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RULES
OF GOVERNMENTAL
AGENCIES



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INTRODUCTION

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

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

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

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

2007 REGISTER SCHEDULE VOLUME #31

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1	December 26, 2006	January 5, 2007
2	January 2, 2007	January 12, 2007
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49	November 26, 2007	December 7, 2007
50	December 3, 2007	December 14, 2007
51	December 10, 2007	December 21, 2007
52	December 17, 2007	December 28, 2007

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Tobacco Products Manufacturers' Escrow Enforcement Act of 2003
- 2) Code Citation: 14 Ill. Admin. Code 250
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
250.20	Amendment
250.30	Amendment
250.50	Amendment
250.70	Amendment
250.80	Amendment
250.100	Amendment
250.110	Amendment
- 4) Statutory Authority: Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167]
- 5) A Complete Description of the Subjects and Issues Involved: The Attorney General is required to maintain a directory of participating manufacturers in addition to a directory of tobacco product manufacturers who, although they have not participated in the Master Settlement Agreement with the State, are, based upon units sold in the State, maintaining adequately funded escrow accounts as required by law. Part 250 establishes procedures through which the Attorney General carries out this responsibility and manufacturers may be included on the directories. In this rulemaking the procedures for denying or removing a tobacco product manufacturer from placement on the directories are amended to establish a procedure for allowing a manufacturer to cure deficiencies within 10 calendar days of receiving a notice of intent to deny and to add to the factors upon which the Attorney General's Office may rely in deciding whether to list a manufacturer or brand family on the directory. All references to the National Association of Attorneys General's list of tobacco product manufacturers and the Director of Revenue's reviewing notice of appointment of an agent for service of process are removed. These amendments clarify the definition of "units sold" to include roll-your-own tobacco for which tobacco products tax is owed even though that type of tobacco product does not bear excise tax stamps, and they permit, rather than require, distributors to provide electronic mail addresses to the Attorney General's Office. They also include a reference to the manufacturers' statutory right to request judicial review of an adverse determination by the Attorney General's Office as to inclusion on the directory or the making of deposits in quarterly installments.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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NOTICE OF PROPOSED AMENDMENTS

- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first notice period by writing:

Marilyn Kueper, Chief
Tobacco Enforcement Bureau
Office of the Attorney General
500 S. Second Street
Springfield, IL 62706

217/785-8541
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses that will be affected are those that are licensed cigarette distributors, licensed distributors of roll-your-own tobacco, and tobacco product manufacturers.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2006

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 14: COMMERCE
SUBTITLE A: REGULATION OF BUSINESS
CHAPTER II: ATTORNEY GENERALPART 250
TOBACCO PRODUCTS MANUFACTURERS'
ESCROW ENFORCEMENT ACT OF 2003

Section	
250.10	General
250.20	Definitions
250.30	Distributor Filings
250.40	Prohibition of Distribution of Non-Compliant TPM Cigarettes
250.50	Appointment of Agent for Service of Process
250.60	Certification Requirements for Tobacco Product Manufacturers
250.70	NPMs Required to Make Quarterly Installment Payments
250.80	Establishment of Directory of Participating Manufacturers and Directory of Compliant NPMs
250.90	Release of Escrow Account Money
250.100	Review of AGO Determinations
250.110	Violations

AUTHORITY: Implementing and authorized by Sections 25 and 35 of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167].

SOURCE: Adopted at 27 Ill. Reg. 7719, effective April 16, 2003; emergency amendment at 28 Ill. Reg. 939, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7904, effective May 28, 2004; amended at 31 Ill. Reg. _____, effective _____.

Section 250.20 Definitions

"AGO" means the Office of the Illinois Attorney General.

"Brand family" has the same meaning prescribed in Section 10 of the Escrow Enforcement Act.

"Cigarette" has the same meaning prescribed in Section 10 of the Escrow Act [30 ILCS 168], which includes roll-your-own ("RYO") tobacco.

"Department" means the Illinois Department of Revenue.

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"Director" means Director of Revenue.

"Distributor" has the same meaning prescribed in Section 1 of the Cigarette Tax Act [35 ILCS 130], and Section 1 of the Cigarette Use Tax Act [35 ILCS 135], and, in addition, means a distributor of roll-your-own tobacco in accordance with Section 10-5 of the Tobacco Products Tax Act of 1995 [35 ILCS 143], as appropriate.

"Escrow Act" means the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168].

"Escrow Enforcement Act" means the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167] (see P.A. 93-446).

"Filed" means received by the AGO in readable form, however transmitted, or postmarked for delivery by the U.S. mail.

"Liability year" means the calendar year in which a tobacco product manufacturer's cigarettes are sold in Illinois, and to which the requirements of the Escrow Act apply.

"NPM" means a tobacco product manufacturer that is not a Participating Manufacturer.

"Participating manufacturer" has the same meaning prescribed in Section 15(a)(1) of the Escrow Act [30 ILCS 168].

"Qualified Escrow Fund" has the same meaning prescribed in Section 10 of the Escrow Act.

"Stamps or imprints" means revenue tax stamps or imprints as provided for in Section 3 of the Cigarette Tax Act or stamps or imprints evidencing the payment of cigarette use tax as provided for in Section 3 of the Cigarette Use Tax Act, as appropriate.

"Tobacco product manufacturer" or "TPM" has the same meaning prescribed in Section 10 of the Escrow Act.

"Units sold" has the same meaning prescribed in Section 10 of the Escrow Act

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and includes "roll-your-own" tobacco for which tobacco products tax is owed and does not bear an excise tax stamp of the State.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.30 Distributor Filings

- a) Each distributor shall report quarterly to the AGO on paper or electronic forms provided by the AGO such information as is necessary for the AGO to ascertain the quantity of each NPM's cigarettes sold in Illinois by the distributor during the preceding quarter. Paper forms shall be sent to: Office of the Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706. Paper forms may alternatively be faxed to (217)524-4701. Electronic forms shall be e-mailed to tobacco@atg.state.il.us. The quarterly information to be reported shall include:
- 1) The number of each NPM's cigarettes distributed by the distributor within Illinois, by brand.
 - 2) The equivalent stick count of each NPM's RYO tobacco distributed by the distributor within Illinois, by brand.
 - 3) The NPM name and address for each brand.
 - 4) The name and address of the person or entity from whom the distributor purchased or obtained the brand.
 - 5) The name and address of the first importer of foreign NPM brands or the first purchaser of non-resident NPM brands.
- b) The information required by subsection (a) shall be filed prior to the 20th day after the end of each calendar quarter. The filing for:
- 1) January, February, and March is due on or before April 20.
 - 2) April, May, and June is due on or before July 20.
 - 3) July, August, and September is due on or before October 20.
 - 4) October, November, and December is due on or before January 20 of the following year.

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- c) Distributors not selling any NPM brands for the relevant time period shall timely file a form as described in subsection (a) marked "none".
- d) Distributors shall maintain and make available to the Attorney General all records, invoices, and documentation relating to or reflecting purchases and sales of NPM cigarettes, which records, invoices and documentation provide a basis for the filings under subsection (a), for a period of not less than five years after the date of sale.
- e) Distributors ~~may~~ shall provide an electronic mail address to the AGO for the purpose of receiving electronic mail updates and notifications.
- f) Distributors shall provide any additional information requested by the AGO including, but not limited to, samples of packaging, labeling of each brand family, names of customers and quantities of each brand sold to them and a statement signed by an officer of the manufacturer, under penalty of perjury, certifying whether the manufacturer is, or is not, a participating tobacco manufacturer under the MSA.
- g) Distributors not complying with this Section 250.30, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.110.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.50 Appointment of Agent for Service of Process

- a) Any non-resident or foreign NPM that has not registered to do business in this State shall appoint an agent located within the State of Illinois to receive service of process on behalf of that non-resident or foreign NPM. On forms provided by the AGO, the NPM shall submit the name, address, phone number, company name (if applicable) and hours of availability of the agent, as well as proof of appointment, to ~~the Director and~~ the AGO.
- b) If the NPM terminates the authority of the agent, the NPM shall notify ~~the Director and~~ the AGO of the termination at least 30 calendar days prior to the termination, and provide proof at least 5 calendar days prior to the termination of the appointment of a new agent. If the agent terminates an agency appointment, the NPM shall notify ~~the Director and~~ the AGO of the termination no later than 5

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calendar days after the termination, and shall include proof of the appointment of a new agent.

- c) Any foreign or non-resident NPM that fails to appoint an agent as required by this Section and in Section 20 of the Escrow Enforcement Act shall be deemed to appoint the Illinois Secretary of State as the agent on whom process may be served on its behalf. However, such appointment will not satisfy the condition precedent for having its brand families listed in the directory of compliant NPMs.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.70 NPMs Required to Make Quarterly Installment Payments

- a) Whenever the AGO determines that compliance with the Escrow Act will be promoted by requiring certification and escrow deposits more frequently than on an annual basis, the AGO may require an NPM, on a case-by-case basis, to certify its compliance with the Escrow Act and make its required escrow deposits in quarterly installments during the Liability Year. The notice of the AGO's determination requiring the payment of quarterly installments shall be a final administrative decision. Factors which may be considered in making this determination include, but are not limited to, the following:
- 1) the initial addition of an NPM to the directory of compliant NPMs;
 - 2) a history of the NPM not complying with the Escrow Act;
 - 3) a history of the NPM under-funding its qualified escrow account;
 - 4) a history of the NPM failing to timely pay, or failing to pay entirely, judgments or penalties due under the Escrow Act to a qualified escrow account or to the AGO;
 - 5) credible evidence supporting a concern by the AGO that the NPM may not be financially able to meet its fiscal obligations under the Escrow Act when they become due on April 30 of the following calendar year;
 - 6) a volume of more than 2,000,000 cigarettes sold during a calendar quarter.
- b) The ~~initial~~ notice of the AGO's determination requiring the payment of quarterly installments shall include:

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- 1) the basis for the determination;
 - 2) the date the first quarterly payment is due, such date being a minimum of 30 days after the date of notice;
 - 3) that the NPM may request judicial review of the AGO's determination in the manner set forth in Section 250.100 ~~no later than 30 days after the date of notice~~;
 - 4) the requirement that quarterly installment payments shall be made for four quarters where the basis for quarterly installment payments is the initial addition of an NPM to the directory of compliant NPMs; and
 - 5) a copy of the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment.
- c) Each NPM required to make quarterly installment payments shall:
- 1) make its required escrow deposit based upon Illinois sales for the previous quarter;
 - 2) provide proof of deposit for each quarterly installment;
 - 3) file quarterly with the AGO the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment; and
 - 4) file a State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Escrow Reconciliation Payment, make a final reconciliation payment and provide proof of deposit on or before April 15 of the year following the liability year.
- d) The information required by subsection (c) shall be filed on or before the last day of the month following the end of the quarter. The filing for:
- 1) January, February, and March is due on or before April 30.
 - 2) April, May and June is due on or before July 31.
 - 3) July, August and September is due on or before October 31.

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- 4) October, November and December is due on or before January 31 of the following year.
- e) The AGO shall notify the NPM of the date it can cease making quarterly installment payments.
- f) NPMs not complying with this Section, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and will be dealt with in accordance with Section 250.110. In addition, NPMs not complying with this Section shall be subject to a penalty not to exceed 5% of the amount improperly withheld from escrow per each day of the violation, and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.80 Establishment of Directory of Participating Manufacturers and Directory of Compliant NPMs

- a) The AGO shall develop, maintain, and publish a directory of participating manufacturers who have generally performed their financial obligations under the MSA ~~(or provide a web address link to a directory maintained by the National Association of Attorneys General)~~, and a separate directory of compliant NPMs who have established a qualified escrow account and who are otherwise in compliance with Section 15(a)(2) of the Escrow Act and Section 15(a)(2) and (3) of the Escrow Enforcement Act.
- b) The directories shall be published on the AGO's website (www.illinoisattorneygeneral.gov) and shall be revised as necessary as new information is received by the AGO.
 - 1) If the AGO intends to remove or not list a TPM from the directory, the AGO shall send a notice of intent to deny the TPM or its agent for service of process. The notice of intent to deny shall include:
 - A) the factual and legal deficiencies upon which the AGO's intended action rests;

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- B) the actions that the TPM must undertake to cure the factual or legal deficiencies upon which the intended action is based; and
- C) a notification that the TPM shall have 10 calendar days to cure deficiencies and submit documentation or other information of its attempt to cure to the AGO.
- 2) The AGO may extend the time period for a TPM to cure its deficiencies.
- c) If the TPM's deficiencies have been cured, a notice of approval shall be sent to the TPM or its agent for service of process. If the TPM's deficiencies have not been cured, a notice of removal or refusal to list shall be sent to the TPM or its agent for service of process. The notice of approval, removal or refusal to list shall be sent by certified or registered U.S. Mail or by other commercial mail delivery service 10 days prior to the change. The notice of approval, removal or refusal to list shall be a final administrative decision. Any TPM may request judicial review of the final administrative decision in the manner set forth in Section 250.100.
- d) If the AGO decides to add or remove a TPM or brand family from the directory, a notice of the addition or removal of an NPM or brand family from the directory shall be sent provided to distributors. The notice to distributors shall be sent by U.S. Mail or by other commercial mail delivery service 10 calendar days prior to the change. Notice of such change shall also be provided to the NPM that is being added or removed (or whose brand family is being added or removed). The notice shall be sent to the NPM or its agent for service of process by certified mail 10 calendar days prior to the change.
- ee) The AGO shall not place an NPM on the directory of compliant NPMs unless all outstanding final judgments (including interest thereon) for violations of the Escrow Act and the Escrow Enforcement Act have been fully satisfied for that brand family and NPM, and:
- 1) the NPM has had sales in one or more Liability Years prior to the date of the directory's publication and it is in full compliance with its escrow obligations under the Escrow Act and the Escrow Enforcement Act and Section 250.70 as to such sales, including the payment of any applicable penalties; or
 - 2) the NPM is a successor to a tobacco product manufacturer that has had sales in one or more Liability Years prior to the date of the directory's

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publication, and it has deposited funds into a qualified escrow account to fully fund all prior Liability Year obligations for all of its predecessor's brands and paid all the penalties due for all such brands for all prior Liability Years, if the NPM's predecessor has not already done so; or

- 3) the NPM has had no sales in any prior Liability Years but has established a qualifying escrow account (as evidenced by an approved Escrow Agreement) and is otherwise compliant with the Escrow Act and the Escrow Enforcement Act.

~~f~~) Under Section 15(a)(2) of the Escrow Act, each NPM for a particular brand family is jointly and severally liable with every other NPM for that particular brand family for all Liability Year escrow obligations and penalties.

g) In determining compliance for purposes of placing a ~~TPM~~~~an NPM~~ on the directory of participating manufacturers and the directory of compliant NPMs, the AGO may consider the following factors:

- 1) the requirements for placement on the directory as set forth in this Part and in the Acts;
- 2) distributor filings;
- ~~3~~2) the ~~TPM's~~~~NPM's~~ certifications, ~~and~~ affidavits, and supporting documents;
- 4) the lack of completeness of the TPM's certifications, affidavits, and supporting documents;
- ~~5~~3) the NPM's escrow agreement;
- 6) the failure of a TPM who is a PM to generally perform its financial obligations under the MSA, or of the TPM, predecessor of the TPM, or previous TPM of the brand families to make its full MSA payments unless as provided in MSA § XI(d);
- 7) the failure of the NPM, predecessor of the NPM, or previous NPM of the brand families to timely pay or fully fund its qualified escrow account or to timely or entirely pay judgments or penalties due to a qualified escrow

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- account or to the AGO under the Escrow Act or other states' tobacco statutes;
- 4) ~~the timeliness of the NPM's deposits into the escrow account;~~
- 5) ~~the timeliness of the NPM's payment of penalties due;~~
- 6) ~~the requirements for placement on the directory as set forth in this Part and in the Acts;~~
- 87) whether the ~~TPM~~NPM is, in fact, the manufacturer of the brands with respect to which the ~~TPM~~NPM seeks to be listed as compliant; ~~and~~
- 9) whether acting on its own or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries or another TPM, the TPM's having engaged in business as a distributor (as defined in the Tobacco Products Tax Act of 1995 [35 ILCS 143]) without first having obtained a license to do so from the Department;
- 10) the TPM's failure to cure the deficiencies identified in a notice of intent to deny under this Part within 10 calendar days after receiving the notice;
- 11) the TPM's failure to provide additional information as requested by the AGO;
- 128) information from any other source (e.g., U.S. Department of the Treasury, Department of Revenue, distributors) that pertains to the verification of the accuracy of the information provided by the ~~TPM~~NPM;
- 13) whether the TPM is controlled, managed, or operated by a person with a current or prior interest in any other TPM that is not or has not been compliant with the Escrow Act or that is the subject of an injunction for failure to comply with the Escrow Act; and
- 14) any other facts or circumstances that are relevant to the certification of the TPM.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.100 Review of AGO Determinations

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~~All AGO's determinations of removal and refusal to list and AGO's determinations regarding quarterly installments shall be final administrative decisions. Any TPM dissatisfied with the AGO's determination of removal or refusal to list compliance, or with the AGO's determination regarding quarterly installments, may obtain judicial review, which shall be governed by the provisions of the Administrative Review Law [735 ILCS 5/3]. ~~submit documents relevant to the determination to the AGO and request review of the determination by an Assistant Attorney General who is designated by the Attorney General to undertake such reviews and who did not participate in the initial determination. Any such request for a determination shall be submitted in writing to: Office of the Illinois Attorney General, Special Litigation Bureau, 100 West Randolph Street, 13th Floor, Chicago, Illinois, 60601. The burden of proof shall be on the TPM to establish that it or a particular brand family is entitled to be listed in the directory.~~~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 250.110 Violations

- a) The AGO may investigate conduct that appears to be in violation of the Escrow Act, the Escrow Enforcement Act, or this Part, and may request the assistance of the Department in accordance with its investigatory powers under the Cigarette Tax Act [35 ILCS 130], the Cigarette Use Tax Act [35 ILCS 135], or the Tobacco Products Tax Act of 1995 [35 ILCS 143].
- b) If the AGO determines that a violation has occurred, it shall give written notice to the distributor or the ~~TPM~~~~NPM~~ that has committed the violation and shall provide written notice of the violation to the Director. The notice shall include copies of any documents evidencing the violation and a recommendation for revocation or suspension of license pursuant to Section 6 of the Cigarette Tax Act, Section 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco Products Tax Act of 1995, as appropriate.
- c) The AGO may initiate litigation in Circuit Court to enforce the provisions of the Escrow Act, the Escrow Enforcement Act, and this Part, or to seek an injunction to restrain a threatened or actual violation of the Acts or rules. In any such action, the AGO shall be entitled to recover the costs of the investigation, the costs of the litigation, and reasonable attorney fees.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Reimbursement Provision Contained in Individual and Group Accident and Health Policies
- 2) Code Citation: 50 Ill. Adm. Code 2020
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
2020.20	Amendment
2020.30	Amendment
2020.40	Amendment
- 4) Statutory Authority: Implementing Sections 143(l), 357.18, 357.19, 367(11) and Article IX and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/Art. IX, 143(l), 357.18, 357.19, 367(11) and 401]
- 5) A Complete Description of the Subjects and Issues Involved: Insurers can elect to include reimbursement or subrogation language in their policy provisions, however, this Section is not clearly written to differentiate the rights for reimbursement and subrogation. It's important to note that the change does not establish new rights for subrogation but its purpose would be to clearly identify the existing requirements for both reimbursement and subrogation language.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking: No
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking 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.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

Helen Kim, Staff Attorney
Department of Financial and
Professional Regulation
Division of Insurance
100 W. Randolph
Suite 9-301
Chicago, Illinois 60601

or

Craig Cellini, Rules Coordinator
Department of Financial and
Professional Regulation
Division of Insurance
320 West Washington
4th Floor
Springfield, Illinois 62767-0001

312/814-5422

217/785-2139

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: This does not affect small businesses, small municipalities and not for profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: Reporting
- C) Types of professional skills necessary for compliance: Insurance

14) Regulatory Agenda on which this rule was summarized: January 2007

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL
REGULATION~~INSURANCE~~

SUBCHAPTER Z: ACCIDENT AND HEALTH INSURANCE

PART 2020

REIMBURSEMENT AND SUBROGATION PROVISIONS~~PROVISION~~ CONTAINED IN
INDIVIDUAL AND GROUP ACCIDENT AND HEALTH POLICIES

Section

2020.10	Scope
2020.20	Purpose
2020.30	Definitions
2020.40	Reimbursement Provision

AUTHORITY: Implementing Sections 143(1), 357.18, 357.19, 367(11) and Article IX and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/Art. IX, 143(1), 357.18, 357.19, 367(11) and 401].

SOURCE: Adopted at 24 Ill. Reg. 16666, effective November 1, 2000; amended at 31 Ill. Reg. _____, effective _____.

Section 2020.20 Purpose

The purpose of this Part is to clarify policy form language concerning the application of Sections 357.18 and 357.19 of the Illinois Insurance Code [215 ILCS 5/357.18 and 357.19] and the use of reimbursement and subrogation provisions in such policy forms. This Part is not intended to affect any equitable causes of action, if any, that~~which~~ may exist or develop in relation to the insurance contract.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 2020.30 Definitions

Code means the Illinois Insurance Code [215 ILCS 5].

Department means the Illinois Department of Financial and Professional
Regulation~~Insurance~~.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

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Division means the Illinois Department of Financial and Professional Regulation-
Division of Insurance.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 2020.40 Reimbursement Provision

- a) Right of Reimbursement: In addition to any other requirements set forth in the ~~Illinois Insurance~~ Code or ~~Department~~ Department's regulations, if an insurer includes a reimbursement provision in its policy, that provision shall be in the formstate, as set forth in subsection (a)(1) if the insurer has the right to first reimbursement, or subsection (a)(2) if the insurer does not have the right to first reimbursement, ~~unless otherwise approved by the Department pursuant to subsection (b) of this Section:~~
- 1) ~~Right of Reimbursement: If a covered person incurs expenses for sickness or injury that occurred due to the negligence of a third party: A) we~~ "If a covered person recovers expenses for sickness or injury that occurred due to the negligence of a third party, we have the right to first reimbursement for all benefits we paid from any and all damages collected from the negligent third party for those same expenses whether by action at law, settlement, or compromise, by the covered person, the covered person's parents, if the covered person is a minor, or the covered person's legal representative as a result of that sickness or injury. You are required to furnish any information or assistance, or provide any documents that we may reasonably require in order to exercise our rights under this provision. This provision applies whether or not the third party admits liability."; ~~and~~
- ~~2B)~~ "If a covered person recovers expenses for sickness or injury that occurred due to the negligence of a third party, we have the right to reimbursement for all benefits we paid from any and all damages collected from the negligent third party for those same expenses whether by action at law, settlement, or compromise, by the covered person, covered person's parents if the covered person is a minor, or covered person's legal representative as a result of that sickness or injury. You are required to furnish any information or assistance, or provide any documents that we may reasonably require in order to exercise our rights under this provision. This provision applies whether or not the third party admits liability." ~~we~~

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~~are assigned the right to recover from the third party, or his or her insurer, to the extent of the benefits we paid for that sickness or injury.~~

~~We shall have the right to first reimbursement out of all funds the covered person, the covered person's parents, if the covered person is a minor, or the covered person's legal representative, is or was able to obtain for the same expenses we have paid as a result of that sickness or injury.~~

~~You are required to furnish any information or assistance or provide any documents that we may reasonably require in order to obtain our rights under this provision. This provision applies whether or not the third party admits liability.~~

2) ~~Right of Reimbursement: If a covered person incurs expenses for sickness or injury that occurred due to the negligence of a third party:~~

A) ~~we have the right to reimbursement for all benefits we paid from any and all damages collected from the third party for those same expenses whether by action at law, settlement, or compromise, by the covered person, covered person's parents, if the covered person is a minor, or covered person's legal representative as a result of that sickness or injury; and~~

bB) Right of Subrogation: In addition to any other requirements set forth in the Code or Department regulations, if an insurer includes a subrogation provision in its policy, that provision shall be in the form as follows: "We are assigned the right to recover from the negligent third party, or his or her insurer, to the extent of the benefits we paid for that sickness or injury. You are required to furnish any information or assistance, or provide any documents that we may reasonably require in order to exercise our rights under this provision. This provision applies whether or not the third party admits liability."

~~We shall have the right to reimbursement out of all funds the covered person, the covered person's parents, if the covered person is a minor, or the covered person's legal representative, is or was able to obtain for the same expenses we have paid as a result of that sickness or injury.~~

~~You are required to furnish any information or assistance or provide any documents that we may reasonably require in order to obtain our rights~~

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~~under this provision. This provision applies whether or not the third party admits liability.~~

- b) ~~An insurer may not modify the standard reimbursement provision language in subsection (a) of this Section unless it receives prior approval from the Department. However, under no circumstances can the language stated in paragraph (A) of subsection (a)(1) or (a)(2) of this Section be modified to circumvent Section 357.18 and 357.19 of the Illinois Insurance Code [215 ILCS 5/357.18 and 357.19]. The insurer shall notify the Department in its letter of submission made pursuant to 50 Ill. Adm. Code 916.40(b) of the proposed use of modified reimbursement language pursuant to this Section in all policy forms submitted for approval pursuant to Section 143 of the Illinois Insurance Code [215 ILCS 5/143] and 50 Ill. Adm. Code 916.~~
- c) Any policy containing a reimbursement or subrogation provision that is in effect prior to ~~July 1, 2007~~November 1, 2000 shall comply with the provisions of this Part upon the renewal of that policy.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Processing, Classification Policies and Review Criteria

2) Code Citation: 77 Ill. Adm. Code 1110

3) Section Numbers: Proposed Action:

1110.210	Amend
1110.220	Repeal
1110.230	Amend
1110.234	New
1110.310	Repeal
1110.320	Repeal
1110.410	Repeal
1110.420	Repeal
1110.510	Repeal
1110.520	Repeal
1110.530	Amend
1110.610	Repeal
1110.620	Repeal
1110.630	Amend
1110.1410	Repeal
1110.1420	Repeal
1110.1430	Amend
1110.2310	Repeal
1110.2320	Repeal
1110.2330	Amend
1110.2410	Repeal
1110.2420	Repeal
1110.2430	Amend
1110.3030	New

4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]

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

Definitions:

Proposed amendments would consolidate all definitions in Part 1100 and Part 1110 to Section 1100.220 – General Definitions. The proposed relocation and consolidation of definitions provides a central source for all review-based

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definitions. This will simplify the process of searching for definitions related to project review subjects and criteria.

Sections 1110.220, 1110.520, 1110.620, 1110.1420, 1110.2320, and 1110.2420 will be repealed.

General Requirements:

Proposed Sections 1110.210 and 1110.230 change "Review Criteria" to "Information Requirements". The proposed "Information Requirements" will present an overview of the applicant, the proposed project, and all options considered and rejected, in favor of the proposed project. The three "Information Requirements" to be addressed are: Background of Applicant; Purpose of Project; and Alternatives to the Proposed Project.

Two of the redundant existing review criteria are incorporated into "Category of Service" review criteria in Sections F through AE of Part 1110. Existing criterion "Project Scope and Size" has been relocated to proposed Section 1110.232.

"Project Scope and Size, Utilization and Unfinished/Shell Space":

In the proposed new Section 1110.232, review criteria for both "Size of Project" and "Project Services Utilization" are relocated to a new Section (1110.234), which incorporates criteria concerning the physical aspects of a project, as well as "utilization" for projects that involve services, functions or equipment for which HFPB has not established utilization or occupancy standards in Part 1100.

In addition, this rule includes a new criterion for the review of "Unfinished/Shell Space". HFPB is required to consider shell space or unfinished space proposed in a project, per a mandate of the Health Facilities Planning Act.

"Category of Service" Rules:

A new format has been developed for all "Category of Service" review criteria. The new format reflects the intent and purposes of the Health Facilities Planning Act, and since the format will be applied to all "Category of Service" review criteria, it provides a uniform approach to the review and assessment of proposed projects.

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The proposed new format retains most of the existing requirements, and also incorporates "Need" and "Location" requirements from the existing "General Review Criteria" in Section 1110.230. Subparts D and E will be repealed, since the requirements have been incorporated into the "Category of Service" review criteria.

"Clinical Service Areas Other Than Categories of Service" – Review Criteria:

The proposed new rule contains review criteria that are applicable only to those CON projects or components of projects concerning Clinical Service Areas that are not "Categories of Service", but for which utilization standards are listed in Part 1110- Attachment B.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Public comment may be submitted at the Health Facilities Planning Board meeting, which starts at 9:00 AM on Wednesday, May 2, 2007.

The meeting will be conducted at:

Inn at 835
835 S. Second Street
Springfield, Illinois

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

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Claire Burman
Coordinator, Rules Development
Illinois Health Facilities Planning Board
100 W. Randolph Street, 6th Floor
Chicago, Illinois 60601

312/814-2565

e-mail: CLAIRE.BURMAN@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Hospitals, long term care facilities, ESRD facilities, Ambulatory Surgical Treatment Centers, Comprehensive Physical Rehabilitation Centers.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2006

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

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TITLE 77: PUBLIC HEALTH

CHAPTER II: HEALTH FACILITIES PLANNING BOARD

SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1110

PROCESSING, CLASSIFICATION POLICIES AND REVIEW CRITERIA

SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section

- 1110.10 Introduction to Part 1110
- 1110.20 Projects Required to Obtain a Permit (Repealed)
- 1110.30 Processing and Reviewing Applications
- 1110.40 Classification of Projects
- 1110.50 Recognition of Services Which Existed Prior to Permit Requirements
- 1110.55 Recognition of Non-hospital Based Ambulatory Surgery Category of Service
- 1110.60 Master Design Projects
- 1110.65 Master Plan or Capital Budget Projects

SUBPART B: REVIEW CRITERIA – DISCONTINUATION

Section

- 1110.110 Introduction
- 1110.120 Discontinuation – Definition
- 1110.130 Discontinuation – Review Criteria

SUBPART C: GENERAL PURPOSE, MASTER DESIGN, AND FACILITY CONVERSION - INFORMATION REQUIREMENTS AND CHANGES OF OWNERSHIP REVIEW CRITERIA

Section

- 1110.210 Introduction
- 1110.220 Definitions – General Review Criteria (Repealed)
- 1110.230 Project Purpose, Background and Alternatives - Information Requirements~~General Review Criteria~~
- 1110.234 Project Scope and Size, Utilization, and Unfinished/Shell Space - Review Criteria
- 1110.235 Additional General Review Criteria for Master Design and Related Projects Only
- 1110.240 Changes of Ownership, Mergers and Consolidations

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SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS
INVOLVING ESTABLISHMENT OF ADDITIONAL BEDS OR
SUBSTANTIAL CHANGE IN BED CAPACITY

Section

- 1110.310 Introduction (Repealed)
1110.320 Bed Related Review Criteria (Repealed)

SUBPART E: MODERNIZATION REVIEW CRITERIA

Section

- 1110.410 Introduction (Repealed)
1110.420 Modernization Review Criteria (Repealed)

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA –
MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section

- 1110.510 Introduction (Repealed)
1110.520 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Definitions (Repealed)
1110.530 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Review Criteria

SUBPART G: CATEGORY OF SERVICE REVIEW CRITERIA –
COMPREHENSIVE PHYSICAL REHABILITATION

Section

- 1110.610 Introduction (Repealed)
1110.620 Comprehensive Physical Rehabilitation – Definitions (Repealed)
1110.630 Comprehensive Physical Rehabilitation – Review Criteria

SUBPART H: CATEGORY OF SERVICE REVIEW CRITERIA –
ACUTE MENTAL ILLNESS

Section

- 1110.710 Introduction
1110.720 Acute Mental Illness – Definitions
1110.730 Acute Mental Illness – Review Criteria

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SUBPART I: CATEGORY OF SERVICE REVIEW CRITERIA –
SUBSTANCE ABUSE/ADDICTION TREATMENT

Section

- 1110.810 Introduction (Repealed)
- 1110.820 Substance Abuse/Addiction Treatment – Definitions (Repealed)
- 1110.830 Substance Abuse/Addiction Treatment – Review Criteria (Repealed)

SUBPART J: CATEGORY OF SERVICE REVIEW CRITERIA –
NEONATAL INTENSIVE CARE

Section

- 1110.910 Introduction
- 1110.920 Neonatal Intensive Care – Definitions
- 1110.930 Neonatal Intensive Care – Review Criterion

SUBPART K: CATEGORY OF SERVICE REVIEW CRITERIA –
BURN TREATMENT

Section

- 1110.1010 Introduction (Repealed)
- 1110.1020 Burn Treatment – Definitions (Repealed)
- 1110.1030 Burn Treatment – Review Criteria (Repealed)

SUBPART L: CATEGORY OF SERVICE REVIEW CRITERIA –
THERAPEUTIC RADIOLOGY

Section

- 1110.1110 Introduction (Repealed)
- 1110.1120 Therapeutic Radiology – Definitions (Repealed)
- 1110.1130 Therapeutic Radiology – Review Criteria (Repealed)

SUBPART M: CATEGORY OF SERVICE REVIEW CRITERIA –
OPEN HEART SURGERY

Section

- 1110.1210 Introduction
- 1110.1220 Open Heart Surgery – Definitions
- 1110.1230 Open Heart Surgery – Review Criteria

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SUBPART N: CATEGORY OF SERVICE REVIEW CRITERIA –
CARDIAC CATHETERIZATION

Section

- 1110.1310 Introduction
- 1110.1320 Cardiac Catheterization – Definitions
- 1110.1330 Cardiac Catheterization – Review Criteria

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA –
~~IN-CENTER HEMODIALYSIS CHRONIC RENAL DIALYSIS~~

Section

- 1110.1410 Introduction (~~Repealed~~)
- 1110.1420 Chronic Renal Dialysis – Definitions (~~Repealed~~)
- 1110.1430 ~~Review Criteria for In-Center Hemodialysis Projects~~ ~~Chronic Renal Dialysis~~ –
~~Review Criteria~~

SUBPART P: CATEGORY OF SERVICE REVIEW CRITERIA –
NON-HOSPITAL BASED AMBULATORY SURGERY

Section

- 1110.1510 Introduction
- 1110.1520 Non-Hospital Based Ambulatory Surgery – Definitions
- 1110.1530 Non-Hospital Based Ambulatory Surgery – Projects Not Subject to This Part
- 1110.1540 Non-Hospital Based Ambulatory Surgery – Review Criteria

SUBPART Q: CATEGORY OF SERVICE REVIEW CRITERIA –
COMPUTER SYSTEMS

Section

- 1110.1610 Introduction (Repealed)
- 1110.1620 Computer Systems – Definitions (Repealed)
- 1110.1630 Computer Systems – Review Criteria (Repealed)

SUBPART R: CATEGORY OF SERVICE REVIEW CRITERIA –
GENERAL LONG-TERM CARE

Section

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- 1110.1710 Introduction
1110.1720 General Long-Term Care – Definitions
1110.1730 General Long-Term Care – Review Criteria

SUBPART S: CATEGORY OF SERVICE REVIEW CRITERIA –
SPECIALIZED LONG-TERM CARE

Section

- 1110.1810 Introduction
1110.1820 Specialized Long-Term Care – Definitions
1110.1830 Specialized Long-Term Care – Review Criteria

SUBPART T: CATEGORY OF SERVICE REVIEW CRITERIA –
INTRAOPERATIVE MAGNETIC RESONANCE IMAGING

Section

- 1110.1910 Introduction (Repealed)
1110.1920 Intraoperative Magnetic Resonance Imaging – Definitions (Repealed)
1110.1930 Intraoperative Magnetic Resonance Imaging – Review Criteria (Repealed)

SUBPART U: CATEGORY OF SERVICE REVIEW CRITERIA –
HIGH LINEAR ENERGY TRANSFER (L.E.T.)

