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RULES
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Editor’s Note 1: The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are (End of March, June, Sept, Dec) as follows:

Issue 15 - April	11, 2003: Data through	March	31, 2003 (1stQuarter)
Issue 28 - July	11, 2003: Data through	June	30, 2003 (2nd Quarter)
Issue 41 - October	10, 2003: Data through	September	29, 2003 (3rd Quarter)
Issue 2 - January	9, 2004: Data through	December	29, 2003 (Annual)

Editor’s Note 2: Submit all rulemaking documentation to the following address:

Secretary of State
Department of Index
Administrative Code Division
111 East Monroe Street
Springfield, Illinois 62756

Editor’s Note3:

To: All State Agencies
From: Secretary of State
Department of Index
Administrative Code Division

The Code Division will be conducting a monthly workshop. This is the opportunity for the Administrative Code Division to ask the question “How can we help you?” Each month will consist of different discussion topics. State agencies will be able to select one or more workshops to attend. Please return the included registration form at least two weeks prior to the scheduled workshop. Topics will come from the Secretary of State’s Style Manual and 1 Ill. Admn. Code 100. All workshops will be scheduled from 8:30am to 12:00pm on selected dates. Unless other wise announced workshops will be held at the Illinois State Library, 300 S. Second St., Rm. 403-404, Springfield, IL. 62701. If you have any questions or concerns please contact our office (217)782-6537.

Workshop Schedule and Signup Sheet on following page:

**Secretary of State
Department of Index
Administrative Code Division
Workshop Schedule and Signup Sheet**

April 30, 2003 Topics: <ul style="list-style-type: none"> • Introduction to the Secretary of State Style Manual • Rulemaking Process in Illinois • Organization and Format of Rules 	Number Attending
May 14, 2003 Topics: <ul style="list-style-type: none"> • Authority Notes • Source Notes • Filing and Publication Procedures 	Number Attending
June 25, 2003 Topics: <ul style="list-style-type: none"> • Miscellaneous Information <ul style="list-style-type: none"> Emergency Rules Second Notices Executive Orders/Proclamations Regulatory Agenda Other Notices • Checklists 	Number Attending

Agency Name: _____
 Contact Name: _____
 Address: _____
 City/Zip: _____
 Phone Number: _____

Please return this registration sheets to:

Secretary of State
 Department of Index
 Administrative Code Division
 Attn: Brenna Boston
 111 E. Monroe
 Springfield, IL 62756
Fax Number: (217) 524-0308

If you have any question please call (217) 782-6537.

All workshops will be held at:

Illinois State Library
 300 S. Second St. Rm. 403-404
 Springfield, IL 62701
 8:30am – 12:00pm

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Real Estate License Act of 2000

2) Code Citation: 68 Ill. Adm. Code 1450

<u>Section Number</u>	<u>Proposed Action</u>
1450.10	Amendment
1450.95	Amendment
1450.105	Amendment
1450.110	Amendment
1450.115	Amendment
1450.140	Amendment
1450.160	Amendment
1450.165	Amendment
1450.175	Amendment
1450.200	Amendment
1450.205	Amendment
1450.220	Amendment
1450.225	Amendment
1450.246	New
1450.266	New
1450.270	Repeal
1450.275	Amendment
1450.276	New
1450.277	New
1450.278	New
1450.280	Amendment
1450.285	Amendment
1450.286	New
1450.287	New
1450.288	New
1450.290	Amendment
1450.295	Amendment
1450.300	Repeal
1450.305	Amendment
1450.310	Repeal
1450.315	Amendment

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PROPOSED AMENDMENTS

- 4) Statutory Authority: Implementing and authorized by the Real Estate License Act of 2000 [225 ILCS 454].
- 5) A complete description of the subjects and issues involved: These proposed amendments implement provisions contained in Public Act 92-217 and clarify portions of the real estate education provisions authorized under the Real Estate License Act of 2000. PA 92-217 established an Audit Fund to provide the Office of Banks and Real Estate (OBRE) with the resources to contract with certified public accountants to conduct audits of escrow accounts held by real estate brokers. Section 1450.246 establishes the basis for contracting with a certified public accountant to conduct such audits and the criteria OBRE must use to assess the cost of such audits to the real estate broker. Section 1450.266 establishes guidelines for advisory letters to licensees from OBRE. Certain portions of Subpart G are also clarified pertaining to the real estate school rules.
- 6) Will these proposed amendments replace emergency amendments currently in effect?
No

Does this rulemaking contain an automatic repeal date? No

Do these proposed amendments contain incorporations by reference? No

Are there any other proposed amendments pending to this Part? No

Statement of Statewide Policy Objectives: This proposal does not substantively affect local government in any manner.

Time, place and manner in which interested persons may comment on this proposed rulemaking:
Interested parties should submit written comments or views concerning the proposed rulemaking to the attention of:

Jeff Riley
Legislative Liaison
Office of Banks and Real Estate
500 East Monroe
Springfield, Illinois 62701
Telephone: 217/782-3000
Telefax: 217/558-4297

Initial Regulatory Flexibility Analysis:

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PROPOSED AMENDMENTS

- a) Types of small businesses affected: Real estate offices and schools
- b) Reporting, bookkeeping or other procedures required for compliance: Sponsoring brokers are required to comply with audit procedures for special accounts contained in Section 1450.246.
- c) Types of professional skills necessary for compliance: None

Regulatory Agenda on which this rulemaking was summarized: January 2002

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS

CHAPTER VIII: OFFICE OF BANKS AND REAL ESTATE
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONSPART 1450
REAL ESTATE LICENSE ACT OF 2000

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Section
1450.10 Definitions

SUBPART B: LEASING AGENT RULES

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1450.20 Leasing Agent Examination Requirement
1450.25 Sponsor Card for Leasing Agents
1450.30 Issuance of Leasing Agent License
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1450.40 120 Day Leasing Agent Permit
1450.50 Continuing Education Requirement for Leasing Agents
1450.55 Approved Courses, Schools and Instructors for Leasing Agents

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1450.60 Educational Requirements to Obtain a Broker's or Salesperson's License
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- 1450.207 Confidentiality
- 1450.210 Failure to Disclose Information Not Affecting Physical Condition
- 1450.215 Licensee Serving as a Dual Agent in a Transaction Where a Licensee is a Party to the Transaction

SUBPART F: DISCIPLINE RULES AND PROCEDURES

- 1450.220 Unprofessional Conduct
- 1450.225 ~~Discipline Suspension or Denial~~ for Failure to Comply with Illinois Tax Acts Pay Taxes, Child Support Order or Default on Any Illinois Guaranteed Student Loan
- 1450.230 Temporary Suspension
- 1450.235 Otherwise Discipline
- 1450.240 Dissolution: Effect of Suspension or Revocation of Sponsoring Brokers or Managing Brokers
- 1450.245 Inspections and Audits
- 1450.246 Audits of Special Funds by Outside Auditors

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- 1450.250 Case File Review Committee
1450.255 Hearings
1450.260 Real Estate Recovery Fund
1450.265 Automatic Termination Upon Order to Payout from the Real Estate Recovery Fund
1450.266 Advisory Letters

SUBPART G: PRE-LICENSE AND CONTINUING EDUCATION ~~SCHOOL~~ RULES

- 1450.270 Definition of Schools and School Branch (Repealed)
1450.275 Pre-License Schools ~~and Instructors~~
1450.276 Curriculum for Pre-License Schools
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1450.278 Pre-License Instructors
1450.280 Expiration Date and Renewal Period for ~~Pre-License Schools and~~ Pre-License Instructors
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1450.305 Recruitment at Test Center
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- 1450.325 Salesperson Applicants – Transition Provisions
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AUTHORITY: Implementing the Real Estate License Act of 2000 [225 ILCS 454] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Rules and Regulations for the Administration of the Real Estate Brokers and Salesmen License Act (General Rules), effective December 4, 1974; Rules and Regulations for the Administration of the Real Estate Brokers and Salesmen License Act (School Rules), effective July 29, 1974; amended at 3 Ill. Reg. 885, effective February 2, 1979; amended at 4 Ill. Reg. 195, effective August 12, 1980; amended at 5 Ill. Reg. 5343, effective May 6, 1981; amended at 5 Ill. Reg. 8541, effective August 10, 1981; codified at 5 Ill. Reg. 11064; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; emergency amendment at 6 Ill. Reg. 2406, effective February 3, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8221, effective July 1, 1982; amended at 9 Ill. Reg. 341, effective January 3, 1985; transferred from Chapter I, 68 Ill. Adm. Code 450 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1450 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2977; amended at 12 Ill. Reg. 8036, effective April 26, 1988; amended at 15 Ill. Reg. 10416, effective July 1, 1991; amended at 16 Ill. Reg. 3204, effective February 14, 1992; emergency amendment at 19 Ill. Reg. 12003, effective August 8, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 16623, effective December 1, 1995; amended at 20 Ill. Reg. 6492, effective April 30, 1996; recodified from Chapter VII, Department of Professional Regulation, to Chapter VIII, Office of Banks and Real Estate, pursuant to PA 89-23 and PA 89-508, at 20 Ill. Reg. 11984; amended at 21 Ill. Reg. 3602, effective March 7, 1997; amended at 21 Ill. Reg. 8350, effective June 30, 1997; old Part repealed and new Part adopted by emergency rulemaking at 24 Ill. Reg. 704, effective January 1, 2000, for a maximum of 150 days; old Part repealed and new Part adopted at 24 Ill. Reg. 8263, effective May 30, 2000; amended at 27 Ill. Reg. _____, effective _____.

SUBPART A: DEFINITIONS

Section 1450.10 Definitions

Unless otherwise clarified by this Part, definitions set forth in the Act also apply for purposes of this Part.

"Act" means the Real Estate License Act of 2000 [225 ILCS [454455](#)].

"Affidavit of Non-participation" means a sworn statement made by an unlicensed person associated with or an owner of a licensed real estate corporation, limited liability company, partnership, or limited partnership attesting that the unlicensed person is not actively directing or engaging in real estate activities as part of that

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association or ownership.

"Certificate of registration" means the document issued by OBRE indicating approval of a continuing education course for which CE credit can be granted.

"Compliance agreement" means an agreement entered into between a licensee and OBRE in conjunction with an administrative warning letter.

"Credit hour" means classroom attendance for a minimum of 50 minutes of lecture or its equivalent through a distance education learning program approved by OBRE. For the purposes of this Part the term "classroom hour" shall have the same meaning as credit hour.

"Good moral character" means a reliable and trustworthy character as will enable a person to discharge the duties of a real estate licensee in a manner which protects the public's interest and welfare. Evidence of inability to discharge such duties may include the commission of conduct violative of Section 20-20 of the Act.

"Managing broker" means a broker who has supervisory responsibilities for licensees in one or, in the case of a multi-office company, more than one office and who has been appointed as such by the sponsoring broker. Refer to the definition of sponsoring broker below.

"Moral turpitude" means conduct that is inherently base, depraved or vile.

"Office" means a real estate broker's place of business where the general public is invited to transact business and where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business. When determining whether an office exists the following shall be considered by OBRE:

An office is any business location or structure which is owned, controlled, operated or maintained by a person who, at that location or structure, is:

engaging in licensed activities;

offering real estate services to consumers;

holding out to the public that the person is engaged in the practice of real estate brokerage;

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maintaining original real estate documents and records related to active or pending transactions;

maintaining current escrow records; or
meeting consumers for the purpose of engaging in real estate licensed activities.

The following places do not constitute an office:

a motor vehicle primarily used for transportation;

a place whose purpose is solely devoted to advertising real estate matters of a general nature or to making a sponsoring broker's business name generally known;

a place which a licensee uses solely for storage or archiving of records; or

a licensee's residence unless held out to the public as a location at which real estate brokerage services are available to the public.

A licensee engaged in the practice of real estate brokerage shall maintain an office. If the licensee is sponsored by another, then the office shall be the office of the sponsoring broker.

A post office box, mail drop location, or other similar facility shall not constitute an office, so long as none of the activities described in this definition take place at this facility.

"School branch" means a location where a pre-license school provides instruction other than the sponsoring school's principal location.

"Semester hours" shall be converted into quarter hours at a ratio of 2 semester hours to 3 quarter hours.

"Sole owner" when used to describe a licensee means a licensee who has a 100% ownership interest alone, has ownership as a joint tenant or tenant by the entirety or holds 100% beneficial interest in a land trust.

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PROPOSED AMENDMENTS

"Sponsoring broker" means the broker who has issued a sponsor card to a licensed salesperson, another licensed broker, or a leasing agent.

There shall be only one sponsoring broker for any one real estate company. According to the definition herein, the sponsoring broker is the entity holding the company real estate license, whether the entity is an individual who operates as a sole proprietorship, a partnership, limited liability company, corporation or registered limited liability partnership.

The entity that is the sponsoring broker for the real estate company may delegate its duties in accordance with company policy to appropriate company personnel, authorized to act and sign on behalf of the sponsoring broker.

Some examples include but are not limited to:

the sponsoring broker could authorize a managing broker for the company to sign sponsor cards in the name of the sponsoring broker;

the sponsoring broker could authorize a qualified company employee or independent contractor to oversee bookkeeping duties relative to the sponsoring broker's escrow account;

the sponsoring broker may delegate authorized signers for the escrow account to sign on behalf of the sponsoring broker; and

the sponsoring broker may delegate to authorized company personnel, the ability to sign contracts entered into by the sponsoring broker in accordance with the sponsoring broker's company policy.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART C: LICENSING AND EDUCATION

Section 1450.95 Fees

- a) License of a Leasing Agent.

OFFICE OF BANKS AND REAL ESTATE

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- 1) The application fee for an initial leasing agent license shall be \$50.
 - 2) The application fee to renew a leasing agent license shall be \$25 per year.
 - 3) The late renewal fee for leasing agent licenses renewed after the expiration date of the license shall be \$50.
 - 4) The fee for issuing a 120 day leasing agent permit shall be \$25.
- b) License of Real Estate Salesperson.
- 1) The fee for an initial license as a salesperson is \$100. The fee must accompany the application to determine the applicant's fitness to receive a license.
 - 2) The fee for renewal of a salesperson's license which has not expired shall be calculated at the rate of \$25 per year.
 - 3) The fee for the renewal of a salesperson's license which has been expired for not more than 2 years, as provided for in Section 5-55 of the Act, is the sum of all lapsed renewal fees plus \$50.
- c) License of Broker.
- 1) The fee for an initial license as a broker is \$100. The fee must accompany the application to determine an applicant's fitness to receive a license.
 - 2) The fee for the renewal of a broker's license which has not expired shall be calculated at the rate of \$50 per year.
 - 3) The fee for the renewal of a broker's license which has been expired for not more than 2 years, as provided for in Section 5-55 of the Act, is the sum of all lapsed renewal fees plus \$50.
- d) License of Partnership, Limited Liability Company, or Corporation.
- 1) The fee for an initial license for a partnership, limited liability company, or corporation is \$100. The fee must accompany the application to determine an applicant's fitness to receive a license.
 - 2) The fee for the renewal of a license for a partnership, limited liability company, or corporation shall be calculated at the rate of \$50 per year.
 - 3) The fee for the renewal of a license for a partnership, limited liability company or corporation which has been expired is the sum of all lapsed renewal fees plus \$50.
- e) License for Branch Office.
- 1) The fee for an initial license for a branch office is \$100. The fee must accompany the application to determine an applicant's fitness to receive a license.
 - 2) The fee for the renewal of a branch office license shall be calculated at the rate of \$50 per year.
 - 3) The fee for the renewal of a branch office license which has been expired is the sum of all lapsed renewal fees plus \$50.

OFFICE OF BANKS AND REAL ESTATE

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- f) Pre-License School, Instructor, and Course Fees.
- 1) The fee for an application for initial approval of a pre-license school is \$1,000. The fee must accompany the application to determine an applicant's fitness to receive a license.
 - 2) The fee for renewal of approval of a pre-license school shall be calculated at the rate of \$500 per year.
 - 3) The fee for the renewal of approval of a pre-license school which has been expired is the sum of all lapsed renewal fees plus \$50.
 - 4) The fee for an application for initial approval of a branch for a pre-license school is \$150 per branch. The fee must accompany the application to determine an applicant's fitness to receive approval.
 - 5) The fee for renewal of approval of a branch for a pre-license school shall be calculated at the rate of \$100 per branch per year.
 - 6) The fee for the renewal of approval of a branch for a pre-license school which has been expired is the sum of all lapsed renewal fees plus \$50.
 - 7) The fee for transferring a branch location shall be \$25 per transfer.
 - 8) The fee for application for initial approval of a pre-license instructor is \$100. The fee must accompany the application to determine the applicant's fitness for approval.
 - 9) The fee for renewal of approval of a pre-license instructor shall be calculated at the rate of \$100 per year.
 - 10) The fee for the renewal of approval of a pre-license instructor which has been expired is the sum of all lapsed renewal fees plus \$50.
 - 11) The fee for application for initial approval of a pre-license course is \$100. The fee must accompany the application for approval.
 - 12) The fee for renewal of approval of a pre-license course shall be calculated at the rate of \$25 per year.
 - 13) The fee for the renewal of approval of a pre-license course which has been expired is the sum of all lapsed renewal fees plus \$50.
- g) Continuing Education School, Instructor, and Course Fees.
- 1) The fee for an application for initial approval as a continuing education (CE) school shall be \$2,000. The fee must accompany the application to determine an applicant's fitness for approval.
 - 2) The fee for renewal of approval as a CE school shall be \$2,000 per year.
 - 3) The fee for renewal of approval as a CE school which has expired shall be all lapsed renewal fees plus \$50.
 - 4) The fee for an application for initial approval as a CE instructor shall be \$50. The fee must accompany the application to determine an applicant's fitness to receive approval.

OFFICE OF BANKS AND REAL ESTATE

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- 5) The fee for renewal of approval as a CE instructor shall be \$50 per year.
 - 6) The fee for the renewal of approval as a CE instructor which has been expired shall be all lapsed renewal fees plus \$50.
 - 7) The fee for an application for initial approval of a CE course shall be \$100. The fee must accompany the application for approval.
 - 8) The fee for renewal of approval of a CE course shall be \$25 per year.
 - 9) The fee for renewal of approval of a CE course which has expired shall be all lapsed renewal fees plus \$50.
- h) General.
- 1) All fees paid pursuant to the Act and this Section are non-refundable.
 - 2) The fee for the issuance of a duplicate license or pocket card, for the issuance of a replacement license or pocket card for a license or pocket card which has been lost or destroyed, for the issuance of a license with a change of name or address other than during the renewal period, or for the issuance of a license with a change of location of business, is \$25.
 - 3) The fee for a certification of a licensee's record for any purpose is \$25.
 - 4) The fee for a wall license showing registration shall be the cost of producing the license.
 - 5) The fee for a roster of persons licensed under the Act or for a list of licensees sponsored by the sponsoring broker shall be the cost of producing the roster.
 - 6) Applicants for an examination as a leasing agent, broker, salesperson, or instructor shall be required to pay a fee covering the cost of providing the examination. If a designated testing service is utilized for the examination, the fee shall be paid directly to the designated testing service. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged, shall result in the forfeiture of the examination fee.
 - 7) The fee for requesting a waiver of continuing education requirements pursuant to Section 5-70 of the Act shall be \$25.
 - 8) The fee for processing a sponsor card other than at the time of original licensure is \$25.
 - 9) The fee for a copy of a transcript of the proceedings under Section 20-60(h) of the Act shall be the cost of a copy of the transcript. A copy of the balance of the record will be provided at OBRE's cost for producing the record.
 - 10) The fee for certifying the record referred to in Section 20-75 of the Act is \$1 per page of the record.

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- 11) OBRE may charge an administrative fee not to exceed \$500, as a part of a compliance agreement issued with an administrative warning letter pursuant to Section 1450.250(d)(2).
- 12) Each university, college, community college or school supported by public funds shall be exempt from the school licensure fees provided each university, college, community college or school meets the following criteria:
- A) the facility is supported by public funds;
 - B) the instructors are considered full-time faculty and are supported by public funds;
 - C) the program, pre-license and/or continuing education, revenues are deposited into the general fund of the university, college, community college or school as are other appropriated public funds; and
 - D) the program, pre-license and/or continuing education, is not a for-profit division of the university, college, community college or school.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.105 Renewals

- a) Every leasing agent license issued under the Act shall expire on July 31 of each even numbered year.
- b) Every salesperson's license issued under the Act shall expire on April 30 of each odd numbered year. All salespersons licenses which expire on March 31, 2001, pursuant to the Real Estate License Act of 1983 shall be extended to April 30, 2001.
- c) Every broker's license issued under the Act shall expire on April 30 of each even numbered year. All ~~broker's broker~~ licenses which expire on January 31, 2000, pursuant to the Real Estate License Act of 1983 shall be extended to April 30, 2000. Sponsoring brokers shall also submit a properly completed consent to audit and examine special accounts form.
- d) Every license issued to a corporation, limited liability company, partnership, limited partnership, or branch office under the Act shall expire on October 31 of each even numbered year. The holder of the license shall submit the following:
 - 1) A properly completed consent to audit and examine special accounts form; and
 - 2) A properly completed change of business information form as provided

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PROPOSED AMENDMENTS

for in Section 1450.110 of this Part.

- e) Renewal applications shall be submitted on forms provided by OBRE. All renewals shall include the name and license number of the sponsoring broker. Failure to receive a renewal form from OBRE shall not constitute an excuse for failure to pay the renewal fee or to renew one's license.
- f) Practicing or offering to practice on an expired or inoperative license shall constitute unlicensed or unauthorized practice and shall be grounds for discipline pursuant to Section 20-20 of the Act.
- g) Any leasing agent, salesperson, or broker whose license under the Act has expired is eligible to renew the license without paying any lapsed renewal fees or reinstatement fee provided that the license expired while the licensee was:
 - 1) on active duty with the United States Army, United States Navy, United States Marine Corps, United States Air Force, United States Coast Guard, the State Militia called into the service or training of the United States, or
 - 2) engaged in training or education under the supervision of the United States prior to induction into military service, or
 - 3) serving as the Director or Deputy Director of Real Estate in the State of Illinois, or as an employee of OBRE. A licensee renewing his or her license in accordance with this subsection may renew the license within a period of two years following the termination of service and are not required to take a refresher course or a retest.
- h) In accordance with Section 5-55 of the Act, any licensee whose license under this Act has expired for more than 2 years shall not be eligible for renewal of that license. Any licensee whose license has been expired for less than 2 years may renew the license at any time by complying with the requirements of this **Part Section**, by paying the fees required by Section 1450.95 of this Part and by providing OBRE with evidence that the licensee has satisfactorily completed the required continuing education courses, including six hours per year while the license was ~~expired, nonrenewed~~.
- i) In accordance with Section 5-50 of the Act, upon request, OBRE shall prepare and mail to the sponsoring real estate broker a listing of licensees who, according to the records of OBRE, are sponsored by that broker. The sponsoring broker shall notify OBRE concerning any inaccuracies in the listing within 30 days after its receipt.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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- a) It is the responsibility of each licensee to immediately notify OBRE of any change of name, address, or office location. For example, if the licensee has had a name change either by court order or due to a change in marital status, the licensee shall notify OBRE of the name change together with a certified copy of the marriage certificate or portions of the court order relating to the name change, and indicate under which name the license shall issue. If the licensee regularly practices under a diminutive of their first name (e.g., Meg for Margaret or Mark for Mariusz or Sam for Shamim), last name or a middle name instead of the licensee's full legal name, the licensee shall notify OBRE of the alternate name. To help ensure proper credit, the licensee shall ensure that all continuing education certificates are issued under the name of licensure.
- b) It is the responsibility of each sponsoring broker to immediately notify OBRE of any change of business information.
- 1) When a licensee acquires or transfers any interest in a corporation, limited liability company, partnership, or limited partnership licensed under the Act, the sponsoring broker shall submit to OBRE a properly completed change of business information form.
 - 2) When a licensee becomes an officer or manager of a corporation, limited liability company, partnership, or limited partnership licensed under the Act, the sponsoring broker shall submit to OBRE a properly completed change of business information form. Any changes in managing brokers, branch or principal offices shall be reported in writing to OBRE within 15 days after the change.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.115 Continuing Education

- a) Continuing Education Hour Requirements
- 1) Pursuant to Article 5 of the Act, each licensee who is required to take continuing education (CE) shall complete 6 hours of CE for each year of the prerenewal period in courses approved by the Advisory Council. Licensees who complete CE after the expiration of a license are eligible for approval of CE upon payment of all fees required by this Part and completion of the necessary forms.
 - 2) Pursuant to -Section 5-70 of the Act, CE requirements apply to those licensees who obtained initial licensure in Illinois on or after January 1, 1977 and those licensees who did not have a license for 15 years as of January 1, 1992. Continuous licensure is not required to be eligible for

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this exemption. However, if a license has been nonrenewed for a period of 2 years or more, the date of initial licensure, for purposes of this Section, shall be the date of licensure after that nonrenewed period.

- 3) A renewal applicant is not required to comply with the CE requirements for the first renewal following original licensure if:
 - A) ~~the an~~ initial salesperson's license was issued less than one year prior to the expiration date; or
 - B) ~~the initial a~~ broker's license was issued ~~to a person, not already licensed as a salesperson,~~ less than one year prior to the expiration date.
 - 4) A renewal applicant is required to complete 6 hours of continuing education if:
 - A) the licensee's initial salesperson license was issued more than one year prior to that licensee's first expiration date and less than two years prior to that licensee's first expiration date.
 - B) a broker's license was issued to a person, not already licensed as a salesperson, more than one year prior to that licensee's first broker expiration date and less than two years prior to that licensee's first broker expiration date.
 - 5) Salespersons and brokers licensed in Illinois but residing and practicing in other states shall comply with the CE requirements set forth in this Section, unless they are exempt pursuant to Section 5-70(a) of the Act or ~~subsection subsections-~~(a)(2) or (a)(3) ~~above~~.
 - 6) OBRE shall conduct random audits to verify compliance with this Section.
- b) Approved Continuing Education
- 1) CE credit may be earned for verified attendance at or participation in a course which is offered by an approved CE school that meets the requirements set forth in Section 1450.285 of this Part.
 - 2) CE credit may also be earned for completion of a self-study course that is offered by an approved CE school that meets the requirements set forth in Section 1450.295 of this Part.
 - 3) Pursuant to Section 5-70 of the Act, the CE in a curriculum approved by the Education Advisory Council requirement shall be satisfied by successful completion of the following:
 - A) Core category. A minimum of 6 hours of CE in a curriculum approved by the Education Advisory Council.
 - B) Elective category. A maximum of 6 hours of CE in the following elective courses:
 - i) Appraisal;

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- ii) Property management;
 - iii) Residential brokerage;
 - iv) Farm property management;
 - v) Rights and duties of sellers, buyers and brokers;
 - vi) Commercial brokerage and leasing;
 - vii) Real estate financing; and
 - viii) Other CE courses approved by the Advisory Council (e.g., real estate tax laws).
- 4) One hour of approved CE shall include at least 50 minutes of classroom instruction and shall be exclusive of any time devoted to taking the examination as set forth in subsection (b)(6) below.
- 5) Each CE course shall include one or more subjects from either the core category or elective category set forth in subsection (b)(3)(A) or (b)(3)(B), where the individual is in actual attendance, or participates in, or completes self-study. All CE courses shall be a minimum of three hours and shall be offered in three-hour increments. Each three-hour increment shall be from topics in the core or elective category. In no case shall topics from the core and elective category be combined within the same three-hour period. The CE school shall clearly indicate on the certificate of completion the number of hours earned from each CE course and identify whether the completed course was from the core or elective category.
- 6) Each CE course shall include the successful completion of an examination which measures the attendee's understanding of the course material. A score of at least 70% is required on the examination for successful completion of any CE course.
- A) The examination shall be given on-site immediately following any CE course. When a sequence of courses is offered, the examination may be given either at the end of each individual course or it may be given at the end of the sequence of courses so long as the examination covers all aspects of the course material.
 - B) All examinations, including self-study examinations and retake examinations, shall be proctored by a representative of the approved CE school and shall include at least 25 questions for each three-hour increment of CE earned.
 - C) No credit for CE shall be given to any licensee unless the examination is successfully completed. The CE school shall allow the attendee one retake within 30 days after a failed examination in order to receive credit for CE. No more than one retake shall be allowed. A licensee failing a retake shall not receive credit for that

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- CE course unless the entire course is retaken and the examination is successfully completed.
- 7) Self-study CE shall comply with all of the requirements of this Section, except that:
 - A) Verified attendance is only required for taking the examination.
 - B) Classroom instruction is not required for self-study CE, as the intent is for the licensees to review and learn the material on their own.
 - C) Acceptable self-study materials include, but are not limited to, reading material and audio/video cassettes.
 - D) The examination site for self-study CE shall be determined by the CE school, and it shall be proctored by a representative of the approved sponsor. An approved instructor is not required to proctor the examination.
 - 8) All CE courses shall:
 - A) Contribute to the advancement, integrity, extension and enhancement of professional skills and knowledge in the practice of real estate;
 - B) Provide experiences (e.g., role playing, lectures, films) which contain subject matter and course materials relevant to that set forth in Section 5-70 of the Act; and
 - C) Be developed and presented by persons with education and/or experience in the subject matter of the CE course.
 - 9) Nothing shall prohibit an approved CE school and its instructors from utilizing audio-visual aides or satellite communications with two-way voice interaction in assisting in the presentation of CE courses.
 - 10) Pursuant to Section 5-70(f) of the Act, CE credit may be earned by an approved instructor for teaching an approved CE course or pre-license course also approved for CE. Credit for teaching an approved CE course may only be earned one time per course during a prerenewal period. One hour of teaching is equal to one hour of CE.
 - 11) As provided for in Section 5-75 of the Act, if licensees have earned CE hours offered in another state or territory for which they will be claiming credit toward full compliance in Illinois, each applicant shall submit an application along with a \$25 processing fee within 90 days after completion of the CE course and prior to expiration of the license. The Advisory Council shall review and recommend approval or disapproval of the CE course provided the CE school and CE course are substantially equivalent to those approved in Illinois and provided that the course

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included the successful completion of a proctored examination. In determining whether the CE school and CE course are substantially equivalent the Advisory Council shall use the criteria in Sections 5-70 through 5-85 of the Act and this Section.

- 12) CE credit shall not be given for CE courses taken in Illinois from schools not pre-approved by OBRE.
 - 13) Except for self-study CE courses, no more than 6 hours of CE may be taken in any calendar day.
- c) Certification of Compliance with CE Requirements
- 1) Each licensee shall certify on the renewal application full compliance with the CE requirements set forth in subsections (a) and (b) of this Section.
 - 2) OBRE may require additional evidence demonstrating compliance with the CE requirements (e.g., certificate of completion, transcript, etc.). It is the responsibility of each renewal applicant as proof of CE completed.
 - 3) When during an audit or compliance review, OBRE determines that a licensee may be deficient in complying with CE requirements, OBRE will notify the licensee, and the sponsoring broker of the licensee, by certified or registered mail, return receipt requested, or other signature restricted delivery service, of the possible deficiency. The licensee shall have 60 days from the date the deficiency notification is ~~mailed received~~ to submit to OBRE evidence of compliance with CE requirements.
 - A) If satisfactory evidence of compliance with CE requirement (as set forth in subsection (c)(2) of this Section) is submitted, OBRE shall notify the licensee by first class mail, that the licensee is in compliance.
 - B) If the licensee has certified compliance with CE requirements on the licensee's most recent renewal application pursuant to subsection (c)(1) of this Section but cannot submit evidence of having been in compliance on the date the licensee made the certification, the licensee may during the 60 days notice period submit evidence of having attained compliance with CE requirements after the date the certification was made. The submission of evidence of post-certification completion must be accompanied by a non-refundable administrative fee of \$25 per course credit hour completed after the date the licensee originally certified compliance. The submission of evidence will not be reviewed or considered if the proper fee does not accompany the submission. Upon submission of the evidence and appropriate fee, the evidence will be reviewed. If the evidence is found to be

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satisfactory, OBRE shall notify the licensee and the sponsoring broker of the licensee that the licensee is in compliance. Any credit hours submitted for post-certification course completion and found satisfactory may not be used as credit for the next renewal requirements.

