a Class 2 drug, as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 1510 Newtown Pike, Suite 210, Lexington KY 40511; [January 2014 version 7.00](#)~~December 2012 version 5.00~~; this incorporation includes no later amendments or editions).

(Source: Amended at 38 Ill. Reg. 18555, effective August 25, 2014)

Section 603.160 Penalties

- a) Any person who administers or conspires to administer any foreign substance to any horse in violation of this Part shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed.
- b) Penalties for violations of this Part shall be based on the following criteria:
- 1) the nature of the foreign substance; e.g., cough medicine, steroid, narcotic, stimulant, depressant, etc.;
 - 2) the accessibility of the drug; e.g., can be purchased over the counter, only with a prescription, only with a license for controlled substances, cannot be purchased in this country;
 - 3) the age and experience of the violator;
 - 4) whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;
 - 5) what action, if any, was taken by the violator to avoid the violation;
 - 6) the purse of the race.
- c) Any person who violates any provision of this Part for which no specific penalty is provided may be penalized by the stewards or the Board in accordance with the provisions for penalties contained elsewhere in this Chapter or in the Illinois Horse Racing Act of 1975. When imposing penalties, the stewards or the Board

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shall consider all relevant factors including, but not limited to those specified in this Part.

- d) In harness racing, any trainer suspended for a violation of this Part shall, upon notice of the violation, submit to the Stewards a current stable list on a form provided by the Board.
 - 1) The horses on the stable list shall be placed on the Steward's List unless:
 - A) The owner of each horse on the stable list secures the services of a trainer approved by the Stewards; and
 - B) The approved trainer stables the horses on the stable list on the grounds of an organization licensee for the full term of the penalized trainer's suspension;
 - 2) Horses on the stable list shall be permitted to leave to race in other racing jurisdictions or for medical reasons.
- e) Penalties for Class 4 and 5 drug violations:
 - 1) Class 4 as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 1510 Newtown Pike, Suite 210, Lexington KY 40511; [January 2014 version 7.00](#)~~December 2012 version 5.00~~; this incorporation includes no later amendments or editions). Except as provided in Sections 603.60 and 603.70 of this Part, upon finding of a Class 4 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed according to the criteria set forth in subsection (e)(3).
 - 2) Class 5 as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances. Except as provided in Sections 603.75 and 603.60(c) of this Part, upon finding of a Class 5 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed according to the criteria set forth in subsection (e)(3).

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- 3) In determining a disqualification and purse redistribution under this subsection (e), the Stewards shall use the following criteria:
 - A) A recommendation by the Board veterinarian and/or Board chemist regarding the significance of the concentration of the drug or metabolite present and the estimated withdrawal time.
 - B) A recommendation by industry experts, including equine pharmacologists and equine physiologists, regarding the effect of the drug on the horse in the concentration found and/or estimated withdrawal times.
 - C) Repeat violations of these medication and prohibited substance rules by the same trainer or with respect to the same horse.
 - D) Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse.
 - E) The criteria set forth in subsection (b).
- 4) The provisions of this subsection (e) shall be applied retroactively when substantively applicable, including all actions pending before the Board, without regard to when the cause of action accrued; provided, however, that this subsection (e)(4) shall not operate to affect rights of individuals that have fully vested prior to April 23, 2007.

(Source: Amended at 38 Ill. Reg. 18555, effective August 25, 2014)

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- 1) Heading of the Part: Income Tax
 - 2) Code Citation: 86 Ill. Adm. Code 100
 - 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
100.5000	Amendment
100.5020	Amendment
100.6000	New Section
 - 4) Statutory Authority: [35 ILCS 5/601 and 35 ILCS 735/3-8]
 - 5) Effective Date of Rule: August 20, 2014
 - 6) Does this rulemaking contain an automatic repeal date? No
 - 7) Does this amendment contain incorporations by reference? No
 - 8) A copy of the adopted amendment, 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. 11716; June 6, 2014
 - 10) Has JCAR issued a Statement of Objection to this rulemaking? No
 - 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
 - 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter 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? No
- | | | |
|-------------------------|-------------------------|-------------------------------------|
| <u>Section Numbers:</u> | <u>Proposed Action:</u> | <u>Illinois Register Citation:</u> |
| 100.7310 | Amendment | 38 Ill. Reg. 18122, August 29, 2014 |

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- 15) Summary and Purpose of Rulemaking: This rulemaking amends Sections 100.5000 and 100.5020 of the Illinois income tax regulations and adds new Section 100.6000 to provide guidance on how extensions allowed under federal law for filing income tax returns and paying income taxes due (in cases of natural disaster, for example) automatically apply to Illinois filing and payment due dates.
- 16) Information and questions regarding this adopted amendment shall be directed to:

Paul Caselton
Deputy General Counsel Income Tax
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-7055

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section

100.2000	Introduction
100.2050	Net Income (IITA Section 202)
100.2060	Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

SUBPART B: CREDITS

Section

100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA Section 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone and River Edge Redevelopment Zone (IITA Section 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA Section 201(k))
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)
100.2171	Angel Investment Credit (IITA 220)
100.2180	Credit for Residential Real Property Taxes (IITA 208)
100.2185	Film Production Services Credit (IITA Section 213)
100.2190	Tax Credit for Affordable Housing Donations (IITA Section 214)
100.2193	Student-Assistance Contributions Credit (IITA 218)
100.2195	Dependent Care Assistance Program Tax Credit (IITA 210)
100.2196	Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
100.2197	Foreign Tax Credit (IITA Section 601(b)(3))

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- 100.2198 Economic Development for a Growing Economy Credit (IITA 211)
100.2199 Illinois Earned Income Tax Credit (IITA Section 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS
OCCURRING PRIOR TO DECEMBER 31, 1986

Section

- 100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
- 100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
- 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
- 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
- 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
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- 100.2480 Enterprise Zone and River Edge Redevelopment Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
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100.TABLE A Example of Unitary Business Apportionment

100.TABLE B Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28,

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1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended

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at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014.