Section

- 1110.2010 Introduction (Repealed)
1110.2020 High Linear Energy Transfer (L.E.T.) – Definitions (Repealed)
1110.2030 High Linear Energy Transfer (L.E.T.) – Review Criteria (Repealed)

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA –
POSITRON EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section

- 1110.2110 Introduction (Repealed)
1110.2120 Positron Emission Tomographic Scanning (P.E.T.) – Definitions (Repealed)
1110.2130 Positron Emission Tomographic Scanning (P.E.T.) – Review Criteria (Repealed)

SUBPART W: CATEGORY OF SERVICE REVIEW CRITERIA –
EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY

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Section

- 1110.2210 Introduction (Repealed)
- 1110.2220 Extracorporeal Shock Wave Lithotripsy – Definitions (Repealed)
- 1110.2230 Extracorporeal Shock Wave Lithotripsy – Review Criteria (Repealed)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA –
SELECTED ORGAN TRANSPLANTATION

Section

- 1110.2310 Introduction (Repealed)
- 1110.2320 Selected Organ Transplantation – Definitions (Repealed)
- 1110.2330 Selected Organ Transplantation – Review Criteria

SUBPART Y: CATEGORY OF SERVICE REVIEW CRITERIA –
KIDNEY TRANSPLANTATION

Section

- 1110.2410 Introduction (Repealed)
- 1110.2420 Kidney Transplantation – Definitions (Repealed)
- 1110.2430 Kidney Transplantation – Review Criteria

SUBPART Z: CATEGORY OF SERVICE REVIEW CRITERIA –
SUBACUTE CARE HOSPITAL MODEL

Section

- 1110.2510 Introduction
- 1110.2520 Subacute Care Hospital Model – Definitions
- 1110.2530 Subacute Care Hospital Model – Review Criteria
- 1110.2540 Subacute Care Hospital Model – State Board Review
- 1110.2550 Subacute Care Hospital Model – Project Completion

SUBPART AA: CATEGORY OF SERVICE REVIEW CRITERIA – POSTSURGICAL
RECOVERY CARE CENTER ALTERNATIVE HEALTH CARE MODEL

Section

- 1110.2610 Introduction
- 1110.2620 Postsurgical Recovery Care Center Alternative Health Care Model – Definitions
- 1110.2630 Postsurgical Recovery Care Center Alternative Health Care Model – Review
Criteria

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- 1110.2640 Postsurgical Recovery Care Center Alternative Health Care Model – State Board Review
- 1110.2650 Postsurgical Recovery Care Center Alternative Health Care Model – Project Completion

SUBPART AB: CATEGORY OF SERVICE REVIEW CRITERIA –
CHILDREN'S RESPITE CARE ALTERNATIVE HEALTH CARE MODEL

- 1110.2710 Introduction
- 1110.2720 Children's Respite Care Center Alternative Health Care Model – Definitions
- 1110.2730 Children's Respite Care Center Alternative Health Care Model – Review Criteria
- 1110.2740 Children's Respite Care Center Alternative Health Care Model – State Board Review
- 1110.2750 Children's Respite Care Center Alternative Health Care Model – Project Completion

SUBPART AC: CATEGORY OF SERVICE REVIEW CRITERIA –
COMMUNITY-BASED RESIDENTIAL REHABILITATION CENTER
ALTERNATIVE HEALTH CARE MODEL

- 1110.2810 Introduction
- 1110.2820 Community-Based Residential Rehabilitation Center Alternative Health Care Model - Definitions
- 1110.2830 Community-Based Residential Rehabilitation Center Alternative Health Care Model – Review Criteria
- 1110.2840 Community-Based Residential Rehabilitation Center Alternative Health Care Model – State Board Review
- 1110.2850 Community-Based Residential Rehabilitation Center Alternative Health Care Model – Project Completion

SUBPART AE: CLINICAL SERVICE AREAS OTHER THAN
CATEGORY OF SERVICE - REVIEW CRITERIA

Section

1110.3030 Clinical Service Areas Other Than Categories of Service - Review Criteria

- 1110.APPENDIX A Medical Specialty Eligibility/Certification Boards
- 1110.APPENDIX B State and National Norms
- 1110.APPENDIX C Statutory Citations for All State and Federal Laws and Regulations

HEALTH FACILITIES PLANNING BOARD

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Referenced in Chapter 3

AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 18498; amended at 9 Ill. Reg. 3734, effective March 6, 1985; amended at 11 Ill. Reg. 7333, effective April 1, 1987; amended at 12 Ill. Reg. 16099, effective September 21, 1988; amended at 13 Ill. Reg. 16078, effective September 29, 1989; emergency amendments at 16 Ill. Reg. 13159, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 16 Ill. Reg. 16108, effective October 2, 1992; amended at 17 Ill. Reg. 4453, effective March 24, 1993; amended at 18 Ill. Reg. 2993, effective February 10, 1994; amended at 18 Ill. Reg. 8455, effective July 1, 1994; amended at 19 Ill. Reg. 2991, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 7981, effective May 31, 1995, for a maximum of 150 days; emergency expired October 27, 1995; emergency amendment at 19 Ill. Reg. 15273, effective October 20, 1995, for a maximum of 150 days; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2600; amended at 20 Ill. Reg. 4734, effective March 22, 1996; amended at 20 Ill. Reg. 14785, effective November 15, 1996; amended at 23 Ill. Reg. 2987, effective March 15, 1999; amended at 24 Ill. Reg. 6075, effective April 7, 2000; amended at 25 Ill. Reg. 10806, effective August 24, 2001; amended at 27 Ill. Reg. 2916, effective February 21, 2003; amended at 31 Ill. Reg. _____, effective _____.

SUBPART C: GENERAL PURPOSE, MASTER DESIGN, AND FACILITY CONVERSION - INFORMATION REQUIREMENTS AND CHANGES
~~OF OWNERSHIP~~ REVIEW CRITERIA

Section 1110.210 Introduction

- a) This Subpart contains all general purpose and scope, master design, and facility conversion information requirements and review criteria that apply in total or in part to all projects, with the exception of projects solely involving "discontinuation".

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- b) Each required point of information is intended to provide the Health Facilities Planning Board with an overview of the need for a proposed project. HFPB shall consider a project's conformance with the applicable information requirements contained in this Subpart, as well as a project's conformance with all applicable review criteria indicated in subsection (c), to determine whether sufficient project need has been documented to issue a Certificate of Need (CON).
- c) The review criteria to be addressed (as required) are contained in the following HFPB rules:
- 1) Section 1110.234 contains review criteria concerning project scope and size, utilization and unfinished shell space;
 - 2) Section 1110.3030 contains review criteria concerning clinical service areas other than categories of service;
 - 3) Subparts F through AE contain service specific review criteria that must be addressed, as applicable to the category of service included in a proposed project;
 - 4) 77 Ill. Adm. Code 1130 contains the CON procedural requirements that may be applicable to a proposed project.
- d) *An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The application shall include affirmative evidence on which the Director may make the findings required under this Section and upon which the State Board may make its decision on the approval or denial of the permit or exemption. [20 ILCS 3960/6]*
- e) Definitions for Subpart C and Subparts F through AE (service specific) are contained in the Act and in 77 Ill. Adm. Code 1100.220.

~~This Subpart C contains all General, Master Design, and Changes of Ownership Review Criteria that apply in total or in part to all projects except discontinuation and certain non-substantive projects.~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

HEALTH FACILITIES PLANNING BOARD

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Section 1110.220 Definitions - General Review Criteria (Repealed)

- a) ~~"Board Certified or Board Eligible Physician" means a physician who has satisfactorily completed an examination (or is "eligible" to take such examination) in a medical specialty and has taken all of the specific training requirements for certification by a specialty board. For purposes of this definition, "medical specialty" shall mean a specific area of medical practice by health care professionals. A listing of specialty boards may be found in Appendix A of this Part.~~
- b) ~~"Health Services" means diagnostic, treatment or rehabilitative services which are grouped, for purposes of review, into clinically related Categories of Service based upon level or type of support functions, equipment or treatment provided to patients/residents. Categories of Service, when established or discontinued, are subject to review regardless of cost.~~
- c) ~~"Level of Care" means a specific degree of, type of, or approach to patient/resident care within a defined category of service.~~
- d) ~~"Surgery" means a category of service pertaining to the performance of any type of surgical operation(s). Surgical areas include but are not limited to:~~
- ~~1) Operating Rooms;~~
 - ~~2) Nurses Station;~~
 - ~~3) Nurses' Lockers and Lounge;~~
 - ~~4) Doctor's Lockers and Lounge;~~
 - ~~5) Scrub Areas;~~
 - ~~6) General Storage Space;~~
 - ~~7) Linen Storage Area;~~
 - ~~8) Circulation Space;~~
 - ~~9) Patient Holding Area; and~~

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~~10) Recovery.~~

- e) ~~"Distinct Unit" means a physically distinct area comprising all beds served by a nursing station in which a particular category of service is provided and which utilizes a nursing staff assigned exclusively to the distinct area.~~
- f) ~~"DRG" means diagnostic related groups utilized in the Medicare program for health care reimbursement.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.230 Project Purpose, Background and Alternatives - Information Requirements~~General Review Criteria~~

The information requirements contained in this Section are applicable to all projects except projects that are solely for discontinuation. An applicant shall document the *qualifications, background, character and financial resources to adequately provide a proper service for the community* and also demonstrate that the project promotes the *orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of facilities or service.* [20 ILCS 3960/2]

a) Background of Applicant – Information Requirements

- 1) An applicant must demonstrate that it is fit, willing and able, and *has the qualifications, background and character to adequately provide a proper standard of health care service for the community.* [20 ILCS 3960/6] In evaluating the fitness of the applicant, HFPB shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application. A health care facility is considered "owned or operated" by every person or entity that, within the three years preceding the filing of the application, owns, directly or indirectly, an ownership interest. If any person or entity owns any option to acquire stock, the stock shall be considered to be owned by such person or entity (refer to 77 Ill. Adm. Code 1100 and 1130 for definitions such as "adverse action", "ownership interest", and "principal shareholder").

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- 2) Examples of facilities owned or operated by an applicant include:
- A) The applicant, Partnership ABC, owns 60% of the shares of Corporation XYZ, which manages the Good Care Nursing Home under a management agreement. The applicant, Partnership ABC, owns or operates Good Care Nursing Home.
 - B) The applicant, Healthy Hospital, a corporation, is a subsidiary of Universal Health, the parent corporation of Healthcenter Ambulatory Surgical Treatment Center (ASTC), its wholly owned subsidiary. The applicant, Healthy Hospital, owns and operates Healthcenter ASTC.
 - C) Dr. Wellcare is the applicant. His wife is the director of a corporation that owns a hospital. The applicant, Dr. Wellcare, owns or operates the hospital.
 - D) Drs. Faith, Hope and Charity own 40%, 35%, and 10%, respectively, of the shares of Healthfair, Inc., a corporation, which is the applicant. Dr. Charity owns 45% and Drs. Well and Care each own 25% of the shares of XYZ Nursing Home, Inc. The applicant, Healthfair, Inc., owns and operates XYZ Nursing Home, Inc.
- 3) The applicant shall submit the following information:
- A) A listing of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, as applicable;
 - B) A certified listing from the applicant of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application;
 - C) Authorization permitting HFPB and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted, including, but not limited to: official records of IDPH or other State agencies; the licensing or certification records of other states (where applicable); and the

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records of nationally recognized accreditation organizations. Failure to provide the authorization shall constitute an abandonment or withdrawal of the application without any further action by HFPB.

- 4) If, during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior applications may be utilized to fulfill the information requirements of this criterion. In such instances, the applicant shall attest that the information has been previously provided, cite the project number of the prior application, and certify that no changes have occurred regarding the information that has been previously provided. The applicant is able to submit amendments to previously submitted information, as needed to update and/or clarify data.

b) Purpose of the Project – Information Requirements

The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.

- 1) The applicant shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided should include, but is not limited to, existing identification of problems or issues that need to be addressed, including:
- A) The area's demographics or characteristics (e.g., rapid area growth rate, increased aging population, higher or lower fertility rates) that may affect the need for services in the future;
 - B) The population's morbidity or mortality rates;
 - C) The incidence of various diseases in the area;
 - D) The population's financial ability to access health care (e.g., financial hardship, increased number of charity care patients, changes in the area population's insurance or managed care status);

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- E) The physical accessibility to necessary health care (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).
- 2) The applicant shall cite the source of the information (e.g., local health department Illinois Project for Local Assessment of Need (IPLAN) documents, Public Health Futures, local mental health plans, or other health assessment studies from governmental or academic and/or other independent sources).
- 3) The applicant shall detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being. Further, the applicant shall provide goals with quantified and measurable objectives with specific time frames that relate to achieving the stated goals.
- 4) For projects involving modernization, the applicant shall describe the conditions being upgraded. For facility projects, the applicant shall include statements of age and condition and any regulatory citations. For equipment being replaced, the applicant shall also include repair and maintenance records.
- c) Alternatives to the Proposed Project – Information Requirements
The applicant shall document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.
- 1) Alternative options that shall be addressed include, but are not limited to:
- A) Proposing a project of greater or lesser scope and cost;
- B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes;
- C) Developing alternative settings to meet all or a portion of the project's intended purposes;

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- D) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and
- E) Other considerations.
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of cost, patient access, quality, and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation.
- 3) The applicant shall provide empirical evidence, including quantified outcome data, that verifies improved quality of care.
- a) ~~Location—Review Criterion~~
~~An applicant who proposes to establish a new health care facility or a new category of service or who proposes to acquire major medical equipment that is not located in a health care facility and that is not being acquired by or on behalf of a health care facility must document the following:~~
- 1) ~~that the primary purpose of the proposed project will be to provide care to the residents of the planning area in which the proposed project will be physically located. Documentation for existing facilities shall include patient origin information for all admissions for the last 12 months. Patient origin information must be presented by zip code and be based upon the patient's legal residence other than a health care facility for the last six months immediately prior to admission. For all other projects for which referrals are required to support the project, patient origin information for the referrals is required. Each referral letter must contain a certification by the health care worker physician that the representations contained therein are true and correct. A complete set of the referral letters with original notarized signatures must accompany the application for permit.~~
- 2) ~~that the location selected for a proposed project will not create a maldistribution of beds and services. Maldistribution is typified by such factors as: a ratio of beds to population (population will be based upon the most recent census data by zip code), within 30 minutes travel time under~~

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~~normal driving conditions of the proposed facility, which exceeds one and one-half times the State average; an average utilization rate for the last 12 months for the facilities providing the proposed services within 30 minutes travel time under normal driving conditions of the proposed project which is below the Board's target occupancy rate; or the lack of a sufficient population concentration in an area to support the proposed project.~~

- b) ~~Background of Applicant—Review Criterion~~
- 1) ~~The applicant shall demonstrate that it is fit, willing and able, and *has the qualifications, background and character to adequately provide a proper standard of health care service for the community.* [20 ILCS 3960/6] In evaluating the fitness of the applicant, the State Board shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application.~~
 - 2) ~~For purposes of this subsection:~~
 - A) ~~"Adverse action" means conviction of any felony or any misdemeanor involving fraud or dishonesty; any supervision, probation, suspension, revocation, termination, or denial of a license or certificate or registration; imposition of a conditional license; termination or suspension from participation in any program involving payment authorized under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act, as amended; or denial, suspension, revocation or termination of accreditation by an nationally recognized organization.~~
 - B) ~~A health care facility is considered "owned or operated" by every person or entity which, within the three years preceding the filing of the application, owns, directly or indirectly, an ownership interest as specified in this subsection (b)(2).~~
 - C) ~~"Ownership interest" means any legal or equitable interest, including any interest arising from a lease or management agreement, which gives rise to participation in profits or losses, or which gives rise to the exercise or implementation of any decision~~

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~~making authority respecting the operations or finances of the health care facility.~~

- ~~i) In the case of an individual, "ownership interest" includes any interest owned or exercised, directly or indirectly, by or for the individual's spouse or children.~~
 - ~~ii) In the case of a partnership, "ownership interest" includes any interest owned or exercised, directly or indirectly, by or for any general partner, and the partnership is considered to be owned by all of its general partners.~~
 - ~~iii) In the case of a limited liability company, "ownership interest" includes any interest owned, directly or indirectly, by or for any member or partner, and the limited liability company is considered to be owned by all of its members or partners.~~
 - ~~iv) In the case of an estate, "ownership interest" includes any interest owned or exercised, directly or indirectly, by any beneficiary, and the estate is considered to be owned by all of its beneficiaries.~~
 - ~~v) In the case of a trust, "ownership interest" includes any interest owned or exercised, directly or indirectly, by any beneficiary, and the trust is considered to be owned by all of its beneficiaries.~~
 - ~~vi) In the case of a corporation, "ownership interest" includes any interest owned, directly or indirectly, by or for any principal shareholder, member, director or officer, and the corporation is considered to be owned by its principal shareholders, members, directors and officers.~~
- ~~D) "Principal shareholder" means:~~
- ~~i) In the case of a corporation having 30 or more shareholders, a person who, directly or indirectly,~~

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~~beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the corporation.~~

- ii) ~~In the case of a corporation having fewer than 30 shareholders, a person who, directly or indirectly, beneficially owns, holds or has the power to vote 50% or more of any class of securities issued by the corporation, or any member of any group of five or fewer shareholders which, directly or indirectly, beneficially own, hold or have the power to vote 80% or more of any class of securities issued by the corporation.~~

- E) ~~If any person or entity owns any option to acquire stock, the stock shall be considered to be owned by such person or entity.~~

3) ~~Examples of facilities owned or operated by the applicant:~~

- A) ~~The applicant, Partnership ABC, owns 60% of the shares of Corporation XYZ which manages the Good Care Nursing Home under a management agreement. The applicant, Partnership ABC, owns or operates Good Care Nursing Home.~~
- B) ~~The applicant, Healthy Hospital, a corporation, is a subsidiary of Universal Health, the parent corporation of Healthcenter ASTC, its wholly owned subsidiary. The applicant, Healthy Hospital, owns and operates Healthcenter ASTC.~~
- C) ~~Dr. Wellcare is the applicant. His wife is the director of a corporation which owns a hospital. The applicant, Dr. Wellcare, owns or operates the hospital.~~
- D) ~~Drs. Faith, Hope and Charity own 40%, 35%, and 10%, respectively, of the shares of Healthfair, Inc., a corporation, which is the applicant. Dr. Charity owns 45% and Drs. Well and Care each own 25% of the shares of XYZ Nursing Home, Inc. The applicant, Healthfair, Inc., owns and operates XYZ Nursing Home, Inc.~~

4) ~~Documentation to be submitted shall include:~~

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- A) ~~A listing of all health care facilities owned or operated by the applicant, including licensing, certification and accreditation identification numbers, if applicable;~~
 - B) ~~proof of current licensure and, if applicable, certification and accreditation of all health care facilities owned or operated by the applicant;~~
 - C) ~~a certification from the applicant listing any adverse action taken against any facility owned or operated by the applicant during the three years prior to the filing of the application;~~
 - D) ~~authorizations permitting the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection (b)(4) or to obtain any additional documentation or information which the State Board or IDPH finds pertinent to this subsection (b)(4). Failure to provide the authorization shall constitute an abandonment or withdrawal of the application without any further action by the State Board.~~
- 5) ~~If during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior application may be utilized to fulfill the data requirements of this Part. In these cases, applicant must state that the information has been previously provided to IDPH, cite the project for the prior application, and certify that no changes have occurred regarding the information which has been previously provided.~~
- 6) ~~In addition to documentation submitted by the applicant, the State Board and IDPH shall review the official records of IDPH, other State agencies, and, where applicable, those of other states, respecting licensure and certification, and shall review the records of nationally recognized accreditation organizations to determine compliance with the requirements of this subsection (b).~~
- e) ~~Alternatives to the Proposed Project—Review Criterion.—The applicant must document that the proposed project is the most effective or least costly alternative.~~

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~~Documentation shall consist of a comparison of the proposed project to alternative options. Such a comparison must address issues of cost, patient access, quality, and financial benefits in both the short and long term. If the alternative selected is based solely or in part on improved quality of care, the applicant shall provide empirical evidence including quantifiable outcome data that verifies improved quality of care. Alternatives must include, but are not limited to: purchase of equipment, leasing or utilization (by contract or agreement) of other facilities, development of freestanding settings for service and alternate settings within the facility.~~

- d) ~~Need For the Project—Review Criterion. The project must be needed.~~
- 1) ~~If the State Board has determined need pursuant to Part 1100, the proposed project shall not exceed additional need determined unless the applicant meets the criterion for a variance.~~
 - 2) ~~If the State Board has not determined need pursuant to Part 1100, the applicant must document that it will serve a population group in need of the services proposed and that insufficient service exists to meet the need. Documentation shall include but not be limited to:~~
 - A) ~~area studies (which evaluate population trends and service use factors);~~
 - B) ~~calculation of need based upon models of estimating need for the service (all assumptions of the model and mathematical calculations must be included);~~
 - C) ~~historical high utilization of other area providers; and~~
 - D) ~~identification of individuals likely to use the project.~~
 - 3) ~~If the project is for the acquisition of major medical equipment that does not result in the establishment of a category of service, the applicant must document that the equipment will achieve or exceed any applicable target utilization levels specified in Appendix B within 12 months after acquisition.~~

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- e) ~~Size of Project— Review Criterion. The applicant must document that the size of a proposed project is appropriate.~~
- 1) ~~The proposed project cannot exceed the norms for project size found in Appendix B of this Part unless the additional square footage beyond the norm can be justified by one of the following:~~
- A) ~~the proposed project requires additional space due to the scope of services provided;~~
- B) ~~the proposed project involves an existing facility where the facility design places impediments on the architectural design of the proposed project;~~
- C) ~~the proposed project involves the conversion of existing bed space and the excess square footage results from that conversion; or~~
- D) ~~the proposed project includes the addition of beds and the historical demand over the last five year period for private rooms has generated a need for conversion of multiple bed rooms to private usage.~~
- 2) ~~When the State Board has established utilization targets for the beds or services proposed, the applicant must document that in the second year of operation the annual utilization of the beds or service will meet or exceed the target utilization. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures which would increase utilization.~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 1110.234 Project Scope and Size, Utilization, and Unfinished/Shell Space - Review Criteria

- a) Size of Project – Review Criterion
The applicant shall document that the amount of physical space proposed

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for the project is necessary and not excessive. The proposed gross square footage (GSF) cannot exceed the GSF standards of Appendix B, unless the additional GSF can be justified by documenting one of the following:

- 1) Additional space is needed due to the scope of services provided, justified by clinical or operational needs, as supported by published data or studies;
- 2) The existing facility's physical configuration has constraints or impediments and requires an architectural design that results in a size exceeding the standards of Appendix B;
- 3) The project involves the conversion of existing bed space that results in excess square footage.

b) Project Services Utilization - Review Criterion

This criterion is applicable only to projects or portions of projects that involve services, functions, or equipment for which the State Board has not established utilization standards or occupancy targets in 77 Ill. Adm. Code 1100. The applicant shall document that, in the second year of operation, the annual utilization of the service or equipment will meet or exceed the utilization standards specified in Appendix B.

c) Unfinished or Shell Space - Review Criterion

If the project includes unfinished space (i.e., shell space) that is to meet an anticipated future demand for service, the applicant must document that the amount of shell space proposed for each department or area is justified, and that the space will not exceed the GSF standards of Appendix B unless the amount of space is mandated by a governmental or certification agency. The applicant shall provide the following information:

- 1) The total gross square footage of the proposed shell space;
- 2) The anticipated use of the shell space, specifying the proposed GSF to be allocated to each department, area, or function;
- 3) Evidence that the shell space is being constructed due to:
 - A) Requirements of governmental or certification agencies; or

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B) Experienced increases in the historical occupancy or utilization of those departments, areas, or functions proposed to occupy the shell space. The applicant shall provide the historical utilization for the department, area, or function for the latest five-year period for which data are available and, based upon the average annual percentage increase for that period, project the future utilization of the department, area, or function through the anticipated date when the shell space will be placed into operation.

d) Assurances

The applicant shall submit the following:

- 1) Verification that the applicant will submit to HFPB a CON application to develop and utilize the shell space, regardless of the capital thresholds in effect at that time or the categories of service involved;
- 2) The estimated date by which the subsequent CON application (to develop and utilize the subject shell space) will be submitted; and
- 3) The anticipated date when the shell space will be completed and placed into operation.

(Source: Added at 31 Ill. Reg. _____, effective _____)

SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS
INVOLVING ESTABLISHMENT OF ADDITIONAL BEDS OR
SUBSTANTIAL CHANGE IN BED CAPACITY

Section 1110.310 Introduction (Repealed)

~~Subpart D contains all Bed Related Review Criteria. These criteria apply only to projects proposing the addition of inpatient beds to a Category of Service and are utilized in addition to the General Review Criteria outlined in Subpart C.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.320 Bed Related Review Criteria (Repealed)

- ~~a) Establishment of Additional Hospitals—Review Criterion. A proposed general~~

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~~hospital to be located within a Metropolitan Statistical Area (M.S.A.*) must contain a minimum of 100 MS beds.~~

~~AGENCY NOTE: *M.S.A.'s are defined and named in the U.S. Bureau of the Census publication, Metropolitan Statistical Areas: 1984, available from the U.S. Government Printing Office, Washington, D.C. 20402.~~

- b) ~~Allocation of Additional Beds—Review Criterion. The applicant proposing to establish a category of service must document that access to the service will be improved. Documentation shall consist of at least one of the following:~~
- ~~1) the proposed service is not available within the planning area;~~
 - ~~2) existing facilities have restricted admission policies resulting in access limitations;~~
 - ~~3) existing service providers are experiencing occupancy levels in excess of the category of service target levels;~~
 - ~~4) the travel time to existing service providers is excessive (exceeds 45 minutes) for area residents to be served by the project.~~
- e) ~~Addition of Beds to Existing Facilities—Review Criterion~~
- ~~1) The applicant must document that the addition of beds is necessary. Documentation shall consist of evidence that:
 - ~~A) existing inpatient bed services over the latest 12 month period have averaged at or above the target occupancy; or~~
 - ~~B) when occupancy levels over that period fall below the target occupancy the services affected cannot be converted to provide the needed bed space due to architectural or programmatic considerations.~~~~
 - ~~2) An applicant proposing to add beds while operating an acute care service (for purposes of this subsection, acute care services means: M-S, OB, Pediatrics, ICU, Acute Mental Illness, and Burn services) must document the appropriateness of the length of stay in existing services. Documentation shall consist of a comparison of patient length of stay with~~

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~~other providers within the planning area. An applicant whose existing services have a length of stay longer than that of other area providers must document that the severity or type of illness treated at the applicant facility is greater.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

SUBPART E: MODERNIZATION REVIEW CRITERIA

Section 1110.410 Introduction (Repealed)

~~Subpart E contains all Modernization Review Criteria. These criteria apply only to modernization projects and are utilized in addition to the General Review Criteria outlined in Subpart C.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.420 Modernization Review Criteria (Repealed)

- a) ~~Modernization of Beds—Review Criterion. The applicant must document that the number of beds proposed in each category of service affected does not exceed the number of beds needed to support the facility's utilization in each service proposed at the appropriate modernization target as found in Part 1100. (Utilization shall be based upon the latest 12-month period for which data are available.)~~
- b) ~~Modern Facilities—Review Criterion. The applicant must document that the proposed project meets one of the following:~~
 - 1) ~~The proposed project will result in the replacement of equipment or facilities which have deteriorated and need replacement. Documentation shall consist of, but is not limited to: historical utilization data, downtime or time spent out of service due to operational failures, upkeep and annual maintenance costs, and licensure or fire code deficiency citations involving the proposed project.~~
 - 2) ~~The proposed project is necessary to provide expansion for diagnostic treatment, ancillary training, or other support services to meet the requirements of existing services or services previously approved to be~~

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~~added or expanded. Documentation shall consist of but is not limited to: historical utilization data, evidence of changes in industry standards, changes in the scope of services offered, and licensure or fire code deficiency citations involving the proposed project.~~

- e) ~~Major Medical Equipment—Review Criterion~~
~~Proposed projects for the acquisition of major medical equipment must document that the equipment will achieve or exceed any applicable target utilization levels specified in Appendix B within 12 months after acquisition.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA –
MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section 1110.510 Introduction (Repealed)

~~Subpart F contains Review Criteria which pertain to the Medical/Surgical, Obstetric, Pediatric and Intensive Care categories of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.520 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Definitions (Repealed)

- a) ~~Medical/Surgical~~
- 1) ~~"Medical Surgical Service" means a category of service pertaining to the medical surgical care performed at the direction of a physician in behalf of patients by physicians, dentists, nurses and other professional and technical personnel. For purposes of this Subchapter, the medical surgical category of service includes such subcategories of service as medical, surgical, ophthalmology, intermediate intensive care, tuberculosis, gynecology (outside obstetric (OB) department), research, eyes ears nose and throat, orthopedic, neurology, cardio thoracic vascular, trauma, inpatient renal dialysis, special care units, substance abuse/addiction treatment, dental and urology. The medical surgical category of service~~

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~~does not include the following categories of service and their subcategories:~~

- ~~A) Obstetric Service;~~
- ~~B) Pediatric Service;~~
- ~~C) Intensive Care Service;~~
- ~~D) Rehabilitation Service;~~
- ~~E) Acute Mental Illness Treatment Service;~~
- ~~F) Neonatal Intensive Care Service;~~
- ~~G) Burn Treatment Service;~~
- ~~H) General Long Term Care Categories of Service; and~~
- ~~I) Specialized Long Term Care Categories of Service.~~

- 2) ~~"Medical Surgical Unit" means an assemblage of inpatient beds and related facilities in which medical surgical services are provided to a defined and limited class of patients according to their particular medical care needs.~~

b) Obstetrics

- 1) ~~"Combined Maternity and Gynecological Unit" means an entire facility or a distinct part of a facility which provides both a program of maternity care (as defined in subsection (b)(3) below) and a program of obstetric gynecological care (as defined in subsection (b)(5) below) and which is designed, equipped, organized and operated in accordance with the requirements of the Hospital Licensing Act [210 ILCS 85].~~
- 2) ~~"Fertility Rate" means projections of population fertility based upon resident birth occurrence as provided by IDPH.~~
- 3) ~~"Maternity Care" means a subcategory of obstetric service related to the~~

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~~medical care of the patient prior to and during the act of giving birth either to a living child or to a dead fetus and to the continuing medical care of both patient and newborn infant under the direction of a physician in behalf of the patient by physicians, nurses, and other professional and technical personnel.~~

- 4) ~~"Maternity Facility or Unit" means an entire facility or a distinct part of a facility which provides a program of maternity and newborn care and which is designed, equipped, organized, and operated in accordance with the requirements of the Hospital Licensing Act.~~
- 5) ~~"Obstetric Gynecological Care" means a subcategory of obstetric service where medical care is provided to clean gynecological, surgical, or medical cases which are admitted to a postpartum section of an obstetric unit in accordance with the requirements of the Hospital Licensing Act.~~
- 6) ~~"Obstetric Service" means a category of service pertaining to the medical or surgical care of maternity and newborn patients or medical or surgical cases which may be admitted to a postpartum unit.~~

e) Pediatrics

- 1) ~~"Designated Pediatric Beds" means beds within the facility which are primarily used for pediatric patients and are not a component part of a distinct pediatric unit as defined in subsection (c)(2) below.~~
- 2) ~~"Pediatric Facility or Distinct Pediatric Unit" means an entire facility or a distinct unit of a facility, where the nurses' station services only that unit, which provides a program of pediatric service and is designed, equipped, organized and operated to render medical surgical care to the 0-14 age population.~~
- 3) ~~"Pediatric Service" means a category of service for the delivery of treatment pertaining to the non-intensive medical surgical care of a pediatric patient (0-14 years in age) performed at the direction of a physician in behalf of the patient by physicians, dentists, nurses, and other professional and technical personnel.~~

d) Intensive Care

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- 1) ~~"Intensive Care Service" means a category of service providing the coordinated delivery of treatment to the critically ill patient or to patients requiring continuous care due to special diagnostic considerations requiring extensive monitoring of vital signs through mechanical means and through direct nursing supervision. This service is given at the direction of a physician in behalf of patients by physicians, dentists, nurses, and other professional and technical personnel. The intensive care category of service includes the following subcategories; medical Intensive Care Unit (ICU), surgical ICU, coronary care, pediatric ICU, and combinations of such ICU. This category of service does not include intermediate intensive or coronary care and special care units which are included in the medical surgical category of service.~~

- 2) ~~"Intensive Care Unit" means a distinct part of a facility which provides a program of intensive care service and which is designed, equipped, organized and operated to deliver optimal medical care for the critically ill or for patients with special diagnostic conditions requiring specialized equipment, procedures and staff, and which is under the direct visual supervision of a qualified professional nurses' staff. Effective February 15, 2003, the repeal of 77 Ill. Adm. Code 1110.1010, 1110.1020 and 1110.1030, the beds and corresponding utilization for the Burn Treatment category of service will be included in the Intensive Care category of service.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.530 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Review Criteria

Applicants proposing to establish, expand or modernize Medical/Surgical, Obstetric, Pediatric or Intensive Care beds shall describe how the proposed project will address all of the following indicators of need:

- a) Planning Area Need - Review Criterion
The applicant shall document that the number of beds to be established, added or modernized is necessary to serve the planning area's population, based on the following:

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- 1) 77 Ill. Adm. Code 1100 Formula Calculation
 - A) The number of beds to be established or added for each category of service is in conformance with the projected bed deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.
 - B) The number of beds proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the occupancy standard specified in 77 Ill. Adm. Code 1100.
- 2) Service to Planning Area Residents
 - A) Applicants proposing to establish or add beds shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.
 - B) Applicants proposing to add beds to an existing category of bed service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.
 - C) Patient origin information shall be presented by zip code and be based upon the patient's legal residence (other than a health care facility) for the last six months immediately prior to admission.
- 3) Service Demand – Establishment of Beds

The number of beds proposed to establish a new category of service, or to expand an existing category of service, is necessary to accommodate the service demand experienced by the applicant facility over the latest two-year period. The applicant shall document:

 - A) Historical Referrals

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The number of referrals to other facilities, for each proposed category of service, for each of the latest two years.

Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient hospital.