- C) If the licensee fails to submit within the 60 day notice period satisfactory evidence of compliance with CE requirements, the failure shall be evidence of a violation of Section 20-20(a) of the Act regarding false or fraudulent representation to obtain a license and the continuing education requirements of Article 5 of the Act. OBRE shall send notice pursuant to Section 20-60 of the Act indicating the commencement of disciplinary proceedings. A copy of this notice shall be sent to the sponsoring broker of the licensee.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART D: COMPENSATION AND BUSINESS PRACTICES

Section 1450.140 Advertising

- a) Deceptive and misleading advertising includes, but is not limited to, the following:
- 1) advertising a property that is subject to an exclusive listing agreement with a sponsoring broker other than the licensee's own without the permission of and identifying that listing broker; ~~and~~
 - 2) failing to remove advertising of a listed property within a reasonable time, given the nature of the advertising, after the earlier of the closing of a sale on the listed property or the expiration or termination of the listing agreement; ~~and-~~
 - 3) advertising a property at auction as an absolute auction or auction without reserve, when there is a minimum bid or opening bid required.
- b) For the purposes of this Section and Section 1450.145 on Internet Advertising, listing information available on a sponsoring broker's or licensee's website, extranet or similar site but behind a firewall or similar device requiring a password, registration or other type of security clearance to access that information shall not be considered advertising.
- c) For the purposes of this Section and Section 1450.145 on Internet Advertising, unsolicited marketing of a licensee's real estate brokerage services and farming (prospecting) shall be considered advertising.

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- d) Nothing in Section 10-30 of the Act shall require a sponsoring broker to include the name of one of its sponsored licensees on signs or other general advertising of the sponsoring broker.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.160 Employment Agreements

Every sponsoring broker shall have a written employment agreement with every licensee they sponsor. This agreement shall be dated and signed by the parties. The agreement shall include, at a minimum, the employment or independent contractor relationship terms, including but not limited to, supervision, duties, compensation, duration, and termination. The term "duration", as used in this Section, is not intended to require a specific termination date, but rather to allow the parties to negotiate the term of the agreement, such as "at will", or a specific length of time, and how the agreement is renewed or terminated, and that these provisions be included in the agreement. The employing broker shall give to every employee and independent contractor a copy of the employment agreement and any modifications.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.165 Unlicensed Assistants

- a) Licensees under the Act may employ, or otherwise utilize the services of, unlicensed assistants to assist them with administrative, clerical, or personal activities for which a license under the Act is not required.
- b) An unlicensed assistant, on behalf of and under the direction of a licensee, may engage in the following administrative, clerical, or personal activities without being in violation of the licensing requirements of the Act. The following list is intended to be illustrative and declarative of the Act and is not intended to increase or decrease the scope of activities for which a license is required under the Act. An unlicensed assistant of a licensee may:
- 1) answer the telephone, take messages, and forward calls to a licensee;
 - 2) submit listings and changes to a multiple listing service;
 - 3) follow up on a transaction after a contract has been signed;
 - 4) assemble documents for a closing;
 - 5) secure public information from a courthouse, sewer district, water district, or other repository of public information;
 - 6) have keys made for a company listing;
 - 7) draft advertising copy and promotional materials for approval by a licensee;

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- 8) place advertising;
 - 9) record and deposit earnest money, security deposits, and rents;
 - 10) complete contract forms with business and factual information at the direction of and with approval by a licensee;
 - 11) monitor licenses and personnel files;
 - 12) compute commission checks and perform bookkeeping activities;
 - 13) place signs on property;
 - 14) order items of routine repair as directed by a licensee;
 - 15) prepare and distribute flyers and promotional information under the direction of and with approval by a licensee;
 - 16) act as a courier to deliver documents, pick up keys, etc.;
 - 17) place routine telephone calls on late rent payments;
 - 18) schedule appointments for the licensee (this does not include making phone calls, telemarketing, or performing other activities to solicit business on behalf of the licensee);
 - 19) respond to questions by quoting directly from published information;
 - 20) sit at a property for a broker tour which is not open to the public;
 - 21) gather feedback on showings;
 - 22) perform maintenance, engineering, operations or other building trades work and answer questions about such work;
 - 23) provide security;
 - 24) provide concierge services and other similar amenities to existing tenants;
 - 25) manage or supervise maintenance, engineering, operations, building trades and security; and
 - 26) perform other administrative, clerical, and personal activities for which a license under the Act is not required.
- c) An unlicensed assistant of a licensee may not perform the following activities for which a license under the Act is required. The following list is intended to be illustrative and declarative of the Act and is not intended to increase or decrease the scope of activities for which a license is required under the Act. An unlicensed assistant of a licensee may not:
- 1) host open houses, kiosks, or home show booths or fairs;
 - 2) show property;
 - 3) interpret information on listings, titles, financing, contracts, closings, or other information relating to a transaction;
 - 4) explain or interpret a contract, listing, lease agreement, or other real estate document with anyone outside the licensee's company;
 - 5) negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee; or

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- 6) perform any other activity for which a license under the Act is required.
- d) Any licensee who employs an unlicensed assistant shall be responsible for the actions of the unlicensed assistant taken while under the supervision of or at the direction of the licensee.
- e) Any licensee who is responsible for the actions of an unlicensed assistant by statute, regulation, contract, or office policy and who permits, aids, assists, or allows an unlicensed assistant to perform any activity for which a license under the Act is required shall be in violation of the Act.
- f) Stenographic, clerical, maintenance, engineering, building trades, security, or office personnel not directly engaged in the practice of real estate brokerage as defined in Section 1-10 of the Act are not required to be licensed.
- g) A licensee is prohibited from acting as an unlicensed assistant for any licensee other than his or her sponsoring broker or a licensee sponsored by the sponsoring broker.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.175 Special Accounts

- a) Escrow Moneys Defined.
 - 1) "Escrow moneys" means all moneys, promissory notes or any other type or manner of legal tender or financial consideration deposited with any person for the benefit of the parties to the transaction. A transaction exists once an accepted real estate contract is signed or lease agreed to by the parties. Escrow moneys include without limitation earnest moneys and security deposits, except those security deposits in which the person holding the security deposit is also the sole owner of the property being leased or sold and for which the security deposit is being held.
 - 2) Pursuant to the terms of a written agreement between a licensee and a client, such as a property management agreement, rent moneys paid to a licensee for transmittal to the licensee's client (e.g., the owner) shall not be considered to be "escrow moneys". In addition, other moneys held in a custodial account by a licensee for transmittal to licensee's client, pursuant to the terms of a written agreement, such as a contract for deed, shall not be subject to these escrow rules.
 - 3) Earnest money constitutes escrow moneys whether in the form of personal checks, cashier's checks, money orders, cash, or any other forms of legal tender.
- b) Escrow Accounts. Pursuant to Section 20-20(h)(8) of the Act, sponsoring brokers

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who accept escrow moneys shall maintain and deposit in a special account (hereinafter referred to as an escrow account), separate and apart from personal or other business accounts, all escrow moneys entrusted to them while acting as the real estate brokers, escrow agents, or as the temporary custodians of the funds of others.

- 1) Such escrow account shall be non-interest bearing, unless the character of the deposit is such that payment of interest thereon is otherwise required by law or unless the principals to the transaction specifically require, in writing, that the deposit be placed in an interest bearing account.
 - 2) If an interest bearing account is required, the recipient of the interest shall be specifically indicated, in writing, by the principals of the transaction.
 - 3) A sponsoring broker may maintain more than one escrow account.
 - 4) An escrow account need not be maintained by a sponsoring broker who does not receive escrow moneys entrusted to him or her while acting as a real estate broker, or as escrow agent, or as temporary custodian of the funds of others.
 - 5) Every escrow account, whether interest bearing or non-interest bearing, shall be maintained at a federally insured depository.
 - 6) Commingling Prohibited. Each sponsoring broker shall deposit only escrow moneys received in connection with any real estate transaction in an escrow account. The sponsoring broker shall not deposit personal funds in an escrow account, except he or she may deposit from his or her own personal funds, and keep in any escrow account, an amount sufficient to avoid incurring service charges relating to the escrow account. The sum shall be specifically documented as being for service charges and the sponsoring broker shall have proof available that the amount of his or her own funds in the escrow account does not exceed the minimum amount required by the depository to maintain the account without incurring service charges. Transfer of funds as provided for in subsection (i)(4) of this Section shall not constitute commingling.
- c) The sponsoring broker shall provide a receipt to the payor of any cash constituting escrow funds and shall retain a copy of the receipt.
- d) Time of Deposit of Escrow Moneys. All escrow moneys accepted by a sponsoring broker shall be placed in the sponsoring broker's escrow account not later than the next business day following the transaction. A transaction exists once an accepted real estate contract is signed or lease agreed to by the parties. If such funds are received on a day prior to a bank holiday or any other day on which the bank or savings and loan association is closed, such funds shall then be deposited on the next business day upon which the depository is open.

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- e) A sponsoring broker serving as escrow agent shall notify all principals in writing if a principal fails to tender escrow moneys, when a principal's payment as escrow moneys is dishonored by the financial institution on which it was drawn, or when there appears on the face of the governing contract to be a deficiency in the amount on deposit.
- f) Maintenance of Escrow Moneys on Deposit in Escrow Account. The sponsoring broker shall keep all escrow moneys on deposit in an escrow account until a transaction is consummated or terminated, except to the extent that such escrow moneys, or any part thereof, shall be disbursed according to the provisions set forth in subsection (g).
- g) Disbursement of Escrow Moneys. Pursuant to Section 20-20(h)(8) of the Act, the sponsoring broker shall disburse escrow moneys according to the following requirements, however, a sponsoring broker may not disburse funds until they have been honored by the payor's depository.
- 1) The sponsoring broker must disburse escrow moneys upon consummation or termination of the transaction. Such disbursement must be according to the terms of the contract and must be made not earlier than the day the transaction is consummated or terminated and not later than the next business day following the sponsoring broker's receipt of notice of the consummation or termination, or otherwise in accordance with the written direction of all principals to the transaction or their duly authorized agents.
 - A) Commissions and/or fees earned by a sponsoring broker in any transaction shall be disbursed by that broker from the funds deposited in an escrow account no earlier than the day the transaction is consummated or terminated and not later than the next business day after the transaction is consummated or terminated, or otherwise in accordance with the written direction of all principals to the transaction or their duly authorized agents.
 - B) Authorized disbursements are those which are made on behalf of, and at the written direction of, all principals to the transaction or their duly authorized agents.
 - C) A sponsoring broker shall not withhold, for any period of time, an authorized disbursement of escrow moneys due to any claim for a commission or compensation to any licensee.
 - 2) Pursuant to Section 20-20(h)(8)(i) of the Act, if prior to the consummation or termination of the transaction, the sponsoring broker receives written direction from all of the principals to the transaction or their duly authorized agents agreeing to a disbursement of the escrow moneys, that broker must disburse the escrow moneys according to the written

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directions. Such disbursement must be made not later than the next business day following the sponsoring broker's receipt of the last required written direction.

- 3) The sponsoring broker may release escrow moneys pursuant to Section 20-20(h)(8)(ii) of the Act which allows a sponsoring broker to disburse escrow moneys prior to the consummation or termination of the transaction in accordance with directions providing for the release, payment, or distribution of escrow moneys contained in any written contract signed by the principals to the transaction or their duly authorized agents. In any such case the terms of the contract concerning the release of the escrow moneys shall be adhered to by the sponsoring broker.
- 4) Pursuant to Section 20-20(h)(8)(iii) of the Act and notwithstanding any other requirements or responsibilities in this Part, if the sponsoring broker receives an order from a court of competent jurisdiction providing for the disbursement of the escrow moneys, that broker must disburse the escrow moneys according to the terms of the order.
- 5) For the purposes of this Section, "duly authorized agent" shall mean an attorney-in-fact, an attorney-at-law who represents that he or she is acting on behalf of one of the principals to the transaction, or any other person the licensee can prove was authorized to act on behalf of a principal to the transaction.
- h) Disputes Regarding Escrow Moneys. In the event of a dispute over the return or forfeiture of any escrow moneys held by the sponsoring broker or if a sponsoring broker has knowledge that any party to a transaction contests or disagrees with an anticipated disbursement of escrow moneys held by that broker, he or she shall continue to hold the deposit in his or her escrow account:
 - 1) until he or she has a written release from all parties or their duly authorized agents consenting to the disposition, in which case the escrow moneys must be disbursed according to the terms of the written direction no later than the next business day after the sponsoring broker's receipt of the last required written release;
 - 2) until a civil action is filed, by either the sponsoring broker or one of the parties, to determine its disposition, at which time payment may be made into court;
 - 3) until the funds are turned over to the State Treasurer or such other appropriate State agency or officer designated pursuant to the Act or the Uniform Disposition of Unclaimed Property Act [765 ILCS 1025], because of inactivity of the account or inability to locate the parties, or inability of the parties to reach a resolution.

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If an interpleader action is filed by the sponsoring broker, and the broker is authorized by real estate contract to withdraw from the escrow account those amounts as may be necessary to reimburse the sponsoring broker for costs and reasonable attorney's fees associated with that action, excluding costs and attorney's fees associated with that broker's attempt to collect a commission or fee.

- i) Escrow Records. Each sponsoring broker who accepts earnest money shall maintain, in his or her office or place of business, a bookkeeping system in accordance with sound accounting principles, and without limiting the foregoing, such system shall consist of at least the following escrow records as further described below:
 - 1) Journal. A journal shall be maintained for each escrow account. Such journal shall show the chronological sequence in which funds are received and disbursed by the sponsoring broker.
 - A) For funds received, such journal shall include the date, ~~the funds were received~~ ~~the name of the party who delivers such funds to the sponsoring broker~~, the name of the person on whose behalf ~~the such~~ funds are delivered to that broker and the amount of ~~the such~~ funds so delivered.
 - B) For fund disbursement, ~~the such~~ journal shall include the date, the payee, the check number and the amount disbursed.
 - C) A running balance shall be shown after each entry (receipt or disbursement).
 - 2) Ledger. A ledger shall be maintained for each transaction. The ledger shall show the receipt and the disbursement of funds affecting a single particular transaction such as between buyer and seller, or landlord and tenant, or the respective parties to any other relationship. The ledger shall include the names of all parties to a transaction, the amount of such funds received by the sponsoring broker and the date of such receipt. The ledger shall show, in connection with the disbursements of such funds, the date thereof, the payee, the check number and the amount disbursed. The ledger shall segregate one transaction from another transaction. There shall be a separate ledger or separate section of each ledger, as the broker shall elect, for each of the various kinds of real estate transactions (e.g., lease). If the ledger is computer generated from the same data entry from which the journal is generated, the sponsoring broker must maintain copies of the bank deposit slips, bank disbursement slips, or other bank receipts, to account for the data on the ledger.
 - 3) Monthly Reconciliation Statement. Each sponsoring broker shall

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reconcile, within ten days after receipt of the monthly bank statement, each escrow account maintained by such broker except where there has been no transactional activity during the previous month. Such reconciliation shall include a written work sheet comparing the balances as shown on the bank or savings and loan association statement, the journal and the ledger, respectively, in order to insure agreement between the escrow account and the journal and the ledger entries with respect to such escrow account. Each such reconciliation shall be kept for at least 5 years from the last day of the month covered by such reconciliation.

- 4) If escrow moneys are transferred from an escrow account to another account for disbursement, the sponsoring broker must maintain a copy of all records reflecting a disbursement from the other account.
- 5) Master Escrow Account Log. Each sponsoring broker shall maintain a Master Escrow Account Log identifying all escrow bank account numbers, and the name and address of the bank where the escrow accounts are located. The Master Escrow Account Log must specifically include all bank account numbers opened for individual transactions, even if such account numbers fall under another umbrella account number.
- 6) A sponsoring broker may employ a more sophisticated bookkeeping system based on sound accounting principles, including a system of electronic data processing equipment. However, any such system must contain or produce printed records containing the information required by this Section, although it need not be in the same format as provided for in this Section.
- 7) OBRE shall have available for distribution, on request, samples of an approved journal, ledger, monthly reconciliation statement, and Master Escrow Account Log.
- 8) Pursuant to Section 20-20(h)(9) of the Act, the sponsoring broker shall make available to the real estate enforcement personnel of the OBRE during normal business hours all escrow records and related documents maintained in connection with the practice of real estate within 24 hours after a request.
- 9) Copies of all Escrow Money Instruments. Except as otherwise provided by law, the broker shall retain copies of all escrow money instruments received from a principal as part of a transaction, including copies of all personal checks, cashier's checks, certified checks, money orders, promissory notes, or other financial instruments. The broker shall also retain copies and/or documentation of all disbursements or transfers into or out of an escrow account.

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- 10) Escrow records shall be retained for 5 years. The escrow records for the immediate prior 2 years shall be maintained in the office location and the balance of the records can be maintained at another location.
 - 11) If escrow records are lost, stolen, or destroyed due to fire, flood or any other circumstances, the broker must report such loss to the OBRE enforcement division within 30 days by signature restricted delivery. The broker must also immediately obtain copies of monthly bank statements, deposit and disbursement receipts, and any other available records, to reconstruct such loss of escrow records.
 - 12) A sponsoring broker may delegate the bookkeeping duties under this Part to another person, including a managing broker, a bookkeeper, certified public accountant, unlicensed assistant, licensed assistant, or sponsored licensee. However, compliance with the bookkeeping duties remain the responsibility of the sponsoring broker. The sponsoring broker is ultimately responsible for the proper administration of the escrow account pursuant to this Part.
- j) Sponsored Licensees. Sponsoring brokers shall institute office policies to ensure that the sponsored licensees tender escrow moneys received in compliance with this Part. Sponsored licensees, whether salespersons, brokers, or leasing agents, may not maintain their own escrow accounts.
- k) Branch Offices. Branch offices may maintain escrow accounts in compliance with this Part or may transmit all escrow moneys received to the main office, but not to another branch office, for compliance with this Part.
- 1) If the branch office does maintain escrow accounts, all of the requirements of this Part apply, including maintaining all required escrow records, and submitting to OBRE all required escrow forms.
 - 2) If the branch office does not maintain escrow accounts but instead transmits all escrow moneys received to the main office, all escrow moneys must be transmitted by the branch office to the main office not later than the next business day following the transaction. A transaction exists once an agreement has been reached and an accepted real estate contract signed or lease agreed to by the parties. Even if the branch office transmits all escrow moneys received to the main office, the branch office must maintain records showing the date the escrow moneys were transferred to the main office. The funds received at the main office from a branch office shall be placed in the sponsoring broker's escrow account not later than the next business day following receipt of such funds from the branch office.
- l) Escrow Requirements for Property Management Activities. Security deposits

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shall be maintained in an escrow account for the duration of the lease, unless the tenant waives this requirement in writing. Such waiver, if included in the lease, shall appear in bold print.

- m) Notification to OBRE of Identity of Escrow Accounts. Consent to Audit All Accounts.
- 1) Each sponsoring broker shall, at the time of the original application for licensure and at the time of renewal of licensure, on forms provided by OBRE, file with OBRE the name of the banks, savings and loan associations, or other recognized depositories in which each escrow account is maintained, and the name of each account, and the names of the persons authorized to withdraw funds from such accounts, and shall, as a condition of licensure, consent on such form to the examination and audit of all escrow accounts, notwithstanding whether the account is identified on the form, by OBRE.
 - 2) A new form shall be executed by the sponsoring broker and filed with OBRE within 10 days after the time of a change of depository, method of doing business, or persons authorized to make withdrawal. A new form shall also be executed each time a new escrow account is opened. However, a new form shall not be required each time a new escrow account is opened for an individual transaction and where such account falls under an umbrella account which has already been identified in a prior form. The identity of each of these individual escrow accounts, however, must be included in the Master Escrow Account Log pursuant to subsection (i)(5) of this Section.
- n) Violations. Any licensee who violates any of the provisions of this Part may be deemed to have endangered the public interest pursuant to Section 20(h)(12) of the Act and may be subject to a temporary suspension pursuant to Section 20-65 of the Act.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.200 Written Agreements

- a) No licensee shall solicit, accept or execute any contract or other document relating to a real estate transaction which shall contain any blanks with the intention of filling them ~~to be filled~~ in after signing or initialing the contract or other document.
- b) No licensee shall make any addition to, deletion from or alteration of any signed contract or other document relating to a real estate transaction without the written,

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telefax or telegraphic consent or direction from all signatories. No licensee shall process any contract or other document that has been altered after being signed, unless each addition, deletion or alteration is signed or initialed by all signatories at the time of the addition, deletion or alteration.

- c) A true copy of the original or corrected contract or other document relating to a real estate transaction shall be ~~hand~~ delivered or mailed within 24 hours of the time of signing or initialing the original or correction to the person signing or initialing ~~any~~ the contract or other document.
- d) All forms used by licensees intended to become binding real estate contracts shall clearly state this in the heading in large bold type. No licensee shall use a form designated Offer to Purchase when it is intended that the form shall be a binding real estate contract.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.205 Referral Fees and Affinity Relationships

- a) No licensee may pay a referral fee to an unlicensed person who is not a principal to the transaction. In order to meet the license requirement, the person receiving the referral fee may be duly licensed as a real estate broker in either Illinois or ~~the person's another~~ state or country of domicile. If the person's country of domicile does not have a licensing statute for real estate agents, then in order to receive a referral fee the person must be complying with the laws, if any, his or her country has adopted concerning the practice of the real estate brokerage business.
- b) No licensee may request a referral fee unless reasonable cause for payment of the referral fee exists. Reasonable cause for payment of a referral fee means that:
 - 1) an actual introduction of a client has been made to a licensee; or
 - 2) a contractual referral fee relationship exists with the licensee.The fact that reasonable cause to demand a referral fee exists does not necessarily mean that a legal right to the referral fee exists.
- c) A licensee is prohibited from interfering with the agency relationship of another licensee or attempting to induce a client to break a listing or an exclusive representation agreement with another licensee for the purpose of replacing that agreement with a new listing or representation agreement in order to obtain a referral fee. For purposes of this Section, an agency relationship shall be deemed to exist when a written, exclusive agency agreement (either a listing or buyer representation agreement) is entered into. Interfering with the agency relationship of another licensee includes, but is not limited to:
 - 1) demanding a referral fee from another licensee without reasonable cause;

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- 2) threatening to take harmful action against the client of another licensee because of their existing agency relationship and in order to obtain a referral fee; or
- 3) counseling the client of another licensee on how to terminate or amend an existing agency contract in order to obtain a referral fee.

Any activities that involve the communication of corporate relocation policies or benefits to a transferring employee, as long as that communication does not involve advice or encouragement on how to terminate or amend an existing agency contract shall not be considered interference.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART F: DISCIPLINE RULES AND PROCEDURES

Section 1450.220 Unprofessional Conduct

OBRE may suspend, revoke, or take other disciplinary action based upon its finding that the licensee or applicant has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public. The following descriptions are illustrative of the types of conduct ~~that which~~ would constitute "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public."

- a) Failure to act in the best interests of a client.
- b) Deliberately misleading a client as to the market value of the property.
- c) Failing to advertise the property as obligated by the listing agreement.
- d) Deliberately misrepresenting to prospective purchasers or their agents the condition of the property or the availability of access to show the property.
- e) Purchasing or transferring of the property through an intermediary in order to conceal the purchase by the licensee.
- f) Inducing a seller to list the property through false representations.
- g) Inducing a seller through false representations or false promises to transfer the property to the licensee.
- h) Taking unfair advantage of a client's or customer's age, disability, or lack of understanding of the English language.
- i) Engaging in conduct with the public or other real estate licensees in the practice of real estate in a manner that is abusive, harassing, or lewd.
- j) Representing oneself as a sponsoring broker or managing broker without providing the actual supervision and management of the real estate business.
- k) Failing to reasonably safeguard confidential information or improperly using confidential information.

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- l) Obstructing an inspection, audit, investigation, examination, or a disciplinary proceeding ~~by falsifying or wilfully destroying a document which is required to be kept.~~
- m) Any violation of Section 1450.175, Special Accounts, shall be deemed unprofessional conduct.
- n) Assisting or inducing a licensee to violate the Act or this Part.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.225 ~~Discipline Suspension or Denial~~ for Failure to Comply with Illinois Tax Acts Pay Taxes, Child Support Order or Default on Any Illinois Guaranteed Student Loan

- a) If OBRE receives certification that a licensee is in violation of Section 20-35, 20-40, or 20-45 of the Act, OBRE shall notify the licensee, by certified or registered mail, return receipt requested, or other signature restricted delivery, that the licensee may be disciplined unless the will be suspended 90 days from the date of the notice, unless the licensee provides to OBRE certification that the licensee has complied with all applicable Illinois tax Acts, eliminated the delinquency, eliminated the arrearage or has arranged for payment of the obligations in a manner satisfactory to the appropriate administering agency.
- b) If OBRE receives certification that an applicant is in violation of Section 20-35, 20-40, or 20-45 of the Act, OBRE shall notify such applicant, by certified or registered mail, return receipt requested, or other signature restricted delivery, of its intent to deny the applicant a license under the Act, unless the applicant provides to OBRE certification proof that the applicant has complied with all applicable Illinois tax Acts, eliminated the delinquency arrearage or has arranged for payment of the obligations in a manner satisfactory to the appropriate administering agency.
- c) For the purposes of this Section "certification Certification" shall mean: be defined as:
 - ~~1) a verified statement by the licensee or applicant on an application or renewal form of such delinquency or failure to pay;~~
 - 1)2) a verified statement by the appropriate administering agency of such delinquency, failure to file, or failure to pay or default; or
 - 2)3) a finding by an administrative body, or a finding by a court of competent jurisdiction that the licensee or applicant is delinquent in child support or is liable to pay a certain amount for Illinois taxes or is delinquent or has defaulted on an Illinois guaranteed student loan obligation.
- d) A licensee or applicant may participate in request a hearing, but the basis for the

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hearing shall only be for the purpose of proving that the petitioner is not the person for which such failure to pay or ~~delinquency arrearage~~ information was received, that the petitioner has executed a formal, written payment plan with the appropriate administering agency, signed by both parties, or that the petitioner has satisfied the outstanding debt; collateral attack of the certification is not permitted in its entirety.

- e) A licensee will be eligible for reinstatement, renewal or issuance ~~reinstated, renewed or issued~~ upon a showing that the certified failure to file, failure to pay, default arrearage or delinquency has been satisfied and by completing the appropriate application and paying any fees as established by this Part.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.246 Audits of Special Funds by Outside Auditors

- a) General Rule. OBRE may cause audits of special accounts of sponsoring brokers to be conducted by licensed certified public accountants under the circumstances and as provided for in this Section.
- b) Basis for Audit. Upon receipt of:
- 1) a complaint from one or more members of the public;
 - 2) information from another regulatory or law enforcement agency; or
 - 3) evidence developed by OBRE or one of its investigators;
- which causes OBRE to reasonably believe that escrow moneys required to be kept in a special account have been misappropriated, OBRE may contract with a licensed certified public accountant for the purpose of auditing the special accounts of the sponsoring broker responsible for the accounts in question.
- c) Definitions. The following terms shall have the meanings set forth in this Section:
- 1) Reasonable belief. The complaints, information or evidence available to OBRE are of such a nature or have sufficient credibility that a prudent person in the exercise of good judgment would reasonably rely or act upon that information or evidence.
 - 2) Misappropriated or Misappropriation. The use of escrow moneys for a purpose other than that for which the escrow moneys were deposited or that is permitted by the Real Estate License Act of 2000, this Part, or the agreements providing for the handling of the escrow moneys. The mere failure to follow the provisions of Section 1450.175 dealing with the deposit and accounting for escrow moneys shall not constitute misappropriation.

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- 3) Escrow Moneys. Shall have the same definition as set forth in Section 1-10 of the Act.
- d) Notice of Audit. OBRE shall notify in writing the sponsoring broker responsible for the special accounts to be audited that an auditor has been retained to audit those special accounts, the identity of the auditor or auditing firm, and the fact that the sponsoring broker must submit all pertinent records for audit within 30 days after receipt of the written notice.
- e) Procedures for Audit. The auditor or OBRE shall contact the sponsoring broker responsible for the special accounts for the purpose of scheduling the audit of the special accounts. The sponsoring broker shall provide the records requested for the purpose of the audit to the auditor at the scheduled time and location or as otherwise agreed by the sponsoring broker and the auditor or OBRE.
- f) Written Report. Any licensed certified public accountant performing an audit for OBRE under the provisions of this Section and the Act shall provide a written report to OBRE, with a copy to the sponsoring broker, detailing the findings of the auditor with specific reference to compliance with the special account requirements of the Act and this Part.
- g) Noncompliance and Cost of Audit. The sponsoring broker shall be responsible for the cost of the audit if an order is issued by the Commissioner, pursuant to Section 20-60 of the Act, finding that escrow moneys were misappropriated by the sponsoring broker or his, her, or its employees, independent contractors, agents or designees.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.266 Advisory Letters

- a) OBRE may issue advisory letters on issues dealing with the interpretation and application of the Real Estate License Act of 2000 and this Part.
- b) A licensee is entitled to rely upon an advisory letter from OBRE and will not be disciplined by OBRE for actions taken in reliance on the advisory letter. An advisory letter may only be relied upon by the licensee seeking the advisory letter. However, OBRE may change its position prospectively, at which time the licensee who sought the advisory letter will have to meet the new position or policy of OBRE.
- c) Although not binding on OBRE, licensees other than the licensee who sought the advisory letter may refer to an advisory letter issued by OBRE as the reason for a licensee's acts or omissions that result in OBRE considering disciplinary action against the licensee. OBRE will consider such arguments but will not be bound

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- by the advisory letter except as to the licensee who actually sought the advisory letter from OBRE.
- d) Requests for advisory letters shall be submitted in writing to OBRE. The request shall include at a minimum the following:
- 1) the name of the licensee on whose behalf the advisory letter is sought;
 - 2) the factual situation or hypothetical factual situation on which the advisory letter is sought;
 - 3) citations to any provisions of the Act, rules or cases that the licensee or the licensee's advisor believes is relevant to the issue as well as a discussion of the relevance of the cited material to the issue on which advice is sought; and
 - 4) a statement of the issue or issues on which advice is sought.
- e) Because advisory letters will be available through the Freedom of Information Act and may also be published by OBRE, the party requesting the advisory letter should indicate whether the name of the licensee should be disclosed in the advisory letter. If the request for the advisory letter includes a request to keep the name of the licensee or other parties in the letter confidential, then the person requesting the advisory letter shall submit along with the request a second letter using generic business names, for example Licensee A, Company B, for the names to be kept confidential. If OBRE receives such a request, then the published response will only use the generic names.
- f) OBRE shall respond to the licensee requesting the advisory letter within 60 days after receipt of the request by OBRE. The response may be the advisory letter, an estimated time for providing an advisory letter, a request for clarification or additional information, or a statement that OBRE declines to issue an advisory letter as requested with an indication of the reason for declining to issue the advisory letter. OBRE shall provide a copy of all correspondence concerning a request for an advisory letter to the sponsoring broker, if any, of the licensee requesting the advisory letter.