SUBPART O: TIME AND PLACE FOR FILING RETURNS

Section 100.5000 Time for Filing Returns: ~~Individuals~~ (IITA Section 505)

- a) Unless, ~~pursuant to Illinois Income Tax Act (IITA) Section 602~~, an extension of time for filing a return is granted, returns shall be filed on or before the due dates specified below.
- 1) **Individuals**
Under IITA Section 505(a)(2), the annual return of an individual or married couple is required to be filed on or before the 15th day of the fourth month following the close of the individual's or married couple's taxable year. The final return of a decedent shall be filed at the time (extensions included) that it would have been due had the decedent not died.
 - 2) **Corporations (Including Subchapter S Corporations)**
Under IITA Section 505(a)(1), except as provided by subsection (a)(6) of this Section, the annual return of a corporation is required to be filed on or before the 15th day of the third month following the close of the corporation's taxable year unless the income or loss of a taxpayer is reported for federal purposes on a return with a due date later than the 15th day of the third month following the close of the taxable year, in which case the same due date shall apply to the corresponding Illinois return.
 - 3) **Cooperatives**
The annual return of a cooperative is required to be filed on or before the 15th day of the ninth month following the close of the cooperative's taxable

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year. For purposes of this ~~subsection (a)(3) regulation~~, a cooperative is any taxpayer that derives its base income under IITA Section 203(e)(2)(F) from federal taxable income determined in accordance with IRC sections 26 U.S.C 1381 through 1388.

- 4) Partnerships
Under IITA Section 505(a)(2), the annual return of a partnership is required to be filed on or before the 15th day of the fourth month following the close of the partnership's taxable year.
 - 5) Estates and Trusts
Under IITA Section 505(a)(2), the annual return of an estate or trust is required to be filed on or before the 15th day of the fourth month following the close of taxable year of the estate or trust.
 - 6) Exempt Organizations
Under IITA Section 505(a)(3), the annual return of an organization ~~that which~~ is exempt from the ~~federal~~ Federal income tax pursuant to ~~Internal Revenue Code (IRC)~~ section ~~Section~~ 501(a) (other than an employees' trust described in IRC ~~section~~ Section 401(a)) is required to be filed on or before the 15th day of the fifth month following the close of the taxable year of the exempt organization.
- b) Due Date that Falls on Saturday, Sunday or a Holiday
IRC section 7503 provides that, when the last day for filing a return falls on Saturday, Sunday or a legal holiday, the return is considered timely if it is filed on the next succeeding day that is not a Saturday, Sunday or legal holiday. This provision is incorporated into the meaning of "due date" for purposes of the IITA under IITA Section 102 Pursuant to Section 1.11 of "AN ACT to revise the law in relation to the construction of the statutes" (Ill. Rev. Stat. 1985, ch. 1, par. 1012); if the due date for any return or other report or payment falls on Saturday, Sunday or a Holiday, such due date shall be considered to be the next business date either for the purpose of submitting such return or other report or payment by mail or for the purpose of submitting such return or other report or payment in person.

(Source: Amended at 38 Ill. Reg. 18568, effective August 20, 2014)

Section 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)

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- a) Tentative Payments. An extension of time to file a return permitted under this Section is not to be construed as an extension by the Department of the time for payment of tax due on ~~that~~ return.
- b) Automatic Illinois Extensions. The Department will grant an automatic extension of 6 months (7 months for corporations) to file any Illinois income tax return except returns due under Article 7 of the IITA. No application form need be filed by a taxpayer to obtain this extension. If a balance of tentative tax is due, the taxpayer should transmit the payment with the appropriate form by the original filing due date in order to avoid the penalty for underpayment of tax (IITA Section 1005) and statutory interest (IITA Section 1003).
- c) Additional Extensions Beyond the Automatic Extension Period. The Department will approve an extension of more than 6 months (7 months for corporations) if an extension of more than 6 months is granted by the Internal Revenue Service. For corporations the additional Illinois extension will be one month beyond any approved federal extension of longer than 6 months. For all other taxpayers, the additional extension will be for the length of time approved by the Internal Revenue Service. All taxpayers must attach a copy of the approved federal extension to their return when it is filed.
- d) Penalty and Interest on Underpayment of Tax
 - 1) IITA Section 1005 Penalty
A penalty of 6% per annum on any tax underpayment shall be assessed if the amount of tax required to be shown on a return is not paid on or before the date required for filing the return (determined without regard to any extension of time to file) for returns due prior to January 1, 1994. For returns due on and after January 1, 1994, without regard to extensions, the penalty shall be determined in the manner and at the rate prescribed by the UPIA.
 - 2) IITA Section 1003 Interest-
Interest at the rate of 9% per annum (or at ~~the~~ adjusted rate ~~as is~~ established under ~~IRC section 26 USC~~ 6621(b)) will be assessed for the period from the due date of the return to the date of payment for any amount of tax not paid on or before the due date (determined without regard to any extension) for returns due before January 1, 1994. For returns due on and after January 1, 1994, without regard to extensions, the

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penalty shall be determined in the manner and at the rate prescribed by the UPIA.