B) Projected Service Demand

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients the physician will refer to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

4) Service Demand – Expansion of Bed Capacity

The number of beds to be added (at an existing facility) for each category of service is necessary to reduce the facility's experienced high occupancy, and to meet a projected demand for service. The applicant shall document the following:

A) Historical Service Demand

i) An average annual occupancy rate that has equaled or exceeded occupancy standards for the category of service, as specified in 77 Ill. Adm. Code 1100, for each of the latest two years.

ii) If patients have been referred to other facilities in order to receive the subject services, the applicant shall provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and name and location of the recipient hospital, for each of the latest two years.

B) Projected Service Demand – Based on Rapid Population Growth

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A projected demand for service, based upon rapid population growth in the applicant facility's existing market area (as experienced within the latest 12-month period), shall be determined as follows:

- i) The applicant shall define the facility's market area based upon historical patient origin data by zip code or census tract;
- ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year for county, incorporated place, township, or community area, by the U.S. Census Bureau or IDPH;
- iii) Projections shall be for a maximum period of five years from the date the application is submitted;
- iv) Projections shall contain documentation of population changes in terms of births, deaths and net migration for a period of time equal to or in excess of the projection horizon;
- v) Projections shall be for total population and specified age groups for the applicant's market area, as defined by HFPB for each category of service in the application; and
- vi) Documentation on projection methodology, data sources, assumptions and special adjustments, as submitted to HFPB.

C) Projected Referrals

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients whom the physician will refer to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the

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physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

5) Service Accessibility

The number of beds being established or added for each category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;
- v) The project will provide service for at least 50% of the population who must currently travel over 30 minutes to receive service;
- vi) For purposes of this Section only, all services within the 30-minute travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

B) Supporting Documentation

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The applicant shall provide the following documentation concerning existing restrictions to service access:

- i) The location and utilization of other planning area service providers;
 - ii) Patient location information by zip code;
 - iii) Independent travel **time** studies;
 - iv) A certification of waiting times;
 - v) Scheduling or admission restrictions that exist in area providers;
 - vi) An assessment of area population characteristics that document that access problems exist;
 - vii) Most recently published IDPH Hospital Questionnaire;
 - viii) Complete 12-month utilization record for which IDPH annual facility data are available.
- 6) Category of Service Modernization
- A) If the project involves modernization of beds, the applicant shall document that the inpatient bed areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, due to such factors as, but not limited to:
 - i) High cost of maintenance;
 - ii) Non-compliance with licensing or life safety codes;
 - iii) Changes in standards of care (e.g., private versus multiple bed rooms); or
 - iv) Additional space for diagnostic or therapeutic purposes.

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- B) Documentation shall include the following, as applicable to the factors cited in the application:
- i) Copies of maintenance reports;
 - ii) Copies of citations for life safety code violations;
 - iii) IDPH licensing reports; and
 - iv) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) reports.
- b) Unnecessary Duplication/Maldistribution - Review Criterion
- 1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:
 - A) A list of all zip code areas (in total or in part) that are located within 30 minutes travel time (under normal driving conditions) of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent census data available); and
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes travel time from the project site that provide the categories of service that are proposed by the project.
 - 2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, beds, and services characterized by such factors as, but not limited to:
 - A) A ratio of beds to population that exceeds one and one-half times the State average;

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- B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the minimum utilization standard established pursuant to 77 Ill. Adm. Code 1100; or
- C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above minimum utilization standards.
- 3) The applicant shall document that the proposed project will not lower the utilization of other area providers below the minimum occupancy standard specified in 77 Ill. Adm. Code 1100.

c) Staffing - Review Criterion

- 1) An applicant proposing to establish a new hospital or to add beds to an existing hospital shall document that a sufficient supply of personnel will be available to staff the total number of beds proposed. Sufficient staff availability shall be based upon evidence that for the latest 12-month period prior to submission of the application, those hospitals located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant facility's site have not experienced a staffing shortage with respect to the categories of services proposed by the project.
- 2) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
- 3) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response should be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in excess of 10%. Copies of any correspondence received from the facilities must be included in the application.

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- 4) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10% percent, the applicant shall provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.
- d) Assurances
The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of the beds for each category of service will meet or exceed the minimum utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.
- a) ~~Unit Size—Review Criterion~~
- 1) ~~Obstetrics~~
- A) ~~The minimum unit size for a new obstetric unit within a Metropolitan Statistical Area is 20 beds.~~
- B) ~~The minimum unit size for a new obstetric unit outside a Metropolitan Statistical Area is 7 beds.~~
- 2) ~~Intensive Care. The minimum unit size for an intensive care unit is 4 beds.~~
- 3) ~~Pediatrics. The minimum size for a pediatric unit within a Metropolitan Statistical Area is 16 beds.~~
- b) ~~Variances to Bed Need—Review Criterion. The applicant must document one or more of the following.~~
- 1) ~~High Occupancy Variance~~
- A) ~~The applicant must document that the applicant facility has experienced high occupancy. Documentation shall consist of evidence that the historical average annual occupancy rate has~~

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~~equaled or exceeded the target occupancy for the prior 24-month period.~~

- B) ~~The applicant must also document that the number of beds proposed will not exceed the number needed to reduce the facility's high occupancy to the target occupancy, or if the number of beds proposed exceeds the number of beds justified by the applicant's historical workload, then projections may be used. Utilization projections must be based upon the following:~~
- ~~i) projections shall be based upon population projections from the U.S. Bureau of the Census;~~
 - ~~ii) projections shall be for a maximum period of 5 years from the date the application is submitted;~~
 - ~~iii) projections shall be zip code and age specific; and~~
 - ~~iv) projections shall be based upon the applicant's service area as defined by historical patient origin, and shall not include projected changes in market share.~~

~~The projections provided must also demonstrate that the proposed number of beds will not exceed the number of beds needed to meet the target occupancy rate over the next 5 years.~~

2) ~~Medically Underserved Variance~~

- A) ~~The applicant must document that access to the proposed service is restricted in the planning area as documented by:~~
- ~~i) the absence of the service within the planning area;~~
 - ~~ii) limitations on governmentally funded or charity patients;~~
 - ~~iii) restrictive admission policies of existing providers;~~
 - ~~iv) the area population and existing care system exhibit indicators of median care problems such as an average~~

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~~family income level below the State average poverty level, high infant mortality or designation as a Health Manpower Shortage Area; or~~

v) ~~the project will provide service for a portion of the population who must currently travel over 45 minutes to receive service.~~

B) ~~Documentation shall consist of location and utilization of other planning area service providers; patient location information and all applicable time travel studies; a certification of waiting times and scheduling or admission restrictions that exist in area providers; and an assessment of area population characteristics which would indicate an access problem.~~

C) ~~The applicant must also document that the number of beds proposed will not exceed the number needed at the target occupancy rate to meet the health care needs of the population identified as having restricted access.~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART G: CATEGORY OF SERVICE REVIEW CRITERIA—
COMPREHENSIVE PHYSICAL REHABILITATION

Section 1110.610 Introduction (Repealed)

~~Subpart G contains Review Criteria which pertain to the Comprehensive Physical Rehabilitation category of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.620 Comprehensive Physical Rehabilitation - Definitions (Repealed)

a) ~~"Comprehensive Physical Rehabilitation" means a category of service provided in a comprehensive physical rehabilitation facility providing the coordinated interdisciplinary team approach to physical disability under a physician licensed~~

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~~to practice medicine in all its branches, who directs a plan of management of one or more of the classes of chronic disabling disease or injury. Comprehensive physical rehabilitation must include but is not limited to the services of: elements as specified in the federal regulations defining "a rehabilitation unit—distinct part" (42 CFR 405.471(i) (1986)). Comprehensive physical rehabilitation services can only be provided by a comprehensive physical rehabilitation facility.~~

- b) ~~"Comprehensive Physical Rehabilitation Facility" means a distinct bed unit of a hospital or a special referral hospital which provides a program of comprehensive physical rehabilitation and which is designed, equipped, organized and operated to deliver inpatient rehabilitation services; and which is licensed by the Department of Public Health under the "Hospital Licensing Act" or is a facility operated or maintained by the State or a state agency.~~
- e) ~~There are two types of comprehensive physical rehabilitation facilities:~~
- ~~1) Freestanding comprehensive physical rehabilitation facility means a specialty hospital dedicated to the provision of comprehensive rehabilitation; and~~
 - ~~2) Hospital-based comprehensive physical rehabilitation facility means a distinct unit, located in a hospital, dedicated to the provision of comprehensive physical rehabilitation.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.630 Comprehensive Physical Rehabilitation Beds - Review Criteria

Applicants proposing to establish, expand or modernize Comprehensive Physical Rehabilitation beds shall describe how the proposed project will address all of the following indicators of need:

- a) Planning Area Need - Review Criterion
The applicant shall document that the number of beds to be established, added or modernized is necessary to serve the planning area's population, based on the following:
- 1) 77 Ill. Adm. Code 1100 Formula Calculation

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- A) The number of beds to be established or added is in conformance with the projected bed deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.
- B) The number of beds proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the occupancy standard specified in 77 Ill. Adm. Code 1100.
- 2) Service to Area Residents
- A) Applicants proposing to establish or add beds shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.
- B) Applicants proposing to add beds to an existing category of bed service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.
- C) Patient origin information must be presented by zip code and be based upon the patient's legal residence (other than a health care facility) for the last six months immediately prior to admission.
- 3) Service Demand – Establishment of Beds
The number of beds proposed to establish a new category of service, or to expand an existing category of service, is necessary to accommodate the service demand experienced by the applicant facility over the latest two-year period. The applicant shall document:
- A) Historical Referrals
The number of referrals to other facilities, for each proposed category of service, for each of the latest two years.
Documentation of the referrals shall include: patient origin by zip

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code; name and specialty of referring physician; and the name and location of the recipient hospital.

B) Projected Service Demand

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients whom the physician will refer to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

4) Service Demand – Expansion of Bed Capacity

The number of beds to be added (at an existing facility) for each category of service is necessary to reduce the facility's experienced high occupancy, and to meet a projected demand for service. The applicant shall document the following:

A) Historical Service Demand

i) An average annual occupancy rate that has equaled or exceeded occupancy standards for the category of service, as specified in 77 Ill. Adm. Code 1100, for each of the latest two years.

ii) If patients have been referred to other facilities in order to receive the subject services, the applicant shall provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and name and location of the recipient hospital, for each of the latest two years.

B) Projected Service Demand – Based on Rapid Population Growth

A projected demand for service, based upon rapid population growth in the applicant facility's existing market area (as

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experienced within the latest 12-month period), shall be determined as follows:

- i) The applicant shall define the facility's market area based upon historical patient origin data by zip code or census tract;
- ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year for county, incorporated place, township, or community area by the U.S. Census Bureau or IDPH;
- iii) Projections shall be for a maximum period of five years from the date the application is submitted;
- iv) Projections shall contain documentation of population changes in terms of births, deaths and net migration for a period of time equal to or in excess of the projection horizon;
- v) Projections shall be for total population and specified age groups for the applicant's market areas, as defined by HFPB for each category of service in the application; and
- vi) Documentation on projections methodology, data sources, assumptions and special adjustments, as submitted to HFPB.

C) Projected Referrals

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

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- 5) Service Accessibility
The number of beds being established or added for each category of service is necessary to improve access for planning area residents. The applicant shall document the following:
- A) Service Restrictions
The applicant shall document that at least one of the following factors exists in the planning area:
- i) The absence of the proposed service within the planning area;
 - ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
 - iii) Restrictive admission policies of existing providers;
 - iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area or a Medically Underserved Population;
 - v) The project will provide service for at least 50% of the population who must currently travel over 45 minutes to receive service;
 - vi) For purposes of this Section only, all services within the 45-minute travel time meet or exceed the utilization standard, specified in 77 Ill. Adm. Code 1100.
- B) Supporting Documentation
The applicant shall provide the following documentation concerning existing restrictions to service access:

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- i) The location and utilization of other planning area service providers;
 - ii) Patient location information by zip code;
 - iii) Independent travel **time** studies;
 - iv) A certification of waiting times;
 - v) Scheduling or admission restrictions that exist in area providers;
 - vi) An assessment of area population characteristics that document that access problems exist;
 - vii) Most recently published IDPH Hospital Questionnaire;
 - viii) Complete 12-month utilization record for which IDPH annual facility data are available.
- 6) Category of Service Modernization
- A) If the project involves modernization of beds, the applicant shall document that the inpatient bed areas to be modernized are deteriorated or functionally obsolete, and need to be replaced or modernized due to such factors as, but not limited to:
 - i) High cost of maintenance;
 - ii) Non-compliance with licensing or life safety codes;
 - iii) Changes in standards of care (e.g., private versus multiple bed rooms); or
 - iv) Additional space for diagnostic or therapeutic purposes.
 - B) Documentation shall include the following, as applicable to the factors cited in the application:

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- i) Copies of maintenance reports;
 - ii) Copies of citations for life safety code violations;
 - iii) IDPH licensing reports; and
 - iv) JCAHO reports.

- b) Unnecessary Duplication/Maldistribution - Review Criterion
 - 1) The applicant shall document that the project will not result in an unnecessary duplication or maldistribution of beds. The applicant shall provide the following information:
 - A) A list of all zip code areas (in total or in part) that are located within 45 minutes travel time (under normal driving conditions) of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent census data available); and
 - C) The names and locations of all existing or approved health care facilities, located within 45 minutes travel time from the project site, that provide the categories of service that are proposed by the project.

 - 2) The applicant shall document that the project will not result in a maldistribution of services. Maldistribution exists when the identified area has an excess supply of facilities, beds, and services characterized by such factors as, but not limited to:
 - A) A ratio of beds to population that exceeds one and one-half times the State average;
 - B) Historical utilization (for the latest 12- month period prior to submission of the application) for existing facilities and services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or

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- C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards established pursuant to 77 Ill. Adm. Code 1100.
- 3) The applicant shall document that the proposed project will not lower the utilization of other area providers below the occupancy standard specified in 77 Ill. Adm. Code 1100.
- c) Staffing - Review Criterion
 - 1) Availability
 - A) An applicant proposing to establish a new hospital or to add beds to an existing hospital shall document that a sufficient supply of personnel will be available to staff the total number of beds proposed. Sufficient staff availability shall be based upon evidence that, for the latest 12-month period prior to submission of the application, those hospitals located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant facility's site have not experienced a staffing shortage with respect to the categories of services proposed by the project.
 - B) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
 - C) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in

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excess of 10%. Copies of any correspondence received from the facilities must be included in the application.

D) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10%, the applicant shall provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.

2) Personnel Qualifications

The applicant must document that personnel possessing proper credentials in the following categories are available to staff the service:

A) Medical Director – Medical direction of the facility shall be vested in a physician who is a doctor of medicine licensed to practice in all of its branches and who has had three years of post-graduate specialty training in the medical management of inpatients requiring rehabilitation services.

B) Rehabilitation Nursing – Supervisors, for all nurses participating as part of the rehabilitation team, must be available on staff and shall have documented education in rehabilitation nursing and at least one year of rehabilitation nursing experience.

C) Allied Health – The following allied health specialists shall be available on staff:

i) Physical Therapist – Graduate of a program in physical therapy approved by the American Physical Therapy Association and is licensed to practice in the State of Illinois.

ii) Occupational Therapist – Registered by the American Occupational Therapy Association or graduate of an approved educational program, with the experience needed for registration. Educational programs are approved by the American Medical Association's Council on Medical Education in collaboration with the American Occupational

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Therapy Association and is licensed to practice in the State of Illinois.

iii) Social Worker.

D) Other Specialties – The following personnel shall be available on staff or on a consulting basis:

i) Speech Pathologist;

ii) Psychologist;

iii) Vocational Counselor or Specialist;

iv) Dietitian;

v) Pharmacist;

vi) Audiologist; and

vii) Prosthetist and Orthotist.

3) Documentation shall consist of:

A) Medical Director Curriculum Vitae of Medical Director.

B) Other Personnel

i) Letters of interest from potential employees;

ii) Applications filed with the applicant for a position;

iii) Signed contracts with required staff; or

iv) Narrative explanation of how other positions will be filled.

d) Facility Size – Review Criterion

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- 1) The minimum freestanding facility size for comprehensive physical rehabilitation is a minimum facility capacity of 100 beds.
 - 2) The minimum hospital unit size for comprehensive physical rehabilitation is 16 beds.
- e) Assurances
The applicant shall document that, in the second year of operation, the annual utilization of the beds for each category of service will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.
- a) ~~Facility Size—Review Criterion~~
- 1) ~~The minimum freestanding facility size for comprehensive physical rehabilitation is a minimum facility capacity of 100 beds.~~
 - 2) ~~The minimum hospital unit size for comprehensive physical rehabilitation is 15 beds.~~
- b) ~~Access Variance to Bed Need—Review Criterion~~
- 1) ~~The applicant must document that access to the proposed service is restricted in the planning area as documented by:~~
 - A) ~~the absence of the service within the planning area;~~
 - B) ~~limitations on governmentally funded or charity patients;~~
 - C) ~~restrictive admission policies of existing providers; or~~
 - D) ~~the project will provide service for a portion of the population who must currently travel over 45 minutes to receive service.~~
 - 2) ~~The applicant must also document that the number of beds proposed will not exceed the number needed to meet the health care needs of the~~

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~~population identified as having restricted access at the target occupancy rate.~~

e) ~~Staffing Requirements—Review Criterion~~

1) ~~The applicant must document that personnel possessing proper credentials in the following categories are available to staff the service:~~

A) ~~Medical Director—Medical direction of the facility shall be vested in a physician who is a doctor of medicine licensed to practice in all of its branches and who has had three year of post graduate specialty training in the medical management of inpatients requiring rehabilitation services.~~

B) ~~Rehabilitation Nursing—Supervisors, for all nurses participating as part of the rehabilitation team, must be available on staff and shall have documented education in rehabilitation nursing and at least one year of rehabilitation nursing experience.~~

C) ~~Allied Health—The following allied health specialists must be available on staff:~~

i) ~~Physical Therapist—Graduate of a program in physical therapy approved by the American Physical Therapy Association.~~

ii) ~~Occupational Therapist—Registered by the American Occupational Therapy Association or graduate of an approved educational program, with the experience needed for registration. Educational programs are approved by the American Medical Association's council on Medical Education in collaboration with the American Occupational Therapy Association.~~

iii) ~~Social Worker~~

D) ~~Other Specialties—The following personnel must be available on staff or on a consulting basis:~~

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- i) ~~Speech Pathologist;~~
 - ii) ~~Psychologist;~~
 - iii) ~~Vocational Counselor or Specialist;~~
 - iv) ~~Dietician;~~
 - v) ~~Pharmacist;~~
 - vi) ~~Audiologist;~~
 - vii) ~~Prosthetist and Orthotist; and~~
 - viii) ~~Dentist.~~
- 2) ~~Documentation shall consist of:~~
- A) ~~letters of interest from potential employees;~~
 - B) ~~applications filed with the applicant for a position;~~
 - C) ~~signed contracts with required staff; or~~
 - D) ~~a narrative explanation of how other positions will be filled.~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA –
IN-CENTER HEMODIALYSIS~~CHRONIC RENAL DIALYSIS~~

Section 1110.1410 Introduction (Repealed)

~~Subpart O contains Review Criteria which pertain to the Chronic Renal Dialysis category of service. These Review Criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

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Section 1110.1420 Chronic Renal Dialysis Service – Definitions (Repealed)

~~"Acute Dialysis" is dialysis given on an intensive care, inpatient basis to patients suffering from (presumably reversible) acute renal failure, or to patients with chronic renal failure with serious complications.~~

~~"Chronic Renal Dialysis" is a category of service in which dialysis is performed on a regular long term basis in patients with chronic irreversible renal failure. The maintenance and preparation of patients for kidney transplantation (including the immediate post operative period and in case of organ rejection) or other acute conditions within a hospital does not constitute a chronic renal dialysis category of service.~~

~~"Dialysis" is a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The two types of dialysis which are recognized in classical practice are hemodialysis and peritoneal dialysis.~~

~~"Hematocrit" means a measure of the packed cell volume of red blood cells expressed as a percentage of total blood volume.~~

~~"Hemodialysis" is a type of dialysis that involves the use of artificial kidney through which blood is circulated on one side of a semipermeable membrane while the other side is bathed by a salt dialysis solution. The accumulated toxic products diffuse out of the blood into the dialysate bath solution. The concentration and total amount of water and salt in the body fluid is adjusted by appropriate alternations in composition of the dialysate fluid.~~

~~"Peritoneal Dialysis" is a type of dialysis in which the dialysate fluid is injected slowly into the peritoneum, causing dialysis of water and waste products to occur through the peritoneal sac which acts as a semipermeable membrane. The fluid and waste, after accumulating for a period of time (1 hour), is drained from the abdomen and the process is repeated. This procedure is much slower than hemodialysis, requiring the patient to be immobilized for a long period of time.~~

~~"Renal Dialysis Facility" means a freestanding facility or a unit within an existing health care facility that furnishes routine chronic dialysis service(s) to chronic renal disease patients. Such types of services are: self dialysis, training in self dialysis, dialysis performed by trained professional staff and chronic maintenance~~

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~~dialysis including peritoneal dialysis.~~

~~"Self Care Dialysis Training" is a program which trains Chronic Renal Disease patients or their helpers, or both, to perform self care dialysis.~~

~~"Self Dialysis" or "Self Care Dialysis" is maintenance dialysis performed by a trained patient at home or in a special facility with or without the assistance of a family member or other helper.~~

~~"Urea" means the chief product of urine and the final product of protein metabolism in the body.~~

~~"Urea Reduction Ratio (URR)" means the amount of blood cleared of urea during dialysis. It is reflected by the ratio of the measured level of urea before dialysis and urea remaining after dialysis. The larger the URR, the greater the amount of urea removed during the dialysis treatment.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.1430 Review Criteria for In-Center Hemodialysis Projects ~~Chronic Renal Dialysis—Review Criteria~~

Applicants proposing to establish, expand or modernize in-center hemodialysis stations shall describe how the proposed project will address all of the following indicators of need:

- a) Planning Area Need - Review Criterion
The applicant shall document that the number of stations to be established, added or modernized is necessary to serve the planning area's population, based on the following:
 - 1) 77 Ill. Adm. Code 1100 Formula Calculation
 - A) The number of stations to be established or added is in conformance with the projected station deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.
 - B) The number of stations proposed shall not exceed the number of the projected deficit, to meet the health care needs of the

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population served, in compliance with the utilization target specified in 77 Ill. Adm. Code 1100.

2) Service to Planning Area Residents

- A) Applicants proposing to establish or add stations shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable).
- B) Applicants proposing to add stations to an existing service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.
- C) Patient origin information shall be presented by zip code and be based upon the patient's legal residence as reported in the patient's records immediately prior to admission.

3) Service Demand – Establishment of Beds

The number of stations proposed to establish a new category of service, or to expand an existing category of service, is necessary to accommodate the service demand experienced by the applicant facility over the latest 12-month period prior to submission of the application. The applicant shall document:

- A) Historical Referrals
The applicant shall provide physician referral letters that attest to the physician's total number of patients who have received in-center hemodialysis at existing facilities during the 12-month period prior to submission of the application.
- B) Projected Service Demand
The physician referral letters shall provide an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Documentation of patients shall include:

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patient origin by zip code, type of patient (current in-center hemodialysis or pre-dialysis), patient initials and current treatment facility for existing dialysis patients. Each referral letter must contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, the physician's specialty, and verification by the physician that the patient referrals have not been used to support another CON application for in-center hemodialysis services. The anticipated number of referrals cannot exceed the physician's experienced caseload.

- 4) Service Demand – Expansion of Bed Capacity
The number of stations to be added (at an existing facility) is necessary to reduce the facility's experienced high occupancy, and to meet a projected demand for service. The applicant shall document the following:
- A) Historical Service Demand
- i) An average annual utilization rate that meets the utilization target for the category of service, as specified in 77 Ill. Adm. Code 1100, for each of the latest two years.
- ii) If patients have been referred to other facilities in order to receive the subject services, the applicant shall provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and name and location of the recipient facility, for each of latest two years.
- B) Projected Service Demand – Based on Rapid Population Growth
A projected demand for service, based upon rapid population growth in the applicant facility's existing market area (as experienced within the latest 12-month period), determined as follows:
- i) The applicant shall define the facility's market area based upon historical patient origin data by census tract;

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- ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year for county, incorporated place, township, or community area by the U.S. Census Bureau or IDPH;
- iii) Projections shall be for a maximum period of five years from the date the application is submitted;
- iv) Projections shall contain documentation of population changes in terms of births, deaths and net migration for a period of time equal to or in excess of the projection's horizon;
- v) Projections shall be for total population and specified age groups for the applicant's market areas, as defined by HFPB for each category of service in the application; and
- vi) Documentation on projection methodology, data sources, assumptions and special adjustments shall be submitted to HFPB.

C) Projected Referrals

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Documentation of patients shall include: patient origin by zip code, type of patient (current in-center hemodialysis or pre-dialysis), patient initials and current treatment facility for existing dialysis patients. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, the physician's specialty and verification by the physician that the patient referrals have not been used to support another pending or approved CON application for in-center hemodialysis services. The anticipated number of referrals cannot exceed the physician's experienced caseload.

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5) Service Accessibility

The number of stations being established or added is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including but not limited to individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area or a Medically Underserved Population;
- v) The project will provide service for at least 50% of the population who must currently travel over 30 minutes to receive service;
- vi) For purposes of this Section only, all services within the 30-minute travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

B) Supporting Documentation

The applicant shall provide the following documentation concerning existing restrictions to service access:

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- i) The location and utilization of other planning area service providers;
 - ii) Patient location information by zip code;
 - iii) Independent travel time studies;
 - iv) A certification of waiting times;
 - v) Scheduling or admission restrictions that exist in area providers;
 - v) An assessment of area population characteristics that document that access problems exist;
 - vi) Most recently published IDPH Hospital Questionnaire;
 - vii) Complete 12-month utilization record for which IDPH annual facility data is available.
- 6) Category of Service Modernization
- A) If the project involves modernization of stations, the applicant shall document that station areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, due to such factors as, but not limited to:
 - i) High cost of maintenance;
 - ii) Non-compliance with licensing or life safety codes;
 - iii) Changes in standards of care; or
 - iv) Additional space for diagnostic or therapeutic purposes.
 - B) Documentation shall include the following, as applicable to the factors cited in the application:
 - i) Copies of maintenance reports;

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- ii) Copies of citations for life safety code violations;
 - iii) IDPH licensing reports; and
 - iv) JCAHO reports.
- b) Unnecessary Duplication/Maldistribution - Review Criterion
- 1) The applicant shall document that the project will not result in an unnecessary duplication of stations. The applicant shall provide the following information:
 - A) A list of all zip code areas (in total or in part) that are located within 30 minutes travel time (under normal driving conditions) of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent census data available); and
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes travel time from the project site that provide the categories of service that are proposed by the project.
 - 2) The applicant shall document that the project will not result in a maldistribution of services. Maldistribution exists when the identified area has an excess supply of facilities, stations, and services characterized by such factors as, but not limited to:
 - A) A ratio of stations to population that exceeds one and one-half times the State average;
 - B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the utilization target established pursuant to 77 Ill. Adm. Code 1100; or

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- C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at the utilization target established pursuant to 77 Ill. Adm. Code 1100.
- 3) The applicant shall document that the proposed project will not lower the utilization of other area providers below the utilization target specified in 77 Ill. Adm. Code 1100.
- c) Staffing - Review Criterion
 - 1) Availability
 - A) An applicant proposing to establish a new category of service or to add stations to an existing facility shall document that a sufficient supply of personnel will be available to staff the total number of stations proposed. Sufficient staff availability shall be based upon evidence that, for the latest 12-month period prior to submission of the application, those facilities located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant facility's site have not experienced a staffing shortage with respect to the categories of services proposed by the project.
 - B) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
 - C) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response **should** be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in excess of 10%. Copies of any correspondence received from the facilities must be included in the application.

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D) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10%, the applicant shall provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.

2) Qualifications

The applicant shall document the availability of qualified staff and other health manpower and management for the provision of quality ESRD services.

A) Medical Director – Medical direction of the facility shall be vested in a physician who has completed a board-approved training program in nephrology and has at least 12 months experience providing care to patients receiving dialysis.

B) Registered Nurse – The nurse responsible for nursing services in the unit shall be a registered nurse (RN) who meets the practice requirements of the State of Illinois and has at least 12 months experience in providing nursing care to patients on maintenance dialysis.

C) Dialysis Technician – This individual shall meet all applicable State of Illinois requirements.

D) Dietitian – This individual shall be a registered dietitian with the Commission on Dietetic Registration, meet the practice requirements of the State of Illinois and have a minimum of one year of professional work experience in clinical nutrition as a registered dietitian.

E) Social Worker – The individual responsible for social services shall have a Masters of Social Work.

3) Documentation shall consist of:

A) Medical Director
Curriculum Vitae of Medical Director

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- B) All Other Personnel
- i) Letters of interest from potential employees;
 - ii) Applications filed with the applicant for a position;
 - iii) Signed contracts with required staff; or
 - iv) A narrative explanation of how other positions will be filled.
- 4) Training
The applicant proposing to establish an in-center hemodialysis category of service shall document that an ongoing program of training in dialysis techniques for nurses and technicians will be provided at the facility.
- 5) Staffing Plan
The applicant proposing to establish an in-center hemodialysis category of service shall document that at least one RN will be on duty when the unit is in operation and will maintain a ratio of at least one direct patient care provider to every four patients.
- 6) Medical Staff
The applicant shall provide a letter certifying whether the facility will or will not maintain an open medical staff.
- d) Minimum Size - Review Criterion
The minimum number of in-center hemodialysis stations for an ESRD facility is:
- 1) Four dialysis stations for facilities outside a Metropolitan Statistical Area;
 - 2) Eight dialysis stations for a facility within a Metropolitan Statistical Area.
- e) Support Services – Review Criterion
An applicant proposing to establish an in-center hemodialysis category of service must submit a certification from an authorized representative that attests to each of the following:
- 1) Participation in a dialysis data system;

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- 2) Availability of support services consisting of clinical laboratory service, blood bank, nutrition, rehabilitation, psychiatric, and social services; and
 - 3) Provision of training for self-care dialysis, self-care instruction, home and home-assisted dialysis, and home training will be provided at the proposed facility or the existence of a signed, written agreement for provision of these services with another facility.
- f) Continuity of Care – Review Criterion
An applicant proposing to establish an in-center hemodialysis category of service shall document that a signed, written affiliation agreement or arrangement is in effect for the provision of inpatient care and other hospital services. Documentation shall consist of copies of all such agreements.
- g) Relocation of Facilities – Review Criterion
This criterion may only be used to justify the relocation of a facility from one location in the planning area to another in the same planning area and may not be used to justify any additional stations. A request for relocation of a facility requires the discontinuation of the current category of service at the existing site and the establishment of a new category of service at the proposed location. The applicant shall document the following:
- 1) That the existing facility has met the utilization targets detailed in 77 Ill. Adm. Code 1100.630 for the latest 12-month period for which data is available; and
 - 2) That the proposed facility will improve access for care to the existing patient population.
- h) Assurances
- 1) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of the stations will meet the utilization target specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.

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- 2) An applicant proposing to expand or relocate in-center hemodialysis stations shall demonstrate compliance with the following outcome measures for the latest 12-month period for which data is available:
- A) Adequacy of Hemodialysis
> 85% of hemodialysis patient population achieves urea reduction ratio (URR) > 65% and/or > 85% of hemodialysis patient population achieves Kt/V Daugirdas II > 1.2.
- B) Anemia Management
> 85% of the hemodialysis patient population achieves hemoglobin > 11 gm/dL.
- a) ~~Data System—Review Criterion. An applicant proposing to establish a renal dialysis facility must document that a chronic renal dialysis data system exists or will be established. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.~~
- b) ~~Minimum Size of Renal Dialysis Center or Renal Dialysis Facilities—Review Criterion. The minimum facility size for establishment of a renal dialysis facility is:~~
- 1) ~~three dialysis stations within the facility in areas not included in an MSA or in an MSA of less than 500,000 people;~~
- 2) ~~six dialysis stations in MSA's of over 500,000 population.~~
- e) ~~Variance to Station Need—Review Criterion~~
~~An applicant proposing to establish a renal dialysis facility or to add stations when no need for additional stations exists in the planning area must document one of the following:~~
- 1) ~~a new facility will improve access in a geographic area that is within 30 minutes travel time of the proposed facility site as evidenced by documentation that verifies:~~
- A) ~~all existing renal dialysis facilities in the area are operating at or in excess of the target utilization level for the latest 12 month period~~

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- ~~for which data is available; and~~
- ~~B) a sufficient number of patients is experiencing an access problem to justify the proposed number of stations at the minimum utilization level detailed in 77 Ill. Adm. Code 1100; and~~
- ~~C) the caseload at all existing renal dialysis facilities in the area will not be adversely affected; or~~
- 2) ~~additional stations are needed to reduce high utilization of an existing facility as evidenced by documentation that verifies that the number of proposed stations will reduce the facility's experienced utilization level for the latest 12-month period for which data is available to the minimum utilization level detailed in 77 Ill. Adm. Code 1100.~~
- d) ~~Support Services—Review Criterion. The applicant proposing to establish a renal dialysis facility must document that clinical and pathological laboratory services, blood bank, nutrition, rehabilitation, psychiatric and social services, and self-care dialysis support services, will be available. Documentation shall consist of a narrative as to how such services will be provided. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.~~
- e) ~~Affiliation Agreements—Review Criterion. The applicant proposing to establish a renal dialysis facility must document that a written affiliation agreement or arrangement is in effect for the provision of inpatient care and other hospital services. Documentation shall consist of copies of all such agreements. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.~~
- f) ~~Self Care and Home Dialysis Training—Review Criterion. The applicant proposing to establish a renal dialysis facility must document that self-care dialysis, self-care instruction, home dialysis and home training will be provided at the applicant facility or that a written agreement with another facility for the provision of these services exists. Documentation shall consist of a certification that services are provided by the applicant or copies of all agreements for provision of such services. This criterion shall not be applicable to existing renal dialysis facilities that are relocating or adding stations.~~
- g) ~~Relocation of Facilities—Review Criterion. This criterion may only be used to~~

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~~justify the relocation of a facility from one location in the planning area to another in the same planning area and may not be used to justify any additional stations. The applicant must document the following:~~

- ~~1) that the existing facility has met the occupancy targets detailed in 77 Ill. Adm. Code 1100.630 for the latest 12 month period for which data is available;~~
- ~~2) that the proposed facility will improve access for care to the existing patient population; and~~
- ~~3) that the existing facility needs to be replaced in order to comply with Section 1110.420(b).~~

~~h) Addition of Stations—Review Criterion. This criterion applies to an existing facility which proposes the addition of stations at the existing site. The applicant must document the following:~~

- ~~1) that the existing facility has met the occupancy targets set forth in 77 Ill. Adm. Code 1100.630 for the latest 12 month period for which data is available;~~
- ~~2) that the proposed project will not adversely impact the workload at any other existing facility within 30 minutes travel time of the applicant facility; and~~
- ~~3) that a need for additional stations exists in the planning area based upon the update to the Inventory of Health Care Facilities in effect at the time of State Board consideration; or that the proposed project is in conformance with the variance set forth in subsection (c) of this Section.~~

~~i) Quality of Care—Review Criterion. The applicant must demonstrate the following:~~

- ~~1) that greater than 65% of its patients achieve a urea reduction ratio (URR) of 0.65 or better; and~~
- ~~2) that greater than 65% of its patients achieve a hematocrit level of 31% or better.~~

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(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA –
SELECTED ORGAN TRANSPLANTATION

Section 1110.2310 Introduction (Repealed)

~~Subpart X contains review criteria which pertain to the selected organ transplantation category of service. These review criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.2320 Selected Organ Transplantation – Definitions (Repealed)

- a) ~~The selected organ transplantation service means a category of service relating to the surgical transplantation of any of the following human organs: heart, lung, heart lung, liver, pancreas, or intestine and small bowel. It does not include bone marrow or cornea transplants.~~
- b) ~~A selected organ transplantation center means a hospital which provides staffing and other adult or pediatric medical and surgical specialty services required for the care of a transplant patient.~~
- e) ~~"Teaching Institution" for the purpose of this Subpart means a hospital having a major relationship with a medical school as defined and listed in the current "Directory of Residency Training Programs" developed by the American Medical Association, 535 Dearborn, Chicago, Illinois 60610 and the National Organ Procurement and Transplantation Network.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.2330 Selected Organ Transplantation – Review Criteria

Applicants proposing to establish, expand or modernize a Selected Organ Transplantation category of service shall describe how the proposed project will address all of the following indicators of need:

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- a) Planning Area Need - Review Criterion
The applicant shall document that the project is necessary to serve the planning area's population, based on the following:
- 1) 77 Ill. Adm. Code 1100 Formula Calculation
No formula need for this category of service has been established.
 - 2) Service to Planning Area Residents
 - A) Applicants proposing to establish this category of service shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable).
 - B) Applicants shall document that at least 50% of the projected patient volume will be from residents of the area. Patient origin information must be presented by zip code and be based upon the patient's legal residence (other than a health care facility) for the last six months immediately prior to admission.
 - 3) Service Demand
The project to establish a new category of service, or to expand an existing category of service, is necessary to accommodate the service demand experienced by the applicant facility over the latest two-year period. The applicant shall document:
 - A) Historical Referrals
The number of referrals to other facilities, for the proposed category of service, for each of the latest two years.
Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; type of transplant; name and location of the recipient hospital.
 - B) Projected Service Demand
The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application,

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and an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Each referral letter must contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

4) Service Accessibility

The category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area or a Medically Underserved Population;
- v) The project will provide service for at least 50% of the population who must travel over 30 minutes to receive service; or

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vi) For purposes of this Section only, all services within the one-hour travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

B) Supporting Documentation

The applicant shall provide the following documentation concerning existing restrictions to service access:

i) The location and utilization of other planning area service providers;

ii) Patient location information by zip code;

iii) Independent travel time studies;

iv) A certification of waiting times;

v) Scheduling or admission restrictions that exist in area providers;

vi) An assessment of area population characteristics that document that access problems exist;

vii) Most recently published IDPH Hospital Questionnaire;

viii) Complete 12-month utilization record for which IDPH annual facility data is available.