(Source: Added at 27 Ill. Reg. _____, effective _____)

SUBPART G: PRE-LICENSE AND CONTINUING EDUCATION ~~SCHOOL~~-RULESSection 1450.270 Definition of Schools and School Branch (~~Repealed~~)

~~"Schools", when used in this Part, refer to pre-license schools or continuing education schools as defined in Section 1-10 of the Act. Pre-license schools are those schools licensed by OBRE offering courses in subjects related to real estate~~

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~~transactions, including subjects upon which an applicant is examined in determining fitness to receive a license. Continuing education school refers to any school licensed by OBRE for continuing education in accordance with Section 30-15 of the Act.~~

~~A "school branch" means a pre-license or continuing education school other than the sponsoring schools' principal location.~~

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

Section 1450.275 Pre-License Schools ~~and Instructors~~

- a) In accordance with Section 30-5(a) of the Act, ~~any person or entity a school~~ seeking approval ~~to provide for~~ pre-license education shall submit an application on forms provided by OBRE along with the appropriate fee required by this Part. OBRE shall, ~~after review by the Advisory Council, upon the recommendation of the Advisory Council,~~ approve a pre-license school if it meets certain minimum requirements ~~and pays the required fee as provided described in the Act and this Part, this Section.~~
- b) ~~An approved pre-license school could be:~~
- ~~1) A college or university chartered by its state education authority;~~
 - ~~2) A private real estate school, whether operated by a corporation, community organization or any other entity to meet the education requirements of an applicant for a real estate broker or salesperson license under the Act; or~~
 - ~~3) A public real estate school approved by the state education authority, and supported by public taxes.~~
- ~~b)e) The program of education for a pre-license school shall:~~
- ~~1) Be approved by the school's governing and/or supervising body;~~
 - ~~2) Use instructors who have a valid license as a pre-license instructor as set forth in the Act and Section 1450.278; Have a faculty all of whom meet the qualifications of subsection (f) below;~~
 - ~~3) Have a curriculum that which conforms to the standards of Section 1450.276 subsection (g) below;~~
 - ~~4) Administer a minimum 100 question final course examination as outlined in Section 1450.276 subsection (g)(6) below.~~
- ~~c)d) Facilities~~
- ~~1) A pre-license school must provide an office in Illinois or a bordering state for the maintenance of all records, office equipment and office space~~

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necessary for customer service.

~~2) A pre-license school seeking approval of any classroom site shall furnish to OBRE an affidavit setting forth the name of the owner of the premises to be utilized and a copy of the lease, if applicable.~~

~~2)3) The premises, equipment and facilities of the pre-license school shall comply with all applicable community fire codes, building codes, and health and safety standards.~~

~~3)4) The pre-license school is subject to inspection prior to approval or at any time thereafter by authorized representatives of OBRE. The inspection shall be during ~~during~~ regular business hours, with at least 24 hours' advance notice of the inspection.~~

~~4)5) No pre-license school shall be maintained in a private residence.~~

~~5)6) Whenever a ~~an approved~~ pre-license school intends to operate ~~operates~~ a branch location, ~~then~~ an application shall be submitted to OBRE ~~filed~~ for each branch location. Each application shall be accompanied by the fee as required by this Part.~~

~~6)7) No ~~approved~~ pre-license school shall allow the school premises or classrooms to be used during class time by anyone to directly or indirectly recruit students to become affiliated with a licensee. ~~new affiliates for any company.~~ Instructors and school administrators shall promptly report to OBRE any such efforts to recruit students.~~

~~d)e) Administration~~

~~1) Pre-License schools shall use only licensed pre-license instructors. ~~Instructors within an adult education, community education or vocational education program at any approved pre-license school shall meet the criteria for approval as set forth in subsection (f) of this Section.~~~~

~~2) No licensed ~~approved~~ pre-license school shall advertise that it is endorsed, recommended, or accredited by OBRE. The pre-license school, however, may indicate that the school is licensed by and the course of study has been approved by OBRE.~~

~~3) Every ~~Before each approved real estate course is to begin, an approved~~ pre-license school shall submit to OBRE, upon its request, a schedule of all courses to be taught and when and where they will be taught. OBRE shall be notified of any changes to that schedule. ~~submit notice to OBRE where the class is to be taught, title of the course, who is to instruct the class, date and time of the class and estimated class enrollment.~~~~

~~4) The pre-license school shall provide a prospective ~~the~~ student prior to enrollment with information that ~~which~~ specifies the course of study to be offered, [;] the tuition to be charged, [;] the school's policy regarding refund of~~

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unearned tuition when a student is dismissed or withdraws voluntarily or through hardship; any additional fee to be charged for supplies, materials or books ~~that which~~ become the property of the student upon payment; and other matters ~~that as~~ are material to the relationship between the school and the student. ~~(for example: cost of retaking a course, current status of licensure, if any, any disciplinary action taken by OBRE, attendance requirements).~~

- 5) Each pre-license school shall maintain for each student a record which shall include the course of instruction undertaken, dates of attendance, and areas of study completed satisfactorily. Each student's record shall be maintained by the pre-license school for a period of 5 years and shall be available for inspection by the student or by OBRE or its designee during regular business hours.
- ~~6) Total tuition for any course of instruction offered by the pre-license school shall be the same for all students at any given time.~~
- ~~6)7) A licensed An approved~~ pre-license school shall upon request give evidence of the financial resources available to equip and maintain the school, as documented by, e.g., a current balance sheet or an income statement.
- ~~7)8) OBRE shall be reimbursed by any out-of-state pre-license school for all reasonable expenses incurred by the inspector to inspect its facilities. in the course of inspection.~~
- e) OBRE shall notify administrative officials of the applicant in writing within 15 days after its approval or disapproval. In the event the applicant is disapproved, the reasons will be detailed and the applicant advised that the applicant may request a hearing as provided for in Section 30-5 of the Act.
- f) OBRE shall be notified of all proposed changes in ownership of a pre-license school on forms provided by OBRE 30 days prior to the change in ownership.
- f) Qualifications of Pre-License Instructors in Approved Pre-License Schools
The approved pre-license school shall employ only pre-license instructors who have been approved by OBRE and meet the following:
- 1) Except as provided in subsection (f)(7) below, pass an examination approved by OBRE with a minimum score of 70; and
 - 2) Holds a real estate broker's license for at least the last 3 years and has been engaged in active practice as an Illinois real estate broker; or
 - 3) Is currently admitted to practice law by the Supreme Court of Illinois and for at least 3 years has been engaged in the active practice of law in Illinois; or
 - 4) Is a properly credentialed pre-license instructor of real estate courses who

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- ~~is or has been engaged in the practice of teaching for at least 3 years; or as evidenced by a professional designation such as but not limited to, a designated real estate instructor (DREI); or approved by a college or university's governing body to teach in a real estate degree program; or~~
- 5) ~~Is properly licensed or certificated to engage in the business of appraisal, finance and/or related real estate occupations and who is a member of a nationally recognized association in that field, and for at least 3 years has been engaged in that practice; or~~
- 6) ~~In the judgment of the Director, is qualified by experience or education, or both, to supervise a course of study pursuant to the provisions of this Section. In determining whether a person is qualified to supervise a course of study under this Section, the Director shall consider:~~
- ~~A) The individual's teaching experience;~~
 - ~~B) The individual's real estate experience;~~
 - ~~C) Any real estate, business or legal education of the individual;~~
 - ~~D) The results of a personal interview with the individual. The personal interview may be conducted via telephone if it would be overly burdensome and unreasonable for the applicant to personally appear for the interview (e.g., applicant living out-of-state). Any applicant who the Director has determined does not meet the requirements of this subsection (f)(6)(D) shall be evaluated by the Advisory Council. The Advisory Council shall evaluate the application and make a recommendation to the Commissioner for approval or disapproval of the applicant as a pre-license instructor. OBRE shall issue approval to the applicant or notify the applicant in writing why approval cannot be issued.~~
- 7) ~~Previously approved pre-license instructors are exempt from taking the examination as long as they maintain an active instructor's certificate and have no break in active status greater than 2 years.~~
- 8) ~~A pre-license school seeking the approval of OBRE for pre-license instructors shall submit an application on forms provided by OBRE and the appropriate fee.~~
- 9) ~~No approved pre-license instructor shall be seated for either the salesperson or broker licensure examination except for the purpose of securing a salesperson or brokers license.~~
- g) ~~Curriculum for Pre-License Schools~~
- 1) ~~The pre-license school shall offer classroom instruction in the following subjects:~~
 - A) ~~Real Estate Transactions as outlined in subsection (g)(3)(A) below;~~

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- ~~B) Brokerage Administration and Contracts and Conveyances as outlined in subsections (g)(3)(B) and (C) below; and~~
- ~~C) In addition to those listed in subsections (g)(1)(A) and (B) above, at least 3 optional courses as outlined in subsection (g)(3) below shall be offered.~~
- 2) ~~The application of the pre-license school requesting approval shall include an outline of the content of the courses to be offered. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall conform to the approved curriculum outlines prepared by OBRE.~~
- 3) ~~Approved courses shall meet the minimum criteria set forth below:~~
 - ~~A) Real Estate Transactions shall include a minimum of 45 class hours. The course shall include instruction in real estate law, types of interest and ownership in real estate, home ownership, legal descriptions, titles, liens, taxes, encumbrances, listing, advertising, appraisal, finance, closings, and professional code of ethics.~~
 - ~~B) Brokerage Administration shall consist of a minimum of 15 class hours and shall be mandatory for all broker candidates. The course shall include instruction in Illinois real estate law and licensure, listings, title search, forms for closing, contract forms, and the broker-salesperson relationship.~~
 - ~~C) Contracts and Conveyances shall consist of a minimum of 15 class hours and shall be mandatory for all broker candidates. The course shall include instruction in deeds, fixtures, contracts, real estate closings, foreclosure and redemption, land use controls, landlord/tenant relationship, cooperatives and condominiums.~~
 - ~~D) A mandatory course consisting of 15 class hours, which shall include agency, disclosure, environmental issues, license law and other topics in a curriculum approved by the EAC and OBRE.~~
 - ~~E) Appraisal shall consist of a minimum of 15 class hours. The course shall include instruction in the appraisal process, real property and value, economic trends, depreciation, land value.~~
 - ~~F) Property Management shall consist of a minimum of 15 class hours. The course shall include instruction in fundamentals of tenant management relationship, property modernization, property maintenance, leases, insurance, commercial property, industrial property, advertising.~~
 - ~~G) Financing shall consist of a minimum of 15 class hours. The course shall include instruction in types of financing, sources of financing,~~

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- ~~mortgages, mortgage documents, closing a mortgage, interest, liens, foreclosure, insurance, mortgage risk, principles of property value for mortgage credit, mortgage analysis, construction loans.~~
- ~~H) Sales and Brokerage shall consist of a minimum of 15 class hours. The course shall include instruction in qualifications and functions of a real estate broker; land utilization; appraisal principles and methods; office organization; selection, training and supervision of salespersons and office personnel; compensation of salesperson listings; prospects; real estate markets; financial control; and government regulations.~~
 - ~~I) Farm Property Management shall include a minimum of 15 class hours. The course shall include instruction in inventorying assets; determining method of operation, tenants, budgeting, crop and livestock production, marketing, tax planning and depreciation, government programs and regulations, insurance and ethics.~~
 - ~~J) Real Property Insurance shall include a minimum of 15 class hours. The course shall include instruction in risk, functions of insurance, insurance contracts, types and purposes of insurance.~~
- ~~4) OBRE shall make available to the public upon request copies of the curriculum of any of the courses specified above.~~
 - ~~5) If additional elective courses are developed, they shall be approved by OBRE prior to implementation. The courses shall be approved upon determination that the course is at least 15 clock hours in length and constitutes real estate related material.~~
 - ~~6) Examinations. Each course shall end in a mandatory final examination for which the minimum pass rate shall be no less than 75%.~~
 - ~~7) Changes in ownership, management and curriculum occurring subsequent to the approval of a program shall be approved by OBRE prior to implementation in order for approval to continue uninterrupted.~~
- ~~h) OBRE shall notify officials of the school in writing within 15 days after its approval or disapproval. In the event the pre license school is disapproved, the reasons thereof will be detailed and the officials advised that the disapproval may be appealed by notifying OBRE, in writing, within 10 days after the receipt of the disapproval.~~

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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- a) Pre-license schools shall offer, at a minimum, the courses provided for in this Section.
- b) The application for licensure as a pre-license school shall include a list of courses to be offered, an outline and course description for each course along with an examination and answer key. Each outline shall make reference to the textbook used and other material related to the course or subject matter, and shall conform to the approved curriculum outlines prepared by OBRE.
- c) Pre-license schools must provide the following courses:
 - 1) Real Estate Transactions shall include a minimum of 45 class hours. The course shall include instruction in real estate law, types of interest and ownership in real estate, home ownership, legal descriptions, titles, liens, taxes, encumbrances, listing, advertising, appraisal, finance, closings, and professional code of ethics. This course will be required for those wishing to obtain a salesperson's license.
 - 2) Brokerage Administration shall consist of a minimum of 15 class hours and shall be mandatory for all broker candidates. The course shall include instruction in Illinois real estate law and licensure, listings, title search, forms for closing, contract forms, and the broker-salesperson relationship.
 - 3) Contracts and Conveyances shall consist of a minimum of 15 class hours and shall be mandatory for all broker candidates. The course shall include instruction in deeds, fixtures, contracts, real estate closings, foreclosure and redemption, land use controls, landlord/tenant relationship, cooperatives and condominiums.
 - 4) Advanced Principles 2000 shall consist of a minimum of 15 class hours and shall be mandatory for all broker candidates and shall include agency, disclosure, environmental issues, escrow, license law and other topics approved by the EAC and OBRE.
- d) Pre-license schools shall provide one or more of the following courses:
 - 1) Appraisal shall consist of a minimum of 15 class hours. The course shall include instruction in the appraisal process, real property and value, economic trends, depreciation and land value.
 - 2) Property Management shall consist of a minimum of 15 class hours. The course shall include, but not be limited to, instruction in fundamentals of tenant-management relationship, property modernization, property maintenance, leases, real property insurance, commercial property, industrial property and advertising.
 - 3) Financing shall consist of a minimum of 15 class hours. The course shall include instruction in types of financing, sources of financing, mortgages, mortgage documents, closing a mortgage, interest, liens, foreclosure, real

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- property insurance, mortgage risk, principles of property value for mortgage credit, mortgage analysis and construction loans.
- 4) Sales and Brokerage shall consist of a minimum of 15 class hours. The course shall include instruction in qualifications and functions of a real estate broker; land utilization; appraisal principles and methods; office organization; selection, training and supervision of salespersons and office personnel; compensation of salesperson listings; prospects; real estate markets; financial control; and government regulations.
 - 5) Farm Property Management shall include a minimum of 15 class hours. The course shall include instruction in inventorying assets, determining method of operation, tenants, budgeting, crop and livestock production, marketing, tax planning and depreciation, government programs and regulations, insurance and ethics.
 - 6) Real Property Insurance shall include a minimum of 15 class hours. The course shall include instruction in risk, functions of insurance, insurance contracts, types and purposes of insurance.
 - 7) Other courses as approved from time to time by OBRE. If additional elective courses are developed, they shall be approved by OBRE prior to implementation. The courses shall be approved upon determination that the course is at least 15 clock hours (one clock hour equals 50 minutes) in length and constitutes real estate related material.
- e) Examinations. Each course shall end in a mandatory proctored final examination consisting of 50 questions for each 15 classroom hours for which the minimum passing score shall be no less than 75%.
 - f) Attendance at all classes is mandatory; however, credit for absences not to exceed 10% of the class hours may be made up by attendance at make-up classes as provided in subsection (g). Missing any class hours after having the opportunity to make up class hours as provided in subsection (g) shall result in failure of the course.
 - g) Each school shall provide time and facilities for conducting make-up classes for students who were absent from the regularly scheduled class period.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.277 Expiration Date and Renewal Period for Pre-License Schools

- a) Every pre-license school and school branch license as well as their course approvals shall expire on June 30 of each odd numbered year.

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- b) Each pre-license school shall be responsible for submitting an application for renewal of the license on forms provided by OBRE. Failure to receive a renewal form shall not constitute a valid reason for failure to submit a renewal application or pay the renewal fee or to renew the appropriate license.
- c) The applicable fees shall be those set forth in Section 1450.95 of this Part.
- d) As part of the renewal application each pre-license school shall submit a list of courses, an outline, course description and examination answer key for each course to be taught.
- e) Operation of a pre-license school on an expired or inoperative license shall constitute the unlicensed or unauthorized practice and may be grounds for discipline.
- f) Any pre-license school or school branch whose license under the Act has expired for more than two years shall not be eligible for renewal of that license. Any pre-license school whose license has been expired for less than two years may renew the license only after providing OBRE with evidence that all qualifications of Section 1450.275 have been met and the required fees have been paid.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.278 Pre-License Instructors

- a) An applicant for a license as a pre-license instructor must be approved by OBRE and meet the following criteria:
 - 1) Except as provided in subsection (b), pass an examination approved by OBRE with a minimum score of 75 percent, make application for the license within one year after receiving the necessary minimum score, have a real estate broker's license and been active as a real estate broker for at least the last 3 years; or
 - 2) Be currently admitted to practice law by the Supreme Court of Illinois, and for at least 3 years have been engaged in the active practice of law in Illinois; or
 - 3) Be a properly credentialed pre-license instructor of real estate courses who is or has been engaged in the practice of teaching for at least 3 years; or as evidenced by a professional designation such as, but not limited to, a designated real estate instructor (DREI); or approved by a college's or university's governing body to teach in a real estate degree program; or
 - 4) Be properly licensed or certified to engage in the business of appraisal, finance and/or related real estate occupations and be a member of a

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nationally recognized association in that field, and for at least 3 years have been engaged in that practice; or

- 5) In the judgment of the Director of Real Estate, after receipt of a recommendation from the Advisory Council, the person is qualified by experience or education, or both, to supervise a course of study pursuant to the provisions of this Section. In determining whether a person is qualified to supervise a course of study under this Section, the Director shall consider:

- A) The individual's teaching experience;
- B) The individual's real estate experience;
- C) Any real estate, business or legal education of the individual;
- D) The results of a personal interview with the individual. The personal interview may be conducted via telephone if it would be overly burdensome and unreasonable for the applicant to personally appear for the interview (e.g., applicant living out-of-state); and
- E) The recommendation of the Advisory Council. The Advisory Council shall evaluate the application and make a recommendation to the Director of Real Estate for approval or disapproval of the applicant as a pre-license instructor.

OBRE shall issue approval to the applicant or notify the applicant in writing why approval cannot be issued.

- b) Previously approved pre-license instructors are exempt from taking the examination as long as they have maintained a valid instructor's license, and have no lapse in licensure greater than 2 years.
- c) No approved pre-license instructor shall be seated for either the salesperson or broker licensure examination except for the purpose of securing a salesperson's or broker's license. Nothing in this provision shall prevent OBRE from using pre-license instructors to monitor and evaluate the examination.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.280 Expiration Date and Renewal Period for ~~Pre-License Schools and~~ Pre-License Instructors

- a) ~~Every pre-license school or school branch license shall expire on June 30 of each odd numbered year.~~
- a)b) Pre-license Every pre-license instructor licenses license and every registration of a pre-license course shall expire on June 30 of each odd numbered year.

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- ~~b)e)~~ Each licensed ~~pre-license school and~~ pre-license instructor shall be responsible for submitting an application for renewal of the license on forms provided by OBRE verifying that a pre-license course was taught during the pre-renewal period by the applicant or the applicant attended an OBRE approved instructor training program during the pre-renewal period. Failure to receive a renewal form shall not constitute a valid reason for failure to submit the renewal form or pay the required renewal fee, ~~or to renew the appropriate license.~~
- ~~c)d)~~ The applicable fees shall be those set forth in Section 1450.95 of this Part.
- ~~e)~~ ~~Each pre-license school and pre-license instructor shall submit a list of courses to be taught as part of the renewal application.~~
- ~~d)f)~~ ~~Instructing~~ ~~Operation of a pre-license school or instructing~~ courses on an expired or inoperative license shall constitute the unlicensed or unauthorized practice and may be grounds for discipline, ~~pursuant to Section 20-20 of the Act.~~
- ~~e)g)~~ Any licensed pre-license instructor whose license under the Act has expired is eligible to renew the license without paying any lapsed renewal fees or reinstatement fees provided that the license expired while the instructor was:
- 1) on active duty with the United States Army, United States Navy, United States Marine Corps, United States Air Force, United States Coast Guard, the State Militia called into the service or training of the United States; or
 - 2) engaged in training or education under the supervision of the United States prior to induction into military service; or
 - 3) serving as the Director of Real Estate in the State of Illinois, or as an employee of OBRE.
- A pre-license instructor renewing his or her license in accordance with this subsection ~~(e)(g)~~ may renew the license within a period of two years following the termination of service and is not required to retest or reapply.
- ~~f)h)~~ Except as otherwise provided in this Section ~~In accordance with Section 30-5 of the Act,~~ any ~~pre-license school or school branch,~~ or pre-license instructor whose license under the Act has expired for more than two years shall not be eligible for renewal of that license. ~~licensure.~~
- ~~1) Any pre-license school or pre-license instructor whose license has expired for less than two years may renew the license at any time by complying with the requirements of this Section and by paying the fees required.~~
 - ~~2) Any pre-license school or pre-license instructor whose license has been expired for less than two years may renew the license only after providing OBRE with evidence that, in the case of a school, all qualifications of Section 1450.275 have been met. In the case of a pre-license instructor, that instructor must show he or she has taught at least one course within the period of licensure or has completed an OBRE approved instructor~~

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~~training program.~~

- g) Any pre-license instructor whose license has been expired for less than two years may renew the license only after providing OBRE with evidence that all qualifications of Section 1450.278 have been met, that the instructor taught at least one course within the period of licensure or has completed an OBRE approved instructor training program and the required fee is paid.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.285 Continuing Education Schools ~~and Instructors~~

- a) Approval of continuing education (CE) Schools. Those entities seeking approval as CE schools shall maintain an office in Illinois for maintenance of all records, office equipment and office space necessary for customer service.
- 1) The CE school's office may be subject to inspection by authorized representatives of OBRE during regular working hours and upon at least 24 hours' notice when OBRE has reason to believe that there is not full compliance with the Act or this Part and that this inspection is necessary to ensure full compliance.
 - 2) OBRE shall be reimbursed by any out-of-state CE school for all reasonable expenses incurred by the inspector to inspect its facilities. ~~in the course of the inspection.~~
- 3) Entities seeking licensure approval as CE schools shall file a CE school application, on forms provided by OBRE, along with the required fee. The application shall include the following:
- A) ~~A list of all CE courses that the CE school is planning to offer during the 12 month period following approval and a list of all instructors the school plans to utilize in the offering of the CE courses. The list shall include the instructor's name, address, and approval number as provided in Section 30-15(f) of the Act. An approved CE school shall not be precluded from offering CE courses or from utilizing instructors not listed in the initial application or subsequent annual renewals if written notice of the CE course and the instructor to be utilized is submitted 30 days prior to the CE course date pursuant to subsection (a)(3)(C)(v) below;~~
 - A)B) An agreement by the applicant that the applicant shall provide to OBRE, upon request, a schedule including The description, location, date, and time-time, and name of instructor of each CE

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course to be offered;

~~B)C)~~ The CE school's certification:

- ~~i)~~ ~~that the content areas of all CE courses offered by the CE school for CE credit will conform to those listed in Section 5-70(e) of the Act and that CE schools shall not offer for approved credit any of the courses set forth in Section 5-85 of the Act;~~
- ~~i)ii)~~ that all CE courses offered by the CE school for CE credit will comply with the criteria in the Act and this Part; this Section;
- ~~ii)iii)~~ that the CE school will be responsible for verifying attendance at each CE course and providing a certificate of completion signed by the CE school; ~~on forms provided by OBRE.~~
- ~~iii)~~ that Further, that the CE school will maintain its these records for not less than 5 years and shall make these records available for inspection by ~~the licensee or~~ OBRE or its designee during regular business hours;
- iv) that upon request by OBRE, the CE school will submit evidence ~~as is necessary~~ to establish compliance with this Section and Sections 30-15 through 30-25 of the Act. ~~The evidence shall be required when OBRE has reason to believe that there is not full compliance with the Act and this Part and that this information is necessary to ensure compliance;~~
- ~~v)~~ ~~that the CE school will submit to OBRE a written notice of a CE course 30 days prior to the CE course date if the program was not listed in the application or any subsequent renewal application. The notice shall include the description, location date and time of the CE course to be offered;~~
- ~~v)vi)~~ that the CE schools will only offer CE, other than distance education self-study CE, in an environment that which is conducive to learning (i.e., adequate lighting, seating) and does not jeopardize the health, safety, and welfare of the attendees; ~~and~~
- ~~vi)vii)~~ that financial resources are available to equip and maintain its office in a manner necessary to enable the CE school to comply with Article 30 of the Act, this Section and this

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Part, documented by a current balance sheet, an income statement or any similar evidence as requested by OBRE; and-

vii) that upon request the CE school will make available to a licensee who has taken one or more of the CE school's courses the records dealing with the licensee's participation in those courses.

~~D) Evidence of the CE school's ability to provide the certificates required by Section 30-15(b)(5) of the Act.~~

4) ~~Validly licensed pre-license CE schools seeking approved to offer CE the courses qualify for a continuing education school license required by Article 5 of the Act shall be deemed to be approved to offer CE programs upon completion of the required an application for approval and the submission of the fee required fee. by Section 1450.95.~~

~~5) Within 30 days after the action by the Advisory Council,~~

5) OBRE shall issue approval to the CE school or notify the CE school, in writing, why approval cannot be issued.

~~b)6) Licensed Approved~~ CE schools shall comply with the following:

~~1)A) No licensed approved CE school shall allow the premises or classrooms utilized during CE courses to be used by anyone to directly or indirectly recruit students. new affiliates for any company. CE schools and CE instructors shall report to OBRE any efforts to recruit students. licensees.~~

~~2)B) No licensed approved CE school shall advertise that it is endorsed, recommended, or accredited by OBRE. The CE school, however, may indicate that the school and the CE course have been approved by OBRE.~~

~~3)C) Licensed Approved CE schools shall utilize in the teaching of approved CE courses only CE instructors who have been licensed approved by OBRE.~~

~~4)D) Licensed Approved CE schools shall specify in any advertising promoting CE courses the number of CE hours that may be credited toward Illinois CE requirements for license renewal. Further, licensed approved CE schools shall specify the number of core or elective CE course hours that may be earned by successfully completing the course.~~

~~5)E) All CE courses given by licensed approved CE schools shall be open to all licensees and not be limited to members of a single organization or group.~~

~~c) Administration~~

~~1) All CE schools shall seek a certificate of registration for all CE courses they plan to offer and shall not offer any CE course until OBRE has issued a certificate of registration for that course. All requests for registration of~~

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courses shall include a course description, course outline, examination and answer key.

- 2) Upon request all CE schools shall also notify OBRE as to all CE instructors they plan to use.
- 3)7) The CE school shall be responsible for assuring verified attendance at each CE course or self-study examination. No renewal applicant shall receive CE credit for time not actually spent attending the CE course or when a passing score of 70% on the examination was not achieved.
- 8) ~~To maintain approved CE school status, each CE school shall submit annually during the 30 days preceding April 1 a school renewal application along with the required fee. The CE school shall be required to submit to OBRE with the renewal application the following:~~
 - A) ~~A list of those CE courses planned to be offered in the 12-month period immediately following the renewal period. This list shall include a description, location, date and time the course is planned to be offered.~~
 - B) ~~A list of those instructors the school plans to utilize. This list shall include the name, address, and instructor approval number for each.~~
- 4)9) Each licensed approved CE school shall submit to OBRE, on or before the 15th of each month, a graduation report of those licensees passing ~~approved~~ CE courses offered by it during the preceding calendar month.
 - A) The monthly ~~graduation~~ reports shall, at a minimum, include the following information for each licensee:
 - i) the licensee's name, address, social security number, and license number;
 - ii) the CE ~~course~~ school's name and license number; and
 - iii) the CE course name, course license identification number, course category (core or elective), and credit hours; ~~and;~~ ~~and the date and time classes were held.~~
iv) such other information as may be required by OBRE.
 - B) If no courses were given by a CE school during the preceding calendar month, that CE school shall report in writing that no courses were given.
 - C) The monthly ~~graduation~~ reports shall be submitted on forms or in a computer readable format provided specified by OBRE.
 - D) There is no processing fee for a monthly ~~graduation~~ report submitted in the computer readable format specified by OBRE. Each monthly ~~graduation~~ report submitted on paper or in a format

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other than that specified by OBRE shall be accompanied by a processing fee of \$.50 per licensee, per course; listed on the report, payable by check to OBRE.

- E) A monthly ~~graduation~~ report received by OBRE with a postmark after the day it is due (the 15th day of the month) shall be accompanied by an administrative fee of \$200 in addition to the fees set forth ~~in subsection (c)(4)(D) above.~~
- F) If a CE school fails to file monthly ~~graduation~~ reports or a statement saying that ~~no CE courses none~~ were given, or fails to pay ~~the~~ required fees, ~~if any, as set forth in subsections (a)(9)(D) and (E) of this Section~~ for three successive months, then the courses offered by that school may be disqualified pursuant to procedures set forth in Section 30-15(~~d~~) of the Act until all delinquent ~~graduation~~ reports, processing fees, and administrative fees as set forth in ~~subsections (a)(9)(D) and (E) of this Section~~ have been submitted to and are received by OBRE. OBRE shall send notice to the school of an informal conference before the Advisory Council and of pending disqualification pursuant to Section 30-15(d) of the Act by certified or registered mail, return receipt requested, or by other signature restricted delivery service.

db) Continuing Education Instructors

- 1) An applicant seeking approval from OBRE to become an approved CE instructor shall submit a completed application, on forms provided by OBRE, along with the required fee as provided for in Section 1450.95 of this Part.
- 2) An individual applying to become an approved CE instructor shall meet at least one of the following criteria:
 - A) Licensed and active in practice as a real estate broker for at least the last three years; or
 - B) Is currently admitted to practice law and for three years has been engaged in real estate related work as part of his or her/her active practice of law or has taught pre-licensure real estate courses; or
 - C) Is a properly credentialed instructor of real estate courses who is or has been engaged in the practice of teaching for at least three years; or as evidenced by a professional designation, such as but not limited to a designated real estate instructor (DREI); or approved by a college or university's governing body to teach in a real estate degree program; or
 - D) Is properly licensed or certified to engage in the business of

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- appraisal, finance and/or related real estate occupations (not including real estate salespersons or leasing agents) and for at least three years has been engaged in that practice; or
- E) Is qualified by experience or education, or both, to teach CE pursuant to the provisions of Section 30-15(b)(~~9~~)(a) of the Act. In determining whether a person is qualified to teach CE under that Section, the Director of Real Estate shall consider the following:
- i) The individual's teaching experience;
 - ii) The individual's real estate experience;
 - iii) Any real estate, business or legal education of the individual; and
 - iv) The results of a personal interview with the individual. The personal interview may be conducted via telephone if it would be overly burdensome and unreasonable for the applicant to personally appear for the interview (e.g., applicant living out-of-state). Any applicant who the Director has determined does not meet the requirements of this subsection (~~d~~)(b)(2)(E) shall be evaluated by the Advisory Council. The Advisory Council shall evaluate the application and make a recommendation to the Commissioner for approval or disapproval of the applicant as a CE instructor. OBRE shall issue approval to the applicant or notify the applicant in writing why approval cannot be issued.
- 3) CE instructors approved to teach salesperson and broker pre-license courses, pursuant to Section 1450.275 of this Part, are deemed approved as CE instructors as long as they maintain their approval under Section 1450.275 of this Part, submit an application to OBRE for approval as a CE instructor and pay the required fee.
- 4) Within 30 days after receipt of an application, OBRE shall issue approval to the applicant or notify the applicant in writing why approval cannot be issued.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

[Section 1450.286 Curriculum for Continuing Education Schools and Course Registration Process](#)

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- a) The following are the subject matters for core (mandatory) courses subject to change by OBRE, through its Advisory Council:
- 1) license law and escrow
 - 2) fair housing
 - 3) agency.
- b) The following are the subject matters for elective courses subject to change by OBRE, through its Advisory Council:
- 1) antitrust
 - 2) appraisal
 - 3) property management
 - 4) residential brokerage
 - 5) farm property management
 - 6) rights and duties of sellers, buyers and brokers
 - 7) commercial brokerage and leasing
 - 8) real estate financing
 - 9) environmental
 - 10) technology.
- c) Credit hours may be earned for self-study programs approved by the Advisory Council.
- d) A broker or salesperson may earn credit for a specific continuing education course only once during the prerenewal period.
- e) OBRE shall issue certificates of registration for approved CE courses upon successful completion of the following process:
- 1) The person or entity seeking approval for the CE course shall complete and submit the application approved by OBRE for a certificate of registration;
 - 2) The CE course shall be identified as either “core” or “elective” by the applicant;
 - 3) The CE course description, outline, examination and answer key is submitted along with the application;
 - 4) The required fee as provided for in Section 1450.95 of this Part is submitted; and
 - 5) The Advisory Council approves the application for registration of the CE course.
- f) CE credit may be granted for pre-license courses but only after issuance of a certificate of registration by OBRE following the process provided for in subsection (e) of this Section.