- e) Late Filing Penalty
- 1) The Department will not assess an IITA Section 1001 late filing penalty for the period of any extension provided by the IITA and this Section regulation.
 - 2) For returns due prior to January 1, 1994, *in case of failure to file any tax return required under this Act on the date prescribed therefor (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause (as defined in IRC section 26 USC 6651) there shall be added as a penalty to the amount required to be shown as tax on such return 7.5% of the amount of such tax if the failure is not for more than one month, with an additional 7.5% for each additional month or fraction thereof during which such failure continues, not exceeding 37.5% in the aggregate.* (Section 1001 of the IITA, effective until January 1, 1994)
 - 3) For returns due on and after January 1, 1994, without regard to extensions, *in case of failure to file any tax return required under the IITA~~this Act~~ on the date prescribed therefor, (determined with regard to any extensions of time for filing) there shall be added as a penalty the amount prescribed by Section 3-3 of the UPIA.* (Section 1001 of the IITA, effective January 1, 1994)
 - 4) No penalty is imposed if there was reasonable cause for the taxpayer's failure to timely file the return. (See IITA Section 1001 (as in effect prior to January 1, 1994) and UPIA Section 3-8.) If the due date for filing of any federal income tax return is extended for any reason (for example, as the result of another state's holiday, such as the Emancipation Day holiday observed in Washington, D.C., or because of natural disaster under IRC Section 7508A), a taxpayer who files his or her Illinois return after it is due under the IITA, but on or before the extended due date of the equivalent federal return, is deemed to have reasonable cause for the late filing.

(Source: Amended at 38 Ill. Reg. 18568, effective August 20, 2014)

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SUBPART R: PAYMENTS**Section 100.6000 Payment on Due Date of Return (IITA Section 601)**

- a) Except as provided in subsection (b), every taxpayer required to file a return under the IITA shall, without assessment, notice or demand, pay any tax due thereon to the Department on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). (IITA Section 601(a))
- b) If the due date for payment of a taxpayer's federal income tax liability for a tax year (as provided in the Internal Revenue Code or by Treasury regulation, or as extended by the Internal Revenue Service) is later than the date fixed for filing the taxpayer's Illinois income tax return for that tax year, the due date for payment of the Illinois income tax liability due on that return shall be the extended due date for payment of the taxpayer's federal income tax liability. (IITA Section 601(a)) Pursuant to this provision, if the due date for payment of any federal income tax liability is extended for any reason (for example, as the result of a holiday, including a holiday not observed in this State such as the Emancipation Day holiday observed in Washington, D.C., or because of natural disaster under IRC section 7508A), the payment of any Illinois income tax liability on or before the extended federal due date for payment of the equivalent federal liability shall be timely.

(Source: Added at 38 Ill. Reg. 18568, effective August 20, 2014)

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- 1) Heading of the Part: Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 500
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
500.100	Amendment
500.200	Amendment
500.335	Amendment
- 4) Statutory Authority: 35 ILCS 505
- 5) Effective Date of Rule: August 21, 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. 10885; May 23, 2014
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No
- 11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter 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? No
- 15) Summary and Purpose of Rulemaking: This rulemaking amends provisions in Part 500 (Motor Fuel Tax) to establish a formula that accurately converts cubic feet or pounds of compressed natural gas (CNG) to gallons for purposes of calculating motor fuel tax/motor fuel use tax. Motor fuel tax is calculated on a per gallon basis. The need for

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this rulemaking arises because CNG is not sold on a per gallon basis; instead, it is sold at an established price per cubic foot or pound. It is necessary to provide taxpayers with a conversion factor so that tax can be properly applied. These changes incorporate the standards adopted for use by the International Fuel Tax Agreement; those standards are also generally accepted for use by industry and government.

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

Jerilynn T. Gorden
Deputy General Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-2844

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 500
MOTOR FUEL TAX

SUBPART A: DEFINITIONS

Section	
500.100	Definitions
500.101	Definition of Receiver (Repealed)
500.102	Definition of Loss (Repealed)
500.103	Basis and Rate of Tax Payable by Receivers (Recodified)
500.105	Monthly Returns (Recodified)
500.110	Report of Loss of Motor Fuel (Recodified)
500.115	Daily Gallonage Record (Recodified)
500.120	Licenses Are Not Transferable (Recodified)
500.125	Changes of Corporate Officers (Recodified)
500.130	Blenders' Permits Are Not Transferable (Recodified)
500.135	Vehicles of Distributors Transporting Petroleum Products (Recodified)
500.140	Other Vehicles (Recodified)
500.145	Cost of Collection – Determination (Recodified)
500.150	Cost of Collection – Books and Records (Repealed)
500.155	Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers (Recodified)
500.160	Claims for Refund – Original Invoices (Recodified)
500.165	Definition of Loss (Recodified)
500.170	Sales of Special Fuel – Variation in Usage (Recodified)
500.175	Special Motor Fuel Permits and Decals (Recodified)
500.180	Estimated Claims Not Acceptable (Recodified)
500.185	Claimants Owning Motor Vehicles (Recodified)
500.190	Detailed Answers (Recodified)
500.195	Revocation of License, Etc. – Notice – Hearing (Recodified)