5) Category of Service Modernization

A) If the project involves modernization of a category of service, the applicant shall document that the areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, due to such factors as, but not limited to:

i) High cost of maintenance;

ii) Non-compliance with licensing or life safety codes;

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- A) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or
- B) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards.
- 3) The applicant shall document that the proposed project will not lower the utilization of other area providers below the occupancy standard specified in 77 Ill. Adm. Code 1100.
- c) Staffing - Review Criterion
- 1) An applicant proposing to establish a new category of service shall document that a sufficient supply of personnel will be available to staff the proposed project. Sufficient staff availability shall be based upon evidence that, for the latest 12-month period prior to submission of the application, those hospitals located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant facility's site have not experienced a staffing shortage with respect to the categories of services proposed by the project.
- 2) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
- 3) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in excess of 10%. Copies of any correspondence received from the facilities shall be included in the application.

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- 4) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10% percent, the applicant must provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.
- d) Surgical Staff – Review Criterion
The applicant shall document that the facility has on staff transplant surgeons certified in the applicable specialty and that each has had a minimum of one year of training and experience in transplant surgery, post-operative care, long-term management of organ recipients and the immunosuppressive management of transplant patients. Documentation shall consist of curricula vitae of transplant surgeons on staff and certification by an authorized representative that the personnel with the appropriate certification and experience are on the hospital staff.
- e) Collaborative Support – Review Criterion
The applicant shall document collaboration with experts in the fields of hepatology, cardiology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, anesthesiology, physical therapy, and rehabilitation medicine. Documentation of collaborate involvement shall include, but not be limited to, a plan of operation detailing the interaction of the transplant program and the stated specialty areas.
- f) Support – Review Criterion
An applicant shall submit a certification from an authorized representative that attests to each of the following:
- 1) Availability of on-site access to microbiology, clinical chemistry, radiology, blood bank and resources required to monitor use of immunosuppressive drugs;
 - 2) Access to tissue typing services; and
 - 3) Ability to provide psychiatric and social counseling for the transplant recipients and for their families.
- g) Assurances – Review Criterion

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- 1) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization for the category of service will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.
 - 2) The applicant shall document that the proposed category of service will be provided at a teaching institution.
 - 3) The applicant shall document that the transplant program will be performed in conjunction with graduate medical education.
 - 4) The applicant shall provide proof of membership in the Organ Procurement and Transplantation Network (OPTN) and a federally designated organ procurement organization (OPO).
 - 5) The applicant shall document that information on finances (cost and charges) and patient outcomes will be provided to the Department of Public Health.
- a) ~~Establishment of a Program—Review Criterion~~
- 1) ~~The applicant must document the following:~~
 - A) ~~the applicant is a teaching institution; and~~
 - B) ~~the transplantation program will be performed in conjunction with graduate medical education.~~
 - 2) ~~Documentation shall consist of a written agreement between the applicant and the medical school detailing the relationship of the transplantation program to graduate medical education.~~
- b) ~~Physical Facilities—Review Criterion. The applicant must document sufficient operating and recovery room resources, intensive care resources and personnel to operate the transplant program as reflected in the norms found in Appendix B of this Part.~~

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- e) ~~Access to Donor Organs—Review Criterion. The applicant must document access to donor organs. This must be accomplished by membership in the National Organ Procurement and Transplantation Network and in a Regional Organ Procurement Agency.~~
- d) ~~Recipient Selection—Review Criterion. The applicant must provide a copy of its procedures for selecting transplant candidates and distribution of organs.~~
- e) ~~Surgical Staff—Review Criterion. The applicant must document that the facility has on-staff transplant surgeon(s) certified in the applicable specialty and that each has had a minimum of one year of training and experience in transplant surgery, post-operative care, long-term management of organ recipients and the immunosuppressive management of transplant patients. Documentation shall consist of certification by the hospital administrator that the personnel with the appropriate certification and experience are on the hospital staff.~~
- f) ~~Collaborative Support—Review Criterion. The applicant must document collaboration with experts in the fields of hepatology, cardiology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, anesthesiology, physical therapy, and rehabilitation medicine. Documentation of collaborate involvement shall include, but not be limited to, a plan of operation detailing the interaction of the transplant program and the stated specialty areas.~~
- g) ~~Ancillary Services—Review Criterion. The applicant must document on-site access to microbiology, clinical chemistry, radiology, blood bank and resources required to monitor use of immunosuppressive drugs. The applicant must also have access to tissue typing services and be able to provide psychiatric and social counseling for the transplant recipient and for their families.~~
- h) ~~Data—Review Criterion. The applicant must document that information on finances (cost and charges) and patient outcomes will be provided to the Department of Public Health.~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART Y: CATEGORY OF SERVICE REVIEW CRITERIA –
KIDNEY TRANSPLANTATION

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Section 1110.2410 Introduction (Repealed)

~~Subpart Y contains Review Criteria which pertain to the Kidney Transplantation category of service. These review criteria are utilized in addition to the "General Review Criteria" outlined in Subpart C and any other applicable Review Criteria outlined in Subparts D and E.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.2420 Kidney Transplantation – Definitions (Repealed)

- a) ~~Kidney Transplantation is a category of service which involves the surgical replacement of a nonfunctioning human kidney with a donor kidney in order to restore renal function to the patient.~~
- b) ~~Kidney Transplantation Center means a hospital which directly furnishes transplantation and other medical and surgical specialty services required for the care of the kidney transplant patient, including inpatient dialysis furnished directly or under arrangement.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 1110.2430 Kidney Transplantation – Review Criteria

Applicants proposing to establish, expand or modernize a Kidney Transplantation category of service shall describe how the proposed project will address all of the following indicators of need:

- a) Planning Area Need - Review Criterion
The applicant shall document that the project is necessary to serve the planning area's population, based on the following:
 - 1) 77 Ill. Adm. Code 1100 Formula Calculation
No formula need for this category of service has been established.
 - 2) Service to Planning Area Residents
 - A) Applicants proposing to establish this category of service shall document that the primary purpose of the project will be to provide

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necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable).

- B) Applicants shall document that at least 50% of the projected patient volume will be from residents of the area. Patient origin information must be presented by zip code and be based upon the patient's legal residence (other than a health care facility) for the last six months immediately prior to admission

3) Service Demand

The project to establish a new category of service is necessary to accommodate the service demand experienced by the applicant facility over the latest two-year period. The applicant shall document:

A) Historical Referrals

The number of referrals to other facilities, for the proposed category of service, for each of the latest two years.

Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient hospital.

B) Projected Service Demand

The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

4) Service Accessibility

The category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

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The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area or a Medically Underserved Population;
- v) The project will provide service for at least 50% of the population who must currently travel over three hours to receive service.
- vi) For purposes of this Section only, all services within the 30-minute travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

B) Supporting Documentation

The applicant shall provide the following documentation concerning existing restrictions to service access:

- i) The location and utilization of other planning area service providers;
- ii) Patient location information by zip code;
- iii) Independent travel time studies;

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- iv) A certification of waiting times;
- v) Scheduling or admission restrictions that exist in area providers;
- vi) An assessment of area population characteristics that document that access problems exist;
- vii) Most recently published IDPH Hospital Questionnaire;
- viii) Complete 12-month utilization record for which IDPH annual facility data are available.

5) Category of Service Modernization

- A) If the project involves modernization of a category of service, the applicant shall document that the areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, due to such factors as, but not limited to:
 - i) High cost of maintenance;
 - ii) Non-compliance with licensing or life safety codes;
 - iii) Changes in standards of care (e.g., private versus multiple bed rooms); or
 - iv) Additional space for diagnostic or therapeutic purposes.
- B) Documentation shall include the following, as applicable to the factors cited in the application:
 - i) Copies of maintenance reports;
 - ii) Copies of citations for life safety code violations;
 - iii) IDPH licensing reports;

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iv) JCAHO reports.b) Unnecessary Duplication/Maldistribution - Review Criterion

1) The applicant shall document that the project will not result in an unnecessary duplication or maldistribution of services. The applicant shall provide the following information:

A) A list of all zip code areas (in total or in part) that are located within three hours travel time (under normal driving conditions) of the project's site;

B) The total population of the identified zip code areas (based upon the most recent census data available); and

C) The names and locations of all existing or approved health care facilities located within three hours travel time that provide the category of service that is proposed by the project.

2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area has an excess supply of facilities, beds, and services characterized by such factors as, but not limited to:

A) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or

B) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards.

3) The applicant shall document that the proposed project will not lower the utilization of other area providers below the occupancy standard specified in 77 Ill. Adm. Code 1100.

c) Staffing - Review Criterion

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- 1) An applicant proposing to establish a new category of service shall document that a sufficient supply of personnel will be available to staff the proposed project. Sufficient staff availability shall be based upon evidence that, for the latest 12-month period prior to submission of the application, those hospitals located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant facility's site have not experienced a staffing shortage with respect to the categories of services proposed by the project.
 - 2) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
 - 3) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response should be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in excess of 10%. Copies of any correspondence received from the facilities shall be included in the application.
 - 4) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10% percent, the applicant shall provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.
- c) Surgical Staff – Review Criterion
The applicant shall document that the facility has on staff transplant surgeons certified in the applicable specialty and that each has had a minimum of one year of training and experience in transplant surgery, post-operative care, long-term management of organ recipients and the immunosuppressive management of transplant patients. Documentation shall consist of curricula vitae of transplant surgeons on staff and certification by an authorized representative that the personnel with the appropriate certification and experience are on the hospital staff.

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- d) Support Services – Review Criterion
The applicant shall document that the following are available on premises: laboratory services, social services, dietetic services, self-care dialysis support services, inpatient dialysis services, pharmacy and specialized blood facilities (including tissue typing). The applicant shall also document participation of the center in a recipient registry. Documentation shall consist of a certification as to the availability of such services and participation in a recipient registry.
- e) Assurances – Review Criterion
- 1) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization for the category of service will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.
 - 2) The applicant shall document that the proposed category of service will be provided at a teaching institution.
 - 3) The applicant shall provide proof of membership in the Organ Procurement and Transplantation Network (OPTN) and a federally designated organ procurement organization (OPO).
- a) ~~Establishment of Facilities – Review Criterion. The applicant must document that each existing renal transplantation center is serving a population base of more than two million people with the performance of 25 or more transplants per year and that an unserved population of at least two million people exists within three hours travel time. Documentation shall consist of travel time studies involving all existing service providers.~~
- b) ~~Kidney Transplantation Center – Review Criterion. The applicant must document that the following are available on premises: laboratory services, social services, dietetic services and self care dialysis support services, inpatient dialysis services, pharmacy, specialized blood facilities (including tissue typing). The applicant must also document participation of the center in a recipient registry. Documentation shall consist of a certification as to the availability of such~~

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~~services and participation in a recipient registry.~~

- e) ~~Affiliation Agreements—Review Criterion. The applicant must document that the transplantation center is a teaching institution (see Section 1110.2320(c)).~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART AE: CLINICAL SERVICE AREAS OTHER THAN
CATEGORY OF SERVICE – REVIEW CRITERIA

Section 1110.3030 Clinical Service Areas Other Than Categories of Service - Review
Criteria

These criteria are applicable only to those projects or components of projects concerning clinical service areas that are not "categories of service", but for which utilization standards are listed in Appendix B. In addition, all clinical service areas shall address other applicable requirements in this Part, as well as those in 77 Ill. Adm. Code 1100 and 1130. For those services that are not addressed in Appendix B or defined as a category of service, the applicant shall comply with requirements of the review criterion in Section 1110.234(a) (Size of Project), as well as all other applicable requirements in this Part 1110 and 77 Ill. Adm. Code 1100 and 1130. Applicants proposing to establish, expand or modernize clinical service areas shall describe how the proposed project will address all of the following indicators of need:

- a) Planning Area Need - Review Criterion
The applicant shall document that the clinical service areas to be established, expanded or modernized are necessary to serve the planning area's population, based on the following:
- 1) Service to Planning Area Residents
 - A) Applicants proposing to establish clinical service areas as a component of a proposed new facility shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable).
 - B) Applicants proposing to add a new clinical service area or to expand an existing clinical service area at an existing facility shall

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provide patient origin information for the last 12-month period, verifying that at least 50% of the facility's inpatient admissions were residents of the area.

C) Patient origin information shall be presented by zip code and be based upon the patient's legal residence (other than a health care facility) for the last six months immediately prior to receipt of the application.

2) Service Demand - Establishment of Clinical Service Areas for a New Facility
The applicant shall document that each clinical service area (e.g., emergency, surgery, imaging, laboratory, etc.) to be established at a proposed new facility is necessary to support the patient care functions of the facility and that the proposed GSF and anticipated utilization is consistent with the standards established in Appendix B.

3) Service Demand - Establishment of a New Clinical Service Area at an Existing Facility
The clinical service area to be established at an existing facility is necessary to accommodate the demand experienced over the latest two-year period. The applicant shall document:

A) Historical Referrals
The number of referrals to other facilities, for each proposed new clinical service area, for each of the latest two years.
Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient hospital.

B) Projected Service Demand
The applicant shall provide physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application, and an estimate as to the number of patients who will be referred by the physician to the applicant's facility. Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address, and

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the physician's specialty. The anticipated number of referrals cannot exceed the physician's experienced caseload.

- 4) Expansion of Existing Clinical Service Area
The clinical service area expansion is necessary to accommodate an existing facility's experienced high utilization, and to meet a projected demand for service. The applicant shall document the following:
- A) Historical Service Demand
- i) An average annual utilization rate for the clinical service areas, for each of the latest three years that exceeds the utilization target specified in Appendix B; or
- ii) If patients have been referred to other facilities in order to receive the subject services, the applicant shall provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and the name and location of the recipient hospital, for each of the latest two years.
- B) Projected Service Demand - Rapid Population Growth
A projected demand for service, based upon rapid population growth in the applicant facility's existing market area (as experienced within the latest 12-month period), shall be determined as follows:
- i) The applicant shall define the facility's market area based upon historical patient origin data by census tract;
- ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year for county, incorporated place, township, or community area, by the U.S. Census Bureau or IDPH;
- iii) Projections shall be for a maximum period of five years from the date the application is submitted;

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- iv) Projections shall contain documentation of population changes in terms of births, deaths and net migration for a period of time equal to or in excess of the projection horizon;
 - v) Projections shall be for total population and specified age groups for the applicant's market areas, as defined by HFPB for each category of service in the application; and
 - vi) Documentation on projection methodology, data sources, assumptions and special adjustments shall be submitted to HFPB.
- 5) Service Accessibility
The clinical service area to be established or expanded is necessary to improve access for planning area residents. The applicant shall document the following:
- A) Service Restrictions
The applicant shall document that at least one of the following factors exists in the planning area:
 - i) The absence of the proposed clinical service area within the planning area;
 - ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care, or charity care;
 - iii) Restrictive admission policies of existing providers;
 - iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;

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- v) The project will provide service for at least 50% of the population who must currently travel over 30 minutes to receive service;
 - vi) For purposes of this Section only, all existing services within the 30-minute travel time meet or exceed the utilization standard specified in Appendix B.
- B) Supporting Documentation
The applicant shall provide the following documentation, as applicable to the existing restrictions cited in the application:
- i) The location and utilization of other planning area service providers;
 - ii) Patient location information by zip code;
 - iii) All independent travel time studies;
 - iv) A certification of waiting times;
 - v) Scheduling or admission restrictions that exist in area providers;
 - vi) An assessment of area population characteristics that documents that access problems exist;
 - vii) Most recently published IDPH Hospital Questionnaire;
 - viii) Complete 12-month utilization record for which IDPH annual facility data are available.
- 6) Category of Service Modernization
- A) If the project involves modernization of clinical service areas other than categories of service, the applicant shall document that each clinical service area to be modernized is deteriorated or

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functionally obsolete and needs to be replaced or modernized, due to factors including, but not limited to:

- i) High cost of maintenance;
- ii) Non-compliance with licensing or life safety codes;
- iii) Changes in standards of care; or
- iv) Additional space for diagnostic or therapeutic purposes.

B) Documentation shall include the following, as applicable to the factors cited in the application:

- i) Copies of maintenance reports;
- ii) Copies of citations for life safety code violations;
- iii) IDPH licensing reports; and
- iv) JCAHO reports.

b) Unnecessary Duplication/Maldistribution - Review Criterion

1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:

- A) A list of all zip code areas (in total or in part) that are located within 30 minutes travel time (under normal driving conditions) of the project's site;
- B) The total population of the identified zip code areas (based upon the most recent census data available); and
- C) The names and locations of all existing or approved health care facilities, located within 30 minutes travel time from the project site, that provide the clinical services that are proposed by the project.

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- 2) The applicant shall document that the project will not result in maldistribution. Maldistribution is indicated by such factors as, but not limited to:
 - A) Historical utilization (for the latest 12-month period prior to submission of the application), at facilities located within 30 minutes travel time of the applicant's site, below the minimum utilization standard specified in Appendix B; or
 - B) Insufficient population to provide the volume or caseload necessary to utilize the clinical service areas proposed by the project at or above minimum utilization standards.
 - 3) The applicant shall provide the following information:
 - A) A list of all zip code areas (in total or in part) that are located within 30 minutes travel time (under normal driving conditions) of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent census data available); and
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes travel time from the project site that provide the clinical services that are proposed by the project.
 - 4) The applicant shall document that the proposed project will not lower the utilization of other area providers below the minimum utilization standard specified in Appendix B.
- c) Staffing - Review Criterion
- 1) An applicant proposing to establish or expand a clinical service area shall document that a sufficient supply of personnel will be available to staff the clinical service. Sufficient staff availability shall be based upon evidence that, for the latest 12-month period prior to submission of the application, those facilities located in zip code areas that are (in total or in part) within one hour travel time (under normal driving conditions) of the applicant

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facility's site have not experienced a staffing shortage with respect to the clinical service area proposed by the project.

- 2) A staffing shortage is indicated by an average annual vacancy rate of more than 10% for budgeted full-time equivalent staff positions for health care workers who are subject to licensing by the Department of Financial and Professional Regulation.
- 3) An applicant shall document that a written request for such information was received by all existing facilities within the zip code areas, and that the request included a statement that a written response should be provided to the applicant no later than 15 days from receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute a non-rebuttable assumption that the existing facility has not experienced staffing vacancy rates in excess of 10%. Copies of any correspondence received from the facilities must be included in the application.
- 4) If more than 25% of the facilities contacted indicated an experienced staffing vacancy rate of more than 10%, the applicant shall provide documentation as to how sufficient staff shall be obtained to operate the proposed project, in accordance with licensing requirements.

- d) Assurances
The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of each clinical service area will meet or exceed the minimum utilization standard specified in Appendix B. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.

(Source: Added at 31 Ill. Reg. _____, effective _____)

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Issuance of Licenses
- 2) Code Citation: 92 Ill. Adm. Code 1030
- 3) Section Number: 1030.84 Proposed Action: Amendment
- 4) Statutory Authority: 625 ILCS 5/2-104; 625 ILCS 5/6-521
- 5) A Complete Description of the Subjects and Issues Involved: This amendment involves updating the definitions for vehicle inspection in order to come into compliance with the Federal Motor Carrier Safety Regulations.
- 6) Published Studies or reports, and Sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
1030.83	Amendment	30 Ill. Reg. 18863; December 15, 2006
1030.96	Amendment	30 Ill. Reg. 16895; October 27, 2006
1030.98	Amendment	30 Ill. Reg. 16895; October 27, 2006
- 11) Statement of Statewide Policy Objective: The rulemaking will not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Texts of the prepared amendments are posted on the Secretary of State's website, www.cyberdriveillinois.com as part of the *Illinois Register*. Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this Notice to:

Arlene J. Pulley

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield, Illinois 62723

217-557-4462

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2006

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1030
ISSUANCE OF LICENSES

Section	
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License/Temporary Visitor's Driver's License
1030.12	Driver's License Medical Advisory Board
1030.13	Denial of License or Permit
1030.15	Cite for Re-examination
1030.16	Physical and Mental Evaluation
1030.17	Errors in Issuance of Driver's License/Cancellation
1030.18	Medical Criteria Affecting Driver Performance
1030.20	Classification of Drivers – References
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization and Senior Citizen Transportation
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Third-Party Certification Program
1030.63	Religious Exemption for Social Security Numbers
1030.65	Instruction Permits
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid Arrangements Other Than Standard Eye Glasses or Contact Lenses
1030.80	Driver's License Testing/Written Test
1030.81	Endorsements
1030.82	Charter Bus Driver Endorsement Requirements
1030.83	Hazardous Material Endorsement
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts – Written and/or Road Tests
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Licenses
1030.90	Requirement for Photograph and Signature of Licensee on Driver's License
1030.91	Disabled Person/Handicapped Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses

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- 1030.94 Duplicate or Corrected Driver's License or Instruction Permit
- 1030.95 Consular Licenses (Repealed)
- 1030.96 Restricted Commercial Driver's License
- 1030.97 Invalidation of a Driver's License, Permit and/or Driving Privilege
- 1030.98 School Bus Commercial Driver's License
- 1030.100 Anatomical Gift Donor
- 1030.110 Emergency Medical Information Card
- 1030.115 Change-of-Address
- 1030.120 Issuance of a Probationary License
- 1030.130 Grounds for Cancellation of a Probationary License
- 1030.140 Use of Captured Images
- 1030.APPENDIX A Questions Asked of a Driver's License Applicant
- 1030.APPENDIX B Acceptable Identification Documents

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 6, Art. I] and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/2-104(b)].

SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective July 19, 1989; amended at 13 Ill. Reg. 13898, effective August 22, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 11, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992; emergency amendment at 16 Ill. Reg. 12228, effective July 16, 1992, for a maximum of 150 days; emergency expired on December

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13, 1992; amended at 16 Ill. Reg. 18087, effective November 17, 1992; emergency amendment at 17 Ill. Reg. 1219, effective January 13, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2025, effective February 1, 1993; amended at 17 Ill. Reg. 7065, effective May 3, 1993; amended at 17 Ill. Reg. 8275, effective May 24, 1993; amended at 17 Ill. Reg. 8522, effective May 27, 1993; amended at 17 Ill. Reg. 19315, effective October 22, 1993; amended at 18 Ill. Reg. 1591, effective January 14, 1994; amended at 18 Ill. Reg. 7478, effective May 2, 1994; amended at 18 Ill. Reg. 16457, effective October 24, 1994; amended at 19 Ill. Reg. 10159, effective June 29, 1995; amended at 20 Ill. Reg. 3891, effective February 14, 1996; emergency amendment at 20 Ill. Reg. 8358, effective June 4, 1996, for a maximum of 150 days; emergency amendment repealed in response to an objection of the Joint Committee on Administrative Rules at 20 Ill. Reg. 14279; amended at 21 Ill. Reg. 6588, effective May 19, 1997; amended at 21 Ill. Reg. 10992, effective July 29, 1997; amended at 22 Ill. Reg. 1466, effective January 1, 1998; emergency amendment at 23 Ill. Reg. 9552, effective August 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13947, effective November 8, 1999; amended at 24 Ill. Reg. 1259, effective January 7, 2000; emergency amendment at 24 Ill. Reg. 1686, effective January 13, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6955, effective April 24, 2000; emergency amendment at 24 Ill. Reg. 13044, effective August 10, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18400, effective December 4, 2000; amended at 25 Ill. Reg. 959, effective January 5, 2001; amended at 25 Ill. Reg. 7742, effective June 5, 2001; amended at 25 Ill. Reg. 12646, effective September 24, 2001; emergency amendment at 25 Ill. Reg. 12658, effective September 24, 2001, for a maximum of 150 days; emergency expired February 20, 2002; amended at 26 Ill. Reg. 9961, effective June 24, 2002; amended at 27 Ill. Reg. 855, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 7340, effective April 14, 2003, for a maximum of 150 days; emergency expired September 10, 2003; emergency amendment at 27 Ill. Reg. 16968, effective October 17, 2003, for a maximum of 150 days; emergency expired March 14, 2004; emergency amendment at 28 Ill. Reg. 384, effective January 1, 2004, for a maximum of 150 days; emergency expired May 29, 2004; amended at 28 Ill. Reg. 8895, effective June 14, 2004; amended at 28 Ill. Reg. 10776, effective July 13, 2004; amended at 29 Ill. Reg. 920, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2469, effective January 31, 2005, for a maximum of 150 days; emergency expired June 29, 2005; amended at 29 Ill. Reg. 9488, effective June 17, 2005; amended at 29 Ill. Reg. 12519, effective July 28, 2005; amended at 29 Ill. Reg. 13237, effective August 11, 2005; amended at 29 Ill. Reg. 13580, effective August 16, 2005; amended at 30 Ill. Reg. 910, effective January 6, 2006; amended at 30 Ill. Reg. 5621, effective March 7, 2006; amended at 30 Ill. Reg. 11365, effective June 15, 2006; emergency amendment at 30 Ill. Reg. 11409, effective June 19, 2006, for a maximum of 150 days; emergency expired November 15, 2006; amended at 31 Ill. Reg. 4782, effective March 12, 2007; amended at 31 Ill. Reg. 5096, effective March 15, 2007; amended at 31 Ill. Reg. 5864, effective March 29, 2007; amended at 31 Ill. Reg. _____, effective _____.

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Section 1030.84 Vehicle Inspection

- a) For the purposes of this Section, terms shall be defined as follows:

"Examiner" – employee of the Secretary of State who is qualified to administer a road test.

"First Division Vehicle" – those motor vehicles that are designed to carry not more than ten persons.

"Commercial Motor Vehicle" or "CMV" – a motor vehicle, used in commerce, except those referred to in Section 6-500(6)(B) of the Illinois Vehicle Code, designed to transport passengers of property if:

the vehicle has a GVWR of 26,001 pounds or more or such a lesser GVWR as subsequently determined by federal regulations (49 CFR 383);
or

any combination of vehicles with a GCWR of 26,001 pounds or more provided the GVWR of any vehicle or vehicles being towed is 10,001 pounds or more; or

the vehicle is designed to transport 16 persons; or

the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR 172, subpart F, having a GVWR of 26,001 pounds or more, or such lesser GVWR as subsequently determined by Federal regulations (49 CFR 383); or any combination of vehicles with a GCWR of 26,001 pounds or more, provided the GVWR of any vehicle(s) being towed is 10,001 pounds or more; or a vehicle designed to transport 16 or more persons; or a vehicle transporting hazardous materials that is required to be placarded. The definition does not include recreational vehicles as defined in Section 1-169 of the Illinois Vehicle Code [625 ILCS 5/1-169] when operated primarily for personal use, military vehicles being operated by non-civilian personnel or firefighting equipment owned or operated by or for a governmental entity.

"Gross Combination Weight Rating" or "{GCWR}" – the GVWR of the power unit plus the GVWR of the towed unit or units. In the absence of a value

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~~specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load on the unit. unit(s) or the combined registered weight of the power unit plus the towed unit, whichever is greater.~~

"Gross Vehicle Weight Rating" ~~or "(GVWR)"~~ – the value specified by the ~~manufacturer or manufacturers~~ ~~manufacturer(s)~~ as the maximum loaded weight of a single vehicle, ~~or the registered gross weight, whichever is greater.~~

"Hazardous Materials" – substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce (49 USCA 1802).

"Mandatory Insurance" – requirement of insurance as provided by Article 6 of the Illinois Safety and Family Financial Responsibility Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 7, Art. VI].

"Mandatory Liability Insurance Policy" – a liability insurance policy issued in amounts no less than the minimum amounts set for bodily injury or death and for destruction of property pursuant to Section 7-203 of the Illinois Vehicle Code [625 ILCS 5/7-203], and issued in accordance with the requirements of Sections 143a and 143a-2 of the Illinois Insurance Code [215 ILCS 5/143a and 143a-2]. The definition does not include vehicles subject to the provisions of Chapters 18 or 18a, Article III, or ~~Section~~ ~~Sections~~ 7-609, 12-606, or 12-707.01 of the Illinois Vehicle Code; vehicle required to file proof of liability insurance with the Illinois Commerce Commission; vehicles covered by a certificate of self insurance pursuant to Section 7-502 of the Illinois Vehicle Code; vehicles owned by the United States Government, State of Illinois, or any political sub-division, municipality or local mass transit district; implements of husbandry, other vehicles complying with laws which require insurance in amounts meeting or exceeding the minimum amounts required under the Illinois Vehicle Code; and inoperable or stored vehicles that are not operated.

"Motorcycle" – every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

"Pedalcycle" – motor driven cycle whose speed attainable in 1 mile is 30 miles per hour or less, which is equipped with a motor that produces 2 brake horse

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power or less.

"Proof of Insurance" –

Illinois insurance card [625 ILCS 5/7-602(a)];

the combination of proof of purchase of the motor vehicle within the previous 60 days and a current insurance card issued for the motor vehicle replaced by such purchase [625 ILCS 5/7-602(b)];

a current declarations page of a liability insurance policy [625 ILCS 5/7-602(c)];

liability insurance binder, certificate of liability insurance or receipt for payment to an insurer or its authorized representative for a liability insurance premium, provided such document contains all information the Secretary of State by rule or regulation may require [625 ILCS 5/7-602(d)];

a current rental agreement [625 ILCS 5/7-602(e)];

registration plates, registration sticker or other evidence of registration issued by the Secretary only upon submission of proof of liability insurance [625 ILCS 5/7-602(f)]; or

a certificate, decal, or other document or device issued by a governmental agency for a motor vehicle indicating the vehicle is insured for liability [625 ILCS 5/7-602(g)] or has qualified for an exemption under the law.

"Registration sticker" – a device issued by the Secretary of State to be attached to a rear registration plate that will renew the registration and registration plate or plates for a pre-determined period of time.

"Religious Organization Bus" – any vehicle other than a vehicle of the First Division or a school bus, as defined in Section 1-182 of the Illinois Vehicle Code [625 ILCS 5/1-182], which is exclusively owned and operated by a religious organization and is used primarily in conducting the official activities of such organization.

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"Second Division Vehicle" – vehicles that are designed for carrying more than 10 persons, those designed or used for living quarters, those vehicles that are designed for pulling or carrying property, freight or cargo, those motor vehicles of the First Division remodeled for use and used as motor vehicles of the Second Division, and those motor vehicles of the First Division used and registered as school buses.

"Secretary of State" – the Secretary of State of Illinois.

"Senior Citizen Transportation Vehicle" – any vehicle other than a vehicle of the First Division or a school bus, as defined in Section 1-182 of the Illinois Vehicle Code, that is exclusively owned and operated by a senior citizen organization and is used primarily in conducting the official activities of such organization.

- b) An applicant, who is required to take the road test, as defined in Section 1030.85 of this Part, must provide a representative vehicle for the test. The vehicle will be safety inspected by an examiner prior to the road test. A vehicle that is not properly equipped or that does not have equipment in safe operating order will be rejected for use in the road test. The following equipment shall be safety inspected as required for the type of representative vehicles being used to administer the road test:
- 1) Registration plates shall be attached or affixed to the motor vehicle pursuant to Section 3-413 of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/3-413]. The owner of a vehicle who does not have registration plates and/or a registration sticker shall present proper documentation, pursuant to Section 3-407 of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/3-407], showing that proper registration has been applied for, prior to use of the vehicle for road test.
 - 2) When lighted lamps are required pursuant to Section 12-201(b) of the Illinois Vehicle Equipment Law for the road test, motor vehicles shall have mounted, exhibit and operate such lamps pursuant to Sections 12-201, 12-202, 12-204, 12-205, 12-207, 12-208, 12-209, 12-210 and/or 12-215 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-201, 12-202, 12-204, 12-205, 12-207, 12-208, 12-209, 12-210 and/or 12-215]. A motorized pedalcycle must have mounted and display a lamp~~lamp(s)~~ and reflector as required in Section 11-1507.1 of

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the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-1507.1].