(Source: Added at 27 Ill. Reg. _____, effective _____)

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Section 1450.287 Expiration Date and Renewal Period for Continuing Education Schools

- a) Every continuing education school license shall expire on June 30 of each even numbered year.
- b) Every certificate of registration of a CE course shall expire on June 30 of each even numbered year.
- c) Each licensed CE school shall be responsible for renewal of the license on forms provided by OBRE. Failure to receive a renewal form shall not constitute a valid reason for failure to submit the proper application for renewal.
- d) The applicable fees shall be those set forth in Section 1450.95 of this Part.
- e) Each CE school shall submit the renewal application along with the proper fee and a list of courses to be taught, course descriptions, course outlines, examinations and answer keys.
- f) Operation of a CE school on an expired or inoperative license shall constitute the unlicensed or unauthorized practice and shall be grounds for discipline under the Act.
- g) Any continuing education school whose license under the Act has expired for more than two years shall not be eligible for renewal of that license. Any CE school whose license has been expired for less than two years may renew the license after providing OBRE with evidence that all qualifications of Section 1450.285 have been met and the proper renewal fees have been paid.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.288 Continuing Education Instructors

- a) An applicant seeking approval from OBRE to become a licensed CE instructor shall submit a completed application, on forms provided by OBRE, along with the required fee as provided for in Section 1450.95 of this Part.
- b) An individual applying to become a licensed CE instructor shall meet at least one of the following criteria:
 - 1) Licensed and active in practice as a real estate broker for at least the last three years; or
 - 2) Is currently admitted to practice law and for three years has been engaged in real estate related work as part of his or her active practice of law or has taught pre-licensure real estate courses; or
 - 3) Is a properly credentialed instructor of real estate courses who is or has been engaged in the practice of teaching for at least three years; or as

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- evidenced by a professional designation, such as, but not limited to, a designated real estate instructor (DREI); or approved by a college's or university's governing body to teach in a real estate degree program; or
- 4) Is properly licensed or certified to engage in the business of appraisal, finance and/or related real estate occupations (not including real estate salespersons or leasing agents) and for at least three years has been engaged in that practice; or
- 5) Is qualified by experience or education as outlined in Section 30-15(b)(9) of the Act. In determining whether a person is qualified to teach CE under that Section, the Director of Real Estate shall consider the following:
- A) The individual's teaching experience;
- B) The individual's real estate experience;
- C) Any real estate, business or legal education of the individual;
- D) The results of a personal interview with the individual. The personal interview may be conducted via telephone if it would be overly burdensome and unreasonable for the applicant to personally appear for the interview (e.g., applicant living out-of-state); and
- E) The recommendation of the Advisory Council. The Advisory Council shall make a recommendation to the Director of Real Estate for approval or disapproval of the applicant as a CE instructor.
- c) Individuals validly licensed to teach salesperson and broker pre-license courses, pursuant to Section 1450.278 of this Part, are qualified as CE instructors as long as they submit an application to OBRE for licensure as a CE instructor and pay the required fee.
- d) OBRE shall notify the applicant in writing within 15 days after its approval or disapproval. In the event the applicant is disapproved, the reasons will be detailed and the applicant advised that the applicant may request a hearing as provided for in Section 30-5 of the Act.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 1450.290 Expiration Date and Renewal Period for ~~Continuing Education Schools and~~ Continuing Education Instructors

- a) ~~Every continuing education school license shall expire on June 30 of each even numbered year.~~
- a)b) Every continuing education instructor license ~~and registration of a CE course~~ shall

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expire on June 30 of each even numbered year.

- ~~b)e)~~ Each licensed ~~CE school and~~ CE instructor shall be responsible for renewal of the license on forms provided by OBRE. Failure to receive a renewal form shall not constitute a valid reason to submit the proper application for renewal and for failure to pay the proper renewal fee, ~~or to renew the appropriate license.~~
- ~~c)d)~~ The applicable fees shall be those set forth in Section 1450.95 of this Part.
- ~~e)~~ ~~Each CE school and CE instructor shall submit a list of courses to be taught as part of the renewal application.~~
- ~~d)f)~~ ~~Teaching Operation of a CE school; or instructing~~ CE courses on an expired ~~or inoperative~~ license shall constitute the unlicensed or unauthorized practice and shall be grounds for discipline pursuant to Section 20-20 of the Act.
- ~~e)g)~~ Any licensed CE instructor whose license under the Act has expired is eligible to renew the license without paying any lapsed renewal fees or reinstatement fees provided that the license expired while the instructor was:
- 1) on active duty with the United States Army, United States Navy, United States Marine Corps, United States Air Force, United States Coast Guard, or the State Militia called into the service or training of the United States; or
 - 2) engaged in training or education under the supervision of the United States prior to induction into military service; or
 - 3) serving as the Director of Real Estate in the State of Illinois, or as an employee of OBRE.
- A CE instructor renewing his or her license in accordance with this subsection may renew the license within a period of two years following the termination of service and is are not required to retest or reapply.
- ~~f)h)~~ ~~Any In accordance with Sections 30-20 and 30-25 of the Act, any continuing education school or~~ continuing education instructor whose license under the Act has expired for more than two years shall not be eligible for renewal of that license licensure. ~~1) Any CE school or CE instructor whose license has expired for less than two years may renew the license at any time by complying with the requirements of this Section and by paying the fees required. 2) Any CE school or CE instructor whose license has been expired for less than two years may renew the license only after providing OBRE with evidence that, in the case of a CE school, all qualifications of Section 1450.288 1450.285 have been met and the proper renewal fee is paid.~~
- ~~g)~~ ~~Any In the case of a CE instructor, that~~ CE instructor applying for renewal must verify show he or she has taught at least one course within the period of licensure or has completed an OBRE approved instructor training program.

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(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.295 Distance Education Courses Learning Programs

Distance education courses are courses in which instruction does not take place in a traditional face to face classroom situation but rather when instruction takes place through other media. Distance education programs include but are not limited to those that are presented through on-line courses, interactive classrooms, video conferencing, audio tape, print media, video tape, compact disks and interactive computer.

Distance education courses learning programs shall be affiliated with a licensed pre-license or CE an approved school and meet the curriculum requirements set forth in Section 1450.276 1450.275 and/or Section 1450.286 1450.285 of this Part, as applicable. ~~Distance learning programs mean those courses designed to be taken by means other than attendance in a classroom, e.g., Internet courses or correspondence/home study type courses.~~

- a) Distance education courses must meet all requirements for pre-license or CE courses, whichever is applicable, and any additional requirements established by the Act and this Part.
 - 1) ~~Be approved by OBRE in accordance with Section 30-5 of the Act;~~
 - 2) ~~Maintain a brief description of each lesson;~~
 - 3) ~~Maintain a list of approved instructors who prepare each specific lesson;~~
 - 4) ~~Maintain a list of titles, authors, publishers, and copyright dates of all instructional materials;~~
 - 5) ~~Require minimum passing scores for all examinations of no less than 75%;~~
 - 6) ~~Consist of at least 5 lessons and examinations plus one additional final examination of at least 100 questions.~~
- b) Distance education courses shall be submitted to OBRE for review and approval as provided for in Section 1450.276 or Section 1450.286, whichever is applicable. The program shall develop a written statement of teaching methods to be employed and materials and equipment needed for each course of instruction.
- c) Pre-license or CE schools providing distance education courses ~~The program~~ shall establish written policies and procedures for grading examinations and lessons, which shall include provisions for instructor comments, suggestions and written correction of errors. There shall also be written procedures for the prompt return of materials. Copies of these policies shall be provided to OBRE upon request.
- d) Schools providing distance education courses ~~The program~~ shall establish performance objectives for each ~~specific~~ course ~~of study~~.
- e) Pre-license schools offering distance education courses ~~The program~~ shall maintain an average passing rate of at least 40% for all students who take the licensure examination for the first time over a 6 month period, either January

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- through June or July through December.
- f) Schools providing distance education courses shall provide for a valid licensed
~~An approved~~ instructor to shall be available during normal business hours to answer student questions.
 - g) ~~Students shall be allowed to attend the school's regularly scheduled pre-license or CE courses.~~
 - g) Each school offering distance education courses shall submit for approval by OBRE the general plans for proctoring exams for distance education courses and each school shall be responsible for the security and integrity of course final examinations and the suitability of the sites and proctors utilized by the school.
 - h) Each school offering distance education shall provide appropriate technical support throughout the period the courses are offered.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.300 Class Attendance Requirements (Repealed)

- a) ~~Attendance at all classes is mandatory; however, credit for absences not to exceed 10% of the class hours may be made up by attendance at make-up classes as provided in subsection (b) below. Absences in excess of 10% of class hours shall result in failure of the course.~~
- b) ~~Each school shall provide time and facilities for conducting make-up classes for students who were absent from the regularly scheduled class period.~~

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

Section 1450.305 Recruitment at Test Center

Recruitment of test takers to become affiliated with a licensee at test facilities where the Illinois Real Estate Licensing Examination is being conducted is not permitted before, during, or after the examination.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 1450.310 Withdrawal of Approval of Schools (Repealed)

- a) ~~Upon written recommendation of the Board, OBRE shall withdraw, suspend or place on probation the approval of the pre-license school or a continuing education school when the quality of the program fails to continue to meet the~~

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- ~~established criteria as set forth in this Part or if approval of the school or program was based upon false or deceptive information.~~
- ~~b) If the Board has reason to believe there has been any fraud, dishonesty, or lack of integrity in the furnishing of any documentation for the evaluation of a school or program, it shall refer the matter to the appropriate personnel for investigation and any disciplinary action which might be appropriate under the Act.~~
 - ~~e) An approved pre-license school which does not maintain an average passing rate of at least 40% for all students who take the licensure examination for the first time over a 6 month period, either January through June or July through December, shall at the recommendation of the Board, receive a written warning of noncompliance from OBRE. Approval may be suspended, withdrawn or other disciplinary action taken in accordance with this Part if the school fails to maintain an average passing rate of at least 40% of all students who take the licensure examination for the first time over the next 6 month period.~~
 - ~~d) A probation period shall be further defined as a time during which an approved school cannot receive approval for any course additions or changes.~~
 - ~~e) A real estate program whose approval is being reconsidered shall be given at least 30 days written notice prior to any reconsideration by the Board. The officials in charge may either submit written comments or request a hearing before the Board.~~
 - ~~f) In the event the real estate license of the administrator of an approved school is suspended or revoked, the school approval shall automatically be rescinded.~~

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

Section 1450.315 Discipline of Schools or Instructors

- ~~a) The Advisory Council, after notice, can conduct an informal conference for the purpose of reviewing a school's or instructor's compliance with this Act and this Part. The Advisory Council may make a recommendation to the Board based upon its findings and conclusions resulting from that conference.~~
- ~~b)a) Upon written recommendation of the Board to the Commissioner, OBRE may refuse to issue or renew a license or certificate of registration, reprimand, fine, withdraw approval, place on probation, suspend, or revoke any license or otherwise discipline any license or certificate of registration, of any ~~real estate~~ pre-license school, pre-license instructor, ~~approved-CE~~ school, ~~approved-CE~~ instructor, course, or applicant for the license or certificate of registration when, at any time:

 - 1) The quality of the course, instruction or program fails to meet the established criteria as set forth in the Act and this Part.~~

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- 2) If the license approval was based upon false or deceptive information.
 - 3) If any other professional license, accreditation, certification of the instructor or school is suspended, revoked or otherwise disciplined.
 - 4) When the applicant or licensee has:
 - A) subverted or attempted to subvert the integrity of any exam or course, including through improper reproduction of an exam, providing an answer key to an exam, cheating, bribery or otherwise, or aids and abets an applicant or licensee to subvert the integrity of any exam or course;
 - B) made any substantial misrepresentation, misleading or untruthful advertising, including without limitation guaranteeing success or a "pass score" on any exam or in any course or using any trade name or insignia of membership in any educational or any real estate organization of which the applicant or licensee is not a member;
 - C) taught real estate courses without being qualified, including, but not limited to, being unapproved by OBRE, being unlicensed, having a nonrenewed license or being uncertified, or aids and abets an unqualified individual to teach a real estate course;
 - D) failed to provide information to OBRE as required under any provision of the Act or this Part; or
 - E) disregarded or violated any provision of the Act or this Part.
- ~~c)b~~) Disciplinary proceedings shall be conducted by the Board as provided for in the Act and Subpart F of this Part.
- ~~d)e~~) OBRE may temporarily suspend without hearing the certificate of registration approval for a licensed CE school's courses for failure to comply with the Act or this Part these Rules upon recommendation of the Advisory Council. No CE credit shall be granted to any licensee for completing a CE course for which the certificate of registration approval of OBRE has been temporarily suspended.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Illinois Affordable Housing Tax Credit Program
- 2) Code Citation: 47 Ill. Adm. Code 355
- 3)

<u>Section Numbers:</u>	<u>Emergency Action:</u>
355.102	Amendment
355.103	Amendment
355.107	Amendment
355.203	Amendment
355.204	Amendment
355.205	Amendment
355.206	Amendment
355.207	Amendment
355.209	Amendment
355.210	Amendment
355.211	New
355.302	Amendment
355.303	Amendment
355.304	Amendment
355.305	Amendment
355.306	Amendment
355.309	Amendment
355.402	Amendment
355.403	Amendment
355.406	Amendment
355.503	Amendment
355.504	Amendment
355.601	Amendment
- 4) Statutory Authority: Section 7.28 of the Illinois Housing Development Act [20 ILCS 7.28].
- 5) A Complete Description of the Subjects and Issues Involved: These amendments involve the administration of the affordable housing tax credit program.
- 6) Will this proposed amendment replace an emergency rule currently in effect: No
- 7) Does this rulemaking contain an automatic repeal date?: No.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

8) Does this proposed rule contain incorporations by reference? No.

9) Are there any other proposed rule(s) pending on this Part? No.

Section Numbers Proposed Action Illinois Register Citation

10) Statement of Statewide Policy Objectives: This proposed rule does not create, expand or modify a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may submit comments, data, views or arguments concerning this rulemaking in writing to: Richard Muller, Esq., 401 N. Michigan Ave., Suite 900, Chicago, Illinois 60611 or 312/836-5327. The Authority will consider all written comments received at the above address within 45 days of the date of publication on this notice.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed amendments will have a favorable impact on small to midsize real estate developers and contractors.

B) Reporting, bookkeeping or other procedures required for compliance: No new requirements.

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

13) Regulatory Agenda on which this rulemaking was summarized: January, 2003.

The full text of the Proposed Amendments are identical to the text of the Emergency Amendments beginning on page 5033 of this issue:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Capacity Plates Standards on Various Watercraft
- 2) Code Citation: 17 Ill. Adm. Code 2070
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
2070.10	Amendment
2070.20	Amendment
2070.30	Amendment
- 4) Statutory Authority: Implementing Section 5-4 and authorized by Sections 8-3 and 9-1 of the Boat Registration and Safety Act [625 ILCS 45/5-4, 8-3 and 9-1].
- 5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to update statutory citations.
- 6) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Stanley Yonkauski, Jr.
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809
- 12) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit

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NOTICE OF PROPOSED AMENDMENTS

corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance:
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION

CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER e: LAW ENFORCEMENT

PART 2070

CAPACITY PLATES STANDARDS ON VARIOUS WATERCRAFT

Section

2070.10	Purpose
2070.20	Standards - Safe Loading
2070.30	Standards - Safe Powering

AUTHORITY: Implementing Section 5-4 and authorized by Sections 8-3 and 9-1 of the Boat Registration and Safety Act [625 ILCS 45/5-4, 8-3 and 9-1]

SOURCE: Added February 5, 1968, effective February 1, 1968; codified at 5 Ill. Reg. 10662; Part repealed at 8 Ill. Reg. 1563, effective January 23, 1984, new part adopted at 8 Ill. Reg. 1973, effective January 27, 1984; amended at 13 Ill. Reg. 17345, effective October 27, 1989; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 27 Ill. Reg. _____, effective _____.

Section 2070.10 Purpose

This Part prescribes the methods approved by the Department of Conservation for determining the weight-carrying capacity of every vessel subject to the provisions of Section 5-4 and Section 7-3 of the Boat Registration and Safety Act [\[625 ILCS 45/5-4 and 7-3\]](#) ~~as amended (Ill. Rev. Stat. 1987, ch. 95 ½, pars. 315-4 and 317-3)~~, and the method for determining the maximum horsepower of outboard motors for all vessels designed or represented by the manufacturer as being suitable for use with outboard ~~motors~~ [motor\(s\)](#).

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 2070.20 Standards - Safe Loading

The Illinois Department of Natural Resources adopts the standards contained in 33 CFR 183, Subpart C, [effective June 29, 1999 \(no incorporation in this Part includes later amendments or editions\)](#) ~~(1988)~~, as its minimum standards for the safe loading testing procedure.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 2070.30 Standards - Safe Powering

The Illinois Department of Natural Resources adopts the standards contained in 33 CFR 183, Subpart D, [effective October 23, 1986 \(no incorporation in this Part includes later amendments or editions\)](#) ~~(1988)~~, as its minimum standards for the safe powering test procedure. |

(Source: Amended at 27 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Numbers: Proposed Action:

140.514 Amendment
140.642 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Law 104-315
- 5) Complete Description of the Subjects and Issues Involved: These proposed changes pertain to administrative rules on long term care (LTC) services.

Provisions on physician certifications and recertifications of care at Section 140.514 specify that each applicant for, or recipient of, LTC services is in need of those services. Federal physician certification requirements were repealed several years ago but the Department continued utilizing the certifications as one determinant concerning the LTC Medicaid payment start date. However, physician certification is no longer used as a determining factor on the date for initiating payment, and Section 140.514 is therefore being proposed for repeal.

The primary change on screening assessment requirements in Section 140.642 responds to Public Law 104-315. The change addresses assessment and notification of significant change in the condition of a medicaid eligible nursing facility resident who has a developmental disability (DD) or severe mental illness (MI). When a significant change has occurred in the condition of a resident with DD or MI, the nursing facility must report the change to the State mental health authority or the State developmental disability authority. Criteria which must be met to establish "significant change" are provided in the proposed changes. In recent years, the Department has worked with the Department of Human Services (Office of Mental Health and Office of Developmental Disabilities), the Department of Public Health and LTC provider association to develop the criteria defining "significant change".

Other proposed changes to Section 140.642 update the definitions of developmental disability and mental illness to conform with current State and federal regulations. Further, references to physician certification are being stricken to reflect the repeal of Section 140.514.

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NOTICE OF PROPOSED AMENDMENTS

The proposed amendments will not result in any budgetary changes.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Sections</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
140.20	Amendment	December 13, 2002 (26 Ill. Reg. 17646)
140.420	Amendment	March 14, 2003 (27 Ill. Reg. 4470)
140.421	Amendment	March 14, 2003 (27 Ill. Reg. 4470)
140.530	Amendment	August 30, 2002 (26 Ill. Reg. 13026)
140.860	New Section	September 6, 2002 (26 Ill. Reg. 13146)
140.Table D	Amendment	March 14, 2003 (27 Ill. Reg. 4470)

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) 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:
 Joanne Scattoloni
 Office of the General Counsel, Rules Section
 Illinois Department of Public Aid
 201 South Grand Avenue East, Third Floor
 Springfield, Illinois 62763-0002
 (217)524-0081

The Department requests the submission of written comments within 30 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].

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These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected:
Medicaid funded nursing facilities
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on Which this Rulemaking Was Summarized: These proposed amendments were not included on either of the two most recent agendas because:

This rulemaking was inadvertently omitted when the most recent regulatory agenda was published.

The full text of the proposed amendments begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMSPART 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 Incarcerated Persons

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 Recovery of Money
- 140.16 Termination or Suspension 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 on Individuals Associated with Vendor

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- 140.19 Application to Participate or for Reinstatement Subsequent to Termination, Suspension 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 Terminated, Suspended or Barred 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
- 140.55 Recipient Eligibility Verification (REV) System
- 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 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)

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NOTICE OF PROPOSED AMENDMENTS

- 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)
- 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)

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140.398 Hearings (Recodified)

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section

- 140.400 Payment to Practitioners
- 140.402 Copayments for Noninstitutional Medical Services
- 140.405 SeniorCare Pharmaceutical Benefit
- 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 - Physicians
- 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
- 140.425 Podiatry Services
- 140.426 Limitations on Podiatry Services
- 140.427 Requirement for Prescriptions and Dispensing of Pharmacy Items - Podiatry
- 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
- 140.438 Imaging Centers
- 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
- 140.445 Legend Prescription Items (Not Compounded)
- 140.446 Over-the-Counter Items

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NOTICE OF PROPOSED AMENDMENTS

- 140.447 Reimbursement
- 140.448 Returned Pharmacy Items
- 140.449 Payment of Pharmacy Items
- 140.450 Record Requirements for Pharmacies
- 140.451 Prospective Drug Review and Patient Counseling
- 140.452 Mental Health Clinic Services
- 140.453 Definitions
- 140.454 Types of Mental Health Clinic Services
- 140.455 Payment for Mental Health Clinic 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 Healthy Moms/Healthy Kids Managed Care Clinics (Repealed)
- 140.465 Speech and Hearing Clinics (Repealed)
- 140.466 Rural Health Clinics (Repealed)
- 140.467 Independent Clinics
- 140.469 Hospice
- 140.470 Home Health Services
- 140.471 Home Health Covered Services
- 140.472 Types of Home Health Services
- 140.473 Prior Approval for Home Health Services
- 140.474 Payment for Home Health 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
- 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
- 140.482 Family Planning Services
- 140.483 Limitations on Family Planning Services
- 140.484 Payment for Family Planning Services

DEPARTMENT OF PUBLIC AID

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- 140.485 Healthy Kids Program
- 140.486 Limitations on Medichek Services (Repealed)
- 140.487 Healthy Kids Program Timeliness Standards
- 140.488 Periodicity Schedules, Immunizations and Diagnostic Laboratory Procedures
- 140.490 Medical Transportation
- 140.491 Limitations on Medical Transportation
- 140.492 Payment for Medical Transportation
- 140.493 Payment for Helicopter Transportation
- 140.494 Record Requirements for Medical Transportation Services
- 140.495 Psychological Services
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- 140.500 Long Term Care Services
- 140.502 Cessation of Payment at Federal Direction
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- 140.526 Quality Incentive Standards and Criteria for the Quality Incentive Program (QUIP) (Repealed)
- 140.527 Quality Incentive Survey (Repealed)
- 140.528 Payment of Quality Incentive (Repealed)
- 140.529 Reviews (Repealed)
- 140.530 Basis of Payment for Long Term Care Services
- 140.531 General Service Costs
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- 140.536 Organization and Pre-Operating Costs
- 140.537 Payments to Related Organizations
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- 140.551 General Service Costs
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- 140.554 Component Inflation Index
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- 140.560 Components of the Base Rate Determination
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- 140.566 Out-of-State Placement
- 140.567 Level II Incentive Payments (Repealed)
- 140.568 Duration of Incentive Payments (Repealed)
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- 140.570 Capital Rate Component Determination
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- 140.642 Screening Assessment for Nursing Facility and Alternative Residential Settings and Services
- 140.643 In-Home Care Program
- 140.645 Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21
- 140.646 Reimbursement for Developmental Training (DT) Services for Individuals With Developmental Disabilities Who Reside in Long Term Care (ICF and SNF) and Residential (ICF/MR) Facilities
- 140.647 Description of Developmental Training (DT) Services
- 140.648 Determination of the Amount of Reimbursement for Developmental Training (DT) Programs
- 140.649 Effective Dates of Reimbursement for Developmental Training (DT) Programs
- 140.650 Certification of Developmental Training (DT) Programs
- 140.651 Decertification of Day Programs
- 140.652 Terms of Assurances and Contracts
- 140.680 Effective Date Of Payment Rate
- 140.700 Discharge of Long Term Care Residents
- 140.830 Appeals of Rate Determinations
- 140.835 Determination of Cap on Payments for Long Term Care (Repealed)

SUBPART F: FEDERAL CLAIMING FOR STATE AND LOCAL GOVERNMENTAL ENTITIES

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- 140.850 Reimbursement of Administrative Expenditures
- 140.855 Administrative Claim Review and Reconsideration Procedure
- 140.860 Covered Services (Repealed)
- 140.865 Sponsor Qualifications (Repealed)
- 140.870 Sponsor Responsibilities (Repealed)
- 140.875 Department Responsibilities (Repealed)
- 140.880 Provider Qualifications (Repealed)
- 140.885 Provider Responsibilities (Repealed)
- 140.890 Payment Methodology (Repealed)
- 140.895 Contract Monitoring (Repealed)
- 140.896 Reimbursement For Program Costs (Active Treatment) For Clients in Long Term Care Facilities For the Developmentally Disabled (Recodified)
- 140.900 Reimbursement For Nursing Costs For Geriatric Residents in Group Care Facilities (Recodified)
- 140.901 Functional Areas of Needs (Recodified)
- 140.902 Service Needs (Recodified)
- 140.903 Definitions (Recodified)
- 140.904 Times and Staff Levels (Repealed)
- 140.905 Statewide Rates (Repealed)
- 140.906 Reconsiderations (Recodified)
- 140.907 Midnight Census Report (Recodified)
- 140.908 Times and Staff Levels (Recodified)
- 140.909 Statewide Rates (Recodified)
- 140.910 Referrals (Recodified)
- 140.911 Basic Rehabilitation Aide Training Program (Recodified)
- 140.912 Interim Nursing Rates (Recodified)

SUBPART G: MATERNAL AND CHILD HEALTH PROGRAM

Section

- 140.920 General Description
- 140.922 Covered Services
- 140.924 Maternal and Child Health Provider Participation Requirements
- 140.926 Client Eligibility (Repealed)
- 140.928 Client Enrollment and Program Components (Repealed)
- 140.930 Reimbursement
- 140.932 Payment Authorization for Referrals (Repealed)

SUBPART H: ILLINOIS COMPETITIVE ACCESS AND REIMBURSEMENT

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EQUITY (ICARE) PROGRAM

Section

- 140.940 Illinois Competitive Access and Reimbursement Equity (ICARE) Program (Recodified)
 - 140.942 Definition of Terms (Recodified)
 - 140.944 Notification of Negotiations (Recodified)
 - 140.946 Hospital Participation in ICARE Program Negotiations (Recodified)
 - 140.948 Negotiation Procedures (Recodified)
 - 140.950 Factors Considered in Awarding ICARE Contracts (Recodified)
 - 140.952 Closing an ICARE Area (Recodified)
 - 140.954 Administrative Review (Recodified)
 - 140.956 Payments to Contracting Hospitals (Recodified)
 - 140.958 Admitting and Clinical Privileges (Recodified)
 - 140.960 Inpatient Hospital Care or Services by Non-Contracting Hospitals Eligible for Payment (Recodified)
 - 140.962 Payment to Hospitals for Inpatient Services or Care not Provided under the ICARE Program (Recodified)
 - 140.964 Contract Monitoring (Recodified)
 - 140.966 Transfer of Recipients (Recodified)
 - 140.968 Validity of Contracts (Recodified)
 - 140.970 Termination of ICARE Contracts (Recodified)
 - 140.972 Hospital Services Procurement Advisory Board (Recodified)
 - 140.980 Elimination Of Aid To The Medically Indigent (AMI) Program (Emergency Expired)
 - 140.982 Elimination Of Hospital Services For Persons Age Eighteen (18) And Older And Persons Married And Living With Spouse, Regardless Of Age (Emergency Expired)
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- 140.TABLE A Medichex Recommended Screening Procedures (Repealed)
 - 140.TABLE B Geographic Areas
 - 140.TABLE C Capital Cost Areas
 - 140.TABLE D Schedule of Dental Procedures
 - 140.TABLE E Time Limits for Processing of Prior Approval Requests
 - 140.TABLE F Podiatry Service Schedule
 - 140.TABLE G Travel Distance Standards
 - 140.TABLE H Areas of Major Life Activity
 - 140.TABLE I Staff Time and Allocation for Training Programs (Recodified)
 - 140.TABLE J HSA Grouping (Repealed)
 - 140.TABLE K Services Qualifying for 10% Add-On (Repealed)
 - 140.TABLE L Services Qualifying for 10% Add-On to Surgical Incentive Add-On (Repealed)

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140.TABLE M Enhanced Rates for Maternal and Child Health Provider Services

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

SOURCE: 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 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,

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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 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,

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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. Re. 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; 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. 7025, effective April 24, 1989; 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; 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; 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; Section 140.569 withdrawn at 15 Ill. Reg. 1174; amended at 15 Ill. Reg. 6220, effective

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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; 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; expedited correction at 16 Ill. Reg. 11348, effective March 20, 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; 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; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; 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 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; emergency amendment suspended effective October 12, 1993; 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

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maximum of 150 days; emergency amendment suspended 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 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,

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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 1, 2003; amended at 27 Ill. Reg. 3041, effective February 10, 2003; Reg. 768, effective January 1, 2003; amended at 27 Ill. Reg. 3041, effective February 10, 2003; amended at 27 Ill. Reg. 4470, effective March 14, 2003; amended at 27 Ill. Reg. _____, effective _____.

SUBPART E: GROUP CARE

Section 140.514 Certifications and Recertifications of Care ([Repealed](#))

- a) ~~Prior to the authorization of payment by the Illinois Department of Public Aid (IDPA), a physician must certify for each applicant or recipient in a Skilled Nursing Facility (SNF), an Intermediate Care Facility (ICF), an Intermediate Care Facility for the Mentally Retarded (ICF/MR), an Intermediate Care Facility for the Mentally Retarded-Skilled /Pediatric license, (ICF/MR (SNF/PED)), a Department of Mental Health and Developmental Disabilities (DMHDD) facility for psychiatric services, or a psychiatric hospital (PSYCH HOSP) that SNF, ICF,~~

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~~ICF/MR, ICF/MR(SNF/PED), DMHDD/PSYCH, or PSYCH HOSP services are needed.~~

- ~~b) Recertifications of need for care must be conducted within the following intervals:~~
- ~~1) SNFs and ICFs:

 - ~~A) 60 days after the date of the initial certification; and~~
 - ~~B) every 60 days thereafter.~~~~
 - ~~2) ICFs/MR and ICFs/MR(SNF/PED):

 - ~~A) 60 days after the date of the initial certification;~~
 - ~~B) 180 days after the date of the initial certification;~~
 - ~~C) 12 months after the date of the initial certification;~~
 - ~~D) 18 months after the date of the initial certification;~~
 - ~~E) 24 months after the date of the initial certification; and~~
 - ~~F) every 12 months thereafter.~~~~
 - ~~3) DMHDD/PSYCHs and PSYCH HOSPs:

 - ~~A) 60 days after the date of the initial certification; and~~
 - ~~B) every 60 days thereafter.~~~~

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

Section 140.642 Screening Assessment for Nursing Facility and Alternative Residential Settings and Services

- a) Beginning July 1, 1996, any individual, except those identified in subsection (c) of this Section, seeking admission to a nursing facility licensed under the Nursing Home Care Act [210 ILCS 45] for nursing facility services must be screened to determine his or her need for those services pursuant to this Section. Any individual, except those identified in subsection (c) of this Section, who is seeking admission to a nursing facility that operates under the Hospital Licensing Act [210 ILCS 85] must be screened to determine his or her need for those services except when Medicaid funds will not be used for nursing facility services for any part of the stay. For the purposes of this Section, "nursing facility" or "facility" means a location licensed under the Nursing Home Care Act or the Hospital Licensing Act as a skilled nursing facility or an intermediate care facility.
- b) Screening Assessment
 - 1) The Level I ID Screen is the first phase of the preadmission screening process for nursing facility services described in subsection (a) [of this Section](#). The Level I ID Screen is conducted to determine if there is a reasonable basis for suspecting that an individual has developmental

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disabilities (DD), as defined in subsection (b)(1)(A) of this Section, or severe mental illness (MI), as defined in subsection (b)(1)(B) of this Section. This determination is required to assure that individuals with DD or severe MI are placed into settings which provide the services they require. Entities authorized to complete the Level I ID Screen are agents of DPA, Department of Human Services (DHS), Department on Aging (DoA), Department of Public Health (DPH), hospitals or nursing facilities.