SUBPART B: MOTOR FUEL TAX

Section	
500.200	Basis and Rate of the Motor Fuel Tax
500.201	Licensure

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500.202	Basis and Rate of Tax Payable by Receivers
500.203	Monthly Returns
500.204	Report of Loss of Motor Fuel
500.205	Daily Gallonage Record
500.206	Special Fuel Sold or Used for Non-Highway Purposes
500.210	Documentation of Tax-free Sales of Motor Fuel Made by Licensed Distributors and Suppliers
500.215	Documentation of Tax-free Sales of Fuel Made by Licensed Receivers
500.220	Vehicles of Distributors Transporting Petroleum Products (Repealed)
500.225	Other Vehicles (Repealed)
500.230	Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers
500.235	Claims for Refund of Taxes and Motor Fuel Use Tax Decal Fees – Invoices
500.240	Sales of Special Fuel – Variation in Usage (Repealed)
500.245	Estimated Claims
500.250	Claimants Owning Motor Vehicles (Repealed)
500.255	Detailed Answers
500.260	Revocation of License, Etc. – Notice – Hearing
500.265	Distributors' and Suppliers' Claims for Credit or Refund
500.270	Receivers' Claims for Credit
500.275	Procedure When Tax-Paid Motor Fuel is Returned to Licensee for Credit
500.280	Sales of Motor Fuel to Municipal Corporations Owning and Operating Local Transportation Systems
500.285	Sales of Motor Fuel to Certain Privately-Owned Public Utilities Owning and Operating Transportation Systems in Metropolitan Areas
500.290	When Purchaser's License Number With Department on Invoices Covering Sales of Special Fuel is Required (Repealed)
500.295	Cost of Collection – Determination (Repealed)
500.297	Protest Procedures for Certain Penalties
500.298	Civil Penalties for Dyed Diesel Fuel Violations

SUBPART C: MOTOR FUEL USE TAX

Section	
500.300	Licensure – Temporary Waiver upon Determination of Disaster
500.301	Special Motor Fuel Permits and Decals (Repealed)
500.302	Motor Carrier's Quarterly Report (Repealed)
500.305	Licenses and Decals
500.310	Display of License and Decals

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500.315	Renewal of Decals and Licenses
500.320	Single Trip Permits
500.325	Licensure of Lessors and Lessees
500.330	Cancellation of License
500.335	Quarterly Payment and Reporting
500.340	Credits and Refunds
500.345	Records Requirements
500.350	Revocation
500.355	IFTA Protest Procedures
500.360	Audits

SUBPART D: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section	
500.400	General Information
500.405	Due Date That Falls on Saturday, Sunday or a Holiday

SUBPART E: GENERAL REQUIREMENTS APPLICABLE TO ALL LICENSES AND PERMITS ISSUED UNDER THE MOTOR FUEL TAX LAW

Section	
500.500	Licenses and Permits Are Not Transferable
500.501	Blenders' Permits Are Not Transferable (Repealed)
500.505	Changes of Corporate Officers

SUBPART F: INCORPORATION BY REFERENCE OF RETAILERS' OCCUPATION TAX

Section	
500.600	Incorporation of the Retailers' Occupation Tax Regulations by Reference

AUTHORITY: Implementing the Motor Fuel Tax Law [35 ILCS 505] and authorized by Section 2505-20 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-20].

SOURCE: Adopted July 3, 1931; amended at 2 Ill. Reg. 1, p. 97, effective December 31, 1978; amended at 3 Ill. Reg. 13, p. 98, effective March 25, 1979; amended at 4 Ill. Reg. 28, p. 568, effective June 1, 1980; codified at 8 Ill. Reg. 8612; amended at 10 Ill. Reg. 4540, effective February 28, 1986; amended at 11 Ill. Reg. 10295, effective May 18, 1987; emergency amendment at 13 Ill. Reg. 13271, effective August 7, 1989, for a maximum of 150 days; emergency expired January 4, 1990; amended at 14 Ill. Reg. 6826, effective April 19, 1990;

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amended at 15 Ill. Reg. 6305, effective April 16, 1991; amended at 15 Ill. Reg. 13538, effective August 30, 1991; recodified at 18 Ill. Reg. 4451; amended at 19 Ill. Reg. 3008, effective February 28, 1995; amended at 19 Ill. Reg. 17195, effective December 18, 1995; amended at 20 Ill. Reg. 10168, effective July 16, 1996; amended at 22 Ill. Reg. 2253, effective January 9, 1998; amended at 22 Ill. Reg. 14917, effective August 3, 1998; amended at 22 Ill. Reg. 16322, effective August 25, 1998; amended at 22 Ill. Reg. 20299, effective December 1, 1998; emergency amendment at 24 Ill. Reg. 880, effective January 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6918, effective April 21, 2000; amended at 24 Ill. Reg. 17826, effective November 28, 2000; amended at 26 Ill. Reg. 9912, effective June 24, 2002; amended at 27 Ill. Reg. 7870, effective April 21, 2003; emergency amendment at 27 Ill. Reg. 10547, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3921, effective February 13, 2004; amended at 32 Ill. Reg. 7134, effective April 21, 2008; amended at 36 Ill. Reg. 6677, effective April 12, 2012; amended at 38 Ill. Reg. 18586, effective August 21, 2014.

SUBPART A: DEFINITIONS

Section 500.100 Definitions

For purposes of this Part, the following definitions apply:

"Base Jurisdiction" means the jurisdiction where commercial motor vehicles are based for vehicle registration purposes and:

Where the operational control and operational records of the licensee's commercial motor vehicles are maintained or can be made available; and

Where some travel is accrued by commercial motor vehicles within the fleet.

"Blender" means any person who engages in the practice of blending. (Section 1.6 of the Law)

"Blending" means the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or practicable for use as a motor fuel, except such blending as may occur in the process known as refining by the original refiner of crude petroleum, and except, also, the blending of products known as lubricating oil in the production of

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lubricating oils and greases and except, also, the dyeing of special fuel as required by Section 4d of the Law. (Section 1.5 of the Law)

"Commercial Motor Vehicle" means *a motor vehicle used, designed, or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,793 kilograms, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds or 11,793 kilograms gross vehicle weight.* For purposes of administration of the Motor Fuel Use Tax imposed by Section 13a of the Law, this term does not include motor vehicles operated by the State of Illinois or the United States, recreational vehicles, school buses and commercial motor vehicles operated solely within Illinois for which all motor fuel is purchased within this State. (Section 1.16 of the Law)

"Designated inspection site" means *any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Department to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.* (Section 1.26 of the Law)

"Diesel fuel" means *any product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.* (Section 2(b) of the Law)

"Distributor" means *a person who (i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) exports motor fuel out of this State, or (iv) who is engaged in this State in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in Section 5(A) of the Law.* (Section 1.2 of the Law)

"Dyed diesel fuel" means *special fuel, as defined in Section 1.13 of the Law, dyed in accordance with Section 4d of the Law.* (Section 1.13B of the Law)

"Export" means the transportation of reportable motor fuel or fuel, by any vessel, from Illinois, when the motor fuel or fuel comes to rest in a different state, whether or not in the original vessel used to transport the motor fuel or fuel.