- 3) When windshield wipers are required pursuant to Section 12-503(d) of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-503(d)], they must be in proper operating condition as defined in the same statute.
- 4) The horn must be in proper working order pursuant to Section 12-601 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-601]. Horns do not include a siren, whistle, or bell.
- 5) *No person shall drive a motor vehicle with any sign, poster, window application, reflective material or nonreflective material upon the front windshield, sidewings, or side windows immediately adjacent to each side of the driver which materially obstructs, obscures or impairs the view from both within or without the vehicle. No person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield or rear window which materially obstructs the driver's view. No person shall drive a motor vehicle when the windshield, side or rear windows are in such defective condition or repair as to materially impair the driver's view to the front, side or rear. A vehicle equipped with an unobstructed rear view mirror will be deemed to be in compliance in the event the rear window of the vehicle is materially obscured.* [625 ILCS 5/12-~~503502~~]
- 6) No vehicle may be used for the road test if one or more tires are unsafe as defined in Section 12-405 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-405]. A vehicle equipped with metal studded tires may not be used for the road test.
- 7) The service brakes, foot or hand operated, must be in a condition which allows activation with one movement of the activating device. All First and Second Division vehicles must be equipped with an operable emergency brake. A Class M motorcycle shall have two methods of braking. A Class L motor-driven cycle or pedalcycle shall have at least one method of braking.
- 8) Each driver and front seat passenger of a 1965 or later model motor

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vehicle operated on a street or highway in this ~~State~~ shall wear a properly adjusted and fastened seat safety belt pursuant to Section 12-603.1 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-603.1]. Such requirements shall not apply to a driver possessing a written statement from a physician that such a person is unable, for medical or physical reasons, to wear a seat safety belt, or to certain motor vehicles that are not required to be equipped with seat safety belts under Federal Law (49 CFR 393.93). A retractable lap seat belt shall be provided for the driver of a school bus and must be used by the driver at all times while the bus is being operated, as required by Section 12-807 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-807].

- 9) Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle. A rectangular rearview mirror shall be located on the right and left sides of each Second Division school bus forward of the driver's seat. The mirrors shall have a minimum horizontal dimension of 5 inches and a minimum vertical dimension of 10 inches.
- 10) The seat for the person giving the examination must be securely affixed in a location that assures the examiner's safety and allows the examiner to perform proper scoring of the road test pursuant to Section 1030.85 of this Part. The seat must be free from excessive soil, grease, and should have no protruding springs. Vehicles must not have loose objects on the seats or floors which could pose a danger to the driver or examiner.
- 11) The steering wheel must not be broken or have any part missing. The steering wheel when worked back and forth shall not have more than 5-10 degrees of free play (approximately 2" at the rim of a 20" steering wheel). Vehicles that have excessive free play (more than 10 degrees) in the steering mechanism shall be rejected as unsafe. Free play is the degree of movement the steering wheel must have before the front wheels move.
- 12) Both front vehicle doors must be operable from the inside and outside of the vehicle with the standard latching mechanism. Doors may not be wired or strapped shut.
- 13) Every motor vehicle of a width or design which would not allow hand

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signals to be adequately visible from the front and rear, shall be equipped with an electric turn signal device that indicates the intention of the driver to turn to the right or to the left. Such signaling device shall be in the form of flashing red or amber lights located at the rear of the vehicle on the side toward which the turn is to be made, mounted on the same level and as widely spaced laterally as practicable. Turn signal lamps must be visible from a distance of not less than 300 feet in normal sunlight.

- 14) Any motor vehicle or combination vehicle that operates with air brakes must have air brake hoses that are free from breaks, leaks or bulges that may prevent or hinder the safe operation of the vehicle braking system. Any motor vehicle or combination vehicle that operates with air brakes will not be permitted to be used for the road test if the air pressure ~~gauge~~ ~~guage~~ reading fails to maintain 95 pounds per square inch pressure during normal pressure buildup.
- 15) Three safety flags, flares, fuses or reflectors shall be provided in all Second Division vehicles as described in Section 12-702 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-702].
- 16) An operating speedometer shall be mounted in all vehicles designated as a school bus in such a manner that it is readable to the seated driver.
- 17) The emergency doors at the front and the rear of a designated school bus should open from the inside. The latch must be in operable condition. An alarm system that is visible and audible to the driver must be activated when the engine is running and the emergency door is unlatched.
- 18) One fire extinguisher shall be located in a position readily accessible to the driver of a school bus pursuant to Section 12-808 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-808].
- 19) A school bus shall carry a removable and readily identifiable first aid kit, mounted in full view of and readily accessible to the driver pursuant to Section 12-809 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-809].
- 20) All school buses shall be equipped with an 8-lamp flashing signal system

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consisting of two alternately flashing red signal lights and two flashing yellow signal lights mounted at the front and rear of the bus pursuant to Section 12-805 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-805]. Each signal lamp shall be a sealed beam at least 5½ inches in diameter and shall have sufficient intensity to be visible at 500 feet in normal sunlight. The system shall be actuated only by means of a manual switch. There shall be a device for indicating to the driver that the system is operating properly or is inoperative.

- 21) All Second Division vehicles, as required by Section 12-202 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-202], shall have mounted and properly display clearance, identification and side marker lamps. Such lamps shall be illuminated for the road test, during periods when headlamps are required pursuant to Section 12-201 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-201].
- 22) A stop arm shall be placed on the driver's side of each Second Division school bus and may be operated either manually or mechanically. The design of this stop arm shall comply with Section 12-803 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-803].
- 23) The ~~tailpipe~~tailpipe(s) of each Second Division school bus should extend beyond the rear end of the chassis frame, but not beyond the rear of the bumper.
- 24) A religious organization bus or senior citizen transportation vehicle may be of any color and have any markings designating its purpose other than those required for school buses pursuant to Sections 12-801, 12-802, 12-804 and 12-806 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code [625 ILCS 5/12-801, 12-802, 12-804 and 12-806]. A road test, for a religious organization bus or senior citizen transportation vehicle restriction, may be administered in any vehicle of the proper representative type for the license restriction requested (see 92 Ill. Adm. Code 1030.92).
- 25) No person shall operate any motorcycle, motor-driven cycle or pedalcycle for the road test with handlebars higher than the height of the shoulders of

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the operator when seated in the upright driving position.

- 26) The operator of a motorcycle, motor-driven cycle or pedalcycle, used for the road test shall be protected by glasses, goggles or a transparent shield pursuant to Section 11-1404 of the Illinois Rules of the Road of the Illinois Vehicle Code [625 ILCS 5/11-1404].
- 27) Second Division vehicles or medical transport vehicles shall display a certificate of safety then in effect pursuant to Sections 13-111 and 13-114 of the Illinois Vehicle Inspection Law of the Illinois Vehicle Code [625 ILCS 5/13-111 and 13-114], except those vehicles displaying a Department of Transportation federal census number on the side of the vehicle shall not be subject to such certificate.
- c) Prior to taking a road test, as defined in Section 1030.85 of this Part, each applicant shall execute an affirmation stating that the vehicle to be used for the road test:
- 1) ~~Is~~ insured pursuant to, and in compliance with, the Illinois Mandatory Insurance Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 7, Art. VI] (the applicant shall provide proof of insurance); or
 - 2) ~~Falls~~ within one of the stated exempted categories.
- d) If the applicant refuses to execute or fails to comply with this Section, then no road test shall be given the applicant in that vehicle until such time as the applicant complies.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Adopted Action:</u>
300.615	Amendment
300.620	Amendment
300.624	New
300.625	Amendment
300.626	Amendment
300.627	Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: April 3, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2006; 30 Ill. Reg. 18449
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period: None

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

1. In the table of contents, Section 300.624, "Are" was changed to "Were".
2. In the title of Section 300.624, "Are" was changed to "Were".
3. In Section 300.624(a), second line, "are" was changed to "were".

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
300.640	Amendment	September 15, 2006; 30 Ill. Reg. 14780

- 15) Summary and Purpose of the Rulemaking: The Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300) regulates nursing home licensure. This rulemaking is being undertaken to implement Public Act 94-0752, enacted by the General Assembly to improve the supervision and care of identified offenders in long-term care facilities.

Section 300.615 (Determination of Need Screening and Request for Criminal History Record Information) was amended to add statutory language requiring a name-based background check for all new residents, and a fingerprint-based background check if the results of the name-based check are inconclusive. Additional new language provides for a waiver from the fingerprint-based background check under certain conditions and establishes other statutory requirements.

Section 300.620 (Admission, Retention, and Discharge Policies) received minor changes that reflect the changes to Section 300.615.

Section 300.624 (Criminal History Background Checks for Persons Who were Residents on May 10, 2006) was added so that language requiring background checks for current residents is not confused with language in Section 300.625, while establishing care requirements for new and existing residents who are identified offenders.

Section 300.625 (Identified Offenders) was amended to provide for a waiver from the fingerprint-based background check under certain conditions. Additional amendments implement requirements in P.A. 94-0752 that provide for the care of identified offenders in licensed facilities.

Section 300.626 (Discharge Planning for Identified Offenders) and Section 300.627 (Transfer of an Identified Offender) was amended to implement language in P.A. 94-0752 dealing with involuntary discharge or the transfer of identified offenders.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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

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

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

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

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

SUBPART A: GENERAL PROVISIONS

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

300.290	Quarterly List of Violators (Repealed)
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening and Request for <u>Resident</u> Criminal History Record Information
300.620	Admission, Retention and Discharge Policies
<u>300.624</u>	<u>Criminal History Background Checks for Persons Who Were Residents on May 10, 2006</u>
300.625	Identified Offenders
300.626	Discharge Planning for Identified Offenders
300.627	Transfer of an Identified Offender
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.655	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

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300.695 Contacting Local Law Enforcement
300.696 Infection Control

SUBPART D: PERSONNEL

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

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section
300.1010 Medical Care Policies
300.1020 Communicable Disease Policies
300.1025 Tuberculin Skin Test Procedures
300.1030 Medical Emergencies
300.1035 Life-Sustaining Treatments
300.1040 Behavior Emergencies (Repealed)
300.1050 Dental Standards
300.1060 Vaccinations

SUBPART F: NURSING AND PERSONAL CARE

Section
300.1210 General Requirements for Nursing and Personal Care
300.1220 Supervision of Nursing Services
300.1230 Staffing
300.1240 Additional Requirements

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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. 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,

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effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007.

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SUBPART C: POLICIES

Section 300.615 Determination of Need Screening and Request for Resident Criminal History Record Information

- a) For the purpose of this Section only, a nursing facility is any bed licensed as a skilled nursing or intermediate care facility bed, or a location certified to participate in the Medicare program under Title XVIII of the Social Security Act or Medicaid program under Title XIX of the Social Security Act.
- b) *All persons seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source.* (Section 2-201.5(a) of the Act) A screening assessment is not required provided one of the conditions in Section 140.642(c) of the rules of the Department of Healthcare and Family Services titled Medical Payment (89 Ill. Adm. Code 140.642(c)) is met.
- c) *Any person who seeks to become eligible for medical assistance from the Medical Assistance program under the Illinois Public Aid Code to pay for long-term care services while residing in a facility shall be screened in accordance with 89 Ill. Adm. Code 140.642(b)(4).* (Section 2-201.5(a) of the Act)
- d) *Screening shall be administered through procedures established by administrative rule by the agency responsible for screening.* (Section 2-201.5(a) of the Act) The Illinois Department on Aging is responsible for the screening required in subsection (b) of this Section for individuals 60 years of age or older who are not developmentally disabled or do not have a severe mental illness. The Illinois Department of Human Services is responsible for the screening required in subsection (b) of this Section for all individuals 18 through 59 years of age and for individuals 60 years of age or older who are developmentally disabled or have a severe mental illness. The Illinois Department of Healthcare and Family Services or its designee is responsible for the screening required in subsection (c) of this Section.
- e) *In addition to the screening required by Section 2-201.5(a) of the Act and this Section, a facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [20 ILCS 2635] for all persons 18 or older seeking admission to the facility. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police.*

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~~(Section 2-201.5(b) of the Act) identified offenders who seek admission to a licensed facility shall not be admitted unless the licensed facility complies with the requirements of this Section and Section 300.625 of this Part. (Section 2-201.5(b) of the Act)~~

- f) The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.
- g) ~~f) If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. Screening must include the following:~~
- 1) ~~The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender;~~
 - 2) ~~The facility shall request criminal history record information in accordance with the Uniform Conviction Information Act (UCIA) [20 ILCS 2635]. If the results of the criminal history record check are inconclusive, then the facility shall initiate a fingerprint based criminal history record check as prescribed by the Illinois State Police. Persons may be admitted to facilities while the results of a criminal history record information request are pending; and~~
 - 3) ~~If the individual has a felony conviction and was in the custody of the Department of Corrections, the facility shall request the social evaluation~~

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~~prepared by the Department of Corrections pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2].~~

- ~~h)g)~~ *A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b) of the Act)*~~The facility must review the screenings and all supporting documentation to determine whether the recommended placement of an identified offender is appropriate under Sections 300.620 and 300.625 of this Part. The facility is responsible for the development of a plan of care appropriate to the needs of the identified offender, in accordance with Section 300.625 of this Part. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.~~
- i) *The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act)* *If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.*
- ~~j)h)~~ *If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 300.625 of this Part. (Section 2-201.5(c) of the Act)*~~The facility shall inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation within 48 hours after receiving verification from~~

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~~the Illinois State Police that a prospective or newly admitted resident is an identified offender.~~

- k) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

Section 300.620 Admission, Retention and Discharge Policies

- a) All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.
- b) An individual who needs services that are not readily available in a particular facility, or through arrangement with a qualified outside resource, shall not be admitted to or kept in that facility. The Department defines a "qualified outside source" as one recognized as meeting professional standards for services provided.
- c) Each facility shall have a policy concerning the admission of persons needing prenatal and/or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house and/or outside resources. (See Section 300.3220.)
- d) No person shall be admitted to or kept in the facility:
- 1) Who is at risk because the person is reasonably expected to self-inflict serious physical harm or to inflict serious physical harm on another person in the near future, as determined by professional evaluation;
 - 2) Who is destructive of property, if the destruction jeopardizes the safety of him/herself or others; or

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- 3) Who is an identified offender, unless the requirements of Section 300.615~~(f) and (g)~~ for new admissions and the requirements of Section 300.625 are met.
- e) No resident shall be admitted to the facility who is developmentally disabled and who needs programming for such conditions, as described in the rules governing intermediate care facilities for the developmentally disabled (77 Ill. Adm. Code 350). Such persons shall be admitted only to facilities licensed as intermediate care facilities for the developmentally disabled under 77 Ill. Adm. Code 350 or, if the person is under 18, to a long-term care facility for persons under 22 years of age that is licensed under 77 Ill. Adm. Code 390. Persons from 18 to 21 years of age in need of such care may be kept in either facility.
- f) Persons under 18 years of age may not be cared for in a facility for adults without prior written approval from the Department.
- g) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident or, if the resident is incompetent, by the resident's guardian.
- h) If a resident insists on being discharged and is discharged against medical advice, the facts involved in the situation shall be fully documented in the resident's clinical record.
- i) Persons with communicable, contagious, or infectious diseases may be admitted under the conditions and in accordance with the procedures specified in Section 300.1020.
- j) A facility shall not admit more residents than the number authorized by the license issued to it.

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

Section 300.624 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006

- a) *The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)*

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- b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.
- c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Added at 31 Ill. Reg. 6044, effective April 3, 2007)

Section 300.625 Identified Offenders

- a) ~~The facility shall initiate, for current residents, a request for criminal history record information, in accordance with the Uniform Conviction Information Act, by May 31, 2006.~~
- b) ~~If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.~~
- a)e) The facility shall review the results of the criminal history background checks immediately upon receipt of those checks. If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. If the results of a criminal history record check on any individual are inconclusive, then the facility shall initiate a fingerprint-based criminal history record check as prescribed by the Illinois State Police.
- b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.

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- c) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.
- d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5(b) of the Act.
- e) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.
- f) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)
- g) ~~d~~) If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:
- 1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.

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- 2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 300.695 of this Part.
- 3) Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility. The facility must conspicuously post or display, in an area of its offices accessible to staff, current and prospective residents, family members, and visitors, notification, prescribed by the Department, that an identified offender is residing at the facility. The facility must direct specific inquiries about identified offenders to the Illinois Sex Offender Registration website at www.isp.state.il.us, the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us, the Department of State Police, or local law enforcement agencies.
- A) The notice shall also be prominently posted within every licensed facility.
- B) The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)
- 4) ~~The facility shall notify every resident or resident's guardian in writing that such offenders are residents of the facility. (Section 2-216 of the Act)~~
- 4)5) If the identified offender is on probation, ~~or~~ parole, or mandatory supervised release, status, the facility ~~shall~~must contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.

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- 6) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation if the probation officer has not, within three days after the identified offender becomes a resident, provided the facility with copies of the following:~~
- A) ~~pre-sentence investigation reports or social investigation reports;~~
 - B) ~~any applicable probation orders and corresponding compliance plans;~~
 - C) ~~the name and contact information for the assigned probation officer. (Section 12(11) of the Probation and Probation Officers Act [730 ILCS 110])~~
- e) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in writing within 48 hours after determining that a resident or residents of the licensed facility are listed on the Illinois Department of Corrections or Illinois State Police registered sex offender databases (Section 3-202.3 of the Act).~~
- h) ~~f) Facilities shall~~ must maintain written documentation of compliance with Section 300.615 ~~(f)~~ of this Part ~~and subsection (a) of this Section.~~
- i) ~~g) Facilities must annually complete all of the steps required in subsection (g)(d) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.~~
- j) ~~h) For current residents who are identified offenders, the facility shall review the security measures listed in the Criminal History Analysis Report provided by the Department. must conduct a risk assessment and review the screenings of the identified offender to determine the appropriateness of retention in the facility in accordance with subsection (j).~~
- k) ~~i) Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall~~ must specifically address the resident's needs in an individualized plan of care, ~~that reflects the risk assessment of the individual, in accordance with subsection (j) of this Section.~~

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- ~~l)j)~~ *The facility shall incorporate the Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act)*~~In conducting a risk assessment of an identified offender and developing a plan of care, the facility shall consider the following:~~
- ~~1) The care and supervision needs, if any, specific to the individual's criminal offense;~~
 - ~~2) The results of the screening conducted pursuant to Section 300.615 of this Part;~~
 - ~~3) The amount of supervision required by the individual to ensure the safety of all residents, staff and visitors in the facility;~~
 - ~~4) The physical and mental abilities of the individual;~~
 - ~~5) The current medical assessments of the individual;~~
 - ~~6) The individual's needs in relation to his or her status as an identified offender;~~
 - ~~7) Approaches to resident care that are proactive and are appropriate and effective in dealing with any behaviors specific to the identified offense; and~~
 - ~~8) The number and qualifications of staff needed to meet the needs of the individual and the required level of supervision at all times.~~
- ~~m)k)~~ *If the identified offender is a convicted (see 730 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Criminal History Analysis conducted pursuant to Section 2-201.6 of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)*~~The care planning of identified offenders shall include a description of the security measures necessary to protect facility residents from the identified offender, including whether the identified offender should be segregated from other residents. (Section 3-202.3(5) of the Act)~~

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- 1) ~~Registered sex offenders and individuals serving a term of parole, mandatory supervised release, or probation for a felony offense shall have their own rooms, under the following conditions:~~
 - A) ~~The room must be in direct view of the main nurses' station; and~~
 - B) ~~The resident must not share his or her room or bathroom with any other resident.~~

- 2) ~~If the facility's risk assessment determines that a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act (Section 1-114.01 of the Act) need not have his or her own room, then the facility shall submit in writing to the Department the basis for this determination. The Department shall have an opportunity to raise concerns or objections to the facility determination. Any Department assent to the facility determination shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to any issue regarding the identified offender or other facility residents. The Department shall notify the facility in writing of the results of the Department's review. The notification shall include any objections raised by the Department and the results of the Department's decision as to whether the identified offender requires placement in a separate room. If the facility does not comply with the Department's determination, then the facility will be subject to a notice of violation. The facility request shall include the following supporting documentation:~~
 - A) ~~All of the documentation required by subsection (j) of this Section; and~~
 - B) ~~whether the individual is dependent on any type of life support system or equipment.~~

- 3) ~~In determining whether to raise concerns or objections to a facility determination not to segregate the identified offender in a single room, the Department shall consider, but not be limited to:~~
 - A) ~~The existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident;~~
 - B) ~~The length of time since the individual's release from parole;~~

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~~probation, or mandatory supervised release;~~

- ~~C)~~ ~~The age of the individual at the time of the conviction; and~~
- ~~D)~~ ~~Whether the individual has a felony conviction for a crime listed in Section 955.270(e) of the Health Care Worker Background Check Code (77 Ill. Adm. Code 955.270(e)).~~
- ~~n)~~ The facility's reliance on the Criminal History Analysis Report prepared pursuant to Section 2-201.6(d) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.
- ~~o)†)~~ The facility ~~shall~~must evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and must document such review. The facility ~~shall~~must modify the care plan if necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.
- ~~p)†)~~ Incident reports ~~shall~~must be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 300.690 of this Part. The facility ~~shall~~must review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 300.3300 of this Part.
- ~~q)†)~~ The facility ~~shall~~must notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.
- ~~r)†)~~ The facility ~~shall~~must develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

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(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

Section 300.626 Discharge Planning for Identified Offenders

- a) If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)
- b)a) All discharges and transfers shall be in accordance with Section 300.3300 of this Part.
- c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.
- d)b) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:
- 1) The facility's inability to meet the needs of the resident, based on ~~Section 300.615(g) and~~ Section 300.625 of this Part and subsection (a) of this Section;
 - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
 - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- e)e) Discharge planning shall be included as part of the plan of care developed in accordance with Section 300.625 (k)(j).

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

Section 300.627 Transfer of an Identified Offender

- a) If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely

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within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)

- ~~b)~~a) All discharges and transfers shall be in accordance with Section 300.3300 of this Part.
- ~~c)~~b) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility ~~shall~~must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
- ~~d)~~e) This notification must include all of the documentation required under Section 300.625 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.
- ~~e)~~f) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:
- 1) *The mittimus and any pre-sentence investigation reports;*
 - 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*
 - 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
 - 4) *Reports of disciplinary infractions and dispositions;*
 - 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
 - 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*
- ~~f)~~e) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further

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disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

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- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
330.715	Amendment
330.720	Amendment
330.724	New
330.725	Amendment
330.726	Amendment
330.727	Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: April 3, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 9) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2006; 30 Ill. Reg. 18477
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:
 1. In Section 330.725(a), "of these checks" was changed to "thereof".

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

1. In the table of contents, Section 330.724, "Are" was changed to "Were".
2. In the title of Section 330.724, "Are" was change to "Were".
3. In Section 330.724(a), second line, "are" was changed to "were".

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

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
330.740	Amendment	September 15, 2006; 30 Ill. Reg. 14795

- 15) Summary and Purpose of the Rulemaking: The Sheltered Care Facilities Code (77 Ill. Adm. Code 330) regulates sheltered care facilities. This rulemaking is being undertaken to implement Public Act 94-0752, enacted by the General Assembly to improve the supervision and care of identified offenders in long-term care facilities.

Section 330.715 (Pre-Admission Assessment and Request for Criminal History Record Information) was amended to add statutory language requiring a name-based background check for all new residents, and a fingerprint-based background check if the results of the name-based check are inconclusive. Additional new language provides for a waiver from the fingerprint-based background check under certain conditions and establishes other statutory requirements.

Section 330.720 (Admission and Discharge Policies) received minor changes that reflect the changes to Section 330.715.

Section 330.724 (Criminal History Background Checks for Persons Who were Residents on May 10, 2006) was added so that language requiring background checks for current residents is not confused with language in Section 330.725, while establishing care requirements for new and existing residents who are identified offenders.

Section 330.725 (Identified Offenders) was amended to provide for a waiver from the fingerprint-based background check under certain conditions. Additional amendments implement requirements in P.A. 94-0752 that provide for the care of identified offenders in licensed facilities.

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Section 330.726 (Discharge Planning for Identified Offenders) and Section 330.727 (Transfer of an Identified Offender) were amended to implement language in P.A. 94-0752 dealing with involuntary discharge.

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

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

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

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 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	Monitoring 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
330.284	Calculation of Penalties

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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
330.715	Pre admission Assessment and Request for <u>Resident</u> Criminal History Record Information
330.720	Admission and Discharge Policies
<u>330.724</u>	<u>Criminal History Background Checks For Persons Who Were Residents on May 10, 2006</u>
330.725	Identified Offenders
330.726	Discharge Planning for Identified Offenders
330.727	Transfer of an Identified Offender
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
330.790	Infection Control
330.795	Language Assistance Services

SUBPART D: PERSONNEL

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Section

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

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
- 330.1160 Vaccinations

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

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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
- 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

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Section

330.2610	Codes
330.2620	Water Supply
330.2630	Sewage Disposal
330.2640	Plumbing

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

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SUBPART N: FIRE PROTECTION STANDARDS FOR NEW
SHELTERED CARE FACILITIES

Section

330.3310	Applicable Requirements (Repealed)
330.3320	Applicability of These Standards
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

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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
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 (Repealed)
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
330.APPENDIX A	Interpretation, Components, and Illustrative Services for Sheltered Care Facilities (Repealed)
330.APPENDIX B	Classification of Distinct Part of a Facility For Different Levels of Service (Repealed)

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- 330.APPENDIX C Forms for Day Care in Long-Term Care Facilities
330.APPENDIX D Criteria for Activity Directors Who Need Only Minimal Consultation
(Repealed)
330.APPENDIX E Guidelines for the Use of Various Drugs
330.TABLE A 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. 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,

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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; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5473, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5886, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14218, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15880, effective September 25, 2003; amended at 27 Ill. Reg. 18130, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3541, effective November 15, 2003; amended at 28 Ill. Reg. 11195, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11879, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15156, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12891, effective August 2, 2005; amended at 30 Ill. Reg. 1439, effective January 23, 2006; amended at 30 Ill. Reg. 5260, effective March 2, 2006; amended at 31 Ill. Reg. 6072, effective April 3, 2007.

SUBPART C: POLICIES

Section 330.715 ~~Pre-admission Assessment and Request for~~ Resident Criminal History Record Information

- a) *A facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [210 ILCS 2635] for all persons 18 or older seeking admission to the facility. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act) Identified offenders who seek admission to a licensed facility shall not be admitted unless the licensed facility complies with the requirements of this Section and Section 330.725 of this Part. (Section 2-201.5(b) of the Act)*
- b) *The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.*
- c)b) *If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health*

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or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. Assessment must include the following:

- 1) ~~The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender;~~
- 2) ~~The facility shall request criminal history record information in accordance with the Uniform Conviction Information Act (UCIA) [20 ILCS 2635]. If the results of the criminal history record check are inconclusive, then the facility shall initiate a fingerprint based criminal history record check as prescribed by the Illinois State Police. Persons may be admitted to facilities while the results of a criminal history record request are pending; and~~
- 3) ~~If the individual has a felony conviction and was in the custody of the Department of Corrections, the facility shall request the social evaluation prepared by the Department of Corrections pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2].~~

d)e) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(d) of the Act) The facility must review the assessments and all supporting documentation to determine whether the recommended placement of an identified offender is appropriate under Sections 330.720 and 330.725 of this Part. The facility is responsible for the development of a plan of care appropriate to the needs of the identified offender, in accordance with Section 330.725 of this Part. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care

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~~Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.~~

- e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.
- f) ~~If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 330.725 of this Part. (Section 2-201.5(c) of the Act) The facility shall inform the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation within 48 hours after receiving verification from the Illinois State Police that a prospective or newly admitted resident is an identified offender.~~
- g) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 31 Ill. Reg. 6072, effective April 3, 2007)

Section 330.720 Admission and Discharge Policies

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- a) All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.
- b) No resident determined by professional evaluation to be in need of nursing care shall be admitted to or kept in a sheltered care facility. Neither shall any such resident be kept in a distinct part designated and classified for sheltered care.
- c) Homes in Chicago licensed as Residential Care (Half-Way) Homes shall only accept and keep persons requiring residential care. Residential care is defined as maintenance and oversight. Oversight is defined as general watchfulness and appropriate action to meet the total needs of residents, exclusive of nursing or personal care, as defined in Chapter 136.1 of the "Municipal Code of the City of Chicago". Oversight shall include, at a minimum, social, recreational, and employment opportunities for residents who, by reason of previous physical or mental disability, or in the opinion of a licensed physician, are in need of residential care.
- d) Each facility shall have a policy concerning the admission of persons needing prenatal or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to, or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house or outside resources.
- e) No person shall be admitted to or kept in the facility:
 - 1) Who is at risk because the person is reasonably expected to self-inflict serious physical harm or to inflict serious physical harm on another person in the near future, as determined by professional evaluation;
 - 2) Who is destructive of property and that destruction jeopardizes the safety of her/himself or others;
 - 3) Who has serious mental or emotional problems based on medical diagnosis; or
 - 4) Who is an identified offender, unless the assessment requirements of Section 330.715~~(b) and (c)~~ for new admissions and the requirements of Section 330.725 are met.

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- f) Children under 18 years of age shall not be cared for in a facility for adults.
- g) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is incompetent, by the resident's guardian.
- h) No resident shall be admitted with a communicable, contagious or infectious disease as set forth in Section 330.1130 of this Part.
- i) A facility shall not admit more residents than the number authorized by the license issued to it.

(Source: Amended at 31 Ill. Reg. 6072, effective April 3, 2007)

Section 330.724 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006

- a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)
- b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.
- c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Added at 31 Ill. Reg. 6072, effective April 3, 2007)

Section 330.725 Identified Offenders

- a) ~~The facility shall initiate, for current residents, a request for criminal history record information, in accordance with the Uniform Conviction Information Act, by May 31, 2006.~~

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- b) ~~If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.~~
- a) ~~e) The facility shall review the results of the criminal history background checks immediately upon receipt thereof. If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. If the results of a criminal history record check on any individual are inconclusive, then the facility shall initiate a fingerprint-based criminal history record check as prescribed by the Illinois State Police.~~
- b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.
- c) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.
- d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.
- e) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a

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fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

f) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)

g) ~~d~~) If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:

- 1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.
- 2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 330.785 of this Part.
- 3) Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility. The facility must conspicuously post or display, in an area of its offices accessible to staff, current and prospective residents, family members, and visitors, notification,

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~~prescribed by the Department, that an identified offender is residing at the facility. The facility must direct specific inquiries about identified offenders to the Illinois Sex Offender Registration website at www.isp.state.il.us, the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us, the Department of State Police, or local law enforcement agencies.~~

A) *The notice shall also be prominently posted within every licensed facility.*

B) *The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)*

~~4) The facility shall notify every resident or resident's guardian in writing that such offenders are residents of the facility. (Section 2-216 of the Act)~~

4)5) If the identified offender is on probation, ~~or parole, or mandatory supervised release status~~, the facility ~~shall~~**must** contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.

~~6) The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation if the probation officer has not, within three days after the identified offender becomes a resident, provided the facility with copies of the following:~~

~~A) *pre-sentence investigation reports or social investigation reports;*~~

~~B) *any applicable probation orders and corresponding compliance plans;*~~

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- ~~Ⓒ) *the name and contact information for the assigned probation officer. (Section 12(11) of the Probation and Probation Officers Act [730 ILCS 110])*~~
- e) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in writing within 48 hours after determining that a resident or residents of the licensed facility are listed on the Illinois Department of Corrections or Illinois State Police registered sex offender databases (Section 3-202.3 of the Act).~~
- ~~h)Ⓕ) Facilities shall~~ must maintain written documentation of compliance with Section 330.715~~(b)~~ of this Part ~~and subsection (a) of this Section.~~
- ~~i)Ⓖ) Facilities must annually complete all of the steps required in subsection (g)(d) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.~~
- ~~j)Ⓗ) For current residents who are identified offenders, the facility shall review the security measures listed in the Criminal History Analysis Report provided by the Department. must conduct a risk assessment and review the screenings of the identified offender to determine the appropriateness of retention in the facility in accordance with subsection (j).~~
- ~~k)Ⓙ) Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall~~ must specifically address the resident's needs in an individualized plan of care, ~~that reflects the risk assessment of the individual, in accordance with subsection (j) of this Section.~~
- ~~l)Ⓜ) *The facility shall incorporate the Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act)*~~ In conducting a risk assessment of an identified offender and developing a plan of care, the facility shall consider the following:
- ~~1) The care and supervision needs, if any, specific to the individual's criminal offense;~~
 - ~~2) The results of the screening conducted pursuant to Section 330.715 of this Part;~~

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- ~~3) The amount of supervision required by the individual to ensure the safety of all residents, staff and visitors in the facility;~~
 - ~~4) The physical and mental abilities of the individual;~~
 - ~~5) The current medical assessments of the individual;~~
 - ~~6) The individual's needs in relation to his or her status as an identified offender;~~
 - ~~7) Approaches to resident care that are proactive and are appropriate and effective in dealing with any behaviors specific to the identified offense; and~~
 - ~~8) The number and qualifications of staff needed to meet the needs of the individual and the required level of supervision at all times.~~
- ~~m)k) If the identified offender is a convicted (see 730 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Criminal History Analysis conducted pursuant to Section 2-201.6 of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)The care planning of identified offenders shall include a description of the security measures necessary to protect facility residents from the identified offender, including whether the identified offender should be segregated from other residents. (Section 3-202.3(5) of the Act)~~
- ~~n) The facility's reliance on the Criminal History Analysis Report prepared pursuant to Section 2-201.6(d) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.~~
- ~~1) Registered sex offenders and individuals serving a term of parole, mandatory supervised release, or probation for a felony offense shall have their own rooms. The resident must not share his or her room or bathroom with any other resident.~~

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- 2) ~~If the facility's risk assessment determines that a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act (Section 1-114.01 of the Act) need not have his or her own room, then the facility shall submit in writing to the Department the basis for this determination. The Department shall have an opportunity to raise concerns or objections to the facility determination. Any Department assent to the facility determination shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to any issue regarding the identified offender or other facility residents. The Department shall notify the facility in writing of the results of the Department's review. The notification shall include any objections raised by the Department and the results of the Department's decision as to whether the identified offender requires placement in a separate room. If the facility does not comply with the Department's determination, then the facility will be subject to a notice of violation. The facility request shall include the following supporting documentation:~~
- ~~A) All of the documentation required by subsection (j) of this Section; and~~
 - ~~B) whether the individual is dependent on any type of life support system or equipment.~~
- 3) ~~In determining whether to raise concerns or objections to a facility determination not to segregate the identified offender in a single room, the Department shall consider, but not be limited to:~~
- ~~A) The existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident;~~
 - ~~B) The length of time since the individual's release from parole, probation, or mandatory supervised release;~~
 - ~~C) The age of the individual at the time of the conviction; and~~
 - ~~D) Whether the individual has a felony conviction for a crime listed in Section 955.270(e) of the Health Care Worker Background Check Code (77 Ill. Adm. Code 955.270(e)).~~

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- o)† The facility ~~shall~~must evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and must document such review. The facility ~~shall~~must modify the care plan if necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.
- p)‡ Incident reports ~~shall~~must be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 330.780 of this Part. The facility ~~shall~~must review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 330.4300 of this Part.
- q)‡ The facility ~~shall~~must notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.
- r)‡ The facility ~~shall~~must develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

(Source: Amended at 31 Ill. Reg. 6072, effective April 3, 2007)

Section 330.726 Discharge Planning for Identified Offenders

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 330.4300 of this Part. (Section 2-201.6(g) of the Act)*

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- ~~b)a)~~ All discharges and transfers shall be in accordance with Section 330.4300 of this Part.
- ~~c)~~ When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.
- ~~d)b)~~ A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:
- 1) The facility's inability to meet the needs of the resident, based on ~~Section 330.715(e) and~~ Section 330.725 of this Part and subsection (a) of this Section;
 - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
 - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- ~~e)e)~~ Discharge planning shall be included as part of the plan of care developed in accordance with Section 330.725 ~~(k)(j)~~.