A) A developmental disability is a disability that is attributable to a diagnosis of mental retardation (mild, moderate, severe, profound; ~~unspecified~~), or a related condition. A related condition is attributable to: 1) means the individual has been diagnosed as having infantile autism, infantile cerebral palsy or epilepsy; or 2) any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation. In addition, ~~and~~ this condition is manifested before the age of 22; is likely to continue indefinitely; and results in substantial functional limitations in three or more of the following areas of major life activity:

- i) self-care;
- ii) understanding and use of language;
- iii) learning;
- iv) mobility;
- v) self-direction;
- vi) capacity for independent living.

B) An individual is considered to have a severe mental illness for the purpose of this Section if he or she has one of the following diagnoses: schizophrenia; delusional disorder; schizoaffective disorder; psychotic disorder not otherwise specified; bipolar disorder I - mixed, manic, and depressed; bipolar disorder II; cyclothymic disorder; bipolar disorder not otherwise specified; major depression, recurrent; and due to his or her ~~their~~ mental illness exhibits resulting substantial functional limitations. The functional limitation must be of an extended duration expected to be present for at least a year, which results in substantial limitation in major life activities affecting ~~in~~ at least two of the following areas:

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- i) self-maintenance;
 - ii) social functioning;
 - iii) community living activities;
 - iv) work related skills.
- 2) If the Level I ID Screen indicates that an individual may have DD or severe MI, a comprehensive assessment, the Level II assessment, except as defined in subsection (b)(7) of this Section, is conducted by preadmission screening (PAS) agents designated by the DHS-Office of Developmental Disabilities or DHS-Office of Mental Health, whichever is applicable, concerning the need for nursing facility services and the need for specialized services.
- 3) If the Level I ID Screen does not identify a reasonable basis for suspecting DD or severe MI, the individual is referred to DoA (individuals 60 years of age or older) or DHS-Office of Rehabilitation Services (individuals 18 through 59 years of age) for a Determination of Need to assess the need for nursing facility services.
- 4) For applicants of Medicaid services who are already residing in the facility and were admitted after June 30, 1996, the Department will review and evaluate a copy of the most recent Minimum Data Set (MDS) resident assessment instrument. The Department will refer to DoA or DHS, as appropriate, any light need resident who appears to be a potential candidate for community placement.
- 5) A screening assessment is valid for 90 calendar days from the date of the assessment. For individuals with DD or severe MI, an existing Level II assessment may remain valid after 90 calendar days when the designated PAS agent updates any component of the assessment which is not current, and confirms the validity of the assessment as reliably reflecting the status of the individual.
- 6) Due to exceptional circumstances, an individual identified as having DD or MI, following a Level I ID Screen, may be determined to need nursing facility services. The individual with exceptional circumstances must then receive a Level II assessment to determine the individual's need for specialized services related to placement in a nursing facility, except in the specific circumstances noted in subsection (b)(7) of this Section. Exceptional circumstances include, but are not limited to:
 - A) terminal illness with a life expectancy of six months or less; and
 - B) convalescent care (a medically prescribed period of recovery, following acute care, not to exceed 120 calendar days); and

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- C) severe physical illnesses, such as coma, ventilator dependence, functioning at brain stem level or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure; and
 - D) a diagnosis of dementia, including Alzheimer's disease or a related disorder, in the case of the individual with DD.
- 7) Level II assessment exemption. Some individuals with DD or severe MI may be admitted to a nursing facility without receiving a Level II assessment to determine the need for specialized services by a designated PAS agent. Individuals exempt from a Level II assessment for specialized services are provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears. In all other cases, a determination that specialized services are not needed must be based on a Level II assessment.
 - 8) Screening agents shall present alternatives to institutional placement, and inform individuals of alternative settings before placement into a nursing facility.
 - 9) Non-Medicaid supported individuals who choose to be admitted into a nursing facility when the screening assessment does not justify nursing facility placement will not be denied access to the facility.
- c) A screening assessment does not apply to an individual who:
 - 1) is receiving or will be receiving sheltered care services; or
 - 2) transfers from one facility to another, with or without an intervening hospital stay. It is the transferring facility's responsibility to ensure that copies of the resident's most recent screening assessment accompany the transferring resident; or
 - 3) resided in a facility for a period of at least 60 days and is returning to a facility after an absence of not more than 60 days; or
 - 4) is receiving or will be receiving hospice services; or
 - 5) is readmitted to a facility after a therapeutic home visit; or
 - 6) is readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care; or
 - 7) resided in the facility on June 30, 1996.
 - d) Nursing Facility Services
In Illinois, nursing facilities are licensed for intermediate level nursing care and skilled level nursing care. For guidelines to the type of services provided by nursing facilities refer to 77 Ill. Adm. Code 300.Appendix A.
 - e) Date of Payment

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- 1) No payment for nursing facility services may be made for individuals who ~~A)~~ have been determined eligible, or have applied for Medicaid at the point of admission, unless ~~both~~ the screening assessment documents ~~and a physician's certification, as described in Section 140.514, document~~ a need for such care; ~~or~~
 - ~~B) apply for Medicaid while residing in the facility, unless a physician's certification documents a need for such care.~~
 - 2) ~~The date of the physician certification will not be used to determine the begin date of payment; however, the physician certification shall be completed before Medicaid payment is authorized. The begin date of payment will be determined in accordance with subsection (e)(4), (5) or (6) of this Section, whichever is applicable.~~
 - 2)3) Where the assessment does not establish this need, the individual may request that a licensed physician designated by DPA review the medical reports and any other evidence the individual wishes to submit, and certify whether there is a need for nursing facility services in the individual's case. The individual will be notified of the right to this review.
 - 3)4) For an individual whose preadmission screening assessment has been completed prior to admission, DPA will begin payment:
 - A) on the date of admission if Medicaid eligibility has been established, or
 - B) on the beginning date of Medicaid eligibility if eligibility starts after the date of admission.
 - 4)5) For an individual whose preadmission screening assessment has not been completed prior to admission, DPA will begin payment on the later of:
 - A) the date that the screening assessment requirement is met, or
 - B) the effective date of Medicaid eligibility.
 - 5)6) For an individual who applies for Medicaid after admission to a facility, DPA will begin payment on the effective date of Medicaid eligibility.
- f) Review Required Upon Change in DD/MI Resident Condition
Nursing facilities must notify the State mental health authority or the State developmental disability authority, or their designee as applicable, when there has been a significant change in the condition of a Medicaid eligible resident with developmental disability or severe mental illness as required by 42 USC section 396r(e)(7)(B)(iii)(1999). The nursing facility shall report in a format established by the applicable State authority, or its designee, significant changes in a resident's condition. A determination will then be made whether there has been a significant change requiring a resident review. For the purposes of this subsection (f), a significant

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change for a resident with severe mental illness or developmental disability will be deemed to have occurred when:

- 1) An individual who was determined by PAS to be severely mentally ill, and who has continuously resided in a nursing facility within the last 12 months; who has been referred for admission or been admitted to a psychiatric hospital or psychiatric ward of a general hospital for psychiatric care three or more times within that 12 month period; or
 - 2) An individual who was determined by PAS to be severely mentally ill or developmentally disabled is evaluated by the nursing facility to no longer have a severe mental illness or developmental disability; or
 - 3) An individual who was determined by PAS not to be severely mentally ill or developmentally disabled is evaluated by the nursing facility to have a severe mental illness or developmental disability. There must be a reasonable basis for believing that the condition may indicate the presence of a developmental disability existed prior to the age of 22; or
 - 4) An individual who was determined by PAS to be severely mentally ill who does not have a medical need for nursing facility level of care, meets all of the following:
 - A) no longer receives any intervention programs for mood, behavior or cognitive loss;
 - B) has successfully completed training skills required to return to the community; and
 - C) discharge to the community is not planned within the next 90 days;
or
 - 5) An individual who was determined by PAS to be developmentally disabled no longer receives specialized services; or
 - 6) An individual with severe mental illness or an individual with a developmental disability who entered the nursing facility as an exempted hospital discharge is now found to require more than 30 days of nursing facility care.
- g) Periodic Resident Review
The Department, the Department of Public Health, or their agents may periodically review some or all Medicaid eligible residents found to be severely mentally ill or developmentally disabled to evaluate nursing facilities' compliance with this Section.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code

2) Code Citation: 77 Ill. Adm. Code 300

3) <u>Section Numbers:</u>	<u>Proposed Action:</u>
300.661	Amendment

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) A complete description of the subjects and issues:

Section 300.661 implements the provisions of the Health Care Worker Background Check Act. The rules are being amended to make changes in the waiver review process, by which an individual convicted of a “disqualifying” crime receives a waiver from the Department that allows the individual to work in a direct care position in a health care facility. Minimum time frames are being added. Waivers will not be granted to individuals with certain convictions, unless the Director approves the waiver in writing. Requirements that must be met by waiver applicants are being added. The rulemaking also adds examples of “other evidence” demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents.

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

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

- | | |
|---|-----|
| 6) <u>Will this rulemaking replace an emergency rule currently in effect?</u> | Yes |
| 7) <u>Does this rulemaking contain an automatic repeal date?</u> | No |
| 8) <u>Does this rulemaking contain any incorporations by reference?</u> | No |
| 9) <u>Are there any other proposed amendments pending on this Part?</u> | Yes |

Sections Numbers

Proposed Action

Ill. Reg. Citation

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300.1610	Amendment	26 Ill. Reg. 10269
300.1620	Amendment	26 Ill. Reg. 10269
300.1630	Amendment	26 Ill. Reg. 10269
300.1640	Amendment	26 Ill. Reg. 10269
300.1650	Amendment	26 Ill. Reg. 10269

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate under the State Mandate Act [30 ILCS 805].

11) Time, place, and manner in which interested persons may comment on this rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

Peggy Snyder
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761
217/782-2043
e-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present its comments in writing to Peggy Snyder at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate its status as such, in writing, in its comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: Long-term care facilities

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

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- 13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300

SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section

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

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

SUBPART B: ADMINISTRATION

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300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening
300.620	Admission and Discharge Policies
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.655	Initial Health Evaluation for Employees
300.660	Nursing Assistants
300.661	Health Care Worker Background Check
300.662	Resident Attendants
300.663	Registry of Certified Nursing Assistants
300.665	Student Interns
300.670	Disaster Preparedness
300.680	Restraints
300.682	Nonemergency Use of Physical Restraints
300.684	Emergency Use of Physical Restraints
300.686	Unnecessary, Psychotropic, and Antipsychotic Drugs
300.690	Serious Incidents and Accidents
300.695	Contacting Local Law Enforcement

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SUBPART D: PERSONNEL

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

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

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300.1010	Medical Care Policies
300.1020	Communicable Disease Policies
300.1025	Tuberculin Skin Test Procedures
300.1030	Medical Emergencies
300.1035	Life-Sustaining Treatments
300.1040	Behavior Emergencies (Repealed)
300.1050	Dental Standards

SUBPART F: NURSING AND PERSONAL CARE

Section	
300.1210	General Requirements for Nursing and Personal Care
300.1220	Supervision of Nursing Services
300.1230	Staffing
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SUBPART G: RESIDENT CARE SERVICES

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300.1410	Activity Program
300.1420	Specialized Rehabilitation Services
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SUBPART H: MEDICATIONS

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300.1610	Medication Policies and Procedures

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- 300.1620 Conformance With Physician's Orders
- 300.1630 Administration of Medication
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SUBPART I: RESIDENT AND FACILITY RECORDS

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- 300.1810 Resident Record Requirements
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- 300.1840 Retention and Transfer of Resident Records
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- 300.1860 Staff Responsibility for Medical Records
- 300.1870 Retention of Facility Records
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SUBPART J: FOOD SERVICE

Section

- 300.2010 Director of Food Services
- 300.2020 Dietary Staff in Addition to Director of Food Services
- 300.2030 Hygiene of Dietary Staff
- 300.2040 Diet Orders
- 300.2050 Meal Planning
- 300.2060 Therapeutic Diets (Repealed)
- 300.2070 Scheduling Meals
- 300.2080 Menus and Food Records
- 300.2090 Food Preparation and Service
- 300.2100 Food Handling Sanitation
- 300.2110 Kitchen Equipment, Utensils, and Supplies

SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section

- 300.2210 Maintenance
- 300.2220 Housekeeping
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SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

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300.2410	Furnishings
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SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

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

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300.2810	Applicability of these Standards
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300.2830	Preparation of Drawings and Specifications
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SUBPART O: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

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300.3050	Administration and Public Areas
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300.3080	Treatment and Personal Care
300.3090	Service Departments
300.3100	General Building Requirements
300.3110	Structural
300.3120	Mechanical Systems
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300.3140	Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section	
300.3210	General
300.3220	Medical and Personal Care Program
300.3230	Restraints
300.3240	Abuse and Neglect
300.3250	Communication and Visitation
300.3260	Resident's Funds
300.3270	Residents' Advisory Council
300.3280	Contract With Facility
300.3290	Private Right of Action
300.3300	Transfer or Discharge
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300.3320	Confidentiality
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SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section	
300.3410	Application of Other Sections of These Minimum Standards (Repealed)
300.3420	Administrator (Repealed)
300.3430	Policies (Repealed)
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300.3450	Resident Living Services Medical and Dental Care (Repealed)

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- 300.3460 Resident Services Program (Repealed)
- 300.3470 Psychological Services (Repealed)
- 300.3480 Social Services (Repealed)
- 300.3490 Recreational and Activities Services (Repealed)
- 300.3500 Individual Treatment Plan (Repealed)
- 300.3510 Health Services (Repealed)
- 300.3520 Medical Services (Repealed)
- 300.3530 Dental Services (Repealed)
- 300.3540 Optometric Services (Repealed)
- 300.3550 Audiometric Services (Repealed)
- 300.3560 Podiatric Services (Repealed)
- 300.3570 Occupational Therapy Services (Repealed)
- 300.3580 Nursing and Personal Care (Repealed)
- 300.3590 Resident Care Services (Repealed)
- 300.3600 Record Keeping (Repealed)
- 300.3610 Food Service (Repealed)
- 300.3620 Furnishings, Equipment and Supplies (New and Existing Facilities) (Repealed)
- 300.3630 Design and Construction Standards (New and Existing Facilities) (Repealed)

SUBPART R: DAYCARE PROGRAMS

Section

- 300.3710 Day Care in Long-Term Care Facilities

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

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- 300.4000 Applicability of Subpart S
- 300.4010 Comprehensive Assessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4030 Individualized Treatment Plan for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4040 General Requirements for Facilities Subject to Subpart S
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- 300.4060 Discharge Plans for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S

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- 300.4070 Work Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4080 Community-Based Rehabilitation Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4090 Personnel for Providing Services to Persons with Serious Mental Illness for Facilities Subject to Subpart S

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF PUBLIC AID'S DEMONSTRATION PROGRAM FOR PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

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

- APPENDIX A Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities (Repealed)
- APPENDIX B Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
- APPENDIX C Federal Requirements Regarding Patients'/Residents' Rights (Repealed)
- APPENDIX D Forms for Day Care in Long-Term Care Facilities
- APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
- APPENDIX F Guidelines for the Use of Various Drugs
- TABLE A Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities

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TABLE B	Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities
TABLE C	Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities
TABLE D	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].
SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 544, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; at 19 Ill.

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Reg. 11600, effective July 29, 1995; emergency amendments at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003 for a maximum of 150 days; amended at 27 Ill. Reg. _____, effective _____.

SUBPART C: POLICIES

Section 300.661 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
 - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
 - 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
 - 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));

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- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) ~~Criminal sexual~~ ~~Sexual~~ assault or ~~criminal~~ sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse ~~and~~ ~~or~~ gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal ~~abuse or~~ neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars.

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- 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
 - 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
 - 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
 - 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
 - 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
 - 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
 - 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
 - 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
 - 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
 - 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
 - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
 - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under

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- 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to ~~subsections (m) and (o)~~ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
 - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the department of state police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
 - 3) "Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.
 - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:

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- 1) The employee=s assigned job responsibilities as set forth in the employee=s job description;
 - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
 - 3) Whether the employee=s responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)
- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
 - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with ~~subsection (m) of~~ this Section.
 - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.

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- 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)
- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days of acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- m) An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
 - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
 - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

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- n) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- o) Notwithstanding any other provision in this Section, an application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:
- 1) Except in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met all obligations to the court and under terms of parole (i.e., probation has been successfully completed, compliance with orders of protection); and
 - 2) The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.
- p)⊕) The Department, acting through a waiver committee or through another internal process it implements, may grant a waiver based on mitigating circumstances, which may include:
- 1) The age of the individual at which the crime was committed;
 - 2) The circumstances surrounding the crime;
 - 3) The length of time since the conviction;
 - 4) The applicant's or employee's criminal history since the conviction;
 - 5) The applicant's or employee's work history;
 - 6) The applicant's or employee's current employment references;
 - 7) The applicant's or employee's character references;
 - 8) Nurse Aide Registry records; and
 - 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents; which may include, but is not limited to, the applicant=s or employee=s participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant=s or employee=s participation in anger management or domestic violence prevention programs; the applicant=s or employee=s status on nurse aide registries in other states; the applicant=s or employee=s criminal history in other states; or the applicant=s or employee=s successful completion of all outstanding obligations or responsibilities imposed by or to the court.
- (Section 40(b) of the Health Care Worker Background Check Act)
- Except as indicated in subsections (q) and (r) of this Section, the Director of the Department of Public Health is not required to approve these waivers in writing in order for them to be effective.

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- q) Notwithstanding any other provision in this Section, waivers will not be granted to individuals who have not met the following time frames unless the Director of Public Health approves the waiver in writing. A Disqualifying@ refers to offenses listed in subsections (a)(1) to (27) of this Section:
- 1) Single disqualifying misdemeanor conviction - waiver application no earlier than one year after completion of the sentence or, if no sentence was so imposed, the conviction date;
 - 2) Two to three disqualifying misdemeanor convictions - waiver application no earlier than three years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 3) More than three disqualifying misdemeanor convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 4) Single disqualifying felony convictions - waiver application no earlier than three years after completion of the sentence or, if no sentence was so imposed, the conviction date;
 - 5) Two to three disqualifying felony convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 6) More than three disqualifying felony convictions - waiver application no earlier than ten years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction.
- r) Notwithstanding any other provisions in this Section, waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses unless the Director of Public Health approves the waiver in writing:
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);
 - 2) Murder, homicide, or manslaughter (Sections 9-1, 9-2 and 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-2 and 9-3]);

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- 3) [Kidnaping or aggravated kidnaping \(Sections 10-1 and 10-2 of the Criminal Code of 1961 \[720 ILCS 5/10-1 and 10-2\]\);](#)
 - 4) [Aggravated battery \(Section 12-4 of the Criminal Code 1961 \[720 ILCS 5/12-4\]\);](#)
 - 5) [Criminal sexual assault or aggravated criminal sexual assault \(Sections 12-13 and 12-14 of the Criminal Code of 1961 \[720 ILCS 5/12-13 and 12-14\]\);](#)
 - 6) [Criminal sexual abuse or aggravated criminal sexual abuse \(Sections 12-15 and 12-16 of the Criminal Code of 1961 \[720 ILCS 5/12-15 and 12-16\]\);](#)
 - 7) [Abuse and gross neglect of a long-term care facility resident \(Section 12-19 of the Criminal Code of 1961 \[720 ILCS 5/12-19\]\);](#)
 - 8) [Criminal abuse or neglect of an elderly or disabled person \(Section 12-21 of the Criminal Code of 1961 \[720 ILCS 5/12-21\]\);](#)
 - 9) [Financial exploitation of an elderly person or a person with a disability \(Section 16-1.3 of the Criminal Code of 1961 \[720 ILCS 5/16-1.3\]\);](#)
 - 10) [Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography \(Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 \[720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1\]\);](#)
 - 11) [Armed robbery \(Section 18-2 of the Criminal Code of 1961 \[720 ILCS 5/18-2\]\); and](#)
 - 12) [Aggravated vehicular hijacking, aggravated robbery \(Sections 18-4 and 18-5 of the Criminal Code of 1961 \[720 ILCS 5/18-4 and 18-5\]\).](#)
- s)Ⓢ) An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)
- t)Ⓢ) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- u)Ⓢ) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-

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based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

v)†) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

w)†) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

x)†) The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

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- y)~~w~~) The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- z)~~w~~) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Numbers: Proposed Action:
330.911 Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A complete description of the subjects and issues:

Section 330.911 implements the provisions of the Health Care Worker Background Check Act. The rules are being amended to make changes in the waiver review process, by which an individual convicted of a “disqualifying” crime receives a waiver from the Department that allows the individual to work in a direct care position in a health care facility. Minimum time frames are being added. Waivers will not be granted to individuals with certain convictions, unless the Director approves the waiver in writing. Requirements that must be met by waiver applicants are being added. The rulemaking also adds examples of “other evidence” demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents.

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

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

- 6) Will this rulemaking replace an emergency rule currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain any incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
330.1510	Amendments	26 Ill. Reg. 10289

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330.1520	Amendment	26 Ill. Reg. 10289
330.1530	Amendment	26 Ill. Reg. 10289

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate under the State Mandate Act [30 ILCS 805].
- 11) Time, place, and manner in which interested persons may comment on this rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

Peggy Snyder
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761
217/782-2043
e-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present its comments in writing to Peggy Snyder at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate its status as such, in writing, in its comments.

- 12) Initial Regulatory Flexibility Analysis:
- A) Type of small businesses, small municipalities and not-for-profit corporations affected: Sheltered care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 77 PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 330
SHELTERED CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section

330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.163	Alzheimer=s Special Care Disclosure
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to Be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
330.260	Issuance of Conditional Licenses
330.270	Monitor and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties

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330.284	Calculation of Penalties
330.286	Determination to Assess Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators (Repealed)
330.300	Alcoholism Treatment Programs In Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.315	Supported Congregate Living Arrangement Demonstration
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
330.510	Administrator

SUBPART C: POLICIES

Section	
330.710	Resident Care Policies
330.720	Admission and Discharge Policies
330.730	Contract Between Resident and Facility
330.740	Residents' Advisory Council
330.750	General Policies
330.760	Personnel Policies
330.765	Initial Health Evaluation for Employees
330.770	Disaster Preparedness
330.780	Serious Incidents and Accidents
330.785	Contacting Local Law Enforcement

SUBPART D: PERSONNEL

Section	
330.910	Personnel
330.911	Health Care Worker Background Check Act
330.913	Nursing and Personal Care Assistants (Repealed)
330.916	Student Interns (Repealed)
330.920	Consultation Services
330.930	Personnel Policies

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SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section

330.1110	Medical Care Policies
330.1120	Personal Care
330.1125	Life-Sustaining Treatments
330.1130	Communicable Disease Policies
330.1135	Tuberculin Skin Test Procedures
330.1140	Behavior Emergencies (Repealed)
330.1145	Restraints
330.1150	Emergency Use of Physical Restraints
330.1155	Unnecessary, Psychotropic, and Antipsychotic Drugs

SUBPART F: RESTORATIVE SERVICES

Section

330.1310	Activity Program
330.1320	Work Programs
330.1330	Written Policies for Restorative Services
330.1340	Volunteer Program

SUBPART G: MEDICATIONS

Section

330.1510	Medication Policies
330.1520	Administration of Medication
330.1530	Labeling and Storage of Medications

SUBPART H: RESIDENT AND FACILITY RECORDS

Section

330.1710	Resident Record Requirements
330.1720	Content of Medical Records
330.1730	Records Pertaining to Residents' Property
330.1740	Retention and Transfer of Resident Records
330.1750	Other Resident Record Requirements
330.1760	Retention of Facility Records

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330.1770 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

330.1910 Director of Food Services
330.1920 Dietary Staff in Addition to Director of Food Services
330.1930 Hygiene of Dietary Staff
330.1940 Diet Orders
330.1950 Meal Planning
330.1960 Therapeutic Diets (Repealed)
330.1970 Scheduling of Meals
330.1980 Menus and Food Records
330.1990 Food Preparation and Service
330.2000 Food Handling Sanitation
330.2010 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section

330.2210 Maintenance
330.2220 Housekeeping
330.2230 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

330.2410 Furnishings
330.2420 Equipment and Supplies

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

330.2610 Codes
330.2620 Water Supply
330.2630 Sewage Disposal
330.2640 Plumbing

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SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW
SHELTERED CARE FACILITIES

Section

330.2810	Applicable Requirements (Repealed)
330.2820	Applicability of These Standards
330.2830	Submission of a Program Narrative
330.2840	New Constructions, Additions, Conversions, and Alterations
330.2850	Preparation and Submission of Drawings and Specifications
330.2860	First Stage Drawings
330.2870	Second Stage Drawings
330.2880	Architectural Drawings
330.2890	Structural Drawings
330.3000	Mechanical Drawings
330.3010	Electrical Drawings
330.3020	Additions to Existing Structures
330.3030	Specifications
330.3040	Building Codes
330.3050	Site
330.3060	General Building Requirements
330.3070	Administration
330.3080	Corridors
330.3090	Bath and Toilet Rooms
330.3100	Living, Dining, Activity Rooms
330.3110	Bedrooms
330.3120	Special Care Room
330.3130	Kitchen
330.3140	Laundry
330.3150	Housekeeping, Service, and Storage
330.3160	Plumbing
330.3170	Heating
330.3180	Electrical

SUBPART N: FIRE PROTECTION STANDARDS FOR
NEW SHELTERED CARE FACILITIES

Section

330.3310	Applicable Requirements (Repealed)
330.3320	Applicability of These Standards

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330.3330	Fire Protection
330.3340	Fire Department Service and Water Supply
330.3350	General Building Requirements
330.3360	Exit Facilities and Subdivision of Floor Areas
330.3370	Stairways, Vertical Openings, and Doorways
330.3380	Corridors
330.3390	Exit Lights and Directional Signs
330.3400	Hazardous Areas and Combustible Storage
330.3410	Fire Alarm and Detection System
330.3420	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.3430	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING
SHELTERED CARE FACILITIES

Section	
330.3610	Site
330.3620	General Building Requirements
330.3630	Administration
330.3640	Corridors
330.3650	Bath and Toilet Rooms
330.3660	Living, Dining, and Activity Rooms
330.3670	Bedrooms
330.3680	Special Care Room
330.3690	Kitchen
330.3700	Laundry Room
330.3710	Housekeeping and Service Rooms and Storage Space
330.3720	Plumbing and Heating
330.3730	Electrical

SUBPART P: FIRE PROTECTION STANDARDS FOR EXISTING
SHELTERED CARE FACILITIES

Section	
330.3910	Fire Protection
330.3920	Fire Department Service and Water Supply
330.3930	Occupancy and Fire Areas
330.3940	Exit Facilities and Subdivision of Floor Areas
330.3950	Stairways, Vertical Openings, and Doorways

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- 330.3960 Exit and Fire Escape Lights and Directional Signs
 330.3970 Hazardous Areas and Combustible Storage
 330.3980 Fire Alarm and Detection System
 330.3990 Fire Extinguishers, Electric Wiring, and Miscellaneous
 330.4000 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART Q: RESIDENT'S RIGHTS

Section

- 330.4210 General
 330.4220 Medical and Personal Care Program
 330.4230 Restraints
 330.4240 Abuse and Neglect
 330.4250 Communication and Visitation
 330.4260 Resident's Funds
 330.4270 Residents' Advisory Council
 330.4280 Contract With Facility
 330.4290 Private Right of Action
 330.4300 Transfer or Discharge
 330.4310 Complaint Procedures
 330.4320 Confidentiality
 330.4330 Facility Implementation

SUBPART R: DAY CARE PROGRAMS

Section

- 330.4510 Day Care in Long-Term Care Facilities

- APPENDIX A Interpretation, Components, and Illustrative Services for Sheltered
 Care Facilities (Repealed)
 APPENDIX B Classification of Distinct Part of a Facility For Different Levels of
 Service (Repealed)
 APPENDIX C Forms for Day Care in Long-Term Care Facilities
 APPENDIX D Criteria for Activity Directors Who Need Only Minimal
 Consultation (Repealed)
 APPENDIX E Guidelines for the Use of Various Drugs
 TABLE A Heat Index Table/Apparent Temperature

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

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SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552 effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 22 Ill. Reg. 4078, effective February 13, 1998; amended at 22 Ill. Reg. 7203, effective April 15, 1998; amended at 22 Ill. Reg. 16594, effective September 18, 1998; amended at 23 Ill. Reg. 1085, effective January 15, 1999; amended at 23 Ill. Reg. 8064, effective July 15, 1999; amended at 24 Ill. Reg. 17304, effective November 1, 2000; amended at 25 Ill. Reg. 4901, effective April 1, 2001; amended at 26 Ill. Reg. 4859, effective April 1, 2002; amended at 26 Ill. Reg. 10559, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2202, effective February 1, 2003 for a maximum of 150 days; amended at 27 Ill. Reg. _____, effective _____

SUBPART D: PERSONNEL

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Section 330.911 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
 - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
 - 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
 - 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
 - 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
 - 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));

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- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) ~~Criminal sexual~~ ~~Sexual~~ assault or ~~criminal~~ sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse ~~and~~ ~~or~~ gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal ~~abuse or~~ neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

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- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
 - 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
 - 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
 - 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
 - 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
 - 24) Those provided in Section 4 of The Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
 - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
 - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
 - 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to ~~subsections (m) and (o)~~ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)

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- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
 - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
 - 3) "Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.
 - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:
- 1) The employee=s assigned job responsibilities as set forth in the employee=s job description;
 - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
 - 3) Whether the employee=s responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

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- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
 - 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
 - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with ~~subsection (m) of~~ this Section.
 - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)
- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

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- k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days of acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- m) An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
 - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- n) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- o) **Notwithstanding any other provision in this Section, an application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:**
- 1) **Except in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met all obligations to the court and under terms of parole (i.e., probation has been successfully completed, compliance with orders of protection); and**
 - 2) **The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.**

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p)⊕) The Department, acting through a waiver committee or through another internal process it implements, may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents; which may include, but is not limited to, the applicant=s or employee=s participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant=s or employee=s participation in anger management or domestic violence prevention programs; the applicant=s or employee=s status on nurse aide registries in other states; the applicant=s or employee=s criminal history in other states; or the applicant=s or employee=s successful completion of all outstanding obligations or responsibilities imposed by or to the court.
(Section 40(b) of the Health Care Worker Background Check Act)

Except as indicated in subsections (q) and (r) of this Section, the Director of the Department of Public Health is not required to approve these waivers in writing in order for them to be effective.

q) Notwithstanding any other provision in this Section, waivers will not be granted to individuals who have not met the following time frames unless the Director of Public Health approves the waiver in writing. ADisqualifying@ refers to offenses listed in subsections (a)(1) to (27) of this Section:

- 1) Single disqualifying misdemeanor conviction - waiver application no earlier than one year after completion of the sentence or, if no sentence was so imposed, the conviction date;
- 2) Two to three disqualifying misdemeanor convictions - waiver application no earlier than three years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;

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- 3) More than three disqualifying misdemeanor convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 4) Single disqualifying felony conviction - waiver application no earlier than three years after completion of the sentence or, if no sentence was so imposed, the conviction date;
 - 5) Two to three disqualifying felony convictions - waiver applications no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 6) More than three disqualifying felony convictions - waiver application no earlier than ten years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction.
- r) Notwithstanding any other provisions in this Section, waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses unless the Director of Public Health approves the waiver in writing:
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);
 - 2) Murder, homicide, or manslaughter; (Sections 9-1, 9-2, and 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-2 and 9-3]);
 - 3) Kidnaping or aggravated kidnaping (Sections 10-1 and 10-2 of the Criminal Code of 1961 [720 ILCS 5/10-1 and 10-2]);
 - 4) Aggravated battery (Section 12-4 of the Criminal Code of 1961 [720 ILCS 5/12-4]);
 - 5) Criminal sexual assault or aggravated criminal sexual assault (Sections 12-13 and 12-14 of the Criminal Code of 1961 [720 ILCS 5/12-13 and 12-14]);
 - 6) Criminal sexual abuse or aggravated criminal sexual abuse (Sections 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-15 and 12-16]);
 - 7) Abuse and gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19]);

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- 8) [Criminal abuse or neglect of an elderly or disabled person \(Section 12-21 of the Criminal Code of 1961 \[720 ILCS 5/12-21\]\);](#)
 - 9) [Financial exploitation of an elderly person or a person with a disability \(Section 16-1.3 of the Criminal Code of 1961 \[720 ILCS 5/16-1.3\]\);](#)
 - 10) [Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography \(Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 \[720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1\]\);](#)
 - 11) [Armed robbery \(Section 18-2 of the Criminal Code of 1961 \[720 ILCS 5/18-2\]\); and](#)
 - 12) [Aggravated vehicular hijacking, aggravated robbery \(Sections 18-4 and 18-5 of the Criminal Code of 1961 \[720 ILCS 5/18-4 and 18-5\]\).](#)
- s)⊕ An individual shall not be employed in a direct care position from the time the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)
- t)⊕ A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- u)⊕ A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include but not be limited to:
- 1) certified court records;
 - 2) written verification from the State=s Attorney=s office that prosecuted the conviction at issue;
 - 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;

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- 4) a signed affidavit from the individual concerning the validity of the report;
or
 - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- v)~~s)~~ This Section shall not apply to:
- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
 - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
 - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)
- w)~~t)~~ An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)
- x)~~u)~~ The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.
- y)~~v)~~ The facility shall retain on file for a period of 5 years, records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- z)~~w)~~ The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Illinois Veterans' Homes Code
- 2) Code Citation: 77 Ill. Adm. Code 340
- 3) Section Numbers: Proposed Action:
340.1377 Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A complete description of the subjects and issues:

Section 340.1377 implements the provisions of the Health Care Worker Background Check Act. The rules are being amended to make changes in the waiver review process, by which an individual convicted of a "disqualifying" crime receives a waiver from the Department that allows the individual to work in a direct care position in a health care facility. Minimum time frames are being added. Waivers will not be granted to individuals with certain convictions, unless the Director approves the waiver in writing. Requirements that must be met by waiver applicants are being added. The rulemaking also adds examples of "other evidence" demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents.