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Motor fuel or fuel delivered to a different state, by or on behalf of the seller, constitutes an export by the seller. Motor fuel or fuel delivered to a different state, by or on behalf of the purchaser, constitutes an export by the purchaser. The exporter of the motor fuel or fuel is subject to the reporting and licensing requirements of the origin and destination states.

"Fuel" means *all liquids defined as "motor fuel"* and aviation fuels and kerosene, but excluding liquified petroleum gases. (Section 1.19 of the Law)

"Gallon" means, in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state (Section 1.8 of the Law). For purposes of this Part, a gallon is equal to a liquid measurement of 4 quarts or 3.785 liters.

"Import" means the transportation of reportable motor fuel or fuel, by any vessel, into Illinois, when the motor fuel or fuel comes to rest in Illinois, whether or not in the original vessel used to transport the motor fuel or fuel. Motor fuel or fuel delivered into Illinois, from a different state, by or on behalf of the seller, constitutes an import by the seller. Motor fuel or fuel delivered into Illinois, from a different state, by or on behalf of the purchaser, constitutes an import by the purchaser. The importer of the motor fuel or fuel is subject to the reporting and licensing requirements of the origin and destination states.

"International Fuel Tax Agreement" or "IFTA" means the multijurisdictional International Fuel Tax Agreement ratified by Congress, the provisions of which were imposed upon States pursuant to Public Law 102-240, which mandates that no State shall establish, maintain or enforce any law or regulation that has fuel use tax reporting requirements not in conformity with the International Fuel Tax Agreement.

"Jurisdiction" is a state of the United States, the District of Columbia, a state of the United Mexican States, or a province or Territory of Canada.

"Kerosene-type jet fuel" means *any jet fuel as described in ASTM specification D 1655 and military specifications MIL-T-5624R and MIL-T-83133D (Grades JP-5 and JP-8)*. (Section 1.25 of the Law)

"Law" means the Motor Fuel Tax Law [35 ILCS 505].

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"Leasing" means the giving of possession and control of a vehicle for valuable consideration for a specified period of time.

"Loss" means, for purposes related to claims for refund, the reduction of motor fuel resulting from spillage, spoilage, leakage, theft, destruction by fire or any other provable cause, but does not include a reduction resulting from evaporation or shrinkage due to temperature variations.

"Motor fuel" *means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, the propulsion of motor vehicles. Among other things, "motor fuel" includes "special fuel."* (Section 1.1 of the Law)

"Person" *means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, or any city, town, county or other political subdivision in this State. When used in these rules to prescribe or impose a fine or imprisonment or both, the term as applied to partnerships and associations shall mean the partners or members thereof; as applied to limited liability companies, the term means managers, members, agents or employees of the limited liability company; and as applied to corporations, the term shall mean the officers, agents, or employees thereof who are responsible for any violation of the Act.* (Section 1.11 of the Law)

"Power take-off equipment" *means any accessory that is mounted onto or designed as an integral part of a transmission of a motor vehicle that is registered for highway purposes whereby the accessory allows power to be transferred outside the transmission to a shaft or driveline and the power is used for a purpose other than propelling the motor vehicle.* (Section 1.27 of the Law)

"Premises" *means any location where original records are kept; where tank cars, ships, barges, tank trucks, tank wagons, or other types of transportation equipment are used to distribute fuel or motor fuel; or where containers, storage tanks, or other facilities are used to store or distribute fuel or motor fuel.* (Section 1.24 of the Law)

"Receiver" *means a person who either produces, refines, blends, compounds or manufactures fuel in this State, or transports fuel into this State or receives fuel transported to him or her from without the State or exports fuel out of this State,*

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or who is engaged in the distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active fuel bulk storage capacity of not less than 30,000 gallons. (Section 1.20 of the Law)

"Records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.

"Recreational vehicle" means vehicles, such as motor homes, pickup trucks with attached campers, camping or travel trailers, van or truck campers, mini motor homes, or buses, used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

"Research and development" *means basic and applied research in the engineering, designing, development, or testing of prototypes or new products. "Research and development" does not include manufacturing quality control, any product testing by consumers, market research, sales promotion, sales service, or other non-technological activities or technical services. (Section 1.29 of the Law)*

"Revocation" means the withdrawal of license and privileges.

"Semitrailer" *means every vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. (Section 1.28 of the Law)*

"Special fuel" means *all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5(A) of the Law, or combustible gases as defined in Section 5(B) of the Law. "Special fuel" includes "diesel fuel." All special fuel sold or used for non-highway purposes must have a dye added in accordance with Section 4d of the Law. (Section 1.13 of the Law)*

"Supplier" means *any person other than a licensed distributor who (i) transports special fuel into this State; or (ii) exports special fuel out of this State; or (iii) engages in the distribution of special fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active bulk storage capacity of not less than 30,000 gallons for special fuel as defined in Section 1.13 of the Law. (Section 1.14 of the Law)*

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"Terminal rack" means a mechanism for dispensing motor fuel or fuel from refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transportation. (Section 1.23 of the Law)

"Total distance" for purposes of the motor fuel use tax means all miles traveled during the reporting period by every commercial motor vehicle in the licensee's fleet, regardless of whether the miles are considered taxable or nontaxable by a jurisdiction.