(Source: Amended at 31 Ill. Reg. 6072, effective April 3, 2007)

Section 330.727 Transfer of an Identified Offender

- ~~a)~~ If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 330.4300 of this Part. (Section 2-201 of the Act)
- ~~b)a)~~ All discharges and transfers shall be in accordance with Section 330.4300 of this Part.
- ~~c)b)~~ When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility ~~shall~~must notify

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the Department and the receiving facility that the individual is an identified offender before making the transfer.

~~d)~~e) This notification must include all of the documentation required under Section 330.725 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.

~~e)~~d) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

- 1) *The mittimus and any pre-sentence investigation reports;*
- 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*
- 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
- 4) *Reports of disciplinary infractions and dispositions;*
- 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
- 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*

~~f)~~e) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers

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in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6072, effective April 3, 2007)

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- 1) Heading of the Part: Illinois Veterans' Homes Code
- 2) Code Citation: 77 Ill. Adm. Code 340
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
340.1305	Amendment
340.1310	Amendment
340.1314	New
340.1315	Amendment
340.1316	Amendment
340.1317	Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: April 3, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2006; 30 Ill. Reg. 18502
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period: None

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

1. In the table of contents, Section 340.1314, "Are" was changed to "Were".
2. In the title of Section 340.1314, "Are" was changed to "Were".
3. In Section 340.1314(a), second line, "are" was changed to "were".

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

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- 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 these rulemakings replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
340.1430	Amendment	September 15, 2006; 30 Ill. Reg. 14808

- 15) Summary and Purpose of the Rulemaking: The Illinois Veterans' Homes Code (77 Ill. Adm. Code 340) regulates veterans' homes. This rulemaking is being undertaken to implement Public Act 94-0752, enacted by the General Assembly to improve the supervision and care of identified offenders in long-term care facilities.

Section 340.1305 (Pre-Admission Assessment and Request for Criminal History Record Information) was amended to add statutory language requiring a name-based background check for all new residents, and a fingerprint-based background check if the results of the name-based check are inconclusive. Additional new language provides for a waiver from the fingerprint-based background check under certain conditions and establishes other statutory requirements.

Section 340.1310 (Admission, Retention, and Discharge Policies) received minor changes that reflect the changes to Section 340.1305.

Section 340.1314 (Criminal History Background Checks for Persons Who were Residents on May 10, 2006) was added so that language requiring background checks for current residents is not confused with language in Section 340.1315, while establishing care requirements for new and existing residents who are identified offenders.

Section 340.1315 (Identified Offenders) was amended to provide for a waiver from the fingerprint-based background check under certain conditions. Additional amendments implement requirements in P.A. 94-0752 that provide for the care of identified offenders in licensed facilities.

Section 340.1316 (Discharge Planning for Identified Offenders) and Section 340.1317 (Transfer of an Identified Offender) were amended to implement language in P.A. 94-0752 dealing with involuntary discharge.

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

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

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

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
 CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
 SUBCHAPTER c: LONG-TERM CARE 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
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- 340.2000 Maintenance
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340.TABLE A Heat Index Table/Apparent Temperature

340.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. 4870,

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effective April 1, 2002; 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; emergency expired June 30, 2003; amended at 27 Ill. Reg. 5903, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14230, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15904, effective September 25, 2003; amended at 27 Ill. Reg. 18148, effective November 15, 2003; amended at 28 Ill. Reg. 11209, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11931, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15208, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12924, effective August 2, 2005; amended at 30 Ill. Reg. 1452, effective January 23, 2006; amended at 30 Ill. Reg. 5303, effective March 2, 2006; amended at 31 Ill. Reg. 6098, effective April 3, 2007.

SUBPART B: POLICIES AND FACILITY RECORDS

Section 340.1305 ~~Pre-admission Assessment and Request for~~ Resident Criminal History Record Information

- a) *A facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [210 ILCS 2635] for all persons 18 or older seeking admission to the facility. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act) Identified offenders who seek admission to a licensed facility shall not be admitted unless the licensed facility complies with the requirements of this Section and Section 340.1315 of this Part. (Section 2-201.5(b) of the Act)*
- b) *The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.*
- c) ~~b)~~ *If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the*

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resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. Assessment must include the following:

- 1) ~~The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender;~~
- 2) ~~The facility shall request criminal history record information in accordance with the Uniform Conviction Information Act (UCIA) [20 ILCS 2635]. If the results of the criminal history record check are inconclusive, then the facility shall initiate a fingerprint based criminal history record check as prescribed by the Illinois State Police. Persons may be admitted to facilities while the results of a criminal history record request are pending; and~~
- 3) ~~If the individual has a felony conviction and was in the custody of the Department of Corrections, the facility shall request the social evaluation prepared by the Department of Corrections pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2].~~

d)e) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b) of the Act)The facility must review the assessments and all supporting documentation to determine whether the recommended placement of an identified offender is appropriate under Sections 340.1310 and 340.1315 of this Part. The facility is responsible for the development of a plan of care appropriate to the needs of the identified offender, in accordance with Section 340.1315 of this Part. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services

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~~that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.~~

- e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.
- f) ~~↔~~ If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 340.1315 of this Part. (Section 2-201.5(c) of the Act) The facility shall inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation within 48 hours after receiving verification from the Illinois State Police that a prospective or newly admitted resident is an identified offender.
- g) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 31 Ill. Reg. 6098, effective April 3, 2007)

Section 340.1310 Admission, Retention and Discharge Policies

- a) All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.

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- b) No resident determined by professional evaluation to be in need of services not readily available in a particular facility, or distinct part of a facility, or through arrangement with a qualified outside resource, shall be admitted to or kept in that facility. The Department defines a "qualified outside source" as one recognized as meeting professional standards for services provided.
- c) Each facility shall have a policy concerning the admission of persons needing prenatal or maternity care, and a policy concerning keeping of persons who become pregnant while they are residents of the facility. If these policies permit these persons to be admitted to or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to these persons from in-house or outside resources. (See Section 340.1550.)
- d) Residents with a history of aggressive or self-abusive behavior may be admitted only if the facility has in place appropriate, effective and individualized programs to manage the resident's behaviors and adequate, properly trained and supervised staff to administer the programs.
- e) Persons under 18 years of age may not be cared for in a facility for adults without prior written approval from the Department.
- f) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident or, if the resident is incompetent, by the resident's guardian.
- g) If a resident insists on being discharged and is discharged against medical advice, the facts involved in the situation shall be fully documented in the resident's clinical record.
- h) A facility shall document all leaves and temporary transfers. Such documentation shall include date, time, condition of resident, person to whom the resident was released, planned destination, anticipated date of return, and any special instructions on medication dispensed.
- i) No person shall be admitted to or kept in the facility who is an identified offender, unless the requirements of Section 340.1305~~(b) and (c)~~ for new admissions and the requirements of Section 340.1315 are met.

(Source: Amended at 31 Ill. Reg. 6098, effective April 3, 2007)

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Section 340.1314 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006

- a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)
- b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.
- c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Added at 31 Ill. Reg. 6098, effective April 3, 2007)

Section 340.1315 Identified Offenders

- a) ~~The facility shall initiate, for current residents, a request for criminal history record information, in accordance with the Uniform Conviction Information Act, by May 31, 2006.~~
- b) ~~If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.~~
- a)⇒ The facility shall review the results of the criminal history background checks immediately upon receipt of those checks. If the results of the background checks are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based

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background check shall be conducted within 25 days after receiving the inconclusive results of the name-based background check. If the results of a criminal history record check on any individual are inconclusive, then the facility shall initiate a fingerprint-based criminal history record check as prescribed by the Illinois State Police.

- b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.
- c) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.
- d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.
- e) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.
- f) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)
- g) ~~d)~~ If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:
 - 1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. *If a resident of a licensed facility is an identified offender, any federal, State,*

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or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.

- 2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 340.1380 of this Part.
- 3) *Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility. The facility must conspicuously post or display, in an area of its offices accessible to staff, current and prospective residents, family members, and visitors, notification, prescribed by the Department, that an identified offender is residing at the facility. The facility must direct specific inquiries about identified offenders to the Illinois Sex Offender Registration website at www.isp.state.il.us, the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us, the Department of State Police, or local law enforcement agencies.*
 - A) *The notice shall also be prominently posted within every licensed facility.*
 - B) *The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department*

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of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)

- 4) ~~The facility shall notify every resident or resident's guardian in writing that such offenders are residents of the facility. (Section 2-216 of the Act)~~
- 4)5) If the identified offender is on probation, ~~or parole,~~ or mandatory supervised release, status, the facility ~~shall~~must contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.
- 6) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation if the probation officer has not, within three days after the identified offender becomes a resident, provided the facility with copies of the following:~~
- A) ~~pre-sentence investigation reports or social investigation reports;~~
- B) ~~any applicable probation orders and corresponding compliance plans;~~
- C) ~~the name and contact information for the assigned probation officer. (Section 12(11) of the Probation and Probation Officers Act [730 ILCS 110])~~
- e) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in writing within 48 hours after determining that a resident or residents of the licensed facility are listed on the Illinois Department of Corrections or Illinois State Police registered sex offender databases (Section 3-202.3 of the Act).~~
- h) f) Facilities ~~shall~~must maintain written documentation of compliance with Section 340.1305**(b)** of this Part ~~and subsection (a) of this Section.~~
- i) g) Facilities must annually complete all of the steps required in subsection ~~(g)(d)~~ of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.

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- ~~j)h)~~ For current residents who are identified offenders, the facility shall review the security measures listed in the Criminal History Analysis Report provided by the Department. ~~must conduct a risk assessment and review the screenings of the identified offender to determine the appropriateness of retention in the facility in accordance with subsection (j).~~
- ~~k)i)~~ Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall ~~must~~ specifically address the resident's needs in an individualized plan of care ~~that reflects the risk assessment of the individual, in accordance with subsection (j) of this Section.~~
- ~~l)j)~~ The facility shall incorporate the Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act) ~~In conducting a risk assessment of an identified offender and developing a plan of care, the facility shall consider the following:~~
- ~~1) The care and supervision needs, if any, specific to the individual's criminal offense;~~
 - ~~2) The results of the screening conducted pursuant to Section 340.1305 of this Part;~~
 - ~~3) The amount of supervision required by the individual to ensure the safety of all residents, staff and visitors in the facility;~~
 - ~~4) The physical and mental abilities of the individual;~~
 - ~~5) The current medical assessments of the individual;~~
 - ~~6) The individual's needs in relation to his or her status as an identified offender;~~
 - ~~7) Approaches to resident care that are proactive and are appropriate and effective in dealing with any behaviors specific to the identified offense; and~~

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- 8) ~~The number and qualifications of staff needed to meet the needs of the individual and the required level of supervision at all times.~~
- m)k) *If the identified offender is a convicted (see 720 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Criminal History Analysis conducted pursuant to Section 2-201.6 of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)The care planning of identified offenders shall include a description of the security measures necessary to protect facility residents from the identified offender, including whether the identified offender should be segregated from other residents. (Section 3-202.3(5) of the Act)*
- 1) ~~Registered sex offenders and individuals serving a term of parole, mandatory supervised release, or probation for a felony offense shall have their own rooms, under the following conditions:~~
- A) ~~The room must be in direct view of the main nurses' station; and~~
- B) ~~The resident must not share his or her room or bathroom with any other resident.~~
- 2) ~~If the facility's risk assessment determines that a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act (Section 1-114.01 of the Act) need not have his or her own room, then the facility shall submit in writing to the Department the basis for this determination. The Department shall have an opportunity to raise concerns or objections to the facility determination. Any Department assent to the facility determination shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to any issue regarding the identified offender or other facility residents. The Department shall notify the facility in writing of the results of the Department's review. The notification shall include any objections raised by the Department and the results of the Department's decision as to whether the identified offender requires placement in a separate room. If the facility does not comply with the Department's determination, then the facility will be subject to a notice of violation. The facility request shall include the following supporting documentation:~~

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- ~~A) All of the documentation required by subsection (j) of this Section; and~~
- ~~B) Whether the individual is dependent on any type of life support system or equipment.~~
- 3) ~~In determining whether to raise concerns or objections to a facility determination not to segregate the identified offender in a single room, the Department shall consider, but not be limited to:~~
 - ~~A) The existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident;~~
 - ~~B) The length of time since the individual's release from parole, probation, or mandatory supervised release;~~
 - ~~C) The age of the individual at the time of the conviction; and~~
 - ~~D) Whether the individual has a felony conviction for a crime listed in Section 955.270(e) of the Health Care Worker Background Check Code (77 Ill. Adm. Code 955.270(e)).~~
- n) The facility's reliance on the Criminal History Analysis Report prepared pursuant to Section 2-201.6(d) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.
- o) ~~+~~ The facility ~~shall~~must evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and must document such review. The facility ~~shall~~must modify the care plan if necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.
- p) ~~m~~ Incident reports ~~shall~~must be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 340.1330 of this Part. The facility ~~shall~~must review its placement determination of identified offenders based on incident reports involving the

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identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 340.1470 of this Part.

- q)➔ The facility ~~shall~~**must** notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.
- r)➔ The facility ~~shall~~**must** develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

(Source: Amended at 31 Ill. Reg. 6098, effective April 3, 2007)

Section 340.1316 Discharge Planning for Identified Offenders

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 340.1470 of this Part. (Section 2-201.6(g) of the Act)*
- b)➔ All discharges and transfers shall be in accordance with Section 340.1470 of this Part.
- c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.
- d)➔ A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:

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- 1) The facility's inability to meet the needs of the resident, based on ~~Section 340.1305(e) and~~ Section 340.1315 of this Part and subsection (a) of this Section;
 - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
 - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- ~~e)e~~ Discharge planning shall be included as part of the plan of care developed in accordance with Section 340.1315 ~~(k)(j)~~.

(Source: Amended at 31 Ill. Reg. 6098, effective April 3, 2007)

Section 340.1317 Transfer of an Identified Offender

- ~~a)~~ If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 340.1470 of this Part. (Section 2-201.6(g) of the Act)
- ~~b)a~~ All discharges and transfers shall be in accordance with Section 340.1470 of this Part.
- ~~c)b~~ When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
- ~~d)e~~ This notification must include all of the documentation required under Section 340.1315 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.

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~~e)d~~ If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

- 1) *The mittimus and any pre-sentence investigation reports;*
- 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*
- 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
- 4) *Reports of disciplinary infractions and dispositions;*
- 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
- 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*

~~f)e~~ The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6098, effective April 3, 2007)

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Intermediate Care for the Developmentally Disabled Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 350
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
350.625	Amendment
350.630	Amendment
350.634	New
350.635	Amendment
350.636	Amendment
350.637	Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: April 3, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2006; 30 Ill. Reg. 18523
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:
 1. In Section 350.635(a), line 2, "of these checks" was changed to "thereof".
 2. In Section 350.635(a), line 8, a period was inserted after "resident".

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

1. In the table of contents, Section 350.634, "Are" was changed to "Were".
2. In the title of Section 350.634, "Are" was changed to "Were".
3. In Section 350.634(a), second line, "are" was changed to "were".

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

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these rulemakings replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
350.650	Amendment	September 15, 2006; 30 Ill. Reg. 14817

- 15) Summary and Purpose of the Rulemaking: The Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350) regulates facilities that serve the developmentally disabled. This rulemaking is being undertaken to implement Public Act 94-0752, enacted by the General Assembly to improve the supervision and care of identified offenders in long-term care facilities.

Section 350.625 (Determination of Need Screening and Request for Criminal History Record Information) was amended to add statutory language requiring a name-based background check for all new residents, and a fingerprint-based background check if the results of the name-based check are inconclusive. Additional new language provides for a waiver from the fingerprint-based background check under certain conditions and establishes other statutory requirements.

Section 350.630 (Admission, Retention, and Discharge Policies) received minor changes that reflect the changes to Section 350.635.

Section 350.634 (Criminal History Background Checks for Persons Who were Residents on May 10, 2006) was added so that language requiring background checks for current residents is not confused with language in Section 350.635, while establishing care requirements for new and existing residents who are identified offenders.

Section 350.635 (Identified Offenders) was amended to provide for a waiver from the fingerprint-based background check under certain conditions. Additional amendments implement requirements in P.A. 94-0752 that provide for the care of identified offenders in licensed facilities.

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Section 350.636 (Discharge Planning for Identified Offenders) and Section 350.637 (Transfer of an Identified Offender) were amended to implement language in P.A. 94-0752 dealing with involuntary discharge.

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

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

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

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE 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
350.286	Determination to Assess Penalties
350.288	Reduction or Waiver of Penalties

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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 and Request for Resident Criminal History Record Information
350.630	Admission, Retention and Discharge Policies
350.634	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006
350.635	Identified Offenders
350.636	Discharge Planning for Identified Offenders
350.637	Transfer of an Identified Offender
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
350.750	Contacting Local Law Enforcement
350.760	Infection Control

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SUBPART D: PERSONNEL

Section	
350.810	Personnel
350.820	Consultation Services
350.830	Personnel Policies (Repealed)

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
350.1088	Language Assistance Services

SUBPART F: HEALTH SERVICES

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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
350.1260	Vaccinations

SUBPART G: MEDICATIONS

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Section

350.1410	Medication Policies and Procedures
350.1420	Compliance with Licensed Prescriber's Orders
350.1430	Administration of Medication
350.1440	Labeling and Storage of Medications
350.1450	Control of Medications

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

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350.2030 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

350.2210 Furnishings

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

350.2910 Applicability

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350.2920	Codes and Standards
350.2930	Preparation of Drawings and Specifications
350.2940	Site
350.2950	Administration and Public Areas
350.2960	Nursing Unit
350.2970	Living, Dining, Activities Rooms
350.2980	Treatment and Personal Care
350.2990	Service Department
350.3000	General Building Requirements
350.3010	Structural
350.3020	Mechanical Systems
350.3030	Plumbing Systems
350.3040	Electrical Requirements

SUBPART O: RESIDENT'S RIGHTS

Section	
350.3210	General
350.3220	Medical and Personal Care Program
350.3230	Restraints (Repealed)
350.3240	Abuse and Neglect
350.3250	Communication and Visitation
350.3260	Resident's Funds
350.3270	Residents' Advisory Council
350.3280	Contract With Facility
350.3290	Private Right of Action
350.3300	Transfer or Discharge
350.3310	Complaint Procedures
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SUBPART P: SPECIAL STANDARDS FOR INTERMEDIATE CARE FACILITIES FOR
THE DEVELOPMENTALLY DISABLED OF 16 BEDS OR LESS

Section	
350.3710	Applicability of Other Provisions of this Part
350.3720	Administration
350.3730	Admission and Discharge Policies
350.3740	Personnel
350.3750	Consultation Services and Nursing Services

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350.3760	Medication Policies
350.3770	Food Services
350.3780	Codes and Standards
350.3790	Administration and Public Areas
350.3800	Bedrooms
350.3810	Nurses Station
350.3820	Bath and Toilet Rooms
350.3830	Utility Rooms
350.3840	Living, Dining, Activity Rooms
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350.3860	Kitchen
350.3870	Laundry Room
350.3880	General Building Requirements
350.3890	Corridors
350.3900	Special Care Room
350.3910	Exit Facilities and Subdivision of Floor Areas
350.3920	Stairways, Vertical Openings and Doorways
350.3930	Hazardous Areas and Combustible Storage
350.3940	Mechanical Systems
350.3950	Heating, Cooling, and Ventilating Systems
350.3960	Plumbing Systems
350.3970	Electrical Systems
350.3980	Fire Alarm and Detection System
350.3990	Emergency Electrical System
350.4000	Fire Protection
350.4010	Construction Types
350.4020	Equivalencies
350.4030	New Construction Requirements

SUBPART Q: DAY CARE PROGRAMS

Section

350.4210	Day Care in Long-Term Care Facilities
350.APPENDIX A	Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
350.APPENDIX B	Federal Requirements Regarding Residents' Rights (Repealed)
350.APPENDIX C	Seismic Zone Map
350.APPENDIX D	Forms For Day Care in Long-Term Care Facilities
350.APPENDIX E	Guidelines for the Use of Various Drugs

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350.TABLE A	Sound Transmission Limitations in New Intermediate Care Facilities for the Developmentally Disabled
350.TABLE B	Pressure Relationships and Ventilation Rate of Certain Areas for the New Intermediate Care Facilities for the Developmentally Disabled
350.TABLE C	Construction Types and Sprinkler Requirements for Existing Intermediate Care Facilities for the Developmentally Disabled
350.TABLE D	Food Service Sanitation Rules, 77 Illinois Admin. Code 750, 1983 Applicable for New Intermediate Care Facilities for the Developmentally Disabled of 16 Beds or Less
350.TABLE E	Construction Types and Sprinkler Requirements for New Intermediate Care Facilities for the Developmentally Disabled of Sixteen (16) Beds or Less
350.TABLE F	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. 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; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17

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Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 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, 1994; 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 amendment at 20 Ill. Reg. 512, 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. 4878, effective April 1, 2002; 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; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5489, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5924, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14237, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15924, effective September 25, 2003; amended at 27 Ill. Reg. 18160, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3552, effective November 15, 2003; amended at 28 Ill. Reg. 7653, effective May 24, 2004; amended at 28 Ill. Reg. 11217, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11971, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15247, effective September 23, 2005, for the remainder of the maximum 150 days; emergency expired December 8, 2005; amended at 29 Ill. Reg. 12954, effective August 2, 2005; amended at 30 Ill. Reg. 1460, effective January 23, 2006; amended at 30 Ill. Reg. 5338, effective March 2, 2006; amended at 30 Ill. Reg. 13876, effective August 7, 2006; amended at 31 Ill. Reg. 6119, effective April 3, 2007.

SUBPART C: POLICIES

Section 350.625 Determination of Need Screening and Request for Resident Criminal History Record Information

- a) For the purpose of this Section only, a nursing facility is any bed licensed as a

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skilled nursing or intermediate care facility bed, or a location certified to participate in the Medicare program under Title XVIII of the Social Security Act or Medicaid program under Title XIX of the Social Security Act.

- b) *All persons seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source.* (Section 2-201.5(a) of the Act) A screening assessment is not required provided one of the conditions in Section 140.642(c) of the rules of the Department of Healthcare and Family Services titled Medical Payment (89 Ill. Adm. Code 140.642(c)) is met.
- c) *Any person who seeks to become eligible for medical assistance from the Medical Assistance program under the Illinois Public Aid Code to pay for long-term care services while residing in a facility shall be screened in accordance with 89 Ill. Adm. Code 140.642(b)(4).* (Section 2-201.5(a) of the Act)
- d) *Screening shall be administered through procedures established by administrative rule by the agency responsible for screening.* (Section 2-201.5(a) of the Act) The Illinois Department on Aging is responsible for the screening required in subsection (b) of this Section for individuals 60 years of age or older who are not developmentally disabled or do not have a severe mental illness. The Illinois Department of Human Services is responsible for the screening required in subsection (b) of this Section for all individuals 18 through 59 years of age and for individuals 60 years of age or older who are developmentally disabled or have a severe mental illness. The Illinois Department of Healthcare and Family Services or its designee is responsible for the screening required in subsection (c) of this Section.
- e) *In addition to the screening required by Section 2-201.5(a) of the Act and this Section, a facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [20 ILCS 2635] for all persons 18 or older seeking admission to the facility. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act) ~~identified offenders who seek admission to a licensed facility shall not be admitted unless the licensed facility complies with the requirements of this Section and Section 350.635 of this Part.~~ (Section 2-201.5(b) of the Act)*

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- f) The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.
- g) ~~f)~~ If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check. Screening must include the following:
- 1) ~~The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender;~~
 - 2) ~~The facility shall request criminal history record information in accordance with the Uniform Conviction Information Act (UCIA) [20 ILCS 2635]. If the results of the criminal history record check are inconclusive, then the facility shall initiate a fingerprint based criminal history record check as prescribed by the Illinois State Police. Persons may be admitted to facilities while the results of a criminal history record information request are pending; and~~
 - 3) ~~If the individual has a felony conviction and was in the custody of the Department of Corrections, the facility shall request the social evaluation prepared by the Department of Corrections pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2].~~
- h) ~~g)~~ A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b) of the Act) The facility must review the screenings and all supporting

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~~documentation to determine whether the recommended placement of an identified offender is appropriate under Sections 350.630 and 350.635 of this Part. The facility is responsible for the development of a plan of care appropriate to the needs of the identified offender, in accordance with Section 350.635 of this Part. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.~~

- i) *The facility shall provide for or arrange for required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.*
- j) ~~h)~~ *If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 350.635 of this Part. (Section 2-201.5(c) of the Act) The facility shall inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation within 48 hours after receiving verification from the Illinois State Police that a prospective or newly admitted resident is an identified offender.*
- k) *The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis*

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Report is pending.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

Section 350.630 Admission, Retention and Discharge Policies

- a) All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.
- b) Residents shall only be admitted who have had a comprehensive evaluation covering physical, emotional, social and cognitive factors, conducted by an appropriately constituted interdisciplinary team.
- c) No resident determined by professional evaluation to be in need of skilled level of nursing care shall be admitted to, or kept in, an Intermediate Care Facility, or Intermediate Care Facility for the Developmentally Disabled, or any distinct part of the facility designated and classified for intermediate care for the developmentally disabled.
- d) Each facility shall have a policy concerning the admission of persons needing prenatal or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house or outside resources.
- e) A facility for infants and children under 18 years of age shall be used exclusively for children. Persons under 18 years of age may not be cared for in a facility for adults without prior approval from the Department. Such approval will be granted only when it is the best possible placement for the person under the particular set of circumstances.
- f) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is incompetent, by the resident's guardian.
- g) If a resident insists on being discharged and is discharged against the advice of a physician or a Qualified Mental Retardation Professional, the facts involved in the situation shall be fully documented in the resident's clinical record.

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- h) No resident shall be discharged without the concurrence of the attending physician.
- i) No resident shall be admitted with a communicable, contagious or infectious disease except as set forth in Section 350.1223 of this Part.
- j) A facility shall not admit more residents than the number authorized by the license issued to it.
- k) No identified offender shall be admitted to or kept in a facility, unless the requirements of Section 350.625~~(f) and (g)~~ for new admissions and the requirements of Section 350.635 are met.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

Section 350.634 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006

- a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)
- b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.
- c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Added at 31 Ill. Reg. 6119, effective April 3, 2007)

Section 350.635 Identified Offenders

- a) ~~The facility shall initiate, for current residents, a request for criminal history record information, in accordance with the Uniform Conviction Information Act, by May 31, 2006.~~

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- b) ~~If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.~~
- a)e) The facility shall review the results of the criminal history background checks immediately upon receipt thereof. If the results of the background checks are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based background check.~~If the results of a criminal history record check on any individual are inconclusive, then the facility shall initiate a fingerprint-based criminal history record check as prescribed by the Illinois State Police.~~
- b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.
- c) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.
- d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.
- e) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

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- f) *If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)*
- g)ⓓ If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:
- 1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. *If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752 or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act)* Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.
 - 2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 350.750 of this Part.
 - 3) *Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility. The facility must conspicuously post or display, in an area of its offices accessible to staff, current and prospective residents, family members, and visitors, notification, prescribed by the Department, that an identified offender is residing at the facility. The facility must direct specific inquiries about identified offenders to the Illinois Sex Offender Registration website at*

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~~www.isp.state.il.us, the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us, the Department of State Police, or local law enforcement agencies.~~

- ~~A) *The notice shall also be prominently posted within every licensed facility.*~~
- ~~B) *The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)*~~
- ~~4) *The facility shall notify every resident or resident's guardian in writing that such offenders are residents of the facility. (Section 2-216 of the Act)*~~
- ~~4)5) If the identified offender is on probation, ~~or parole, or mandatory supervised release status~~, the facility ~~shall~~ must contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.~~
- ~~6) The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation if the probation officer has not, within three days after the identified offender becomes a resident, provided the facility with copies of the following:~~
 - ~~A) *pre-sentence investigation reports or social investigation reports;*~~
 - ~~B) *any applicable probation orders and corresponding compliance plans;*~~
 - ~~C) *the name and contact information for the assigned probation officer. (Section 12(11) of the Probation and Probation Officers Act [730 ILCS 110])*~~
- e) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in writing within 48 hours after~~

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~~determining that a resident or residents of the licensed facility are listed on the Illinois Department of Corrections or Illinois State Police registered sex offender databases (Section 3-202.3 of the Act).~~

- ~~h) f)~~ Facilities ~~shall~~must maintain written documentation of compliance with Section 350.625~~(f)~~ of this Part ~~and subsection (a) of this Section.~~
- ~~i) g)~~ Facilities ~~shall~~must annually complete all of the steps required in subsection ~~(g)(d)~~ of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.
- ~~j) h)~~ For current residents who are identified offenders, the facility shall review the security measures listed in the Criminal History Analysis Report provided by the Department. ~~must conduct a risk assessment and review the screenings of the identified offender to determine the appropriateness of retention in the facility in accordance with subsection (j).~~
- ~~k) i)~~ Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall~~must~~ specifically address the resident's needs in an individualized plan of care, that reflects the risk assessment of the individual, in accordance with subsection (j) of this Section.
- ~~l) j)~~ The facility shall incorporate the Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act) ~~In conducting a risk assessment of an identified offender and developing a plan of care, the facility shall consider the following:~~
- ~~1) The care and supervision needs, if any, specific to the individual's criminal offense;~~
 - ~~2) The results of the screening conducted pursuant to Section 350.625 of this Part;~~
 - ~~3) The amount of supervision required by the individual to ensure the safety of all residents, staff and visitors in the facility;~~
 - ~~4) The physical and mental abilities of the individual;~~

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- 5) ~~The current medical assessments of the individual;~~
 - 6) ~~The individual's needs in relation to his or her status as an identified offender;~~
 - 7) ~~Approaches to resident care that are proactive and are appropriate and effective in dealing with any behaviors specific to the identified offense; and~~
 - 8) ~~The number and qualifications of staff needed to meet the needs of the individual and the required level of supervision at all times.~~
- m) ~~If the identified offender is a convicted (see 730 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Criminal History Analysis conducted pursuant to Section 2-201.6 of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)The care planning of identified offenders shall include a description of the security measures necessary to protect facility residents from the identified offender, including whether the identified offender should be segregated from other residents. (Section 3-202.3(5) of the Act)~~
- n) ~~The facility's reliance on the Criminal History Analysis Report prepared pursuant to Section 2-201.6(d) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.~~
- 1) ~~Registered sex offenders and individuals serving a term of parole, mandatory supervised release, or probation for a felony offense shall have their own rooms. The resident must not share his or her room or bathroom with any other resident.~~
 - 2) ~~If the facility's risk assessment determines that a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act (Section 1-114.01 of the Act) need not have his or her own room, then the facility shall submit in writing to the Department the basis for this determination. The Department shall have an opportunity to raise concerns or objections to the facility determination. Any Department assent to the facility determination shall not relieve or~~

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~~indemnify in any manner the facility's liability or responsibility with regard to any issue regarding the identified offender or other facility residents. The Department shall notify the facility in writing of the results of the Department's review. The notification shall include any objections raised by the Department and the results of the Department's decision as to whether the identified offender requires placement in a separate room. If the facility does not comply with the Department's determination, then the facility will be subject to a notice of violation. The facility request shall include the following supporting documentation:~~

- ~~A) All of the documentation required by subsection (j) of this Section; and~~
- ~~B) whether the individual is dependent on any type of life support system or equipment.~~

~~3) In determining whether to raise concerns or objections to a facility determination not to segregate the identified offender in a single room, the Department shall consider, but not be limited to:~~

- ~~A) The existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident;~~
- ~~B) The length of time since the individual's release from parole, probation, or mandatory supervised release;~~
- ~~C) The age of the individual at the time of the conviction; and~~
- ~~D) Whether the individual has a felony conviction for a crime listed in Section 955.270(e) of the Health Care Worker Background Check Code (77 Ill. Adm. Code 955.270(e)).~~

o)† The facility ~~shall~~must evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and must document such review. The facility ~~shall~~must modify the care plan if necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.

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- ~~p)~~ Incident reports ~~shall~~must be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 350.700 of this Part. The facility ~~shall~~must review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 350.3300 of this Part.
- ~~q)~~ The facility ~~shall~~must notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.
- ~~r)~~ The facility ~~shall~~must develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

Section 350.636 Discharge Planning for Identified Offenders

- ~~a)~~ *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 350.3300 of this Part. (Section 2-201.6(g) of the Act)*
- ~~b)~~ All discharges and transfers shall be in accordance with Section 350.3300 of this Part.
- ~~c)~~ *When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.*
- ~~d)~~ A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:

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- 1) The facility's inability to meet the needs of the resident, based on ~~Section 350.625(f) and~~ Section 350.635 of this Part and subsection (a) of this Section;
 - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
 - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- ~~e)e~~ Discharge planning shall be included as part of the plan of care developed in accordance with Section 350.635 ~~(k)(j)~~.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

Section 350.637 Transfer of an Identified Offender

- ~~a)~~ *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 350.3300 of this Part. (Section 2-201.6(g) of the Act)*
- ~~b)a~~ All discharges and transfers shall be in accordance with Section 350.3300 of this Part.
- ~~c)b~~ When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
- ~~d)e~~ This notification must include all of the documentation required under Section 350.635 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.

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~~e)~~ If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

- 1) *The mittimus and any pre-sentence investigation reports;*
- 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*
- 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
- 4) *Reports of disciplinary infractions and dispositions;*
- 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
- 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*

~~f)~~ The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

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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)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
390.330	Amendment
390.625	Repealed
390.630	Amendment
390.635	Repealed
390.636	Repealed
390.637	Repealed
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective Date of Rulemaking: April 3, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2006; 30 Ill. Reg. 18549
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period: None

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

1. In Section 390.330, in the definition for Individual Education Program "(IEP)" was change to "or (IEP)".
2. In Section 390.330, in the definition for Individual Habilitation Plan, "(IHP)" was change to "or (IHP)".
3. In Section 390.330, in the definition for Occupational Therapist, Registered, "(OTR)" to "or (OTR)".

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

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these rulemakings replace any emergency rulemakings currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Ill. Reg. Citation:</u>
390.650	Amendment	September 15, 2006; 30 Ill. Reg. 14831

- 15) Summary and Purpose of the Rulemaking: The Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390) regulates licensure of long-term care facilities that serve patients under age 22. This rulemaking is being undertaken to implement Public Act 94-0752, enacted by the General Assembly to improve the supervision and care of identified offenders in long-term care facilities and to omit long-term care for under age 22 facilities from the identified offender requirements.