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

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

- 6) Will this rulemaking replace an emergency rule currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain any incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers
340.1620

Proposed Action
Repealed

Ill. Reg. Citation
26 Ill. Reg. 10303

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340.1630	Renumbered	26 Ill. Reg. 10303
340.1650	Amendment	26 Ill. Reg. 10303
340.1655	Amendment	26 Ill. Reg. 10303
340.1660	Amendment	26 Ill. Reg. 10303
340.1665	Amendment	26 Ill. Reg. 10303
340.1670	Amendment	26 Ill. Reg. 10303
340.1675	Amendment	26 Ill. Reg. 10303

10) Statement of Statewide Policy Objectives: These amendments do not create or expand a State Mandate under the State Mandate Act [30 ILCS 805].

11) Time, place, and manner in which interested persons may comment on this rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

Peggy Snyder
 Division of Legal Services
 Illinois Department of Public Health
 535 West Jefferson St., 5th Floor
 Springfield, Illinois 62761
 217/782-2043
 e-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present its comments in writing to Peggy Snyder at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate its status as such, in writing, in its comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

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- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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 c: LONG-TERM CARE FACILITIES

PART 340

ILLINOIS VETERANS' HOMES CODE

SUBPART A: GENERAL PROVISIONS

Section

340.1000	Definitions
340.1010	Incorporated and Referenced Materials
340.1110	General Requirements
340.1115	Federal Veterans' Regulations
340.1120	Application for License
340.1125	Alzheimer=s Special Care Disclosure
340.1130	Criteria for Adverse Licensure Actions
340.1140	Denial of Initial License
340.1150	Revocation or Denial of Renewal of License
340.1160	Inspections, Surveys, Evaluations, and Consultations
340.1170	Presentation of Findings by the Department
340.1190	Ownership Disclosure
340.1200	Monitor and Receivership
340.1210	Determination of a Violation
340.1220	Determination of the Level of a Violation
340.1230	Plans of Correction and Reports of Correction
340.1240	Calculation of Penalties
340.1245	Conditions for Assessment of Penalties
340.1250	Reduction or Waiver of Penalties
340.1255	Supported Congregate Living Arrangement Demonstration
340.1260	Waivers

SUBPART B: POLICIES AND FACILITY RECORDS

Section

340.1300	Facility Policies
340.1310	Admission and Discharge Policies
340.1320	Disaster Preparedness

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340.1330	Serious Incidents and Accidents
340.1335	Infection Control
340.1340	Facility Record Requirements
340.1350	Personnel Policies
340.1360	Initial Health Evaluation for Employees
340.1370	Administrator
340.1375	Personnel Requirements
340.1376	Registry of Certified Nursing Assistants
340.1377	Health Care Worker Background Check
340.1378	Resident Attendants

SUBPART C: RESIDENT RIGHTS

Section	
340.1400	Implementation of Resident Rights and Facility Responsibilities
340.1410	General
340.1420	Contract Between Resident and Facility
340.1430	Residents' Advisory Council
340.1440	Abuse and Neglect
340.1450	Communication and Visitation
340.1460	Resident's Funds
340.1470	Transfer or Discharge
340.1480	Complaint Procedures
340.1490	Private Right of Action

SUBPART D: HEALTH SERVICES

Section	
340.1500	Medical Care Policies
340.1505	Medical, Nursing and Restorative Services
340.1510	Communicable Disease Policies
340.1520	Tuberculin Skin Test Procedures
340.1530	Physician Services
340.1535	Dental Programs
340.1540	Life-Sustaining Treatments
340.1550	Obstetrical and Gynecological Care
340.1560	Nursing Personnel
340.1570	Personal Care
340.1580	Restraints

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- 340.1590 Nonemergency Use of Physical Restraints
- 340.1600 Emergency Use of Physical Restraints
- 340.1610 Unnecessary, Psychotropic, and Antipsychotic Drugs
- 340.1620 Medication Administration
- 340.1630 Self-Administration of Medication

SUBPART E: MEDICATION ADMINISTRATION SERVICES

Section

- 340.1650 Medication Policies and Procedures
- 340.1655 Conformance with Physician's Orders
- 340.1660 Administration of Medication
- 340.1665 Control of Medications
- 340.1670 Labeling and Storage of Medication

SUBPART F: RESIDENT LIVING SERVICES

Section

- 340.1700 Recreational and Activity Programs
- 340.1710 Social Services
- 340.1720 Work Programs
- 340.1730 Volunteer Program

SUBPART G: RESIDENT RECORDS

Section

- 340.1800 Resident Record Requirements
- 340.1810 Content of Medical Records
- 340.1820 Records Pertaining to Resident's Property
- 340.1830 Retention, Transfer, and Inspection of Records
- 340.1840 Confidentiality of Resident's Records

SUBPART H: FOOD SERVICE

Section

- 340.1900 Food Service Staff
- 340.1910 Diet Orders
- 340.1920 Meal Planning
- 340.1930 Therapeutic Diets (Repealed)

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340.1940 Menus and Food Records
340.1950 Food Preparation and Service
340.1960 Kitchen Equipment, Utensils and Supplies
SUBPART I: PHYSICAL PLANT SERVICES,
FURNISHINGS, EQUIPMENT AND SUPPLIES

Section

340.2000 Maintenance
340.2010 Water Supply, Sewage Disposal, and Plumbing
340.2020 Housekeeping
340.2030 Laundry Services
340.2040 Furnishings
340.2050 Equipment and Supplies

TABLE A Heat Index Table/Apparent Temperature

TABLE B Guidelines for the Use of Various Drugs

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

SOURCE: Emergency rule adopted at 18 Ill. Reg. 10391, effective June 21, 1994, for a maximum of 150 days; emergency rule expired November 18, 1994; adopted at 19 Ill. Reg. 5679, effective April 3, 1995; emergency amendment at 20 Ill. Reg. 496, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10045, effective July 15, 1996; amended at 20 Ill. Reg. 12013, effective September 10, 1996; amended at 22 Ill. Reg. 3959, effective February 13, 1998; amended at 22 Ill. Reg. 7162, effective April 15, 1998; amended at 23 Ill. Reg. 1038, effective January 15, 1999; amended at 23 Ill. Reg. 7931, effective July 15, 1999; amended at 24 Ill. Reg. 17225, effective November 1, 2000; amended at 25 Ill. Reg. 4869, effective April 1, 2001; amended at 26 Ill. Reg. 10589, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2222, effective February 1, 2003 for a maximum of 150 days; amended at 27 Ill. Reg. _____, effective _____.

SUBPART B: POLICIES AND FACILITY RECORDS

Section 340.1377 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing

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or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

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- 9) ~~Criminal sexual~~ ~~Sexual~~ assault or criminal sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse and ~~or~~ gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal abuse or neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));

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- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
 - 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
 - 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
 - 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
 - 24) Those provided in Section 4 of The Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
 - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
 - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
 - 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsection (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to ~~subsections (m) and (o)~~ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
 - c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as

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verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Health Care Worker Background Check Act)

- d) For the purpose of this Section:
 - 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
 - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsection (a)(1) to (27) of this Section.
 - 3) "Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.
 - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination the facility shall consider the following:
 - 1) The employee=s assigned job responsibilities as set forth in the employee=s job description;
 - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions;
 - 3) Whether the employee=s responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the nurse aide registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30 of the Health Care Worker Background Check Act)
- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

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- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
 - 1) That the facility shall request or have requested on its behalf A non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
 - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with ~~subsection (m) of~~ this Section.
 - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30 of the Health Care Worker Background Check Act)
- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may

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request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

- l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days of acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- m) An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
 - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
 - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- n) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- o) **Notwithstanding any other provision in this Section, an application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:**
 - 1) **Except in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met all obligations to the court and under terms of parole (i.e., probation has been successfully completed, compliance with orders of protection); and**
 - 2) **The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.**
- p)⊕) **The Department, acting through a waiver committee or through another internal process it implements,** may grant a waiver based on mitigating circumstances, which may include:

 - 1) The age of the individual at which the crime was committed;
 - 2) The circumstances surrounding the crime;

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- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents; which may include but is not limited to, the applicant=s or employee=s participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant=s or employee=s participation in anger management or domestic violence prevention programs; the applicant=s or employee=s status on nurse aide registries in other states; the applicant=s or employee=s criminal history in other states; or the applicant=s or employee=s successful completion of all outstanding obligations or responsibilities imposed by or to a court. (Section 40(b) of the Health Care Worker Background Check Act)

Except as indicated in subsections (q) and (r) of this Section, the Director of the Department of Public Health is not required to approve these waivers in writing in order for them to be effective.

- q) Notwithstanding any other provision in this Section, waivers will not be granted to individuals who have not met the following time frames unless the Director of Public Health approves the waiver in writing. A Disqualifying@ refers to offenses listed in subsections (a)(1) to (27) of this Section:
- 1) Single disqualifying misdemeanor conviction - waiver application no earlier than one year after completion of the sentence resulting from the conviction or, if no sentence was so imposed, the conviction date;
 - 2) Two to three disqualifying misdemeanor convictions - waiver application no earlier than three years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 3) More than three disqualifying misdemeanor convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;

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- 4) Single disqualifying felony conviction - waiver application no earlier than three years after completion of the sentence resulting from the conviction or, if no sentence was so imposed, the conviction date;
 - 5) Two to three disqualifying felony convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 6) More than three disqualifying felony convictions - waiver application no earlier than ten years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction.
- r) Notwithstanding any other provisions in this Sections, waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses unless the Director of Public Health approves the waiver in writing:
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);
 - 2) Murder, homicide, or manslaughter (Sections 9-1, 9-2 and 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-2 and 9-3]);
 - 3) Kidnaping or aggravated kidnaping (Sections 10-1 and 10-2 of the Criminal Code of 1961 [720 ILCS 5/10-1 and 10-2]);
 - 4) Aggravated battery (Section 12-4 of the Criminal Code 1961 [720 ILCS 5/12-4]);
 - 5) Criminal sexual assault or aggravated criminal sexual assault (Sections 12-13 and 12-14 of the Criminal Code of 1961 [720 ILCS 5/12-13 and 12-14]);
 - 6) Criminal sexual abuse or aggravated criminal sexual abuse (Sections 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-15 and 12-16]);
 - 7) Abuse and gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19]);
 - 8) Criminal abuse or neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21]);
 - 9) Financial exploitation of an elderly person or a person with a disability (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3]);
 - 10) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2 and 11-20.1

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of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1]);

11) Armed robbery (Section 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-2]); and

12) Aggravated vehicular hijacking, aggravated robbery (Section 18-4 and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-4 and 18-5]).

s)⊕ An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)

t)⊕ A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

u)⊕ A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State=s Attorney=s office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report;
or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

v)⊕ This Section shall not apply to:

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- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
 - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
 - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)
- w)†** An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)
- x)†** The facility must send a copy of the results of the UCIA criminal history record check to the state nurse aide registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security Number on the criminal history record check results.
- y)†** The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- z)†** The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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350.1410	Amendment	26 Ill. Reg. 10320
350.1420	Amendment	26 Ill. Reg. 10320
350.1430	Amendment	26 Ill. Reg. 10320
350.1440	Amendment	26 Ill. Reg. 10320
350.1450	Amendment	26 Ill. Reg. 10320

10) Statement of Statewide Policy Objectives: These amendment do not create or expand a State Mandate under the State Mandates Act [30 ILCS 805].

11) Time, place, and manner in which interested persons may comment on this rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

Peggy Snyder
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761
217/782-2043
e-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present its comments in writing to Peggy Snyder at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate its status as such, in writing, in its comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: Intermediate care facilities for the developmentally disabled

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

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- 13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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

DEPARTMENT OF PUBLIC HEALTH

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TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 350

INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section

350.110	General Requirements
350.120	Application for License
350.130	Licensee
350.140	Issuance of an Initial License for a New Facility
350.150	Issuance of an Initial License Due to a Change of Ownership
350.160	Issuance of a Renewal License
350.165	Criteria for Adverse Licensure Actions
350.170	Denial of Initial License
350.175	Denial of Renewal of License
350.180	Revocation of License
350.190	Experimental Program Conflicting With Requirements
350.200	Inspections, Surveys, Evaluations and Consultation
350.210	Filing an Annual Attested Financial Statement
350.220	Information to Be Made Available to the Public By the Department
350.230	Information to Be Made Available to the Public By the Licensee
350.240	Municipal Licensing
350.250	Ownership Disclosure
350.260	Issuance of Conditional Licenses
350.270	Monitor and Receivership
350.271	Presentation of Findings
350.272	Determination to Issue a Notice of Violation or Administrative Warning
350.274	Determination of the Level of a Violation
350.276	Notice of Violation
350.277	Administrative Warning
350.278	Plans of Correction
350.280	Reports of Correction
350.282	Conditions for Assessment of Penalties
350.284	Calculation of Penalties

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350.286	Determination to Assess Penalties
350.288	Reduction or Waiver of Penalties
350.290	Quarterly List of Violators (Repealed)
350.300	Alcoholism Treatment Programs In Long-Term Care Facilities
350.310	Department May Survey Facilities Formerly Licensed
350.315	Supported Congregate Living Arrangement Demonstration
350.320	Waivers
350.330	Definitions
350.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
350.510	Administrator

SUBPART C: POLICIES

Section	
350.610	Management Policies
350.620	Resident Care Policies
350.625	Determination of Need Screening
350.630	Admission and Discharge Policies
350.640	Contract Between Resident and Facility
350.650	Residents' Advisory Council
350.660	General Policies
350.670	Personnel Policies
350.675	Initial Health Evaluation for Employees
350.680	Developmental Disabilities Aides
350.681	Health Care Worker Background Check
350.682	Resident Attendants
350.683	Registry of Developmental Disabilities Aides
350.685	Student Interns
350.690	Disaster Preparedness
350.700	Serious Incidents and Accidents

SUBPART D: PERSONNEL

Section	
350.810	Personnel
350.820	Consultation Services

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350.830 Personnel Policies

SUBPART E: RESIDENT LIVING SERVICES

Section

350.1010 Service Programs
350.1020 Psychological Services
350.1030 Social Services
350.1040 Speech Pathology and Audiology Services
350.1050 Recreational and Activities Services
350.1055 Volunteer Program
350.1060 Training and Habilitation Services
350.1070 Training and Habilitation Staff
350.1080 Restraints
350.1082 Nonemergency Use of Physical Restraints
350.1084 Emergency Use of Physical Restraints
350.1086 Unnecessary, Psychotropic and Antipsychotic Drugs

SUBPART F: HEALTH SERVICES

Section

350.1210 Health Services
350.1220 Physician Services
350.1223 Communicable Disease Policies
350.1225 Tuberculin Skin Test Procedures
350.1230 Nursing Services
350.1235 Life-Sustaining Treatments
350.1240 Dental Services
350.1250 Physical and Occupational Therapy Services

SUBPART G: MEDICATIONS

Section

350.1410 Medication Policies and Procedures
350.1420 Conformance with Physician's Orders
350.1430 Administration of Medication
350.1440 Labeling and Storage
350.1450 Control of Narcotics and Legend Drugs

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SUBPART H: RESIDENT AND FACILITY RECORDS

Section

350.1610	Resident Record Requirements
350.1620	Content of Medical Records
350.1630	Confidentiality of Resident's Records
350.1640	Records Pertaining to Residents' Property
350.1650	Retention and Transfer of Resident Records
350.1660	Other Resident Record Requirements
350.1670	Staff Responsibility for Medical Records
350.1680	Retention of Facility Records
350.1690	Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

350.1810	Director of Food Services
350.1820	Dietary Staff in Addition to Director of Food Services
350.1830	Hygiene of Dietary Staff
350.1840	Diet Orders
350.1850	Meal Planning
350.1860	Therapeutic Diets (Repealed)
350.1870	Scheduling Meals
350.1880	Menus and Food Records
350.1890	Food Preparation and Service
350.1900	Food Handling Sanitation
350.1910	Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section

350.2010	Maintenance
350.2020	Housekeeping
350.2030	Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

350.2210	Furnishings
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350.2220 Equipment and Supplies

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

350.2410 Codes
350.2420 Water Supply
350.2430 Sewage Disposal
350.2440 Plumbing

SUBPART M: CONSTRUCTION STANDARDS FOR NEW INTERMEDIATE
CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section

350.2610 Applicability of These Standards
350.2620 Codes and Standards
350.2630 Preparation of Drawings and Specifications
350.2640 Site
350.2650 Administration and Public Areas
350.2660 Nursing Unit
350.2670 Dining, Living, Activities Rooms
350.2680 Therapy and Personal Care
350.2690 Service Departments
350.2700 General Building Requirements
350.2710 Structural
350.2720 Mechanical Systems
350.2730 Plumbing Systems
350.2740 Electrical Systems

SUBPART N: CONSTRUCTION STANDARDS FOR EXISTING INTERMEDIATE
CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section

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

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6453, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15556, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1983; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill. Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987; amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; amended at 17 Ill. Reg. 2351, effective February

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10, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; emergency expired on November 4, 1993; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1993; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. 1432, effective January 14, 1994; amended at 18 Ill. Reg. 15789, effective October 15, 1994; amended at 19 Ill. Reg. 11481, effective July 29, 1995; emergency amendments at 20 Ill. Reg. 152, effective January 1, 1996 for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10065, effective July 15, 1996; amended at 20 Ill. Reg. 12049, effective September 10, 1996; amended at 21 Ill. Reg. 14990, effective November 15, 1997; amended at 22 Ill. Reg. 4040, effective February 13, 1998; amended at 22 Ill. Reg. 7172, effective April 15, 1998; amended at 22 Ill. Reg. 16557, effective September 18, 1998; amended at 23 Ill. Reg. 1052, effective January 15, 1999; amended at 23 Ill. Reg. 7970, effective July 15, 1999; amended at 24 Ill. Reg. 17254, effective November 1, 2000; amended at 25 Ill. Reg. 4879, effective April 1, 2001; amended at 25 Ill. Reg. 6499, effective May 15, 2001; amended at 26 Ill. Reg. 10611, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2238, effective February 1, 2003, for a maximum of 150 days); amended at 27 Ill. Reg. _____, effective _____.

SUBPART C: POLICIES

Section 350.681 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
 - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));

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- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) ~~Criminal sexual~~ ~~Sexual~~ assault or ~~criminal~~ sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse ~~and~~ ~~or~~ gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal ~~abuse or~~ neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

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- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38,

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- par. 33A-2));
- 24) Those provided in Section 4 of The Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
 - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
 - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
 - 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407 and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to ~~subsections (m) and (o)~~ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
 - c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. Section 25(b) of the Act)
 - d) For the purpose of this Section:
 - 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
 - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.

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- 3) "Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:
 - 1) The employee's assigned job responsibilities as set forth in the employee's job description;
 - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
 - 3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last year, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)
- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
 - 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
 - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness

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- of the report, and request a waiver in accordance with ~~subsection (m) of~~ this Section.
- 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)
- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
 - k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
 - l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

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- m) An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
 - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- n) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- o) Notwithstanding any other provision in this Section, an application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:
- 1) Except in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met all obligations to the court and under terms of parole (i.e., probation has been successfully completed, compliance with orders of protection); and
 - 2) The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.
- p)⊕) The Department, acting through a waiver committee or through another internal process it implements, may grant a waiver based on mitigating circumstances, which may include:
- 1) The age of the individual at which the crime was committed;
 - 2) The circumstances surrounding the crime;
 - 3) The length of time since the conviction;
 - 4) The applicant or employee's criminal history since the conviction;
 - 5) The applicant or employee's work history;
 - 6) The applicant or employee's current employment references;
 - 7) The applicant or employee's character references;
 - 8) Nurse Aide Registry records; and
 - 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents; which may include, but is not limited to, the applicant=s or employee=s participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant=s or employee=s

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participation in anger management or domestic violence prevention programs; the applicant=s or employee=s status on nurse aide registries in other states; the applicant=s or employee=s criminal history in other states; or the applicant=s or employee=s successful completion of all outstanding obligations or responsibilities imposed by or to a court. (Section 40(b) of the Health Care Worker Background Check Act)

Except as indicated in subsections (q) and (r) of this Section, the Director of the Department of Public Health is not required to approve these waivers in writing in order for them to be effective.

q) Notwithstanding any other provision in this Section, waivers will not be granted to individuals who have not met the following time frames unless the Director of Public Health approves the waiver in writing. A Disqualifying@ refers to offenses listed in subsections (a)(1) to (27) of this Section:

- 1) Single disqualifying misdemeanor conviction - waiver application no earlier than one year after completion of the sentence or, if no sentence was so imposed, the conviction date;
- 2) Two to three disqualifying misdemeanor convictions - waiver application no earlier than three years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
- 3) More than three disqualifying misdemeanor convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
- 4) Single disqualifying felony conviction - waiver application no earlier than three years after completion of the sentence or, if no sentence was so imposed, the conviction date;
- 5) Two to three disqualifying felony convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
- 6) More than three disqualifying felony convictions - waiver application no earlier than ten years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the

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most recent conviction date or completion of the sentence resulting from the next most recent conviction.

- r) Notwithstanding any other provisions in this Section, waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses unless the Director of Public Health approves the waiver in writing:
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);
 - 2) Murder, homicide, or manslaughter (Sections 9-1, 9-2 and 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-2 and 9-3]);
 - 3) Kidnaping or aggravated kidnaping (Sections 10-1 and 10-2 of the Criminal Code of 1961 [720 ILCS 5/10-1 and 10-2]);
 - 4) Aggravated battery (Section 12-4 of the Criminal Code 1961 [720 ILCS 5/12-4]);
 - 5) Criminal sexual assault or aggravated criminal sexual assault (Sections 12-13 and 12-14 of the Criminal Code of 1961 [720 ILCS 5/12-13 and 12-14]);
 - 6) Criminal sexual abuse or aggravated criminal sexual abuse (Sections 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-15 and 12-16]);
 - 7) Abuse and gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19]);
 - 8) Criminal abuse or neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21]);
 - 9) Financial exploitation of an elderly person or a person with a disability (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3]);
 - 10) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2 and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1]);
 - 11) Armed robbery (Section 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-2]) and;
 - 12) Aggravated vehicular hijacking, aggravated robbery (Section 18-4 and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-4 and 18-5]).
- s)Ⓢ An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from

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the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)

t) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

u) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

v) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

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- w)†) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)
- x)†) The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.
- y)†) The facility shall retain on file for a period of 5 years, records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- z)†) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Long-Term Care for Under Age 22 Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 390
- 3) Section Numbers: Proposed Action:
390.681 Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A complete description of the subjects and issues:

Section 390.681 implements the provisions of the Health Care Worker Background Check Act. The rules are being amended to make changes in the waiver review process, by which an individual convicted of a “disqualifying” crime receives a waiver from the Department that allows the individual to work in a direct care position in a health care facility. Minimum time frames are being added. Waivers will not be granted to individuals with certain convictions, unless the Director approves the waiver in writing. Requirements that must be met by waiver applicants are being added. The rulemaking also adds examples of “other evidence” demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents.

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

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

- 6) Will this rulemaking replace an emergency rule currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain any incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Section NumbersProposed ActionIll. Reg. Citation

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390.1410	Amendment	26 Ill. Reg. 10339
390.1420	Amendment	26 Ill. Reg. 10339
390.1430	Amendment	26 Ill. Reg. 10339
390.1440	Amendment	26 Ill. Reg. 10339
390.1450	Amendment	26 Ill. Reg. 10339

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate under the State Mandate Act [30 ILCS 805].

11) Time, place, and manner in which interested persons may comment on this rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

Peggy Snyder
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761
217/782-2043
e-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present its comments in writing to Peggy Snyder at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate its status as such, in writing, in its comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: Long-term care facilities for persons under age 22.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

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- 13) Regulatory Agenda on which this rulemaking was summarized: January 2003

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 390
LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
390.110	General Requirements
390.120	Application for License
390.130	Licensee
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse Licensure Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to be Made Available to the Public by the Department
390.230	Information to Be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties

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390.286	Determination to Assess Penalties
390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators (Repealed)
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.315	Supported Congregate Living Arrangement Demonstration
390.320	Waivers
390.330	Definitions
390.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
390.500	Administrator

SUBPART C: POLICIES

Section	
390.610	Management Policies
390.620	Resident Care Policies
390.630	Admission and Discharge Policies
390.640	Contract Between Resident and Facility
390.650	Residents' Advisory Council
390.660	General Policies
390.670	Personnel Policies
390.675	Initial Health Evaluation for Employees
390.680	Child Care/Habilitation Aides
390.681	Health Care Worker Background Check
390.682	Resident Attendants
390.683	Registry of Child Care/Habilitation Aides
390.685	Student Interns
390.690	Disaster Preparedness
390.700	Serious Incidents and Accidents

SUBPART D: PERSONNEL

Section	
390.810	General
390.820	Categories of Personnel

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390.830 Consultation Services

SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section

390.1010 Service Programs
390.1020 Medical Services
390.1025 Life-Sustaining Treatments
390.1030 Physician Services
390.1035 Tuberculin Skin Test Procedures
390.1040 Nursing Services
390.1050 Dental Care Services
390.1060 Physical and Occupational Therapy Services
390.1070 Psychological Services
390.1080 Social Services
390.1090 Speech Pathology and Audiology Services
390.1100 Recreational and Activity Services
390.1110 Educational Services
390.1120 Work Activity and Prevocational Training Services

SUBPART F: RESTRAINTS AND BEHAVIOR MANAGEMENT

Section

390.1310 Restraints
390.1312 Nonemergency Use of Physical Restraints
390.1314 Emergency Use of Physical Restraints
390.1316 Unnecessary, Psychotropic, and Antipsychotic Drugs
390.1320 Behavior Management
390.1330 Behavior Emergencies (Repealed)

SUBPART G: MEDICATIONS

Section

390.1410 Medication Policies and Procedures
390.1420 Conformance with Physician's Orders
390.1430 Administration of Medication
390.1440 Labeling and Storage of Medications
390.1450 Control of Narcotics and Legend Drugs

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SUBPART H: RESIDENT AND FACILITY RECORDS

Section

390.1610	Resident Record Requirements
390.1620	Content of Medical Records
390.1630	Confidentiality of Resident's Records
390.1640	Records Pertaining to Residents' Property
390.1650	Retention and Transfer of Resident Records
390.1660	Other Resident Record Requirements
390.1670	Staff Responsibility for Medical Records
390.1680	Retention of Facility Records
390.1690	Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

390.1810	Director of Food Services
390.1820	Dietary Staff in Addition to Director of Food Services
390.1830	Hygiene of Dietary Staff
390.1840	Diet Orders
390.1850	Meal Planning
390.1860	Infant and Therapeutic Diets
390.1870	Scheduling Meals
390.1880	Menus and Food Records
390.1890	Food Preparation and Service
390.1900	Preparation of Infant Formula
390.1910	Food Handling Sanitation
390.1920	Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section

390.2010	Maintenance
390.2020	Housekeeping
390.2030	Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

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- 390.2210 Furnishings
- 390.2220 Equipment and Supplies
- 390.2230 Sterilization of Supplies and Equipment

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

- 390.2410 Codes
- 390.2420 Water Supply
- 390.2430 Sewage Disposal
- 390.2440 Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW FACILITIES

Section

- 390.2610 Applicability of these Standards
- 390.2620 Codes and Standards
- 390.2630 Preparation of Drawings and Specifications
- 390.2640 Site
- 390.2650 Administration and Public Areas
- 390.2660 Nursing Unit
- 390.2670 Dining, Play, Activity/Program Rooms
- 390.2680 Therapy and Personal Care
- 390.2690 Service Departments
- 390.2700 General Building Requirements
- 390.2710 Structural
- 390.2720 Mechanical Systems
- 390.2730 Plumbing Systems
- 390.2740 Electrical Systems

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING FACILITIES

Section

- 390.2910 Applicability
- 390.2920 Codes and Standards
- 390.2930 Preparation of Drawings and Specifications
- 390.2940 Site
- 390.2950 Administration and Public Areas

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390.2960	Nursing Unit
390.2970	Play, Dining, Activity/Program Rooms
390.2980	Treatment and Personal Care
390.2990	Service Department
390.3000	General Building Requirements
390.3010	Structural
390.3020	Mechanical Systems
390.3030	Plumbing Systems
390.3040	Electrical Requirements

SUBPART O: RESIDENT'S RIGHTS

Section	
390.3210	General
390.3220	Medical and Personal Care Program
390.3230	Restraints
390.3240	Abuse and Neglect
390.3250	Communication and Visitation
390.3260	Resident's Funds
390.3270	Residents' Advisory Council
390.3280	Contract With Facility
390.3290	Private Right of Action
390.3300	Transfer or Discharge
390.3310	Complaint Procedures
390.3320	Confidentiality
390.3330	Facility Implementation

SUBPART P: DAY CARE PROGRAMS

Section	
390.3510	Day Care in Long-Term Care Facilities

APPENDIX A	Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age (Repealed)
APPENDIX B	Forms for Day Care In Long-Term Care Facilities
APPENDIX C	Guidelines for the Use of Various Drugs
TABLE A	Infant Feeding
TABLE B	Daily Nutritional Requirements By Age Group
TABLE C	Sound Transmissions Limitations

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TABLE D	Pressure Relationships and Ventilation Rates of Certain Areas for New Long-Term Care Facilities for Persons Under Twenty-Two (22) Years of Age
TABLE E	Sprinkler Requirements
TABLE F	Heat Index Table/Apparent Temperature

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

SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 21031, effective November 4, 1993; amended at 17 Ill. Reg. 19547, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendments at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended 20 Ill. Reg. 12101, effective September 10, 1996; amended at 22 Ill. Reg. 4062, effective February 13, 1998; amended at 22 Ill. Reg. 7188, effective April 15, 1998; amended at 22 Ill. Reg. 16576, effective September 18, 1998; amended at 23 Ill. Reg. 1069, effective January 15, 1999; amended at 23 Ill. Reg. 8021, effective July 15, 1999; amended at 24 Ill. Reg.