"Weight" for purposes of the motor fuel use tax means the maximum weight of the loaded vehicle or combination of vehicles during the registration period.

(Source: Amended at 38 Ill. Reg. 18586, effective August 21, 2014)

SUBPART B: MOTOR FUEL TAX

Section 500.200 Basis and Rate of the Motor Fuel Tax

- a) *The Motor Fuel Tax is imposed "on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State".*
- 1) *Motor fuel used in such motor vehicles upon public highways and in such recreational watercraft on such waters is taxed according to the following rate schedule:*

<i>Tax Period</i>	<i>Rate</i>
<i>Until August 1, 1983</i>	<i>7½¢ per gallon</i>
<i>From August 1, 1983 through June 30, 1984</i>	<i>11¢ per gallon</i>
<i>From July 1, 1984 through June 30, 1985</i>	<i>12¢ per gallon</i>
<i>From July 1, 1985 through June 30, 1989</i>	<i>13¢ per gallon</i>
<i>From August 1, 1989 through December 31, 1989</i>	<i>16¢ per gallon</i>
<i>From January 1, 1990 and thereafter</i>	<i>19¢ per gallon</i>

- 2) *The tax on the privilege of operating motor vehicles which use diesel fuel shall be the rate according to subsection (a) plus an additional 2½ cents*

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per gallon. This rate is as follows:

<i>Tax Period</i>	<i>Rate</i>
<i>Until August 1, 1983</i>	<i>7½¢ per gallon</i>
<i>From August 1, 1983 through June 30, 1984</i>	<i>13½¢ per gallon</i>
<i>From July 1, 1984 through June 30, 1985</i>	<i>14½¢ per gallon</i>
<i>From July 1, 1985 through July 31, 1989</i>	<i>15½¢ per gallon</i>
<i>From August 1, 1989 through December 31, 1989</i>	<i>18½¢ per gallon</i>
<i>From January 1, 1990 and thereafter</i>	<i>21½¢ per gallon</i>

b) *The Motor Fuel Use Tax is imposed "upon the use of motor fuel upon highways (including toll ways of this State) by commercial motor vehicles". The tax on such motor fuel shall be comprised of two parts:*

- 1) *A tax at the rate established in subsections (a)(1) and (a)(2); and*
- 2) *A rate established by the Department as of January 1 of each year using the average "selling price", as defined in the Retailers' Occupation Tax Act, per gallon of motor fuel sold in this State during the previous 12 months and multiplying it by 6.25% to determine the cents per gallon rate. (Section 13a(2) of the Law). The Department may use data derived from independent surveys conducted or accumulated by third parties to determine the average selling price per gallon of motor fuel. Third parties include, but are not limited to, commercial entities that collect data (available by contract or at no cost) regarding the selling price of motor fuel sold in this State on a per gallon basis.*

c) Compressed natural gas is subject to tax at the rate established in subsection (a)(1). However, because compressed natural gas cannot be measured in gallons, it must be converted to gallons using a conversion factor. For purposes of calculating tax under the Motor Fuel Tax Law, a gallon of compressed natural gas means a quantity of compressed natural gas equal to 126.67 cubic feet of natural gas at 60 degrees Fahrenheit and one atmosphere of pressure. In the alternative, it means a quantity of compressed natural gas that weighs 5.66 pounds.

(Source: Amended at 38 Ill. Reg. 18586, effective August 21, 2014)

SUBPART C: MOTOR FUEL USE TAX

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Section 500.335 Quarterly Payment and Reporting

- a) Every person holding a valid unrevoked motor fuel use tax license issued by the Department under the provisions of the IFTA shall file a quarterly motor fuel use tax return, along with full payment of taxes, with the Department. Returns are due, even if no operations were conducted during the reporting period. The due date for the return and full payment of taxes is the last day of the month immediately following the close of the quarter for which the return is being filed. Returns and full payment of taxes are due on or before the following dates:

Reporting Quarter	Due Date
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

If the due date is a Saturday, Sunday, or legal holiday, the next business day is considered the due date. Each motor fuel use tax return should be mailed in a separate envelope. On and after January 1, 2013, returns and payment of tax, including amended returns, must be made electronically. Electronic returns shall be made in accordance with 86 Ill. Adm. Code 760. Electronic payments shall be made by ACH debit in accordance with 86 Ill. Adm. Code 750.

- b) The taxable event is the consumption of motor fuel, as defined in Section 500.100 of this Part, used to operate commercial motor vehicles. For tax payment and reporting purposes, all motor fuels placed in supply tanks of commercial motor vehicles, and all miles travelled, are taxable. Carriers must utilize the procedures in Section 500.235 for refunds for off-road or non-highway use.
- c) For IFTA licensees: The IFTA provides that member jurisdictions may determine what type of motor fuels and miles travelled are exempt from tax, and are therefore not reportable. Carriers should contact member jurisdictions to determine what types of fuel and miles travelled are exempt from taxation. For IFTA carriers, claims for refunds for fuel used for any purpose other than propelling a commercial motor vehicle upon public highways must be made directly to the respective jurisdiction.