Section 390.330 (Definitions) was amended to delete the definition for "identified offender."

Section 390.625 (Pre-Admission Assessment and Request for Criminal History Record Information) was repealed.

Section 390.630 (Admission, Retention, and Discharge Policies) was amended to delete all references to identified offenders.

Section 390.635 (Identified Offenders) was repealed.

Section 390.636 (Discharge Planning for Identified Offenders) and Section 390.637 (Transfer of an Identified Offender) were repealed.

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

Susan Meister
Division of Legal Services

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Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761

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

The full text of the Adopted 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 FACILITIESPART 390
LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

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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
390.286	Determination to Assess Penalties

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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

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390.500	Administrator

SUBPART C: POLICIES

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390.610	Management Policies
390.620	Resident Care Policies
390.625	Pre-admission Assessment and Request for Criminal History Record Information (Repealed)
390.630	Admission, Retention and Discharge Policies
390.635	Identified Offenders (Repealed)
390.636	Discharge Planning for Identified Offenders (Repealed)
390.637	Transfer of an Identified Offender (Repealed)
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
390.750	Contacting Local Law Enforcement
390.760	Infection Control

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390.1060	Physical and Occupational Therapy Services
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390.1100	Recreational and Activity Services
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390.1330	Behavior Emergencies (Repealed)

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- 390.1410 Medication Policies and Procedures
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- 390.1430 Administration of Medication
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- 390.1610 Resident Record Requirements
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- 390.1650 Retention and Transfer of Resident Records
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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
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Section

390.2410 Codes
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390.2440 Plumbing

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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
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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.

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Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment 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 at 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. 17283, effective November 1, 2000; amended at 25 Ill. Reg. 4890, effective April 1, 2001; amended at 26 Ill. Reg. 4890, effective April 1, 2002; 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; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5509, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5947, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14250, effective August 15, 2003, for a maximum of 150 days; emergency expired January 12, 2004; amended at 27 Ill. Reg. 15949, effective September 25, 2003; amended at 27 Ill. Reg. 18204, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3565, effective November 15, 2003; amended at 28 Ill. Reg. 11231, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 12025, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15301, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12988, effective August 2, 2005; amended at 30 Ill. Reg. 1473, effective January 23, 2006; amended at 30 Ill. Reg. 5383, effective March 2, 2006; amended at 31 Ill. Reg. 6145, effective April 3, 2007.

SUBPART A: GENERAL PROVISIONS

Section 390.330 Definitions

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

Abuse – any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. (Section 1-103 of the Act)

Abuse means:

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

Mental injury arises from the following types of conduct:

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

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

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

Sexual assault.

Access – the right to:

Enter any facility;

Communicate privately and without restriction with any resident who consents to the communication;

Seek consent to communicate privately and without restriction with any resident;

Inspect the clinical and other records of a resident with the express written consent of the resident;

Observe all areas of the facility except the living area of any resident who protests the observation. (Section 1-104 of the Act)

Act – as used in this Part, the Nursing Home Care Act [210 ILCS 45].

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Activity Program – a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior – the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Adaptive Equipment – a physical or mechanical device, material or equipment attached or adjacent to the resident's body that may restrict freedom of movement or normal access to one's body, the purpose of which is to permit or encourage movement, or to provide opportunities for increased functioning, or to prevent contractures or deformities. Adaptive equipment is not a physical restraint. No matter the purpose, adaptive equipment does not include any device, material or method described in Section 390.1310 as a physical restraint.

Addition – any construction attached to the original building which increases the area or cubic content of the building.

Adequate – enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning – a notice to a facility issued by the Department under Section 390.277 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a type A or type B violation.

Administrator – the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator.)

Advocate – a person who represents the rights and interests of an individual as though they were the person's own, in order to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

Affiliate – means:

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With respect to a partnership, each partner thereof.

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

With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder. (Section 1-106 of the Act)

Aide or Orderly – any person providing direct personal care, training or habilitation services to residents.

Alteration – any construction change or modification of an existing building which does not increase the area or cubic content of the building.

Ambulatory Resident – a person who is physically and mentally capable of walking without assistance, or is physically able with guidance to do so, including the ascent and descent of stairs.

Applicant – any person making application for a license. (Section 1-107 of the Act)

Appropriate – term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment – the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist – a person who is licensed as an audiologist under the Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Autism – a syndrome described as consisting of withdrawal, very inadequate social relationships, exceptional object relationships, language disturbances and monotonously repetitive motor behavior; many children with autism will also be seriously impaired in general intellectual functioning; mental illness observed in young children characterized by severe withdrawal and inappropriate response to

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external stimulation.

Autoclave – an apparatus for sterilizing by superheated steam under pressure.

Auxiliary Personnel – all nursing personnel in intermediate care facilities and skilled nursing facilities other than licensed personnel.

Basement – when used in this Part, means any story or floor level below the main or street floor. Where due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.

Behavior Modification – treatment to be used to establish or change behavior patterns.

Cerebral Palsy – a disorder dating from birth or early infancy, nonprogressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty and behavior disorders.

Certification for Title XVIII and XIX – the issuance of a document by the Department to the Department of Health and Human Services or the Department of Healthcare and Family Services verifying compliance with applicable statutory or regulatory requirements for the purposes of participation as a provider of care and service in a specific Federal or State health program.

Charge Nurse – a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

Chemical Restraint – any drug that is used for discipline or convenience and is not required to treat medical symptoms or behavior manifestations of mental illness. (Section 2-106 of the Act)

Child Care/Habilitation Aide – any person who provides nursing, personal or rehabilitative care to residents of licensed Long-Term Care Facilities for Persons Under 22 Years of Age, regardless of title, and who is not otherwise licensed, certified or registered to render such care. Child Care/Habilitation aides must

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function under the supervision of a licensed nurse.

Community Alternatives – service programs in the community provided as an alternative to institutionalization.

Continuing Care Contract – a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract – a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.

Convenience – the use of any restraint by the facility to control resident behavior or maintain a resident, which is not in the resident's best interest, and with less use of the facility's effort and resources than would otherwise be required by the facility. This definition is limited to the definition of chemical restraint and Section 390.1310 of this Part.

Corporal Punishment – painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident – failure to provide a resident with the care and supervision he requires; or, the infliction of mental or physical abuse.

Dentist – any person licensed by the State of Illinois to practice dentistry, includes persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

Department – as used in this Part means the Illinois Department of Public Health.

Developmental Disabilities (DD) Aide – any person who provides nursing, personal or habilitative care to residents of Intermediate Care Facilities for the Developmentally Disabled, regardless of title, and who is not otherwise licensed, certified or registered to render medical care. Other titles often used to refer to DD Aides include, but are not limited to, Program Aides, Program Technicians and Habilitation Aides. DD Aides must function under the supervision of a licensed nurse or a Qualified Mental Retardation Professional (QMRP).

Developmental Disability – means a severe, chronic disability of a person which:

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is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, epilepsy, autism;

is manifested before the person attains age 22;

is likely to continue indefinitely;

results in substantial functional limitations in 3 or more of the following areas of major life activity:

self-care,

receptive and expressive language,

learning,

mobility,

self-direction,

capacity for independent living, and

economic self-sufficiency; and

reflects the person's need for combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. (Section 3-801.1 of the Act)

Dietetic Service Supervisor - a person who:

is a dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or

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is a graduate, prior to July 1, 1990, of a Department-approved course that provided 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution, which included consultation from a dietitian; or

has successfully completed a Dietary Manager's Association approved dietary managers course; or

is certified as a dietary manager by the Dietary Manager's Association; or

has training and experience in food service supervision and management in a military service equivalent in content to the programs in the second, third or fourth paragraph of this definition.

Dietitian – a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Direct Supervision – work performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not strictly routine, who regularly reviews the work performed, and who is accountable for the results.

Director – the Director of the Department of Public Health or designee. (Section 1-110 of the Act)

Director of Nursing Service – the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

Discharge – the full release of any resident from a facility. (Section 1-111 of the Act)

Discipline – any action taken by the facility for the purpose of punishing or penalizing residents.

Distinct Part – an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved

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for the distinct part.

Emergency – a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility. (Section 1-112 of the Act)

Epilepsy – a chronic symptom of cerebral dysfunction, characterized by recurrent attacks, involving changes in the state of consciousness, sudden in onset, and of brief duration. Many attacks are accompanied by a seizure in which the person falls involuntarily.

Existing Long-Term Care Facility – any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Facility, Intermediate Care – a facility which provides basic nursing care and other restorative services under periodic medical direction. Many of these services may require skill in administration. Such facilities are for residents who have long-term illnesses or disabilities which may have reached a relatively stable plateau.

Facility, Intermediate Care for the Developmentally Disabled – when used in this Part, is a facility of three or more persons, or distinct part thereof, serving residents of which more than 50 percent are developmentally disabled.

Facility or Long-Term Care Facility – a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code [55 ILCS 5] or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act (42 USCA 1395 et seq. and 1936 et seq.). It also includes homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans'

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Affairs. A "facility" may consist of more than one building as long as the buildings are on the same tract, or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "Facility" does not include the following:

A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois other than homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs;

A hospital, sanitarium, or other institution whose principal activity or business is the diagnosis, care, and treatment of human illness through the maintenance and operation as organized facilities therefor, which is required to be licensed under the Hospital Licensing Act [210 ILCS 85];

Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];

Any "community living facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];

Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [210 ILCS 140];

Any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;

Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];

Any supportive residence licensed under the Supportive Residences Licensing Act [210 ILCS 65];

Any supportive living facility in good standing with the demonstration

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project established under Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a];

Any assisted living or shared housing establishment licensed under the Assisted Living and Shared Housing Act [210 ILCS 9]; or

*An Alzheimer's disease management center alternative health care model licensed under the Alternative Health Care Delivery Act [210 ILCS 3].
(Section 1-113 of the Act)*

Facility, Long-Term Care, for Residents Under 22 Years of Age – when used in this Part is synonymous with a long-term care facility for residents under 22 years of age, which facility provides total habilitative health care to residents who require specialized treatment, training and continuous nursing care because of medical or developmental disabilities.

Facility, Sheltered Care – when used in this Part is synonymous with a sheltered care facility, which facility provides maintenance, and personal care.

Facility, Skilled Nursing – when used in this Part is synonymous with a skilled nursing facility. A skilled nursing facility provides skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. Such facilities are provided for patients who need the type of care and treatment required during the post acute phase of illness or during recurrences of symptoms in long-term illness.

Financial Responsibility – having sufficient assets to provide adequate services such as: staff, heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

Full-time – on duty a minimum of 36 hours, four days per week.

Goal – an expected result or condition that involves a relatively long period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific, short-term objectives directed toward its attainment.

Governing Body - the policy-making authority, whether an individual or a group,

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that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

Guardian – a person appointed as a guardian of the person or guardian of the estate, or both, of a resident under the Probate Act of 1975 [755 ILCS 5]. (Section 1-114 of the Act)

Habilitation – an effort directed toward the alleviation of a disability or toward increasing a person's level of physical, mental, social or economic functioning. Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services.

Health Information Management Consultant – a person who is certified as a Registered Health Information Administrator (RHIA) or a Registered Health Information Technician (RHIT) by the American Health Information Management Association; or is a graduate of a school of health information management that is accredited jointly by the American Medical Association and the American Health Information Management Association.

Health Services Supervisor (Director of Nursing Service) – the full-time Registered Nurse who is directly responsible for the immediate supervision of the health services in an Intermediate Care Facility.

Home for the Aged – any facility which is operated: by a not-for-profit corporation incorporated under, or qualified as a foreign corporation under, the General Not For Profit Corporation Act of 1986 [805 ILCS 105]; or by a county pursuant to Division 5-22 of the Counties Code [55 ILCS 5]; or pursuant to a trust or endowment established for nonprofit, charitable purposes; and which provides maintenance, personal care, nursing or sheltered care to three or more residents, 90 percent of whom are 60 or more years of age.

Hospitalization – the care and treatment of a person in a hospital as an inpatient.

~~*Identified Offender – a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act, is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense. (Section 1-114.01 of the Act)*~~

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Individual Education Program ~~or (IEP)~~ – a written statement for each resident that provides for specific education and related services. The Individual Education Program may be incorporated into the Individual Habilitation Plan (IHP).

Individual Habilitation Plan ~~or (IHP)~~ – a total plan of care that is developed by the interdisciplinary team for each resident, and that is developed on the basis of all assessment results.

Interdisciplinary Team – a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's strengths and needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. In Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) at least one member of the team shall be a Qualified Mental Retardation Professional. The Interdisciplinary Team includes the resident, the resident's guardian, the resident's primary service providers, including staff most familiar with the resident; and other appropriate professionals and caregivers as determined by the resident's needs. The resident or his or her guardian may also invite other individuals to meet with the Interdisciplinary Team and participate in the process of identifying the resident's strengths and needs.

Licensed Nursing Home Administrator – a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70].

Licensed Practical Nurse – a person with a valid Illinois license to practice as a practical nurse.

Licensee – the person or entity licensed to operate the facility as provided under the Act. (Section 1-115 of the Act)

Life Care Contract – a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

Maintenance – food, shelter, and laundry services. (Section 1-116 of the Act)

Maladaptive Behavior – impairment in adaptive behavior as determined by a clinical psychologist or by a physician. Impaired adaptive behavior may be

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reflected in delayed maturation, reduced learning ability or inadequate social adjustment.

Mentally Retarded and Mental Retardation – subaverage general intellectual functioning originating during the developmental period and associated with maladaptive behavior.

Misappropriation of Property – using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Mobile Nonambulatory – unable to walk independently or without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.

Mobile Resident – any resident who is able to move about either independently or with the aid of an assistive device such as a walker, crutches, a wheelchair, or a wheeled platform.

Monitor – a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.

Neglect – a failure in a facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. (Section 1-117 of the Act) Neglect means the failure to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. This shall include any allegation where:

the alleged failure causing injury or deterioration is ongoing or repetitious;
or

a resident required medical treatment as a result of the alleged failure; or

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the failure is alleged to have caused a noticeable negative impact on a resident's health, behavior or activities for more than 24 hours.

New Long-Term Care Facility – any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Normalization – the principle of helping individuals to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

Nurse – a registered nurse or a licensed practical nurse as defined in the *Nursing and Advanced Practice Nursing Act* [225 ILCS 65]. (Section 1-118 of the Act)

Nursing Assistant – any person who provides nursing care or personal care to residents of licensed long-term care facilities, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render medical care. Other titles often used to refer to nursing assistants include, but are not limited to, nurse's aide, orderly and nurse technician. Nursing assistants must function under the supervision of a licensed nurse.

Nursing Care – a complex of activities which carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

Nursing Unit – a physically identifiable designated area of a facility consisting of all the beds within the designated area, but having no more than 75 beds, none of which are more than 120 feet from the nurse's station.

Objective – an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

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Occupational Therapist, Registered or (OTR) – a person who is registered as an occupational therapist under the Illinois Occupational Therapy Practice Act [225 ILCS 75].

Occupational Therapy Assistant – a person who is registered as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator – the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Other Resident Injury – occurs where a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Oversight – general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed physician, are in need of residential care.

Owner – the individual, partnership, corporation, association or other person who owns a facility. In the event a facility is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the facility, except that if the person who owns the physical plant is an affiliate of the person who operates the facility and has significant control over the day-to-day operations of the facility, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 1-119 of the Act)

Person – any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

Personal Care – assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of maintaining a private, independent residence or who is incapable of managing his person, whether or not a guardian has been appointed for such individual. (Section 1-120

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of the Act)

Pharmacist, Registered – a person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

Physical Restraint – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body, which the individual cannot remove easily and which restricts freedom of movement or normal access to one's body. (Section 2-106 of the Act)

Physical Therapist Assistant – a person who has graduated from a two year college level program approved by the American Physical Therapy Association.

Physical Therapist – a person who is registered as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90].

Physician – any person licensed by the State of Illinois to practice medicine in all its branches as provided in the Medical Practice Act of 1987 [225 ILCS 60].

Probationary License – an initial license issued for a period of 120 days during which time the Department will determine the qualifications of the applicant.

Psychiatrist – a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

Psychologist – a person who is licensed to practice clinical psychology under the Clinical Psychologist Licensing Act [225 ILCS 15].

Qualified Mental Retardation Professional – a person who has at least one year of experience working directly with individuals with developmental disabilities and meets at least one of the following additional qualifications:

Be a physician as defined in this Section.

Be a registered nurse as defined in this Section.

Hold at least a bachelor's degree in one of the following fields:
occupational therapy, physical therapy, psychology, social work, speech or

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language pathology, recreation (or a recreational specialty area such as art, dance, music, or physical education), dietary services or dietetics, or a human services field (such as sociology, special education, or rehabilitation counseling).

Qualified Professional – a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the State of Illinois, if required.

Reasonable Visiting Hours – any time between the hours of 10:00 a.m. and 8:00 p.m. daily. (Section 1-121 of the Act)

Registered Nurse – a person with a valid Illinois license to practice as a registered professional nurse under the Nursing and Advanced Practice Nursing Act.

Repeat Violation – for purposes of assessing fines under Section 3-305 of the Act, a violation that has been cited during one inspection of the facility for which a subsequent inspection indicates that an accepted plan of correction was not complied with, within a period of not more than twelve months from the issuance of the initial violation. A repeat violation shall not be a new citation of the same rule, unless the licensee is not substantially addressing the issue routinely throughout the facility. (Section 3-305(7) of the Act)

Reputable Moral Character – having no history of a conviction of the applicant, or if the applicant is a firm, partnership, or association, of any of its members, or of a corporation, of any of its officers, or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the facility is not reputable.

Resident – person residing in and receiving personal care from a facility. (Section 1-122 of the Act)

Resident Services Director – the full-time administrator, or an individual on the

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professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

Resident's Representative – a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed. (Section 1-123 of the Act)

Restorative Care – a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Room – a part of the inside of a facility that is partitioned continuously from floor to ceiling with openings closed with glass or hinged doors.

Sanitization – the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

Satisfactory – same as adequate.

Seclusion – the retention of a resident alone in a room with a door that the resident cannot open.

Self Preservation – the ability to follow directions and recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

Sheltered Care – maintenance and personal care. (Section 1-124 of the Act)

Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

State Fire Marshal – the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

Sterilization – the act or process of destroying completely all forms of microbial life, including viruses.

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Stockholder of a Corporation – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (Section 1-125 of the Act)

Story – when used in this Part, means that portion of a building between the upper surface of any floor and the upper surface of the floor above except that the topmost story shall be the portion of a building between the upper surface of the topmost floor and the upper surface of the roof above.

Student Intern – means any person whose total term of employment in any facility during any 12-month period is equal to or less than 90 continuous days, and whose term of employment is either:

an academic credit requirement in a high school or undergraduate institution; or

immediately succeeds a full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution, provided that such person is registered for another full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution which quarter, semester or trimester will commence immediately following the term of employment. (Section 1-125.1 of the Act)

Substantial Compliance – meeting requirements except for variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Sections 390.140(a)(3) and 390.150(a)(3).

Substantial Failure – the failure to meet requirements other than a variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Section 390.165(b)(1).

Sufficient – same as adequate.

Supervision – authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with

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initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Therapeutic Recreation Specialist – a person who is certified by the National Council for Therapeutic Recreation Certification and who meets the minimum standards it has established for classification as a Therapeutic Recreation Specialist.

Time Out – removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

Title XVIII – Title XVIII of the Federal Social Security Act as now or hereafter amended. (Section 1-126 of the Act)

Title XIX – Title XIX of the Federal Social Security Act as now or hereafter amended. (Section 1-127 of the Act)

Transfer – a change in status of a resident's living arrangements from one facility to another facility. (Section 1-128 of the Act)

Type A Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom. (Section 1-129 of the Act)

Type B Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility directly threatening to the health, safety or welfare of a resident. (Section 1-130 of the Act)

Unit – an entire physically identifiable residence area having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for each distinct resident area are established as set forth in the respective rules governing the approved levels of service.

Universal Progress Notes – a common record with periodic narrative documentation by all persons involved in resident care.

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Valid License – a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 31 Ill. Reg. 6145, effective April 3, 2007)

SUBPART C: POLICIES

Section 390.625 Pre-admission Assessment and Request for Criminal History Record Information (Repealed)

(Source: Repealed at 31 Ill. Reg. 6145, effective April 3, 2007)

Section 390.630 Admission, Retention and Discharge Policies

- a) All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.
- b) A facility shall admit only residents who have had a comprehensive evaluation of their medical history and physical and psycho/social factors conducted by an appropriately constituted interdisciplinary team. No resident determined by professional evaluation to be in need of services not readily available in a particular facility shall be admitted to or kept in that facility. Additionally, emotional and cognitive histories shall be evaluated when applicable and available.
- c) A facility for persons under 22 years of age shall be used exclusively for persons under 22 years of age, except when the facility's interdisciplinary team has determined that either initial or continued placement in the facility is appropriate because of the resident's physical and mental functioning status, and that the facility has the service resources to meet the needs of the resident. The facility interdisciplinary team shall further determine that placement shall not constitute a serious danger to the other residents.
- d) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is a minor, by the resident's parent or guardian.
- e) If a resident insists on being discharged and is discharged against medical advice, the facts involved in the situation shall be fully documented in the resident's

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clinical record.

- f) No resident shall be discharged without the concurrence of the attending physician. If such approval is given, the facility shall have the right to discharge or transfer a resident to an appropriate resource in accordance with Sections 3-401 through 3-423 of the Act.
- g) A facility shall not admit more residents than the number authorized by the license issued to it.
- h) ~~No identified offender shall be admitted to or kept in the facility, unless the requirements of Section 390.625(b) and (c) for new admissions and the requirements of Section 390.635 are met.~~

(Source: Amended at 31 Ill. Reg. 6145, effective April 3, 2007)

Section 390.635 Identified Offenders (Repealed)

- a) ~~The facility shall initiate, for current residents, a request for criminal history record information, in accordance with the Uniform Conviction Information Act, by May 31, 2006.~~
- b) ~~If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.~~
- c) ~~If the results of a criminal history record check on any individual are inconclusive, then the facility shall initiate a fingerprint based criminal history record check as prescribed by the Illinois State Police.~~
- d) ~~If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:~~
 - 1) ~~The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be~~

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~~permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110 of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.~~

- 2) ~~The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 390.700 of this Part.~~
- 3) ~~The facility must conspicuously post or display, in an area of its offices accessible to staff, current and prospective residents, family members, and visitors, notification, prescribed by the Department, that an identified offender is residing at the facility. The facility must direct specific inquiries about identified offenders to the Illinois Sex Offender Registration website at www.isp.state.il.us, the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us, the Department of State Police, or local law enforcement agencies.~~
- 4) ~~The facility shall notify every resident or resident's guardian in writing that such offenders are residents of the facility. (Section 2-216 of the Act)~~
- 5) ~~If the identified offender is on probation or parole status, the facility must contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.~~
- 6) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation if the probation officer has not, within three days after the identified offender becomes a resident, provided the facility with copies of the following:~~
 - A) ~~pre-sentence investigation reports or social investigation reports;~~

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- B) ~~any applicable probation orders and corresponding compliance plans;~~
- C) ~~the name and contact information for the assigned probation officer. (Section 12(11) of the Probation and Probation Officers Act [730 ILCS 110])~~
- e) ~~The facility must inform the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in writing within 48 hours after determining that a resident or residents of the licensed facility are listed on the Illinois Department of Corrections or Illinois State Police registered sex offender databases (Section 3-202.3 of the Act).~~
- f) ~~Facilities must maintain written documentation of compliance with Section 390.625(b) of this Part and subsection (a) of this Section.~~
- g) ~~Facilities must annually complete all of the steps required in subsection (d) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.~~
- h) ~~For current residents who are identified offenders, the facility must conduct a risk assessment and review the screenings of the identified offender to determine the appropriateness of retention in the facility in accordance with subsection (j).~~
- i) ~~Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, must specifically address the resident's needs in an individualized plan of care that reflects the risk assessment of the individual, in accordance with subsection (j) of this Section.~~
- j) ~~In conducting a risk assessment of an identified offender and developing a plan of care, the facility shall consider the following:~~
 - 1) ~~The care and supervision needs, if any, specific to the individual's criminal offense;~~
 - 2) ~~The results of the screening conducted pursuant to Section 390.625 of this Part;~~

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- 3) ~~The amount of supervision required by the individual to ensure the safety of all residents, staff and visitors in the facility;~~
 - 4) ~~The physical and mental abilities of the individual;~~
 - 5) ~~The current medical assessments of the individual;~~
 - 6) ~~The individual's needs in relation to his or her status as an identified offender;~~
 - 7) ~~Approaches to resident care that are proactive and are appropriate and effective in dealing with any behaviors specific to the identified offense; and~~
 - 8) ~~The number and qualifications of staff needed to meet the needs of the individual and the required level of supervision at all times.~~
- k) *The care planning of identified offenders shall include a description of the security measures necessary to protect facility residents from the identified offender, including whether the identified offender should be segregated from other residents. (Section 3-202.3(5) of the Act)*
- 1) ~~Registered sex offenders and individuals serving a term of parole, mandatory supervised release, or probation for a felony offense shall have their own rooms, under the following conditions:~~
 - A) ~~The room must be in direct view of the main nurses' station; and~~
 - B) ~~The resident must not share his or her room or bathroom with any other resident.~~
 - 2) ~~If the facility's risk assessment determines that a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act (Section 1-114.01 of the Act) need not have his or her own room, then the facility shall submit in writing to the Department the basis for this determination. The Department shall have an opportunity to raise concerns or objections to the facility determination. Any Department assent to the facility determination shall not relieve or indemnify in any manner the facility's liability or responsibility with~~

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~~regard to any issue regarding the identified offender or other facility residents. The Department shall notify the facility in writing of the results of the Department's review. The notification shall include any objections raised by the Department and the results of the Department's decision as to whether the identified offender requires placement in a separate room. If the facility does not comply with the Department's determination, then the facility will be subject to a notice of violation. The facility request shall include the following supporting documentation:~~

- ~~A) All of the documentation required by subsection (j) of this Section; and~~
- ~~B) Whether the individual is dependent on any type of life support system or equipment.~~
- 3) ~~In determining whether to raise concerns or objections to a facility determination not to segregate the identified offender in a single room, the Department shall consider, but not be limited to:~~
 - ~~A) The existence of a severe debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident;~~
 - ~~B) The length of time since the individual's release from parole, probation, or mandatory supervised release;~~
 - ~~C) The age of the individual at the time of the conviction; and~~
 - ~~D) Whether the individual has a felony conviction for a crime listed in Section 955.270(e) of the Health Care Worker Background Check Code (77 Ill. Adm. Code 955.270(e)).~~
- l) ~~The facility must evaluate care plans quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and must document such review. The facility must modify the care plan if necessary in response to this evaluation.~~
- m) ~~Incident reports must be submitted to the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 390.700 of this Part. The facility must review its placement~~

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~~determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 390.3300 of this Part.~~

- n) ~~The facility must notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.~~
- o) ~~The facility must develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.~~

(Source: Repealed at 31 Ill. Reg. 6145, effective April 3, 2007)

Section 390.636 Discharge Planning for Identified Offenders (Repealed)

- a) ~~All discharges and transfers shall be in accordance with Section 390.3300 of this Part.~~
- b) ~~A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:~~
 - 1) ~~The facility's inability to meet the needs of the resident, based on Section 390.625(c) and Section 390.635 of this Part;~~
 - 2) ~~The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or~~
 - 3) ~~The physical safety of the resident, other residents, the facility staff, or facility visitors.~~

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- e) ~~Discharge planning shall be included as part of the plan of care developed in accordance with Section 390.635(j).~~

(Source: Repealed at 31 Ill. Reg. 6145, effective April 3, 2007)

Section 390.637 Transfer of an Identified Offender (Repealed)

- a) ~~All discharges and transfers shall be in accordance with Section 390.3300 of this Part.~~
- b) ~~When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.~~
- e) ~~This notification must include all of the documentation required under Section 390.635 of this Part, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.~~
- d) ~~If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:~~
- 1) ~~*The mittimus and any pre-sentence investigation reports;*~~
 - 2) ~~*The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*~~
 - 3) ~~*Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*~~
 - 4) ~~*Reports of disciplinary infractions and dispositions;*~~
 - 5) ~~*Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*~~
 - 6) ~~*The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*~~

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- e) ~~The information required this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.~~

(Source: Repealed at 31 Ill. Reg. 6145, effective April 3, 2007)

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- 1) Heading of the Part: Procedures and Standards
- 2) Code Citation: 92 Ill. Adm. Code 1001
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1001.30	Amend
1001.70	Amend
1001.80	Amend
1001.90	Amend
1001.100	Amend
1001.110	Amend
1001.220	Amend
1001.300	Amend
1001.360	Amend
1001.410	Amend
1001.420	Amend
1001.430	Amend
1001.440	Amend
1001.441	Amend
1001.443	Amend
1001.450	Amend
1001.600	Amend
1001.670	Amend
1001.680	Amend
- 4) Statutory Authority: Subpart A implements Sections 2-113, 2-118, 6-108, 6-205, and 6-206 and is authorized by Sections 2-103 and 2-104 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-113, 2-118, 6-108, 6-205 and 6-206]. Subpart B implements Chapter 7 and is authorized by Sections 2-103, 2-104, 2-106, 2-107, 2-108, 2-113, and 2-114, and Ch. 7 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-106, 2-107, 2-108, 2-113, 2-114 and Ch. 7]. Subpart C implements Sections 6-205(c) and 6-206(c)3 and is authorized by Sections 2-103 and 2-104 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 6-205(c) and 6-206(c)3]. Subpart D is authorized by Sections 2-104 and 11-501 of the Illinois Vehicle Code and implements Sections 6-103, 6-205(c), 6-206(c)3, and 6-208 of the Illinois Vehicle Code [625 ILCS 5/ 2-104, 6-103, 6-205(c), 6-206(c)3, 6-208 and 11-501]. Subpart F implements Sections 2-113, 2-118, 6-208.2, 11-501.1, and 11-501.8 and is authorized by Sections 2-103, 2-104, and 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-113, 2-118, 6-208.2, 11-501.1 and 11-501.8]

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- 5) Effective Date of Amendments: May 1, 2007
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal Springfield office and is available for public inspection.
- 9) Date Notice of Proposal Published in the Illinois Register: 30 Ill. Reg. 13757; August 18, 2006
- 10) Has JCAR issued a Statement of Objection to these amendments? Yes
- A) Statement of Objection: 31 Ill. Reg. 2032; January 26, 2007
- B) Agency Response: 31 Ill. Reg. 6276; April 20, 2007
- C) Date Agency Response Submitted for Approval to JCAR: April 5, 2007
- 11) Differences between proposal and final version: Some revisions to the original proposal were made according to recommendations made by JCAR in its "First Notice Line Numbered Version and in the "Second Notice Changes" issued by JCAR. This includes several grammatical and stylistic changes. Furthermore, some public comment was received and some revisions made pursuant to those comments.
- Section 1001.70(a)(2) was deleted when the Office submitted Second Notice to JCAR. It concerned the timely filing of petitions to contest the imposition of an implied consent suspension. New text proposed to be added to Section 101.100(n)(4) limiting refiling of a petition to contest an implied consent suspension was removed when the SOS filed Second Notice with JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes, with two exceptions. In Section 1001.410, JCAR objected to two citations in regard to the definitions of boating under the influence and snowmobiling under the influence. JCAR requested that the Department of Administrative Hearings cite to these offenses as "625 ILCS 45" and "625 ILCS 40", respectively. The Department did not accept these requests. Rather, the Department is citing to these offenses as follows: "625 ILCS 40/5-1 through 5-7.6" and "625 ILCS

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45/5-1 through 5-21". However, we believe that these citations, which have been modified from those which were originally proposed by the Department, satisfy the objections of the JCAR.

- 13) Will these amendments replace any emergency amendments currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments:

In Subpart A:

Added titles to subsections in several Sections (those which have not been amended recently), beginning with Section 1001.80.

Section 1001.70 subsection (a) updates the language in this rule by allowing a petition to be filed by fax, e-mail, or regular mail.

Section 1001.80 strikes the Motion to Correct a Material Misstatement of Fact. Petitioners will no longer be able to file these motions.

Section 1001.90 adds a new subsection (b) to codify the Department's established and published policy on the requirement of the submission of original documents, as defined in the rule.

In Section 1001.100, the rules on the rules of evidence in subsection (d) are amended to add a paragraph that allows the hearing to be decided on the basis of the arresting officer's sworn report in implied consent hearings, even if the arresting officer fails to respond to a subpoena.

Section 1001.90(n)(6) is amended to allow the DAH to withdraw out-of-state petitions if the petitioner fails to respond to a request for evidence within 30 (rather than 90) days, but allows another petition to be filed in 30 days. SOS found that the 90-day deadline results in the accumulation of too many files; generally, if a petitioner is going to respond, it is done well within 30 days.

Section 1001.110, subsection (d), is amended to codify a long standing policy of the Department to provide instructions on how to complete the process of obtaining a

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restricted driving permit or effecting the reinstatement of driving privileges, and to impose a deadline on completing this process.

In Subpart B:

Section 1001.220(j) adds a paragraph stating the procedure for obtaining a copy of the record of a safety responsibility hearing by those who are not a party to the hearing, as defined in Section 1001.210.

In Subpart C:

Section 1001.300(b) is amended to clarify the scope/application of subsections (3) and (4). Subsection (c)(3) is amended to clarify/specify the offenses which preclude a petitioner from renewing a permit at an informal hearing.

Section 1001.360 adds a new subsection (c), which is amended to codify a long standing policy of the Department to provide instructions on how to complete the process of obtaining a restricted driving permit or effecting the reinstatement of driving privileges, and to impose a deadline on completing this process. The Department also reserves the discretion to extend these deadlines. Different deadlines are imposed for completing the process of obtaining a restricted driving permit and effecting reinstatement. The failure to complete this process will result in the denial of driving relief.

In Subpart D:

Amended the following definitions (in Section 1001.410):

"Abstinence", to account for the use of medications with ethyl alcohol as an ingredient;

"Alcohol", to include medications with ethyl alcohol as an ingredient;

"Alcohol and drug evaluation (Investigative)", to broaden the scope of its application;

"DUI Disposition", to make it clear that the definition applies to all DUIs, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record.

Created new definitions, as follows:

"Alcohol/drug-related criminal record". This class of offense must now be considered in the evaluation and decision-making process. See the amendments to Sections 1001.420(e), .430(c), and .440(a)(4);

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"Boating under the influence" and "Snowmobiling under the influence". These offenses must now be considered in the evaluation and decision-making process. See the amendments to Sections 1001.420(e), .430(c), and .440(a)(4);

"Treatment Needs Assessment". This rulemaking will specify when a TNA is required. See Section 1001.440(b)(7);

In Section 1001.420, subsection (e), as mentioned above, added additional factors to be considered in deciding whether to issue a restricted driving permit; amended subsection (i) to make it clear that driving on a probationary restricted driving permit without incident does not entitle the petitioner to reinstatement at his/her next hearing; in subsection (k), amended text to conform to P.A. 94-473; in subsection (m) added, consistent with the revised definition of investigative evaluation, what must be included or considered in the investigative evaluation (the "Alcohol/drug-related criminal record", and the offenses of BUI and SUI). It also requires the petitioner to submit updated evaluations if rehabilitative activity is recommended.