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17283, effective November 1, 2000; amended at 25 Ill. Reg. 4890, effective April 1, 2001; amended at 26 Ill. Reg. 10645, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2258, effective February 1, 2003 for a maximum of 150 days; amended at 27 Ill. Reg. _____, effective _____.

SUBPART C: POLICIES

Section 390.681 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
 - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985; ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
 - 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
 - 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
 - 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
 - 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-

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- 3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
 - 8) Home Invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
 - 9) ~~Criminal sexual~~ ~~Sexual~~ assault or ~~criminal~~ sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
 - 10) Abuse ~~and~~ ~~or~~ gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
 - 11) Criminal ~~abuse or~~ neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
 - 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
 - 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
 - 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars 16-1 and 16A-3; Ill. Rev. Stat 1961, ch. 38 pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
 - 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
 - 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38,

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- pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
 - 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
 - 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
 - 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
 - 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
 - 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));
 - 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
 - 24) Those provided in Section 4 of The Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
 - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
 - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or deliver to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or
 - 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).

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- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to ~~subsections (m) and (e)~~ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
 - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
 - 3) "Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.
 - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:
- 1) The employee=s assigned job responsibilities as set forth in the employee=s job description;
 - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
 - 3) Whether the employee=s responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this

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Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
 - 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
 - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with ~~subsection (m) of~~ this Section.
 - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
 - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the

DEPARTMENT OF PUBLIC HEALTH

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criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days of acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- m) An applicant, employee or employer may request a waiver to subsections (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
 - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
 - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA Criminal Records Check.
- n) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above.
- o) [Notwithstanding any other provision in this Section, an application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:](#)
 - 1) [Except in the instance of payment of court-imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met all obligations to the court and under terms of parole \(i.e.,](#)

DEPARTMENT OF PUBLIC HEALTH

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probation has been successfully completed, compliance with orders of protection); and

2) The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.

p)⊕) The Department, acting through a waiver committee or through another internal process it implements, may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse aide registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents- which may include, but is not limited to the applicant=s or employee=s participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant=s or employee=s participation in anger management or domestic violence prevention programs; the applicant=s or employee=s status on nurse aide registries in other states; the applicant=s or employee=s criminal history in other states; or the applicant=s or employee=s successful completion of all outstanding obligations or responsibilities imposed by or to a court.
(Section 40(b) of the Health Care Worker Background Check Act)

Except as indicated in subsections (q) and (r) of this Section, the Director of the Department of Public Health is not required to approve these waivers in writing in order for them to be effective.

q) Notwithstanding any other provision in this Section, waivers will not be granted to individuals who have not met the following time frames unless the Director of Public Health approves the waiver in writing. ADisqualifying@ refers to offenses listed in subsections (a)(1) to (27) of this Section.

- 1) Single disqualifying misdemeanor conviction - waiver application no earlier than one year after completion of the sentence or, if no sentence was so imposed, the conviction date;
- 2) Two to three disqualifying misdemeanor convictions - waiver application no earlier than three years after completion of the sentence resulting from

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- the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
- 3) More than three disqualifying misdemeanor convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 4) Single disqualifying felony conviction - waiver application no earlier than three years after completion of the sentence or, if no sentence was so imposed, the conviction date;
 - 5) Two to three disqualifying felony convictions - waiver application no earlier than five years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction;
 - 6) More than three disqualifying felony convictions - waiver application no earlier than ten years after completion of the sentence resulting from the most recent conviction or, if no sentence was so imposed, the later of the most recent conviction date or completion of the sentence resulting from the next most recent conviction.
- r) Notwithstanding any other provisions in this Section, waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses unless the Director of Public Health approves the waiver in writing:
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);
 - 2) Murder, homicide, or manslaughter (Sections 9-1, 9-2 and 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-2 and 9-3]);
 - 3) Kidnaping or aggravated kidnaping (Sections 10-1 and 10-2 of the Criminal Code of 1961 [720 ILCS 5/10-1 and 10-2]);
 - 4) Aggravated battery (Section 12-4 of the Criminal Code 1961 [720 ILCS 5/12-4]);
 - 5) Criminal sexual assault or aggravated criminal sexual assault (Sections 12-13 and 12-14 of the Criminal Code of 1961 [720 ILCS 5/12-13 and 12-14]);
 - 6) Criminal sexual abuse or aggravated criminal sexual abuse (Sections 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-15 and 12-16]);

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- 7) [Abuse and gross neglect of a long-term care facility resident \(Section 12-19 of the Criminal Code of 1961 \[720 ILCS 5/12-19\]\);](#)
 - 8) [Criminal abuse or neglect of an elderly or disabled person \(Section 12-21 of the Criminal Code of 1961 \[720 ILCS 5/12-21\]\);](#)
 - 9) [Financial exploitation of an elderly person or a person with a disability \(Section 16-1.3 of the Criminal Code of 1961 \[720 ILCS 5/16-1.3\]\);](#)
 - 10) [Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography \(Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 \[720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1\]\);](#)
 - 11) [Armed robbery \(Section 18-2 of the Criminal Code of 1961 \[720 ILCS 5/18-2\]\); and](#)
 - 12) [Aggravated vehicular hijacking, aggravated robbery \(Sections 18-4 and 18-5 of the Criminal Code of 1961 \[720 ILCS 5/18-4 and 18-5\]\).](#)
- s)⊕ An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)
- t)⊕ A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- u)⊕ A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:
- 1) certified court records;
 - 2) written verification from the State=s Attorney=s office that prosecuted the conviction at issue;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
 - 4) a signed affidavit from the individual concerning the validity of the report; or
 - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- v) ~~s)~~ This Section shall not apply to:
- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
 - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
 - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)
- w) ~~t)~~ An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)
- x) ~~u)~~ The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.
- y) ~~v)~~ The facility shall retain on file for a period of 5 years, records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- z) ~~w)~~ The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 27 Ill. Reg. _____, effective _____)

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Imaging Products
- 2) Code Citation: 20 Ill. Adm. Code 1298
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1298.10	New Section
1298.20	New Section
1298.30	New Section
1298.40	New Section
- 4) Statutory Authority: Implementing and authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15].
- 5) A Complete Description of the Subjects and Issues Involved: The Department of State Police, in the context of its powers and duties, captures and produces photographs and images in a variety of formats. This Part will establish the requirements and procedures for obtaining imaging products from the Department.
- 6) Will these proposed amendments replace any emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: These rules will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Within 45 days after the publication of this Notice, any interested person may submit comments, data, views or argument regarding the proposed amendments. The submissions must be in writing and directed to:

Mr. James W. Redlich
Chief Legal Counsel
Illinois State Police

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED AMENDMENTS

124 East Adams Street, Room 102
Post Office Box 19461
Springfield, Illinois 62794-9461

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda which this rulemaking was summarized: January 2003

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

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT

CHAPTER II: DEPARTMENT OF STATE POLICE

PART 1298
IMAGING PRODUCTS

Section

1298.10	Introduction
1298.20	Definitions
1298.30	Request Procedures
1298.40	Fees

AUTHORITY: Implementing and authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15].

SOURCE: Adopted at 27 Ill. Reg. _____, effective _____.

Section 1298.10 Introduction

The Department of State Police, in the context of its powers and duties, captures and produces photographs and images in a variety of formats. Individuals and other entities often desire to obtain copies of these imaging products. This Part is intended to establish the requirements and procedures for obtaining imaging products from the Department.

Section 1298.20 Definitions

“Department” means the Illinois Department of State Police.

“Imaging Products” means any visual image on film, paper, or electronic media produced by Department of State Police personnel. These may include, but are not limited to, photographic images, still digital images, video images, instant print images, visual computer images, illustrative images, charts, schematics, diagrams, images drawn by hand, machine or computer-generated images, and computer animations.

“Requester” means a person or other entity that requests imaging products from the Department.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED AMENDMENTS

1298.30 Request Procedures

- a) A requester shall complete an Imaging Request Form for each imaging product request.
- b) Each request shall include the appropriate fee for the particular request. The payment of fees will be made by certified check, money order, or personal check; cash will not be accepted.
- c) The Department shall not process the request until receipt of a correctly completed Imaging Request Form and the appropriate fees.
- d) The requested imaging products shall be sent by U.S. Mail to the requester unless other arrangements are made and paid for by the requester.
- e) The requester shall not reproduce, license, sell, or further distribute imaging products obtained without the written consent of the Department.
- f) The processing of requests shall be delayed or suspended when Department imaging resources are needed for law enforcement purposes.
- g) In the event release of an image would constitute an unwarranted invasion of the personal privacy due to the manner in which an individual is portrayed in the image, the image will not be released except as required by law or with permission of the individual or the individual's representative.

Section 1298.40 Fees

The fees will reflect the costs incurred to acquire, maintain, and reproduce the particular imaging products. Fees received shall be deposited in the State Police Services Fund or as otherwise legally required. The fees shall be as follows:

- a) 4x6 inch photograph - \$6.00 each
- b) 8x10 inch photograph - \$12.00 each
- c) 8.5x11 inch color index page (up to nine images per page) - \$10.00 each
- d) video tape - \$20.00 each
- e) 8.5x11 inch diagram or illustration - \$10.00
- f) 36x48 inch diagram or illustration - \$85.00
- g) animations - \$40.00 per second of finished animation
- h) CD-ROM images - \$20.00 per disc plus \$0.60 per megabyte of file size

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Special Education Program and Services
- 2) Code Citation: 89 Ill. Adm. Code 765
- 3) Section Numbers: Adopted Action:
765.75 New
- 4) Statutory Authority: Implementing Sections 3, 10, 11 and 13 and authorized by Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3, 10, 11 and 13].
- 5) Effective Date of Amendments: March 7, 2003
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 26 Ill. Reg. 16402-11/8/02
- 10) Has JCAR Issued a Statement of Objection to this rulemaking? No
- 11) Difference(s) between proposal and final version: No 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? Changes will be made as other Parts are amended to reflect the name change of the Illinois Children's School and Rehabilitation Center to the Illinois Center for Rehabilitation and Education-Roosevelt.
- 13) Will this amendment replace an emergency amendment currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: This rulemaking adds new language that pertains to School Personnel. It outlines the requirements and standards for all superintendents, principals, teachers and other educational personnel.
- 16) Information and questions regarding this adopted rule shall be delivered to:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

Mr. Karl Menninger
Acting Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East, Third Floor
Springfield, Illinois 62762

Telephone: (217) 785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER f: EDUCATIONAL FACILITIESPART 765
SPECIAL EDUCATION PROGRAM AND SERVICES

SUBPART A: ADMINISTRATION OF EDUCATIONAL PROGRAM

Section

765.10	Special Education Instructional Programs
765.20	Range of Services
765.30	Availability of Services
765.40	Involvement of Students with Disabilities in Activities
765.50	Adequacy of Facilities
765.60	Written Policies
765.70	State Approved Administrator of Special Education (Repealed)
765.75	School Personnel
765.80	State-Approved Supervisory Services (Repealed)
765.90	Role of Principal (Repealed)

SUBPART B: SERVICE PROVIDED

Section

765.100	Related Services to be Provided or Arranged
765.110	Other Related Services
765.120	Student-based Objectives
765.130	Specific Objectives
765.140	Time Spent

SUBPART C: SPECIAL EDUCATION INSTRUCTIONAL PROGRAM

Section

765.200	Instructional Programs
765.210	Curriculum
765.220	Considerations
765.230	Determinants

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART D: VOCATIONAL PROGRAMS

Section

765.300	Provision of Vocational Programs to Exceptional Students
765.310	Vocational Plan
765.320	Community Work Experiences
765.330	Coordination With Other Programs

AUTHORITY: Implementing Sections 3, 10, 11 and 13 and authorized by Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3, 10, 11 and 13].

SOURCE: Adopted at 6 Ill. Reg. 1235, effective January 18, 1982; codified at 6 Ill. Reg. 14859; amended at 12 Ill. Reg. 12103, effective July 8, 1988; amended at 13 Ill. Reg. 5154, effective March 30, 1989; amended at 15 Ill. Reg. 6261, effective April 15, 1991; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; amended at 23 Ill. Reg. 10297, effective August 10, 1999; amended at 27 Ill. Reg. 5020, effective March 7, 2003.

SUBPART A: ADMINISTRATION OF EDUCATIONAL PROGRAM

Section 765.75 School Personnel

All superintendents, principals, teachers and other educational personnel shall meet standards set by the State Board of Education (23 Ill. Adm. Code 226.800) and the requirements of the Illinois Department of Central Management Services and be licensed or certified as required by law. Other personnel and employees shall meet such standards, certification, and licensing requirements as are required by law, including those of the Illinois State Board of Education, the Illinois Department of Professional Regulation, and the Illinois Department of Central Management Services.

(Source: Added at 27 Ill. Reg. 5020, effective March 7, 2003)

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Trifecta
- 2) Code Citation: 11 Ill. Adm. Code 306
- 3) Section Number: 306.20 Adopted Action: Amended
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Amendment: March 7, 2003
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporation by reference? No
- 8) A copy of this adopted amendment including any material incorporated by reference is available for public inspection at the IRB Central Office, 100 West Randolph, Suite 11-100, Chicago, Illinois, during the hours of 9:00 a.m. and 5:00 p.m.
- 9) Notice of Proposal Published in Illinois Register: 26 Ill. Reg. 16814 – 11/5/02
- 10) Has JCAR issued a Statement of Objections to this amendment? 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
- 13) Will this amendment replace emergency amendments currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: [In stakes races with purses of \\$200,000 or more, common owner entries, either coupled or uncoupled, shall be allowed.](#)
- 16) Information and questions regarding this adopted rule shall be delivered to:

Micky Ezzo

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

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY

SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER a: GENERAL RULESPART 306
TRIFECTA

Section

- 306.10 Definition
- 306.20 Entries
- 306.30 Minimum Fields
- 306.40 Pool Distribution
- 306.50 Dead Heats
- 306.60 Scratches

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 19 Ill. Reg. 15225, effective November 1, 1995; amended at 24 Ill. Reg. 7397, effective May 1, 2000; amended at 26 Ill. Reg. 4900, effective March 20, 2002; amended at 26 Ill. Reg. 12355, effective August 1, 2002; amended at 27 Ill. Reg. 5024, effective March 7, 2003.

Section 306.20 Entries

- a) For harness racing, only one entry either coupled or uncoupled shall be allowed in a trifecta race so long as it is a stakes race with a minimum purse of \$25,000 and a minimum field of eight betting interests at the start of the race. For stakes races with a minimum purse of \$50,000, entries, either coupled or uncoupled, shall be allowed and there shall be no restrictions on minimum betting interests. In stakes races with purses of \$200,000 or more, common owner entries, either coupled or uncoupled, shall be allowed.
- b) For thoroughbred racing, entries, either coupled or uncoupled, shall be allowed in a trifecta race under the following conditions:
 - 1) one entry requires at least six betting interests at the start of the race.
 - 2) two entries requires at least eight betting interests at the start of the race.

ILLINOIS RACING BOARD**NOTICE OF ADOPTED AMENDMENTS**

- 3) more than two entries shall require approval from the Executive Director or the State Director of Mutuels.

- c) This Section shall not apply to races that are permitted for simulcasting under Section 26(g) of the Act [230 ILCS 5/26(g)] or for uncoupled entries permitted in 11 Ill. Adm. Code 1413.114(c) when there are thoroughbred stakes races with purses of \$250,000 or more.

(Source: Amended at 27 Ill. Reg. 5024, effective March 7, 2003)

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Medication
- 2) Code Citation: 11 Ill. Adm. Code 603
- 3) Section Number: 603.180 Adopted Action: Amended
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Amendment: March 7, 2003
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporation by reference? No
- 8) A copy of this adopted amendment including any material incorporated by reference is available for public inspection at the IRB Central Office, 100 West Randolph, Suite 11-100, Chicago, Illinois, during the hours of 9:00 a.m. and 5:00 p.m.
- 9) Notice of Proposal Published in Illinois Register: 26 Ill. Reg. 14575 – 10/4/02
- 10) Has JCAR issued a Statement of Objections to this amendment? 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
- 13) Will this amendment replace emergency amendments currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: Accordingly, ~~in compliance with post race testing procedures set forth in Section 603.110 (Test Samples)~~, the State Veterinarian may draw blood samples from a horse for the purpose of obtaining TCO₂ concentration.
- 16) Information and questions regarding this adopted rule shall be delivered to:

Micky Ezzo

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

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY

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
603.80	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 and Retention of Samples
603.150	Penalties
603.170	Veterinarian's Records
603.180	Carbon Dioxide Tests

AUTHORITY: 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 1, 2002; amended at 26 Ill. Reg. 12579, effective December 1, 2002; amended at 27 Ill. Reg. 5027, effective March 7, 2003.

Section 603.180 Carbon Dioxide Tests

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- a) The Board recognizes that an excess level of total carbon dioxide (TCO₂) in the race horse is considered adverse to the best interests of racing and adverse to the best interest of the horse in that such condition alters its normal physiological state. Accordingly, ~~in compliance with post race testing procedures set forth in Section 603.110 (Test Samples)~~, the State Veterinarian may draw blood samples from a horse for the purpose of obtaining TCO₂ concentration.
- b) Blood samples for TCO₂ shall be drawn pre-race or post-race ~~not earlier than one hour following the official post time of the race.~~
- c) The ~~post race~~ TCO₂ level in the blood shall not exceed:
 - 1) 39.0 millimoles per liter if the horse is competing on furosemide in accordance with Section 603.70 (Furosemide).
 - 2) 37.0 millimoles per liter if the horse is not competing on furosemide.
- d) In the event a blood ~~post race~~ sample from a horse contains an amount of TCO₂ that ~~which~~ exceeds the levels described in subsection (c), the following penalties shall apply:
 - 1) The first time the laboratory reports an excessive TCO₂ level, the trainer shall be fined not more than \$500 and the purse shall be redistributed.
 - 2) The second time the laboratory reports an excessive TCO₂ level, the trainer shall be suspended not more than 30 days and/or fined not more than \$1,000 and the purse shall be redistributed.
 - 3) For each subsequent report of an excessive TCO₂ level, the trainer shall be subject to a suspension of not longer than 120 days, a fine of not more than \$1,000 and the purse shall be redistributed.
- e) The provisions of Section 603.120 (Referee Samples) shall not apply to blood samples drawn for the purposes of carbon dioxide testing.

(Source: Amended at 27 Ill. Reg. 5027, effective March 7, 2003)

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Entries and Declarations
- 2) Code Citation: 11 Ill. Adm. Code 1312
- 3) Section Number: 1312.260 Adopted Action: Amended
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Amendment: March 7, 2003
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporation by reference? No
- 8) A copy of this adopted amendment including any material incorporated by reference is available for public inspection at the IRB Central Office, 100 West Randolph, Suite 11-100, Chicago, Illinois, during the hours of 9:00 a.m. and 5:00 p.m.
- 9) Notice of Proposal Published in Illinois Register: 26 Ill. Reg. 16818 – 11/15/02
- 10) Has JCAR issued a Statement of Objections to this amendment? 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
- 13) Will this amendment replace emergency amendments currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: [However, the uncoupling of entries with common owners shall be permitted in stakes races with purses of \\$200,000 or more.](#)
- 16) Information and questions regarding this adopted rule shall be delivered to:

Micky Ezzo

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

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY

SUBTITLE B: HORSE RACING

CHAPTER I: ILLINOIS RACING BOARD

SUBCHAPTER f: RULES AND REGULATIONS OF HARNESS RACING

PART 1312

ENTRIES AND DECLARATIONS

Section

1312.10	Entries
1312.20	Penalties
1312.30	Sale of Horse With Entrance Due
1312.40	Receipt of Entries
1312.50	Postage Meter
1312.60	Deviation From Published Conditions
1312.70	When Ineligible Horse Races
1312.80	Transfer of Ineligible Horse
1312.90	Withholding Purse When Ineligible Horse Races
1312.100	Early Closing and Late Closing Events
1312.110	Subsequent Payments
1312.120	Trust Funds
1312.130	Stable Space
1312.140	Limitation on Conditions
1312.150	Penalties
1312.160	Excess Entry Fees
1312.170	Entries and Starters Required
1312.180	Elimination Heats
1312.190	Elimination Plans
1312.200	Overnight Events
1312.210	Entry Box and Drawing of Horses
1312.220	Substitute Races
1312.230	Drivers
1312.240	Declaration and Withdrawing
1312.250	Qualifying Races
1312.260	Entry or Coupling
1312.265	Uncoupled Entries
1312.270	Husband-Wife Entries
1312.280	Also Eligibles

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1312.290 Preference
1312.300 Stewards' List
1312.310 Medical Reasons for Ineligibility

AUTHORITY: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Published in Rules and Regulations of Harness Racing, (original date not cited in publication); amended July 12, 1974, filed July 22, 1974; amended February 13, 1976, filed March 1, 1976; amended September 19, 1975, filed October 2, 1975; amended at 4 Ill. Reg. 9, p. 251, effective February 20, 1980; amended at 4 Ill. Reg. 21, p. 85, effective May 9, 1980; amended at 5 Ill. Reg. 1498, effective February 2, 1981; codified at 5 Ill. Reg. 10934; amended at 15 Ill. Reg. 2727, effective February 5, 1991; amended at 24 Ill. Reg. 7390, effective May 1, 2000; amended at 25 Ill. Reg. 6390, effective May 1, 2001; amended at 27 Ill. Reg. 5030, effective March 7, 2003.

Section 1312.260 Entry or Coupling

When starters in a race include two or more horses owned or trained by the same stable or by the same management, or same person, they shall be coupled as an "entry," ~~with no exceptions,~~ and a wager on one horse in the "entry" shall be a wager on all horses in the "entry." However, the uncoupling of entries with common owners shall be permitted in stakes races with purses of \$200,000 or more. If a race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions, but the divisions in which they compete and their post positions shall be drawn by lot.

(Source: Amended at 27 Ill. Reg. 5030, effective March 7, 2003)

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of Part: Illinois Affordable Housing Tax Credit Program
- 2) Code Citation: 47 Ill. Adm. Code 355
- 3)

<u>Section Numbers</u> :	<u>Emergency Action</u> :
355.102	Amendment
355.103	Amendment
355.107	Amendment
355.203	Amendment
355.204	Amendment
355.205	Amendment
355.206	Amendment
355.207	Amendment
355.209	Amendment
355.210	Amendment
355.211	New
355.302	Amendment
355.303	Amendment
355.304	Amendment
355.305	Amendment
355.306	Amendment
355.309	Amendment
355.402	Amendment
355.403	Amendment
355.406	Amendment
355.503	Amendment
355.504	Amendment
355.601	Amendment
- 4) Statutory Authority: Section 7.28 of the Illinois Housing Development Act [20 ILCS 7.28].
- 5) Effective Date of Rule: March 10, 2003
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: N/A
- 7) Date Filed with the Index Department:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY AMENDMENTS

- 8) A copy of the emergency rules is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The affordable housing tax credit program was authorized on August 23, 2001. Many of the Amendments make corrections that were received from outside organizations. If they do not go into effect immediately, the affordable housing tax credits for State fiscal year 2003 technically can not be allocated to certain types of projects that are eligible under the legislation, thus defeating the purpose of the legislation. In particular, the definition of "Affordable Housing Project" was too narrow, excluding other eligible projects.
- 10) A Complete Description of the Subjects and Issues Involved: These rules involve the administration of the affordable housing tax credit program.
- 11) Are there any proposed Amendments to this Part Pending? No
- 12) Statement of Statewide Policy Objectives: This proposed rule does not create, expand or modify a State mandate.
- 13) Information and questions regarding this rule shall be directed to:

Name: Richard B. Muller
Address: Illinois Housing Development Authority
401 N. Michigan Ave., Ste. 900
Chicago IL 60611
Telephone: 312/836-5327

The full text of the emergency rule begins on the next page:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY AMENDMENTS

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT

CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 355

ILLINOIS AFFORDABLE HOUSING TAX CREDIT PROGRAM

SUBPART A: GENERAL RULES

Section

- 355.101 Authority
355.102 Purpose and Objectives
[EMERGENCY](#)
355.103 Definitions
[EMERGENCY](#)
355.104 Compliance with Federal Law
355.105 Forms and Procedures for the Program
355.106 Fees and Charges
355.107 Amendment
[EMERGENCY](#)
355.108 Severability
355.109 Gender and Number
355.110 Titles and Captions

SUBPART B: AFFORDABLE HOUSING TAX CREDIT ALLOCATIONS

- 355.201 Authority to Allocate Affordable Housing Tax Credits
355.202 Transfer of Agency Affordable Housing Tax Credit Ceiling
355.203 Application Process
[EMERGENCY](#)
355.204 Agency Review
[EMERGENCY](#)
355.205 Approval or Rejection by Agency
[EMERGENCY](#)
355.206 Sponsor Participation.
[EMERGENCY](#)
355.207 Regulatory Agreement for Rental Projects
[EMERGENCY](#)
355.208 Affordable Housing Project Documentation and Certification
355.209 Affordable Housing Tax Credit Allocation
[EMERGENCY](#)

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY AMENDMENTS

- 355.210 Recapture of Affordable Housing Tax Credits
[EMERGENCY](#)
- [355.211 Return and Reallocation of Affordable Housing Tax Credits](#)
[EMERGENCY](#)

SUBPART C: DONATIONS

- Acceptable Types of Donations
Aggregation of Donations
[EMERGENCY](#)
- Minimum Donation Amount
[EMERGENCY](#)
- Cash
[EMERGENCY](#)
- 355.305 Securities
[EMERGENCY](#)
- 355.306 Real Property
[EMERGENCY](#)
- 355.307 Personal Property
- 355.308 Limitation on Donations
- 355.309 Transfer of Affordable Housing Tax Credits
[EMERGENCY](#)
- 355.310 Material Participation of Sponsor

SUBPART D: ~~AFFORDABLE HOUSING~~ PROJECTS

- 355.401 Single Family Project Requirements
- 355.402 Down Payment and Closing Cost Assistance
[EMERGENCY](#)
- 355.403 Employer-Assisted Housing Projects
[EMERGENCY](#)
- 355.404 Recapture Agreement
- 355.405 Multifamily Housing Projects
- 355.406 Set-Aside for Technical Assistance and General Operating Support
[EMERGENCY](#)
- 355.407 Limitations on Amount of Technical Assistance and General Operating Support
- 355.408 Technical Assistance—Home Ownership Counseling

SUBPART E: COMPLIANCE MONITORING

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY AMENDMENTS

355.501 Compliance Monitoring

355.502 Monitoring Fees

355.503 Books and Records

EMERGENCY

355.504 Furnishing Information

EMERGENCY

SUBPART F: REPORTS

355.601 Agency Reports

EMERGENCY

AUTHORITY: Section 7.28 of the Illinois Housing Development Act (20 ILCS 3805/7.28).

SOURCE: SOURCE: Adopted by emergency rulemaking at 25 Ill. Reg. 15636, effective December 7, 2001, for a maximum of 150 days. Adopted at 26 Ill. Reg. 5902, effective April 26, 2002. Amended at 26 Ill. Reg. 6962 effective May 10, 2002. Amended at 27 Ill. Reg. 5033 effective March 10, 2003.

SUBPART A: GENERAL RULES

Section 355.102 Purpose and Objectives

EMERGENCY

This Part is established to accomplish the purposes of Section 7.28 of the Illinois Housing Development Act and Section 214 of the Illinois Income Tax Act [35 ILCS 5/214], and in particular the awarding of Affordable Housing Tax Credits ~~in connection with the acquisition, construction, rehabilitation and financing of Affordable Housing Projects for Low Income Households.~~

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.103 Definitions

EMERGENCY

As used in this Part, the following words or terms mean:

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

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NOTICE OF EMERGENCY AMENDMENTS

"Affordable Housing Project": A housing project that is either:

a rental project in which at least 25% of the units ~~(#)~~ [that](#) have rents (including tenant-paid heat) that do not exceed, on a monthly basis, 30% of the gross monthly income of a Household earning the maximum income for a Low-Income Household in the geographical area in which the Affordable Housing Project is located and ~~(#)~~ are occupied by persons and families who qualify as Low-Income Households; or

a unit for sale to Low-Income Households and who will pay no more than 30% of their gross household income for mortgage principal, interest, property taxes, and property insurance upon the purchase of the unit.

"Affordable Housing Restrictions": The income and occupancy restrictions for an Affordable Housing Project required by Section 7.28 and the Rules, or those set forth in the Application for the Affordable Housing Project, whichever are more stringent;

"Affordable Housing Tax Credits": Affordable housing tax credits, as authorized by Section 7.28 and Section 214 of the Illinois Income Tax Act.

"Affordable Housing Tax Credit Ceiling": The aggregate amount of Affordable Housing Tax Credits available for Allocation in a State fiscal year.

"Agency": The Authority, the City of Chicago or any other municipality that may subsequently be designated by law as an agency for the allocation of Affordable Housing Tax Credits.

"Agency Affordable Housing Tax Credit Ceiling": That portion of the ~~total amount of Affordable Housing Tax Credits available for Allocation in a State fiscal year~~ [Affordable Housing Tax Credit Ceiling](#) that is available for Allocation by an Agency. That amount is 24.5% of the Affordable Housing Tax Credit Ceiling for the City of Chicago, and 75.5% of the Affordable Housing Tax Credit Ceiling for the Authority.

"Agency Head": the Executive Director of the Authority or the Housing Commissioner of the City of Chicago.

"Allocation": An award by an Agency of Affordable Housing Tax Credits in connection with an Affordable Housing Project, [an Employer-Assisted Housing Project or Technical Assistance](#).

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"Applicant": The Sponsor (and any other affiliated entities) applying for an Allocation.

"Application": An application to an Agency for ~~Affordable Housing Tax Credits~~ a Reservation and an Allocation submitted by an Applicant ~~in connection with an Affordable Housing Project~~, including the required supporting documentation.

"Authority ": The Illinois Housing Development Authority.

"Certificate": The certificate issued by an Agency evidencing ~~the an Allocation of Affordable Housing Tax Credits in connection with an Affordable Housing Project~~. The Certificate shall state the effective date of the Allocation.

"Compliance Period": The period during which an Affordable Housing Project is obligated to comply with the Affordable Housing Restrictions, as set forth in the Application ~~for such Affordable Housing Project~~. The Compliance Period for each Affordable Housing Project shall be a minimum of 10 years from the date of the initial certificate of occupancy from the municipality in which the Affordable Housing Project is located, except for:

Single Family Projects in which a Sponsor provides construction subsidies or down payment and closing cost assistance to Low-Income Households or Employer-Assisted Housing Projects purchasing a Single Family Residence, in which case the Compliance Period shall be 5 years from the date of the closing of the purchase of the Single Family Residence, and

Hardship cases, as provided in ~~section~~ Section 355.404 of this Part.