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- d) The quarterly return shall include a statement of the total number of miles travelled, as well as total miles travelled in each jurisdiction and in Illinois during the previous calendar quarter; the total number of gallons and type of reportable motor fuel consumed on the highways of all jurisdictions, as well as in each jurisdiction and in Illinois, and the total number of gallons and types of tax paid fuel purchased within each jurisdiction during the previous calendar quarter; and the total (net) of tax due the base jurisdiction on behalf of all jurisdictions. Licensees shall report all required information, and may not include miles operated and gallons of fuel purchased that were unavailable during any prior quarters. If a licensee does not include all required information, and that information is subsequently available, he or she must file an amended return, which will include penalty and interest.
- e) Fuel and distance must be reported in gallons and miles. The conversion rates are:
- | | | |
|---------------|---|-------------------|
| One liter | = | 0.2642 gallons |
| One gallon | = | 3.785 liters |
| One mile | = | 1.6093 kilometers |
| One kilometer | = | 0.62137 mile |
- f) For carriers registered under the IFTA that consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. [See Section 500.200\(c\) for the conversion factor used for compressed natural gas.](#) ~~The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon.~~
- g) In order for a licensee to obtain credit for tax-paid retail purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the licensee showing evidence of the purchases and tax having been paid by the licensee directly to the applicable jurisdiction or at the pump. The receipt must contain the following information:
- 1) date of purchase;
 - 2) seller's name and address;
 - 3) number of gallons purchased;

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- 4) fuel type;
 - 5) price per gallon or total amount of sale;
 - 6) unit numbers; and
 - 7) purchaser's name (in the case of a lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party).
- h) In the case of withdrawals from licensee-owned, tax-paid bulk storage, credit may be obtained only if the following records are maintained:
- 1) date of withdrawal;
 - 2) number of gallons;
 - 3) fuel type;
 - 4) unit number (upon application by a licensee, the Department may waive the requirement of unit numbers for fuel withdrawn from the licensee's own bulk storage and placed in its commercial motor vehicles. The licensee must show that adequate records are maintained to distinguish fuel placed in commercial vs. non-commercial motor vehicles for all member jurisdictions); and
 - 5) purchase and inventory records to substantiate that tax was paid on all bulk purchases.
- i) Carriers registered under the IFTA must pay all taxes due to all member jurisdictions with one check, to be made payable to the Department. Payment by certified check is required of licensees who are required to post a bond. On and after January 1, 2013, payment shall be made electronically by ACH debit in accordance with 86 Ill. Adm. Code 750.
- j) Through December 31, 2012, returns shall be filed on forms provided by the Department. However, with written approval from the Department, a licensee may submit a computer-generated tax return instead of the Department-supplied return. Computer-generated tax returns will be approved only if they contain all

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the same information, are in the same format and are on the same size paper, as the Department's return. On and after January 1, 2013, returns shall be filed electronically in accordance with 86 Ill. Adm. Code 760.

- k) If a licensee uses a reporting service for his or her motor fuel use taxes, the licensee must maintain a power of attorney in its books and records. Use of a power of attorney does not relieve the licensee of the legal obligations associated with the license. The licensee is responsible for the payment of taxes as well as all acts and omissions of the reporting service. Decal and renewal applications will always be mailed directly to the licensee.
- l) Reports not filed or full payment of taxes not made by the due date shall be considered late and any taxes due considered delinquent. The licensee shall be assessed a penalty of \$50 or 10 percent of the delinquent taxes, whichever is greater, for failure to file a report, for filing a late report, or for underpayment of taxes due. Tax shall bear interest at the rate of 1 percent per month or fraction of month until paid. For reasonable cause shown, the Department may waive a penalty. For IFTA licensees, the Department may waive interest for another jurisdiction only with that jurisdiction's approval.

(Source: Amended at 38 Ill. Reg. 18586, effective August 21, 2014)

OFFICE OF THE TREASURER

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Rules for Charitable Trust Stabilization Committee
- 2) Code Citation: 74 Ill. Adm. Code 650
- 3) Register citation of adopted rulemaking and other pertinent action: 38 Ill. Reg. 15890; published July 25, 2014.
- 4) Explanation: On July 25, 2014, the Office of the Treasurer proposed a new Part in Volume 38, Issue 30 of the *Illinois Register*. Two publications errors occurred. First, the agency proposing the rulemaking was erroneously captioned as the Department of Public Health rather than the Office of the Treasurer; second, the rulemaking was captioned as being Notice of Proposed Amendments, rather than Notice of Proposed Rule. JCAR regrets these errors.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of August 19, 2014 through August 25, 2014. The rulemakings are scheduled for review at the Committee's September 16, 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>
10/3/14	<u>Illinois Commerce Commission</u> , Uniform System of Accounts for Electric Utilities (83 Ill. Adm. Code 415)	4/11/14 38 Ill. Reg. 7691	9/16/14
10/3/14	<u>Illinois Commerce Commission</u> , Standards of Service and Customer Credits for Electing Providers (83 Ill. Adm. Code 737)	2/28/14 38 Ill. Reg. 5475	9/16/14
10/3/14	<u>Illinois Commerce Commission</u> , Approval of Negotiated Agreements (83 Ill. Adm. Code 763)	3/7/14 38 Ill. Reg. 5682	9/16/14
10/3/14	<u>Chief Procurement Officer for General Services</u> , Chief Procurement Officer for General Services Standard Procurement (44 Ill. Adm. Code 1)	5/16/14 38 Ill. Reg. 10327	9/16/14
10/4/14	<u>State Board of Education</u> , Transitional Bilingual Education (23 Ill. Adm. Code 228)	5/30/14 38 Ill. Reg. 11459	9/16/14
10/4/14	<u>State Board of Education</u> , Evaluation of Certified Employees under Articles 24A and 34 of the School Code (23 Ill. Adm. Code 50)	4/25/14 38 Ill. Reg. 8682	9/16/14
10/4/14	<u>Illinois Gaming Board</u> , Video Gaming (General)(11 Ill. Adm. Code 1800)	6/20/14 38 Ill. Reg. 12655	9/16/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