"Donation": Money, securities, or real or personal property that is provided without consideration to a Sponsor ~~for an Affordable Housing Project~~ and that is used for:

costs associated with purchasing, rehabilitating, constructing, or providing or obtaining financing for ~~that an~~ Affordable Housing Project, including fees for attorneys, architects, accountants, surveyors and appraisers;

Technical Assistance ~~for that Affordable Housing Project~~; or

General Operating Support of the Sponsor ~~in connection with that Affordable Housing Project~~; or

~~for~~ an Employer-Assisted Housing Project.

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“Donor”: An individual or entity making a Donation.

“Employer-Assisted Housing Project”: A project that involves down payment and closing cost assistance, reduced-interest mortgages, mortgage guarantee programs, rental subsidies, or individual development account savings plans that are:

provided by an employers to its employees to assist them in securing housing near the employer’s work place;

restricted to housing near such work place; and

restricted to employees who qualify as Moderate-Income Households.

“General Operating Support”: Any cost incurred by a Sponsor, directly or indirectly, in connection with an Affordable Housing Project or an Employer-Assisted Housing Project. Such costs may include a proportionate amount of the general overhead expenses of the Sponsor.

“Gross Household Income”: The total annualized income of ~~the~~ a Household from whatever source derived and before taxes or withholdings.

"Household": A single person, family or unrelated persons living together.

"Initial Closing Date": The date on which all legal requirements for the funding of an Affordable Housing Project have been met, as determined by the funding sources for the Affordable Housing Project, and the funds are made available to the Affordable Housing Project for distribution.

"Low-Income Household": A Household whose adjusted income is less than or equal to 60% of the median income of the geographical area of the Household's prospective residence ~~Affordable Housing Project~~, adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

"Material Participation": An individual or entity provides personal services to tenants or prospective tenants of a Multifamily Housing Project or rental Single Family Project, or professional services to a Multifamily Housing Project, on a regular, continuous, and substantial basis for more than ~~500~~ 300 hours during each year during the Compliance Period ~~; and, in the case of personal services, such provision of services constitutes~~

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~~substantially all of the provision of such services for the Multifamily Housing Project by all individuals or entities (including individuals and entities who do not hold ownership interests in the Affordable Housing Project) for that year.~~ This requirement will be satisfied if the Sponsor is the owner, or holds a controlling interest in the entity that is the owner, of the project; or is the managing general partner, or holds a controlling interest in the entity that is the managing general partner, of a limited partnership that is the owner of the project; or is the managing member, or holds a controlling interest in the entity that is the managing member, of the limited liability company that is the owner of the project.

"Members": The Members of the Authority.

"Moderate-Income Household": A Household whose adjusted income is less than 120% of the median income of the geographical area of the Household's ~~Affordable~~ Employer-Assisted Housing Project, adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

"Multifamily Housing Project": An Affordable Housing Project comprised of one or more buildings (other than Single Family Residences) containing an aggregate of five or more rental units.

"Program": The Illinois Affordable Housing Tax Credit Program.

"Reservation": An Agency's conditional reservation of Affordable Housing Tax Credits ~~in connection with an Affordable Housing Project~~ for a Sponsor. A Reservation shall be valid for a period no longer than 24 months from the date of the Reservation Letter. If ~~the Initial Closing Date of the Affordable Housing Project has not occurred~~ the Affordable Housing Tax Credits so reserved have not been allocated within that 24 month period, the Reservation shall expire and shall not be renewed.

"Reservation Letter": The letter from an Agency to a Sponsor conditionally reserving Affordable Housing Tax Credits ~~in connection with the Sponsor's proposed Affordable Housing Project~~.

"Section 7.28": Section 7.28 of the Act.

"Single Family Project": An Affordable Housing Project consisting of:

the construction of Single Family Residences; or

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the rehabilitation of a 2, 3, or 4 unit buildings; upon completion of rehabilitation, the units are sold or rented; or

the rehabilitation of Single Family Residences, which are then sold or rented; or

the rehabilitation of buildings containing more than 4 units; upon completion of rehabilitation, the units are sold as condominiums; or

the financing of Single Family Residences using junior mortgages with a below market interest rate; or

construction subsidies to lower the purchase price of Single Family Residences.

"Single Family Residence": A house, condominium, townhouse or other residence used for occupancy by a single Household as its primary residence.

"Sponsor": A not-for-profit organization that is:

organized under the General Not For Profit Corporation Act of 1986 [805 ILCS 105] for the purpose of constructing or rehabilitating affordable housing units in this State; or

organized for the purpose of constructing or rehabilitating affordable housing units and has been issued a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under provisions of the Internal Revenue Code; or

an organization designated as a community development corporation by the United States government under Title VII of the Economic Opportunity Act of 1964.

"State": The State of Illinois.

"Technical Assistance": Any cost incurred by a Sponsor for:

planning for an Affordable Housing Project [or an Employer-Assisted-Housing Project](#), or

assistance with an Application, or

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counseling services provided to prospective purchasers of a Single Family Residence in connection with a Single Family Project [or an Employer-Assisted Housing Project](#), except as provided in Section 355.408 of this Part.

"Very Low-Income Household": A Household whose adjusted income is less than or equal to 50% of the median income of the geographical area of the Household's [Affordable Housing Project prospective residence](#), adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

Section 355.107 Amendment
EMERGENCY

This Part may be supplemented, amended, or repealed by the Members, from time to time and in such manner as they may determine consistent with this Part, the Act, including but not limited to Section 7.28, and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

SUBPART B: AFFORDABLE HOUSING TAX CREDIT ALLOCATIONS

Section 355.203 Application Process
EMERGENCY

A Sponsor may apply for an Allocation by submitting an Application on forms prescribed by an Agency that may require the following information:

- a) The name and location of the proposed Affordable Housing Project;
- b) The name, address and telephone number of the Sponsor and the proposed owner of the Affordable Housing Project, and, if known, the attorney, accountant, architect, general contractor and consultant for the Affordable Housing Project;

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

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- c) A copy of the Sponsor's current Articles of Incorporation, certified by the Secretary of State or equivalent official of the state of incorporation;
- d) A history of the Sponsor's experience in developing housing, and low-income housing in particular;
- e) A complete description of the proposed Affordable Housing Project, including but not limited to the site, the number and type of units and a rent schedule for the Affordable Housing Project (if applicable), and identifying any proposed tenant populations with special housing needs;
- f) The amount of the proposed financing for the Affordable Housing Project, including letters of interest or commitments from prospective lenders;
- g) The nature and amount of the proposed or anticipated Donation;
- h) For a Multifamily Housing Project [or a rental Single Family Project](#), the percentage of units to be reserved for Low-Income Households and Very Low-Income Households;
- i) The estimated total cost of the proposed Affordable Housing Project, including the cost of land acquisition, the cost of construction, the amount of projected reserves, architects' fees, attorneys' fees, accountant's fees, surveyor's fees, title insurance and all other costs associated with the Affordable Housing Project;
- j) A schedule for the proposed Affordable Housing Project showing the anticipated Initial Closing Date and the anticipated date of completion;
- k) The amount of General Operating Support requested, if any, and the purposes for which it will be used;
- l) The amount of Technical Assistance requested, if any, and the purposes for which it will be used;
- m) The amount of Affordable Housing Tax Credits requested;
- n) A certification from the Sponsor certifying to the Agency that all information contained in the Application and all accompanying information is true, accurate, and complete, to the best of the Sponsor's knowledge; and

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- o) Any additional documentation of the information provided in the Application that the Agency may require in order to confirm the information in the Application, such as a legal description of the Affordable Housing Project site, etc.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.204 Agency Review
EMERGENCY

The Agency shall review each complete Application and approve or reject it. The Agency's review of an Application shall include, but not be limited to, the following criteria (where applicable):

- a) Section 7.28 Requirements. The ability of the Affordable Housing Project to meet the requirements of Section 7.28 and this Part throughout the Compliance Period;
- b) Financial Feasibility. The financial feasibility of the Affordable Housing Project, taking into the consideration the existing housing for Low-Income Households and Very Low-Income Households in the geographical area in which the Affordable Housing Project will be located, the cost of the Affordable Housing Project, the projected income and operating expense of the Affordable Housing Project, and all sources of financing for the Affordable Housing Project, including owner's equity;
- c) Sponsor's Ability. The ability of the Sponsor to successfully construct the Affordable Multifamily Housing Project or the rental Single Family Project and place it in service, taking into consideration the construction or other schedule submitted with the Application, the Sponsor's experience in the development, construction and/or rehabilitation of housing, and the size and scope of the Affordable Housing Project; or the ability of the Sponsor to provide the Technical Assistance; or the ability of the Sponsor to implement the Employer- Assisted Housing Project.
- d) Site Control. Evidence of site control, satisfactory to the Agency, for the Affordable Housing Project, which shall include, but not be limited to, a purchase contract, an option to purchase, or a letter of intent from a prospective Donor of real property or from a governmental agency;

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- e) Donations. The amount of the proposed or anticipated Donation and the Sponsor's plan for obtaining the Donation;
- f) Location. The need for housing for Low-Income [and Very Low-Income](#) Households in the geographical area in which the Affordable Housing Project will be located, based on census data, social surveys, published data, or on-site inspections; and the location of other Affordable Housing Projects for which the Agency has allocated or reserved Affordable Housing Tax Credits;
- g) Housing Stock. The likelihood that the Affordable Housing Project will increase the quality and quantity of housing stock and redevelop blighted areas or prevent the occurrence of slum conditions;
- h) Preservation. The likelihood that the Affordable Housing Project will preserve housing projects in danger of being lost as affordable housing stock;
- i) Involuntary Displacement. For Multifamily Housing Projects [or rental Single Family Projects](#) involving rehabilitation, the Sponsor must minimize involuntary displacement of current tenants who are Low-Income [and Very Low-Income](#) Households, taking into consideration their safety during rehabilitation and the scope and nature of the proposed rehabilitation;
- j) Special Needs Populations. The availability and accessibility of the Affordable Housing Project for special needs populations, including, but not limited to, homeless or displaced individuals, persons with physical, mental or developmental disabilities, persons with alcohol or substance abuse problems, and persons with AIDS and related diseases;
- k) Compliance Period. Whether the Compliance Period of the Affordable Housing Project exceeds the minimum requirements of Section 7.28;
- l) Lower Income Households. The ability of the Affordable Housing Project to serve Households with incomes less than the maximum income for Low-Income [or Very Low Income](#) Households for the geographical area in which the Affordable Housing Project will be located.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

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- a) Upon an Agency's completion of its review of an Application, the Agency shall notify the Sponsor in writing of its approval or rejection of the Application.
- b) Upon the approval of an Application, the Agency shall issue a Reservation Letter conditionally reserving Affordable Housing Tax Credits ~~for the Affordable Housing Project~~. The amount of the Affordable Housing Tax Credits reserved shall be 50% of the amount of the ~~proposed or~~ approved amount of the Donation or the actual Donation, whichever is less.
- c) The Reservation Letter shall set forth the terms and conditions upon which the Affordable Housing Tax Credits will be allocated to the Affordable Housing Project, including, but not limited to:
 - 1) Full compliance by both the Sponsor and, if applicable, the proposed Affordable Housing Project, Technical Assistance or Employer-Assisted Housing Project, with the requirements of Section 7.28 and this Part;
 - 2) Certification from the Sponsor certifying to the Agency that the Sponsor and, if applicable, the Affordable Housing Project Technical Assistance or Employer-Assisted Housing Project, will be in full compliance with the requirements of Section 7.28 and this Part and, (if applicable) will continue to be in compliance during the Compliance Period;
 - 3) Certification from the Sponsor that there will be no material change in the Sponsor, the Sponsor's ownership structure or the structure, if applicable, of the Affordable Multifamily Housing Project or the rental Single Family Project without the prior written approval of the Agency; and
 - 4) If applicable, Execution ~~execution~~ of either a Regulatory Agreement, as required by Section 355.207 of this Part, or one or more Recapture Agreements, as required by Section 355.404 of this Part.
- d) The Sponsor shall have ~~12~~ 24 months from the date of the Reservation Letter to obtain a Donation ~~for the Affordable Housing Project~~. ~~For Affordable Housing Projects, This period may be extended for an additional period of up to 12 months upon written request to the Agency, provided that the Sponsor submits evidence of progress toward the Initial Closing of the Affordable Housing Project.~~ For Technical Assistance or Employer-Assisted Housing Projects, the Sponsor

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[shall have 12 months from the Date of the Reservation Letter to obtain a Donation.](#)

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.206 Sponsor Participation
EMERGENCY

[For a Multifamily Housing Project, or a rental Single Family Project](#) ~~The~~ the Sponsor must have a Material Participation in the development and operation of ~~it's~~ [the Multifamily Housing Project or rental Single Family Project](#) throughout the Compliance Period.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.207 Regulatory Agreement for Rental Projects
EMERGENCY

The Sponsor and the owner of each ~~Affordable~~ Affordable Housing Project that involves the rental of housing units shall enter into a Regulatory Agreement with the allocating Agency before the Agency ~~allocates Affordable Housing Tax Credits~~ [makes an Allocation](#) in connection with that Affordable Housing Project. Under the Regulatory Agreement, the owner of the Affordable Housing Project shall be required to adhere to the Affordable Housing Restrictions for a period equal to the Compliance Period, and agree not to transfer the ownership, or materially change the ownership structure of the owner of the Affordable Housing Project, without the approval of the Agency. The Regulatory Agreement shall be recorded in the office of the Recorder of Deeds in the county where the Affordable Housing Project is located as a restrictive covenant on the Affordable Housing Project. The Regulatory Agreement shall cease to apply in the event of a foreclosure, transfer of title by deed in lieu of foreclosure or similar event, unless the allocating Agency determines that such foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event has occurred pursuant to an arrangement between the owner of the Affordable Housing Project and any lenders or any other party, a purpose of which is to terminate the occupancy restrictions set forth in the Regulatory Agreement. If the Affordable Housing Project is receiving financing from lenders that require rental and occupancy restrictions on the Affordable Housing Project, the Affordable Housing Restrictions may, upon the written approval of the Agency, be incorporated into the documents containing the lenders' occupancy and rental restrictions, provided that:

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- a) the Agency is made a party to the agreement in which the lenders' restrictions are incorporated; and
- b) the Agency shall have the right under that agreement to independently enforce the Affordable Housing Restrictions.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.209 Affordable Housing Tax Credit Allocation
EMERGENCY

~~Upon the Initial Closing of an Affordable Housing Project and receipt by the Agency of all requested documentation, in a format acceptable to the Agency, that establishes to the satisfaction of the Agency that the Initial Closing has occurred and the Sponsor and the Affordable Housing Project are in compliance with all the requirements of Section 7.28 and this Part, the Agency shall allocate Affordable Housing Tax Credits in connection with the Affordable Housing Project. An Agency shall make Allocations:~~

- a) for Affordable Housing Projects, after the Agency has received documentation, in a format acceptable to the Agency, that establishes to the satisfaction of the Agency that the Sponsor and the Affordable Housing Project are in compliance with all of the requirements of Section 7.28 and this Part; the date of the Allocation shall be the date of the Initial Closing.
- b) for Technical Assistance and Employer-Assisted Housing Projects, after the Agency has received documentation, in a format acceptable to the Agency, that establishes to the satisfaction of the Agency that the Sponsor is in compliance with all of the requirements of Section 7.28 and this Part and has the ability to provide the Technical Assistance or to implement the Employer-Assisted Housing Project, as applicable; the date of the Allocation shall be the date of the satisfaction of these requirements.

The effective date of the Allocation shall be the date set forth in the Reservation Letter to the Sponsor, or the date of the ~~Initial Closing~~, Allocation at the election of the Sponsor. No Allocation shall be made with an effective date earlier than the effective date of Section 7.28. The Agency shall submit such forms as the Illinois Department of Revenue may require to notify the Department of the Allocation for the Affordable Housing Project.

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(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.210 Recapture of Affordable Housing Tax Credits
EMERGENCY

Except in the case of fraud committed by a Donor, there shall be no recapture of Affordable Housing Tax Credits after Allocation.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.211 Return and Reallocation of Affordable Housing Tax Credits
EMERGENCY

A Sponsor that has received a Reservation and that is unable to use the Affordable Housing Tax Credits reserved for the Sponsor by such Reservation may return these Affordable Housing Tax Credits to the Agency that issued the Reservation. If a return of the Affordable Housing Tax Credits occurs during the State fiscal year in which such Affordable Housing Tax Credits were reserved, such Agency may reserve and reallocate any Affordable Housing Tax Credits that have been returned or recaptured.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

SUBPART C: DONATIONS

Section 355.302 Aggregation of Donations
EMERGENCY

Subject to Section 355.303, ~~A~~ a Sponsor may aggregate a number of Donations into a single Donation in connection with an ~~Affordable Housing Project~~ Allocation. The Certificate issued in connection with the ~~Affordable Housing Project~~ Allocation shall state the aggregate amount of the Donation; however, the Affordable Housing Tax Credits may be divided ~~pro-rata~~ among the Donors of the individual Donations, as determined by the Sponsor.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.303 Minimum Donation Amount

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

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EMERGENCY

Except in the case of the transfer of a portion of a Certificate as set forth in Section 355.309 of this Part, ~~The~~ the minimum amount of a Donation shall be \$10,000. Individual Donations in an aggregated Donation, including Donations ~~that~~ for which the Affordable Housing Tax Credits are transferred as permitted under Section 355.309 of this Part, ~~may~~ must be less than \$10,000, ~~but~~ and the aggregated Donation must be at least \$10,000.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.304 Cash
EMERGENCY

The amount of a cash Donation shall be evidenced by a copy of the check or cashier's from the Donor, evidence of a wire-transfer of funds by the Donor, or such other evidence of the provision of cash by the Donor that may be satisfactory to the allocating Agency.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.305 Securities
EMERGENCY

Donations of stocks, bonds or other securities shall be documented by the certificate transferring ownership of the security to the Sponsor or a certificate evidencing the transfer of the beneficial interest in the security to the Sponsor; the amount of the Donation shall be the market value of the security at the close of the market on the day of the transfer.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.306 Real Property
EMERGENCY

Donations of real property may be: the fee simple interest in such real property; the beneficial interest of a land trust if a land trust hold title to such real property; or a ground lease with a minimum term of 50 years leasing the real property to the Sponsor.
Donations of a fee simple interest in real property shall be evidenced by a copy of the recorded deed conveying the fee simple title of the real property to the Sponsor and a title search or

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equivalent documentation showing that the ~~donor~~ Donor held fee simple title to the real property as of the date of the transfer. A Donation of a ground lease shall be evidenced by a copy of the ground lease under which the real property is leased. A donation of real property held in a land trust shall be evidenced by the document transferring the beneficial interest in the land trust to the Sponsor and a copy of the land trust agreement, certified by the land trustee, showing that the Sponsor is the sole beneficiary of the land trust. The value of the real property or the leasehold interest in a ground lease shall be determined by a current independent appraisal ~~of the property~~ done by a State-licensed appraiser. An Agency may, in its discretion, have another appraisal done by a State-licensed appraiser; in such a case, the value ~~of the property~~ shall be the lesser of the two appraisals. ~~The beneficial interest in a land trust shall be considered real property. The documentation required to evidence the conveyance of real property held in a land trust shall be the document transferring the beneficial interest in the land trust to the Sponsor and a copy of the land trust agreement, certified by the land trustee, showing that the Sponsor is the sole beneficiary of the land trust.~~

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.309 Transfer of Affordable Housing Tax Credits
EMERGENCY

A Donor that has received a Certificate ~~in connection with an Affordable Housing Project~~ may transfer all or a portion of the Affordable Housing Tax Credits represented by this Certificate to another individual or entity if ~~the transfer is made to~~ an individual or entity ~~that~~ has purchased land for the Affordable Housing Project or ~~another Donor~~ that has made a Donation to ~~the~~ an Affordable Housing Project for which the Certificate was issued. An individual or entity receiving a transfer of Affordable Housing Tax Credits in an amount less than \$100,000 must make a Donation for an Affordable Housing Project of at least 10% of the amount of the transferred Affordable Housing Tax Credits. An individual or entity receiving a transfer of Affordable Housing Tax Credits in an amount equal to or greater than \$100,000 must make a minimum Donation of \$10,000. The Certificate shall indicate the name of the original Donor and the name of the entity to which the Certificate is transferred.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

SUPBART D: ~~AFFORDABLE HOUSING~~ PROJECTS~~Section 355.402 Down Payment and Closing Cost Assistance~~

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~~An Agency may make Allocations to Sponsors of Affordable Housing Projects providing only down payment and closing cost assistance only for Employer Assisted Housing Projects.~~

Section ~~355.403~~ [355.402](#) Employer-Assisted Housing Projects
EMERGENCY

\$2,000,000 of the Affordable Housing Tax Credit Ceiling for a State fiscal year shall be reserved for Employer-Assisted Housing Projects. Of this ceiling, 24.5% shall be available for allocation by the City of Chicago and 75.5% shall be available for allocation by the Authority. If those funds are not reserved for Employer-Assisted Housing Projects by January 31 of that State fiscal year, the funds shall be available for Reservation and Allocation for ~~any type of~~ Affordable Housing Projects, [Technical Assistance or General Operating Support](#).

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

Section ~~355.404~~ [355.403](#) Recapture Agreement
EMERGENCY

Each Household receiving assistance [or a subsidy](#) under a Single Family Project in connection with the purchase of a Single Family Residence shall enter into a Recapture Agreement with the Sponsor. The Recapture Agreement shall create a lien on the Single Family Residence and shall provide that, if the Single Family Residence is transferred during the term of the Compliance Period, other than by will, inheritance or a transfer by law to a joint tenant owner, the Household shall repay to the Sponsor a prorated portion of any funds provided as a grant or subsidy toward the purchase of the Single Family Residence. In cases of hardship to a Low-Income Household, such as serious illness or loss of employment, an Agency may shorten the Compliance Period.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

Section ~~355.405~~ [355.404](#) Multifamily Housing Projects
EMERGENCY

An Agency may make Allocations for Multifamily Housing Projects that involve the construction or rehabilitation of multifamily rental housing buildings.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

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Section ~~355.406~~ [355.405](#) Set-Aside for Technical Assistance and General Operating Support
EMERGENCY

\$1,000,000 of the Affordable Housing Tax Credit Ceiling for a State fiscal year shall be reserved for Technical Assistance and General Operating Support. Of this ceiling, 24.5% shall be available for allocation by the City of Chicago and 75.5 % shall be available for allocation by the Authority. [If these funds are not reserved for Technical Assistance or General Operating Support by May 1 of that State fiscal year, the funds shall be available for Reservation and Allocation for any type of Affordable Housing Projects or Employer-Assisted Housing Projects.](#)

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

Section ~~355.407~~ [355.406](#) Limitations on Amount of Technical Assistance and General Operating Support
EMERGENCY

No Affordable Housing Project shall receive Affordable Housing Tax Credits for Technical Assistance and General Operating Support for the Sponsor of the Affordable Housing Project in an amount greater than 10% of the Allocation for the Affordable Housing Project.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

Section ~~355.408~~ [355.407](#) Technical Assistance--Home Ownership Counseling
EMERGENCY

An Agency Head may determine that his or her Agency will allocate Affordable Housing Tax Credits for Technical Assistance for Donations to entities that provide home ownership counseling services unconnected to a particular Affordable Housing Project. All such home ownership counseling services shall be provided to Households that qualify as Low-Income Households or in the case of Employer Assisted Housing Moderate Income Households as of the date of the provision of the services.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. [5033](#), effective March 10, 2003, for a maximum of 150 days)

SUBPART E: COMPLIANCE MONITORING

Section 355.503 Books and Records

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EMERGENCY

The books and records of each Sponsor and each Affordable Housing Project ~~and its Sponsor~~ shall be subject to inspection, examination and copying by the allocating Agency and its authorized representatives or agents at such times as the allocating Agency reasonably requires for the purpose of determining whether the Sponsor and such Affordable Housing Project is in compliance with Section 7.28 and this Part.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

Section 355.504 Furnishing Information
EMERGENCY

~~The~~ Each Sponsor ~~of each Affordable Housing Project~~ shall furnish such information and operating reports as the allocating Agency shall require in connection with the monitoring of the Sponsor, and if applicable, the Sponsor's Affordable Housing Project or Employer-Assisted Housing Project for compliance with Section 7.28 and this Part.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

SUBPART F: REPORTS

355.601 Agency Reports
EMERGENCY

Each Agency shall submit quarterly reports to the Authority setting forth the Agency's activities under the Program for that quarter. The report shall include the following information:

- a) the amount of Affordable Housing Tax Credits reserved or allocated since the date of the last report;
- b) the name and address of ~~the~~ each Sponsor ~~of each Affordable Housing Project~~;
- c) For each Affordable Housing Project:
 - 1) the amount of Affordable Housing Tax Credits reserved or allocated;
 - 2) the total number of units or Single Family Residences in the Affordable Housing Project;

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- 3) the number of units or Single Family Residences to be occupied by Low-Income and Very Low-Income Households;
 - 4) the type of Households to be served (such as elderly or special needs); and
 - 5) for Multifamily Housing Projects, the number of bedrooms in each unit;
- d) For each Affordable Housing Project, the amount of Affordable Housing Tax Credits reserved or allocated for General Operating Support and Technical Assistance, and the Sponsor's use of such General Operating Support and Technical Assistance; and
 - e) In connection with Technical Assistance for home ownership counseling services, the amount of Affordable Housing Tax Credits reserved or allocated and the number of Low-Income and Very Low-Income Households receiving counseling.
 - f) In connection with an Employer-Assisted Housing Project, the amount of Affordable Housing Tax Credits reserved or allocated and the number of Very Low-Income, Low –Income and Moderate Income Households that received assistance.

(Source: Adopted by emergency rulemaking at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF WITHDRAWAL OF PROPOSED RULEMAKING FOR FAILURE OF
THE AGENCY TO RESPOND TO OBJECTION OF
THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

DEPARTMENT OF PUBLIC AID

- 1) Heading of Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) Date Proposed Rulemaking Originally published in Illinois Register: 4/5/02;
26 Ill. Reg. 5047
- 4) Date Agency Received Joint Committee Statement of Objection: 11/25/02
- 5) Date of Expiration of 90-Day Period for Agency Response to Statement of Objection:
2/23/03

Pursuant to Section 5-110(f) of the Illinois Administrative Procedure Act:

Failure of an agency to respond to the Joint Committee's Objections to a proposed rule, amendment or repealer within 90 days after receipt of the Objection shall constitute withdrawal of the rulemaking in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State, and the notice shall be published in the next available issue of the Illinois Register. The Secretary of State shall refuse to accept for filing a certified copy of the proposed rule, amendment or repealer under the provisions of Section 5-65.

Because the Department of Public Aid has failed to respond to the Objection of the Joint Committee within the statutory period, the above-referenced rulemaking is, by operation of law, withdrawn.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

No second notices were received by the Joint Committee on Administrative Rules during the period of March 4, 2003 through March 10, 2003. Other items previously placed on the JCAR agenda will be considered at the April 8, 2003 meeting. 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.

EXECUTIVE ORDERS

2003-8**Executive Order on Collective Bargaining by Personal Care Assistants**

WHEREAS, personal care assistants (“personal assistants”) provide service to Illinois citizens in need (“recipients”) as part of the Home Services Program under 20 ILCS 2405/3 and 89 Ill.Admin.Code section 676.10, et seq.; and

WHEREAS, in State of Illinois (Departments of Central Management Services & Rehabilitation Services), 2 PERI 2006 at 35 (1985), the State Labor Relations Board found that personal assistants are in a “unique” employment relationship and that the State was not “their ‘employer’ or, at least, their sole employer” under the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., and the Board therefore held that it lacked jurisdiction over the relationship between the State and the personal assistants; and

WHEREAS, the decision in State of Illinois left the Executive Branch with discretion over the organization of its relationship with personal assistants; and

WHEREAS, it is important to preserve the recipients’ control over the hiring, in-home supervision, and termination of personal assistants and, simultaneously, preserve the State’s ability to ensure efficient and effective delivery of personal care services and control the economic terms of the personal assistants’ employment under the Homes Services Program; and

WHEREAS, each recipient employs only one or two personal assistants and does not control the economic terms of their employment under the Homes Services Program and therefore cannot effectively address concerns common to all personal assistants; and

WHEREAS, the personal assistants work in the homes of recipients throughout Illinois and therefore cannot effectively voice their concerns about the organization of the Home Services program, their role in the program, or the terms and conditions of their employment under the Program without representation; and

WHEREAS, it is essential for the State to receive feedback from the personal assistants in order to effectively and efficiently deliver home services; and

WHEREAS, personal assistants are not State employees for purposes of eligibility to receive statutorily mandated benefits because the State does not hire, supervise or terminate the personal assistants; and

WHEREAS, the State has productively dealt with a representative of the personal assistants on an informal basis, and a system of collective bargaining has successfully been implemented with respect to similarly situated workers in other states.

THEREFORE, I hereby order the following:

- I. The State shall recognize a representative designated by a majority of the personal assistants as the exclusive representative of all personal assistants, accord said representative all the rights and duties granted such representatives by the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., and engage in collective bargaining with said representative concerning all terms and conditions of employment of personal assistants working under the Homes Services Program that are within the State’s control.

EXECUTIVE ORDERS

- II. This Executive Order is not intended to and will not in any way alter the “unique” employment arrangement of personal assistants and recipients, nor will it in any way diminish the recipients’ control over the hiring, in-home supervision, and termination of personal assistants within the limits established by the Home Services Program. This Executive Order 2003-8 shall take effect upon filing with the Secretary of State.

Issued by the Governor March 4, 2003

Filed by the Secretary of State March 10, 2003

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PUBLIC INFORMATION

NOTICE OF FINE IMPOSED UNDER
THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(h) of the Residential Mortgage License Act of 1987 ("the Act") and 205 ILCS 635/4-5 (H), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$500 against RPM Mortgage Company, LLC, License No. #5452 of Chicago, Illinois a licensee under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder, effective February 25, 2003.

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PUBLIC INFORMATION

NOTICE OF FINE IMPOSED UNDER
THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(h) of the Residential Mortgage License Act of 1987 ("the Act") and 205 ILCS 635/4-5 (H), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$500 against American Family Mortgage Banking, Inc., License No. #6156 of Carol Stream, Illinois a licensee under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder, effective February 25, 2003.

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PUBLIC INFORMATION

NOTICE OF FINE IMPOSED UNDER
THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(h) of the Residential Mortgage License Act of 1987 ("the Act") and 205 ILCS 635/4-5 (H), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$500 against Mortgage Essentials, Inc., License No. #6173 of Chicago, Illinois a licensee under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder, effective February 25, 2003.

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PUBLIC INFORMATION

NOTICE OF FINE IMPOSED UNDER
THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(h) of the Residential Mortgage License Act of 1987 ("the Act") and 205 ILCS 635/4-5 (H), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$500 against Eagle Home Loans, Inc., License No. #6189 of Chicago, Illinois a licensee under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder, effective February 25, 2003.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Food Stamps
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Register citation of proposed or adopted rulemaking and other pertinent action: 27 Ill Reg. 4803.
- 4) Explanation: The Notice Page for the Department of Human Services, Notice of Request For Expedited Correction was missing:

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

- 1) Heading of the Part: Food Stamps
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Section Numbers: 121.59
- 4) Date Proposal published in Illinois Register: August 2, 2002; 26 Ill. Reg. 11706
- 5) Date Adoption published in Illinois Register: February 21, 2003; 27 Ill. Reg. 2889
- 6) Summary and Purpose of Expedited Correction: The proposed text of Section 121.59 as originally published stated "\$3,000 for all households with a qualifying member, as defined in Section 121.61 one or more members 60 years of age or older" for one of 3 asset disregards listed. However, the text the Department adopted stated "\$3000 for all households with a disabled member or one or more members 60 years of age or older". The Department wishes to correct this mistake as the text that was originally proposed is the correct adopted text.
- 7) Information and questions regarding this request shall be directed to:

Karl Menninger, Acting Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield, Illinois 62762
(217) 785-9772

ILLINOIS ADMINISTRATIVE CODE

Issue Index

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