10/5/14	<u>Secretary of State</u> , Issuance of Licenses(92 Ill. Adm. Code 1030)	7/7/14 38 Ill. Reg. 13734	9/16/14
10/5/14	<u>Illinois Commerce Commission</u> , Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service (Repealer)(83 Ill. Adm. Code 280)	1/17/14 38 Ill. Reg. 1452	9/16/14
10/5/14	<u>Illinois Commerce Commission</u> , Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Billing, Payments, Refunds and Disconnection of Service (New Part)(83 Ill. Adm. Code 280)	1/17/14 38 Ill. Reg. 1497	9/16/14

EXECUTIVE ORDER

2014-10
CREATION OF THE DEPARTMENT OF TRANSPORTATION
TECHNICAL MERIT BOARD

WHEREAS, the Illinois Department of Transportation ("the Department") has the responsibility for the planning, construction, operation and maintenance of Illinois' extensive transportation network, which encompasses highways and bridges, airports, public transit, rail freight, and rail passenger systems; and

WHEREAS, the Department requires specialized technical and professional employees to accomplish the purposes set forth in the Highway Code (605 ILCS 5), Illinois Vehicle Code (625 ILCS 5), Illinois Aeronautics Act (620 ILCS 5), and Illinois Department of Transportation Law (20 ILCS 2705); and

WHEREAS, the Personnel Code (20 ILCS 415) provides for the Department to have employees that are exempt from the Personnel Code, also known as "technical employees"; and

WHEREAS, as Governor of the State of Illinois, I am committed to ensuring the fair, transparent, and efficient operation of the Department and to eliminate abuse wherever it occurs; and

WHEREAS, in the wake of a recent review by the Department, it has become clear that significant steps must be taken to further ensure the integrity of technical employee hiring practices;

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, pursuant to the executive authority vested in me by in Article V of the Constitution of the State of Illinois, do hereby direct as follows:

I. CREATION

There is hereby created the Department of Transportation Technical Merit Board ("the Board") as an independent body. The Board shall have the duties as set forth in this Order.

II. PURPOSE

Separate from and in addition to the actions and functions already performed by the Department, the purpose of the Board is to independently oversee the Department's application of 20 ILCS 415/4c(12). This independent body shall implement, review, and maintain stringent controls for all "technical code" Department employees.

EXECUTIVE ORDER

III. MEMBERSHIP

- a. The Board shall consist of five members to hold office, one until June 30, 2016, one until June 30, 2017, one until June 30, 2018, one until June 30, 2019, and one until June 30, 2020, and until their respective successors are appointed and qualified.
- b. Upon the expiration of the terms of office of those first appointed, the successors shall hold office for 6 years and until a successor is appointed and qualified.
- c. In the case of a vacancy during the term of office of any member, the Governor shall make an appointment for the remainder of the term vacant and until a successor is appointed and qualified.
- d. No more than three members of the Board shall be affiliated with the same political party.
- e. Members shall be appointed by the Governor and may only be removed for cause pursuant to Article V, Section 10 of the Illinois Constitution.
- f. As soon as practicable after the members of the Board have been appointed, they shall meet and shall organize by electing a chairman and a secretary. The initial chairman and secretary, and their successors, shall be elected by the Board from among its members for a term of two years or for the remainder of their term of office as a member of the Board, whichever is shorter.
- g. Three members of the Board shall constitute a quorum for the transaction of business. The Board shall hold regular quarterly meetings and such other meetings as may be called by the chairman. Whenever practicable, notice of each meeting shall be given in writing or electronically to each member by the chairman at least seven days in advance of the meeting.

IV. DUTIES

The Board shall have powers and duties as follows:

- a. To review and either approve or disapprove the establishment of the Department's merit-based classification and salary administration plan and any changes made to the same.
- b. To approve or disapprove within 30 days from the date of submission by the Secretary any new job classifications or modifications to job classifications, subject to 20 ILCS 415/4c(12).
- c. To review an annual audit report submitted by the Department on March 31 of each year for the prior calendar year. The audit report shall provide the Department's findings on whether a random sampling of employees who fall under 20 ILCS 415/4c(12) are performing the duties set forth in its job description and are appropriately classified under the Department's narrow definition of "technical."

EXECUTIVE ORDER

- d. To submit to the Governor and the Secretary a report on or before June 30 of each year regarding the work performed and actions taken by the Board during the prior calendar year and an evaluation of the Department's compliance with 20 ILCS 415/4c(12).

V. INDEPENDENCE

The Board shall function as an independent body, with the discretion to arrange its affairs and proceedings in the manner it deems appropriate.

VI. ADMINISTRATIVE AND TECHNICAL SUPPORT

At the direction of the Board, the Department shall provide administrative and technical support for the Board, including but not limited to, providing an Ethics Officer for the Board, responding to FOIA requests on behalf of the Board, and assisting the Board with complying with the Open Meetings Act. At the direction of the Office of the Governor, any executive agency shall provide assistance to the Board to accomplish their goal of ensuring stringent controls for "technical employees."

VII. TRANSPARENCY

In addition to any policies or procedures the Board may adopt, all operations of the Board shall be subject to the provisions of the Illinois Freedom of Information Act (5 ILCS 140) and the Illinois Open Meetings Act (5 ILCS 120). This section shall not be construed so as to preclude other statutes from applying to the Board and its activities.

VIII. SAVINGS CLAUSE

This Executive Order does not contravene and shall not be construed to contravene any State or federal law, or any collective bargaining agreement.

IX. EFFECTIVE DATE

This Order shall take effect immediately upon its filing with the Secretary of State.

Issued by Governor: August 21, 2014

Filed with Secretary of State: August 21, 2014

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 38, Issue 36 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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