In Section 1001.430, subsection (c) was amended to include the alcohol/drug related criminal record, and incidents of BUI and SUI, and the petitioner's record of performance while driving with an interlock device. Further, this subsection is amended to make it clear that driving on a probationary restricted driving permit without incident does not entitle the petitioner to reinstatement at his/her next hearing. This subsection is also amended in response to a recent Rule 23 decision by the 4th District Appellate Court, which misinterpreted the intent of this subsection and ignored other rules which also apply to the reinstatement process. (See amendments to Section 1001.420(i) above.) Subsection (d) adds, consistent with the revised definition of investigative evaluation, what must be included or considered in the investigative evaluation. It also requires the petitioner to submit updated evaluations if rehabilitative activity is recommended. Subsection (g) is amended to conform to P.A. 94-473. Subsection (i) is amended to apply to all restricted driving permits, rather than just probationary permits.

In Section 1001.440, subsection (a)(1) is amended to clarify when SOS will accept out-of-state evaluations and treatment; subsection (4) is amended to require Uniform Report to consider incidents of BUI and SUI, all DUIs, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record, and the alcohol/drug related criminal record; subsection (5) is amended to clarify that the Driver Risk Education course must be taken after the most recent arrest for DUI, rather than the disposition date (so if a petitioner gets a second DUI while taking the course, which is dismissed in a plea bargain, s/he must start the course over); subsection (6)(A)(1) is amended to clarify rule on transfer of files: allows transfer of either evaluation or

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treatment file and composition of update by the receiving program; allows petitioner to follow an individual provider, so update can be composed by that individual provider if the file is transferred to the individual provider or his/her new employer; allows transfer if the petitioner moves to a different part of the state; subsection (6)(A)(2) is amended to allow treatment program to compose a chronological alcohol/drug use history (codifying existing policy); subsection (6)(B) is amended to allow the chronological alcohol/drug use history to be provided in an updated evaluation; subsection (6)(C) is amended to require that the out-of-state evaluation consider all DUIs, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record; subsection (6)(D) is amended to required investigative evaluation to consider incidents of BUI and SUI and all DUIs, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record; new subsection (6)(E) clarifies when an investigative evaluation must be updated.

Also, subsection (b) is amended to change reference to Dept. of Prof. Regulation to the Dept. of Financial and Prof. Reg., Div. of Prof. Reg.; subsection (5) is amended to clarify when an investigative evaluation must be updated; new subsection (7) on Treatment Needs Assessment specifies when and why one is required (codifying existing policy); and subsection (d) is amended to codify an important evidentiary and decision-making factor.

In Section 1001.441, subsection (a) is amended to remove some outdated language regarding the payment of BAID fees; subsection (i)(6) is amended to allow BAID Unit to request explanation for evidence of tampering found in monitor reports, rather than imposing summary cancellation (this amends the rule to the current practice of the BU; there are so many incidents of tampering that it decided not to impose the summary cancellation); subsection (j) is amended to allow BAID Unit to impose cancellation based upon monitor reports received after a hearing is held or a petitioner is reinstated (this, hopefully, plugs a loophole in the current system, which does not provide the SOS any recourse when SOS finds evidence of alcohol/drug use in monitor reports, received after a petitioner's driving privileges have been reinstated).

In Section 1001.443, subsection (b) (BAID multiple offender rule) is amended to require use of interlock device for 365 days, rather than 12 months, in an attempt to clarify this requirement for petitioners, some of whom apparently rushed to de-install the device upon entering the 12th month of use; subsection amended to clarify when the base period begins; subsection (c) concerning the "certification" of installation requirement by BAID multiple offenders is deleted. Subsection (b) is amended to strike the reference to the certification by the petitioner. A new subsection (c)(4) allows BAID Unit to impose

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cancellation based upon monitor reports received after a hearing is held or a petitioner is reinstated (see Section 1001.441(j)(5) above); the petitioner's right to a hearing to contest the above-referenced cancellations is placed in a new subsection (d).

Section 1001.450 is amended to change the 4-month waiting requirement for another hearing to 90 days. It also clarifies when a petitioner can obtain an informal hearing after being denied at a formal hearing.

In Subpart F:

Section 1001.600 (Zero Tolerance rules) recites/clarifies authority for the hearings conducted to implement the provisions of the zero tolerance statute.

Section 1001.670, subsection (a), is amended to clarify when an investigative evaluation is required; subsection (b) is amended to clarify when a Uniform Report is required.

Section 1001.680 corrects reference to location of formal hearing.

Note that this is substantially the same justification/description recited in the Notice of Proposed Amendments.

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

Marc Christopher Loro, Legal Advisor II
Department of Administrative Hearings
200 Howlett Building
Springfield, Illinois 62756

217/785-8245
mloro@ilsos.net

- 17) Do these amendments require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 50/5-25]? No

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1001
PROCEDURES AND STANDARDS

SUBPART A: FORMAL ADMINISTRATIVE HEARINGS

Section

1001.10	Applicability
1001.20	Definitions
1001.30	Right to Counsel
1001.40	Appearance of Attorney
1001.50	Special Appearance
1001.60	Substitution of Parties
1001.70	Commencement of Actions; Notice of Hearing
1001.80	Motions
1001.90	Form of Papers - <u>Original Documents Required</u>
1001.100	Conduct of Formal Hearings
1001.110	Orders; <u>Notification; Time Limits on Obtaining Relief</u>
1001.120	Record of Hearings
1001.130	Invalidity

SUBPART B: ILLINOIS SAFETY RESPONSIBILITY HEARINGS

Section

1001.200	Applicability
1001.210	Definitions
1001.220	Hearings: Notice; Location; Procedures; Record
1001.230	Rules of Evidence
1001.240	Scope of Hearings
1001.250	Decisions and Orders
1001.260	Rehearings
1001.270	Judicial Review
1001.280	Invalidity

SUBPART C: RULES ON THE CONDUCT OF INFORMAL HEARINGS IN
DRIVER'S LICENSE SUSPENSIONS AND REVOCATIONS

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Section	
1001.300	Applicability
1001.310	Definitions
1001.320	Right to Representation
1001.330	Records and Reports
1001.340	Location of Hearings
1001.350	Duties and Responsibilities
1001.360	Decisions ; <u>Time Limits on Obtaining Relief</u>
1001.370	Invalidity

SUBPART D: STANDARDS FOR THE GRANTING OF RESTRICTED DRIVING PERMITS, REINSTATEMENT, AND THE TERMINATION OF CANCELLATIONS OF DRIVING PRIVILEGES BY THE OFFICE OF THE SECRETARY OF STATE

Section	
1001.400	Applicability; Statement of Principle and Purpose
1001.410	Definitions
1001.420	General Provisions Relating to the Issuance of Restricted Driving Permits
1001.430	General Provisions for Reinstatement of Driving Privileges after Revocation
1001.440	Provisions for Alcohol and Drug Related Revocations, Suspensions, and Cancellations
1001.441	Procedures for Breath Alcohol Ignition Interlock Device Conditioned RDPs
1001.442	BAIID Providers Certification Procedures and Responsibilities; Approval of Breath Alcohol Ignition Interlock Devices; Inspections; BAIID Installer's Responsibilities; Disqualification of a BAIID Provider
1001.443	Breath Alcohol Ignition Interlock Device Multiple Offender – Compliance with Interlock Program
1001.444	Installer's Responsibilities (Repealed)
1001.450	New Hearings
1001.460	Requests for Modification of Revocations and Suspensions
1001.470	Renewal, Correction and Cancellation of RDPs
1001.480	Unsatisfied Judgment Suspensions
1001.485	Reinstatement Application Based Upon Issuance of Drivers License in a State Which is a Member of the Driver License Compact
1001.490	Invalidity

SUBPART E: FORMAL MEDICAL HEARINGS

Section

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1001.500	Applicability
1001.510	Definitions
1001.520	Procedure
1001.530	Conduct of Medical Formal Hearings
1001.540	Subsequent Hearings

SUBPART F: ZERO TOLERANCE SUSPENSION OF DRIVING PRIVILEGES;
PERSONS UNDER THE AGE OF 21 YEARS; IMPLIED CONSENT
HEARINGS; RESTRICTED DRIVING PERMITS

Section

1001.600	Applicability
1001.610	Definitions
1001.620	Burden of Proof
1001.630	Implied Consent Hearings; Religious Exception
1001.640	Implied Consent Hearings; Medical Exception
1001.650	Rebuttable Presumption
1001.660	Alcohol and Drug Education and Awareness Program
1001.670	Petition for Restricted Driving Permits
1001.680	Form and Location of Hearings
1001.690	Invalidity

SUBPART G: MOTOR VEHICLE FRANCHISE ACT

Section

1001.700	Applicability
1001.710	Definitions
1001.720	Organization of Motor Vehicle Review Board
1001.730	Motor Vehicle Review Board Meetings
1001.740	Board Fees
1001.750	Notice of Protest
1001.760	Hearing Procedures
1001.770	Conduct of Protest Hearing
1001.780	Mandatory Settlement Conference
1001.785	Technical Issues
1001.790	Hearing Expenses; Attorney's Fees
1001.795	Invalidity

1001.APPENDIX A BAIID Regions and Minimum Installation/Service Center Site Location

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Guidelines (Repealed)

AUTHORITY: Subpart A implements Sections 2-113, 2-118, 6-108, 6-205, and 6-206 and is authorized by Sections 2-103 and 2-104 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-113, 2-118, 6-108, 6-205 and 6-206]. Subpart B implements Chapter 7 and is authorized by Sections 2-103, 2-104, 2-106, 2-107, 2-108, 2-113, and 2-114, and Ch. 7 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-106, 2-107, 2-108, 2-113, 2-114 and Ch. 7]. Subpart C implements Sections 6-205(c) and 6-206(c)3 and is authorized by Sections 2-103 and 2-104 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 6-205(c) and 6-206(c)3]. Subpart D is authorized by Sections 2-104 and 11-501 of the Illinois Vehicle Code and implementing Sections 6-103, 6-205(c), 6-206(c)3, and 6-208 of the Illinois Vehicle Code [625 ILCS 5/2-104, 6-103, 6-205(c), 6-206(c)3, 6-208 and 11-501]. Subpart E implements Sections 2-113, 2-118, 2-123, 6-103, 6-201, 6-906, and 6-908 and is authorized by Sections 2-103, 2-104, 6-906, and 6-909 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-113, 2-118, 2-123, 6-103, 6-201, 6-906, 6-908 and 6-909]. Subpart F implements Sections 2-113, 2-118, 6-208.2, 11-501.1, and 11-501.8 and is authorized by Sections 2-103, 2-104, and 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/2-103, 2-104, 2-113, 2-118, 6-208.2, 11-501.1 and 11-501.8]. Subpart G implements and is authorized by the Motor Vehicle Franchise Act [815 ILCS 710].

SOURCE: Adopted and codified at 7 Ill. Reg. 7501, effective June 17, 1983; amended at 8 Ill. Reg. 4220, effective April 1, 1984; emergency amendment at 9 Ill. Reg. 17030, effective October 18, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 4558, effective March 18, 1986; amended at 11 Ill. Reg. 17844, effective October 15, 1987; amended at 13 Ill. Reg. 15803, effective October 1, 1989; amended at 14 Ill. Reg. 2601, effective February 15, 1990; amended at 14 Ill. Reg. 16041, effective October 1, 1990; emergency amendment at 16 Ill. Reg. 19926, effective December 8, 1992, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 2047, effective January 27, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 6274, effective May 1, 1993; amended at 17 Ill. Reg. 8528, effective June 1, 1993; emergency amendment at 18 Ill. Reg. 7916, effective May 10, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 15127, effective September 21, 1994; emergency amendment at 19 Ill. Reg. 54, effective January 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 6667, effective May 1, 1995; emergency amendment at 20 Ill. Reg. 1626, effective January 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 8328, effective June 12, 1996; emergency amendment at 20 Ill. Reg. 9355, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15773, effective November 28, 1996; amended at 23 Ill. Reg. 692, effective January 15, 1999; amended at 24 Ill. Reg. 19257, effective December 15, 2000; expedited correction at 25 Ill. Reg. 7352, effective December 15, 2000; emergency amendment at 25 Ill. Reg. 13790, effective October 15, 2001, for a maximum of 150 days; emergency expired on March 13, 2002; emergency amendment at 25 Ill. Reg. 14979, effective November 9, 2001, for a maximum of 150

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days; emergency expired on April 7, 2002; amended at 26 Ill. Reg. 9380, effective June 13, 2002; amended at 26 Ill. Reg. 13347, effective August 21, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 14706, effective September 20, 2002, for a maximum of 150 days; emergency expired on February 16, 2003; amended at 27 Ill. Reg. 5969, effective March 31, 2003; amended at 27 Ill. Reg. 13577, effective August 1, 2003; amended at 28 Ill. Reg. 12123, effective September 1, 2004; amended at 28 Ill. Reg. 15804, effective November 19, 2004; amended at 31 Ill. Reg. 6185, effective May 1, 2007.

SUBPART A: FORMAL ADMINISTRATIVE HEARINGS

Section 1001.30 Right to Counsel

- a) Attorneys Must be Licensed; 711 Students. Any party may appear and be heard through an attorney at law licensed to practice in the State of Illinois, or any law student licensed under Supreme Court Rule 711, in any hearing in any matter involving the exercise of legal skill or knowledge. [ILCS S. Ct. Rule 711]
- b) Pro Hac Vice. Attorneys admitted to practice in states other than the State of Illinois may appear and be heard, upon the attorney's verbal representations or written documentation as to the attorney's admittance, ~~either by special leave of the Director of the Department or~~ pursuant to an Order pro hac vice, entered by a judge of the circuit court of the county in which the hearing is conducted, as provided in Supreme Court Rule 707.
- c) Pro Se. A natural person may appear and be heard on his or her own behalf.
- d) Corporations. A corporation, association, or partnership may appear and present evidence by any bona fide officer, employee, or representative.
- e) The standard of conduct shall be the same as before the Courts of Illinois.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.70 Commencement of Actions; Notice of Hearing

- a) Petition; Notice of Hearing-
A contested case is commenced by the Office, either after the written request of the petitioner or on the Office's initiative, by service of a Notice of Hearing in accordance with Section 2-114, within the time limitation contained in Sections 2-

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118(a) and (b) and 3-402.B(7)(a) and (b), as applicable, of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Code) [625 ILCS 5/2-114, 2-218(a) and (b), and 3-402.B(7)(a) and (b)] upon the respondent. By "written request" it is meant that the petitioner may send the Office a petition via facsimile, electronic transmission, or regular mail.

b) Filing Fee

- 1) A petition for a hearing will not be accepted for filing unless it is accompanied by a fee of \$50, as provided in Sections 2-118 and 3-402.B(7)(a) of the Illinois Vehicle Code. This filing fee must be submitted in the form of a money order, a check, or a credit card charge (with a pre-approved card), made payable to the Secretary of State.
- 2) This filing fee will not be refunded to the party requesting a hearing if the party withdraws from the hearing or defaults.
- 3) In cases where a hearing is continued, the party requesting the hearing will not be required to submit another filing fee.
- 4) In cases where the party requesting a hearing withdraws or defaults, the party will be required to submit another filing fee before another hearing will be scheduled.

c) The Notice of Hearing shall include:

- 1) The names and addresses of all known parties, petitioner and respondent, including the department initiating the hearing;
- 2) Whether the hearing is at the request of the petitioner or the Department;
- 3) The time, date, and place of hearing;
- 4) A short and concise statement of facts (as distinguished from conclusions of law or a mere recitation in the words of the statute) alleging the act or acts done by each petitioner or, where appropriate, respondent; the time, date, and place each such act was done or a short and concise statement of the matters asserted; and the rule, statute, or constitutional provision, if any, alleged to have been violated, or otherwise involved in the

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proceeding; and the relief sought by the petitioner party;

- 5) A statement to each party that:
 - A) Such party may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate in the hearing.
 - B) Failure to so appear shall constitute a default, unless such party has, upon due notice to other parties, moved for and obtained a continuance from the hearing officer.
 - C) Delivery of notice to the designated representative of a party constitutes service upon the party.
 - D) A petitioner who has an open revocation for reckless homicide or aggravated driving under the influence which involved a fatality must submit, with his or her petition for driving relief, either a copy of the Order of the circuit court which states the sentence received upon conviction, certified by the Clerk of the Court, or a document from the Department of Corrections which reflects: the offense for which the petitioner was imprisoned; the date of release from imprisonment; and the terms of release or parole. For the purpose of determining a petitioner's eligibility for reinstatement pursuant to Section 6-208(b)1 of the Code, and for the issuance of a restricted driving permit pursuant to Sections 6-205(c) and 6-206(c)3 of the Code, the date of release from imprisonment refers to the imprisonment on the conviction for the offense and does not include release from imprisonment for a violation of parole or probation. It is the responsibility of the petitioner to provide documentation that clearly reflects the date of his/her release from imprisonment.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.80 Motions

- a) **Form of Motions.** All motions shall be made in writing and shall set forth the relief or order sought and shall be filed with the Department at the earliest time to

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be considered by the hearing officer. Motions based on matter ~~that~~which does not appear of record shall be supported by affidavit. Motions may be presented by a party to obtain appropriate relief, such as to dismiss the proceedings, to add necessary parties, or to extend time for compliance of an order.

- b) Motions to Correct or Reconsider. The Department will not consider ~~Motions~~ Motions to correct a material misstatement of fact or to reconsider ~~Reconsider~~ a decision made or Order entered in a formal hearing. The proper avenue of relief is to file a complaint under the Administrative Review Law. The petitioner may also file another petition for driving relief pursuant to Section 1001.450. ~~The Department will, however, accept a Motion to Correct a Material Misstatement of Fact made in an Order. Such a motion must be submitted within 30 days after the date of the Order, shall recite with particularity the nature of the material misstatement of fact, and shall be accompanied by a filing fee of \$20, in the manner and form as provided in Section 1001.70.~~

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.90 Form of Papers - Original Documents Required

- a) Form of Papers. All papers filed in any proceeding shall be clearly written or typewritten on white paper using one side of the paper only. They shall contain a caption showing the title of the proceeding with a case number. All papers must be signed by the party filing the papers or his/her authorized representative or attorney, and shall contain his or her address, telephone number, and electronic mail address, if available. An original and one copy shall be filed by each party, except as provided in subsection (b).
- b) Original Documents Required. In regard to documents that are submitted pursuant to the requirements of Subpart D and that have not been previously submitted to the Department, the Department will accept, or admit into evidence, only the original document, except as specified in this subsection. By original document is meant a document that bears the original signature of the petitioner and/or author of the document, as applicable.
- 1) Uniform Reports.

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- A) The requirement of the submission of an original document that must also be submitted to a court of venue, can be met in one of two ways:
- i) service providers can print two "originals", both of which are signed and dated by the provider and the petitioner; or
 - ii) the provider can make a photocopy of the original (before it is verified) and the provider and petitioner can sign and date both the original and the copy.
- B) Exceptions to this requirement will be considered only if the petitioner is able to demonstrate that the original document is no longer available from the agency that composed the Uniform Report. In such cases, the petitioner must submit a "Verification Form" that the Department has composed, published, and distributed to service providers, and upon which the service provider shall verify that the copy of the document is a true and correct/identical copy of the original and/or inform the Secretary of State of the reason that the original of a document is not available. In such a case, the petitioner also will be asked to explain, under oath, why an original Uniform Report is not available.
- 2) Updated Evaluations. The first time that an updated evaluation is submitted to the Secretary of State, it must be submitted as an original document. See Sections 1001.410 and .440(a)(6). At subsequent submissions of the same document, such as when renewing a restricted driving permit at an informal hearing, the petitioner may submit a copy of the updated evaluation.
- 3) Treatment Verification. The rules of the Secretary of State require petitioners to submit proof of the successful completion of alcohol or drug related treatment in a "narrative summary" that provides the information listed at Section 1001.440(m)(1). The Department has composed, published, and distributed a "Treatment Verification Form" to be used or replicated by treatment providers for this purpose. The first time that this document, or a narrative summary composed on a treatment provider's letterhead, is submitted, it must be submitted to the Secretary of State as an original.

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- A) As specified in Section 1001.440(m)(2), the Department will accept a copy of the petitioner's Individualized Treatment Plan and Discharge Summary.
- B) As specified in Section 1001.440(m)(3), the Department will accept a copy of the Continuing Care Plan. The other Continuing Care documents that must be submitted to the Secretary of State (periodic status reports and the final summary report, or the waiver of continuing care) must be submitted as originals, on the provider's letterhead stationary.
- 4) Driver Risk Education. The Department will accept a copy of the form used by service providers to record and verify successful completion of a Driver Risk Education course. See Section 1001.440(a).
- 5) Other Documents. All other documents that are composed or created solely for the purpose of being submitted to the Secretary of State at a formal or informal hearing must be submitted as originals. (For example: the Secretary of State medical report forms; reports/evaluations from psychiatrists, clinical psychologists, or other counselors; letters from probation officers or physicians; letters of reference to verify abstinence or attendance of support/recovery program meetings; verification of employment.
- 6) Documents Sent by Facsimile. Documents sent by facsimile will be accepted at the time of the hearing; however, the originals of the faxed documents must be submitted at a later date. Leave to submit the originals will be granted within no more than fourteen calendar days after the hearing. The presiding hearing officer will determine the specific number of days within which the petitioner is allowed to submit the original, based upon the circumstances of each individual case.
- 7) The failure of the petitioner to submit an original document shall not, in and of itself, constitute, under any circumstance, the sole basis of denying driving relief. Rather, relief may be denied or a document rejected only when the hearing officer is able to articulate a specific issue or concern with the authenticity of the document.

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(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.100 Conduct of Formal Hearings

- a) Location; Open to Public; Out-of-state Petitioners. All hearings conducted in any proceeding shall be open to the public. Pursuant to statute, formal hearings may be conducted in Springfield, Chicago, Joliet, Mt. Vernon, or such other locations as agreed upon by the Secretary and the petitioner/respondent.
- 1) In petitions for driving relief, petitioners who have permanently relocated outside of the State of Illinois and petitioners who are still residents but are temporarily residing outside the State of Illinois may make, except as provided in subsection (a)(2), written application in lieu of returning to Illinois for a formal hearing. These petitioners shall be deemed to have waived the right to appear in person. Out-of-state petitioners must initially submit the filing fee authorized by Section 2-118 of the Illinois Vehicle Code and Section 1001.70(b)(1) of this Subpart A, and evidence of their residency, such as, but not limited to, voter's registration, income tax returns, apartment rental leases, mortgage contracts, employment verification, utility and/or telephone bills, etc. The Department reserves the discretion to reject out-of-state petitions ~~that~~~~which~~ fail to provide this evidence or establish residency. The Department also reserves the discretion to reject an out-of-state petition if there is evidence that the petitioner is regularly present in the State of Illinois, such as through work, school, or family contacts, but not limited thereto, and is capable of attending a hearing in person in a timely manner.
 - 2) Out-of-state petitioners who reside within 30 miles of the Illinois border shall be required to attend a hearing in person, unless the petitioner shows good cause for not being able to attend in person. Good cause is shown when it is demonstrated by a written statement that the petitioner cannot attend a formal hearing in person due to economic, physical, or medical reasons. Mere inconvenience does not constitute good cause.
 - 3) Except as provided in Sections 1001.430(k) and 1001.440(o), out-of-state petitioners must submit at a minimum all documentation and information required by Subpart D of this Part, as well as a sworn Out-Of-State Petitioner's Affidavit, ~~that~~~~which~~ provides the information otherwise required by the Secretary, at a formal hearing.

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- 4) A petition for an out-of-state formal hearing is regarded as being filed when the Department accepts, as fully completed, the documentation required by subsection (a)(3). The Department will inform the petitioner of this fact by a dated letter posted in the regular mail. Pursuant to [Section §2-118](#) of the Code, the petitioner's file will be assigned to a hearing officer within 90 calendar days from the date of filing. A final Order will be entered no more than 90 days after it is assigned to a hearing officer.
- b) Parties to a Hearing; Disqualification of Hearing Officer. Every hearing shall be presided over by a hearing officer duly appointed by the Secretary. The Secretary may also appoint a representative to appear and participate in the hearing on his/her behalf. Prior to the taking of evidence, the petitioner/respondent may request disqualification of the hearing officer by making a motion for disqualification on the record, stating the specific grounds upon which it is alleged that a fair and impartial hearing cannot be afforded the petitioner/respondent by the hearing officer. The hearing officer will rule upon the motion. If the motion is denied, the hearing will proceed, or the petitioner may withdraw from the hearing. If the motion is granted, the case shall be transferred to another hearing officer for a hearing on the same day if possible. If it is not possible to schedule a hearing on the same day, a new hearing date shall be scheduled and another hearing officer shall be assigned by the Secretary. The hearing officer shall have authority to conduct the hearing, to rule on all motions, to administer oaths, to subpoena witnesses or documents at the request of any party, to examine witnesses, and to rule upon the admissibility of testimony and evidence.
- c) Depositions and Interrogatories. Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department, may cause, at his/her or its expense, a deposition of any witness to be taken for use as evidence in a contested case (for example, when the witness is not available due to distance, time, cost to the party using the testimony, sickness, infirmity, imprisonment, the witness being out of state or similar factors). The deposition shall be taken in the manner provided by law for evidence depositions in civil actions in the Circuit Courts of Illinois. Any party may direct written interrogatories to any other party. Interrogatories must be restricted to the subject matter of the case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party. Written interrogatories shall be served on the opposing party no later than 15 business days before the

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hearing. Objection to answers or refusals to answer shall be heard on motion at the hearing before the hearing officer, who shall rule on the objection or refusal. Answers shall be sworn. If an answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatories were served, it shall be a sufficient answer to specify the documents and make them available to the inquiring party to inspect and copy at the asking party's expense.

d) Rules of Evidence.

1) The technical rules of evidence shall not apply. Any relevant evidence may be admitted if it is the sort of evidence relied upon by reasonably prudent people in the conduct of their affairs. The existence of any common law or statutory exclusionary rule ~~that~~which might make improper the admission of the evidence over objections in civil or criminal actions shall not be a bar to the admissibility of otherwise relevant evidence. The rules of privilege shall be followed to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant, immaterial or unduly repetitious evidence may be excluded upon objection. Objections to evidentiary offers may be made and shall be noted in the record, and ruled upon by the hearing officer. Any party may make an offer of proof following an adverse evidentiary ruling. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Subject to the evidentiary requirements of this subsection, a party may conduct cross-examination required for a full and fair disclosure of the facts.

2) In regard to implied consent hearings over which the Secretary of State has jurisdiction, the hearing may be conducted upon a review of the official police reports. However, the parties may subpoena the arresting officer and any other officer who was involved in the petitioner's arrest or processing after arrest, as well as any other person whose testimony may be probative to the issues at the hearing. The failure of an officer to answer the subpoena shall be considered grounds for a continuance if, in the hearing officer's discretion, the continuance is appropriate. Furthermore, the failure of the arresting officer to answer a subpoena shall not be considered grounds for the rescission of an implied consent suspension. Rather, the hearing shall proceed on the basis of the other

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evidence available and the hearing officer will assign this evidence whatever probative value he or she deems appropriate.

- e) Official Notice. Official notice may be taken of past hearings and any matter of which the Circuit Courts of Illinois may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including staff memoranda and data, and they shall be afforded an opportunity to contest the material so noticed. The Department's and the hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
- f) Pre-hearing Conference. At the request of any party or upon his own motion, the hearing officer may call a prehearing conference. At the conference, the parties or their representatives shall appear as the hearing officer directs. Matters ~~that~~which may be considered at a prehearing conference include, but are not limited to:
- 1) The simplification of the issues;
 - 2) Amendments to the grounds for action;
 - 3) The possibility of obtaining admissions and stipulations of fact and of documents ~~that~~which will avoid unnecessary proof;
 - 4) The limitation of the number of expert witnesses;
 - 5) Any other matters which may aid in the disposition of the contested case.
- g) Order from Pre-hearing Conference. Upon the conclusion of a prehearing conference, the hearing officer shall enter an order ~~that~~which recites any action taken, any agreements made by the parties as to any of the matters considered, and the issue to be heard.
- h) List of Witnesses; Bill of Particulars. Upon written request, made at least 10 business days prior to the hearing, a party shall furnish to other parties a list of the names and addresses of prospective witnesses, or furnish written answers to a written demand for a bill of particulars.

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- i) Inspection of Documents; Interview of Parties. Any party or his representative shall have the right, upon written motion made at least 10 business days prior to the hearing, to inspect any relevant documents in the possession of or under the control of any other party and to interview parties or persons having knowledge of relevant facts, subject to any statutory or constitutional privileges. Interviews of persons and inspection of documents shall be at times and places reasonable for the persons and for the custodian of the document.
- j) Oath. Testimony shall be taken only on oath or affirmation.
- k) Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing.
- l) Right to Subpoena. Each party shall have the right to request the subpoena of and to call and to examine witnesses, to introduce exhibits, and to cross-examine witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination. Applications to the hearing officer assigned to the case for subpoenas duces tecum shall specify the books, papers, and documents desired to be produced.
- m) Rights of Parties. Each party shall have the right to rebut the evidence against him; to appear in person; and to be represented by counsel. If a party does not testify in his/her own behalf, he or she may be called by the Secretary of State's representative and examined as if under cross-examination.
- n) Motions to Continue and Withdraw
 - 1) Grounds. Hearings before the Department of Administrative Hearings will be continued only pursuant to a motion: filed prior to or on the date of the hearing, made over the telephone less than 15 days prior to or on the date of the hearing, or in person on the day of the hearing. The movant shall set forth the grounds for the motion, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the movant or a member of his/her immediate family, or of the movant's legal counsel, or if the movant is able to demonstrate some other real and compelling need for additional time. A Motion to Continue may be supported by evidence which tends to prove the grounds alleged, including

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sworn testimony taken at a motion hearing on the day of the hearing. The inability to obtain transportation to the hearing site or a party's failure or inability to obtain the documentation required to fulfill the minimum requirements to be issued driving relief are not circumstances ~~that~~which will justify continuing a hearing.

- 2) Must be Continued to a Date Certain. A formal hearing shall not be continued "generally". A continuance, if granted, shall state a date certain upon which the hearing shall reconvene. If the petitioner is not prepared to go forward after the first continuance, a request to withdraw should be submitted.
 - A) Motions to Continue which are filed at least 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date will be given priority in re-scheduling over those motions filed or made less than 15 days prior to the date of the hearing or made on the day of the hearing. The Department will rule upon Motions to Continue filed at least 15 days prior to the date of the hearing and, when possible, notify the movant of its ruling prior to the date of the hearing. If the motion is denied, then the movant must appear at and proceed with the hearing or withdraw from the hearing.
 - B) Motions to Continue which are made in person on the day of the hearing or by telephone less than 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date must also be filed in writing and received or postmarked no more than 5 days after the date of the hearing. A Motion to Continue made in writing less than 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date must be received or postmarked no more than 5 days after the date of the hearing. The Department cannot assure the movant that it will rule upon such motions prior to the date of the hearing.
 - C) A Motion to Continue made or filed by a petitioner waives the statutory requirement of Sections 2-118 and 3-402.B(7)(a) of the Code that his/her hearing commence within 90 days from the date of his/her written request.

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- D) It is the responsibility of the movant to inform the Department, in the Motion to Continue or during his/her telephone conversation, what course of action he/she wishes to take if the motion is denied (either to appear and proceed with the hearing, withdraw or default). In all cases, it is also the responsibility of a movant who has not been notified of the Department's ruling to contact the Department on or before the day of the hearing to determine whether his/her motion has been ruled upon. A movant's failure to appear after a Motion to Continue is denied will result in the entry of an Order of Default.
- 3) Motions Made by the Department. The Department may also make or file a Motion to Continue for unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the hearing officer, the attorney representing the Secretary of State, a witness, or a member of the immediate family of the same, or if the Department is able to demonstrate some other real and compelling need for additional time.
- 4) Motions to Withdraw. Except as provided in this subsection (n)(4) and in Section 1001.70, a petitioner may withdraw from a hearing for any reason. A Motion to Withdraw made in person or by telephone on or before the day of the hearing must be followed up with a written motion that which is received or postmarked no more than 5 days after the date of the hearing. A Motion to Withdraw made in writing must be received or postmarked no more than 5 days after the date of the hearing. Failure to do so will result in an Order of Default. A request to withdraw from a hearing, which in the hearing officer's judgment is based upon surprise of evidence presented or adverse evidence, shall not be granted. Upon withdrawal, the requested relief will not be considered and the petition dismissed. Should the petitioner request another hearing, it must be done in writing and it will be treated as any other request for hearing. (See Section 1001.70.)
- 5) Attorney's Appearance Must be on File. A Motion to Continue or Withdraw made by any attorney on behalf of a petitioner/respondent will not be considered unless the attorney shall have filed a written notice of appearance as provided in Section 1001.40.

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- 6) **Out-of-State Petitioners.** An out-of-state petitioner who fails to provide the information required by Sections 1001.100(a)(3) and 1001.440(o) within ~~3090~~ days after a written demand made by the Department to his/her last known address shall have his/her petition withdrawn by a written Order of the Director or Deputy Director. The Order shall be made part of the petitioner's permanent record and a copy shall be sent to the petitioner's last known address. The Department shall not accept another petition for driving relief from a petitioner whose petition for driving relief has been withdrawn pursuant to this provision for ~~30+20~~ calendar days from the date of the Order.
- o) **Admissions.** A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request or for the admission of genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.
- p) **Opening and Closing Statements.** Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements. Opening statements may not be made at any other time, except at the discretion of the hearing officer. Upon the close of the hearing each party may make a closing statement orally and/or by written brief at the discretion of the hearing officer, incorporating arguments of fact and law. A written brief may be required when the facts and issues are deemed complicated by the hearing officer and there is a need for the parties to plead their cases in writing for the record.
- q) **Exhibits.** All exhibits for any party shall be clearly marked for identification and as admitted into evidence by the hearing officer.
- r) **Cross-examination of Witnesses.** In the hearing of any case, any party or his agent may be called, as an adverse witness and examined as if under cross-examination, by any party. The adverse party calling for the examination is not bound by the testimony of the adverse witness, but may rebut the testimony given and may impeach the witness by proof of prior inconsistent statements. If the hearing officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling him as if under cross-examination. The party calling an occurrence witness may, upon showing that he called the witness in good faith but is surprised by his testimony, impeach the witness by proof of prior

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inconsistent statements.

- s) Burden of Proof. The burden of proof is upon the petitioner for any relief in a hearing. The standard of proof is the preponderance of the evidence, except as provided for in Subpart D.
- t) Interpreters; Hearing Impaired. The Secretary will provide an interpreter for hearing impaired petitioners/respondents who wish to testify; providing a language interpreter, however, is the responsibility of the petitioner/respondent.
- u) Report of Proceedings
 - 1) The Department shall, at its expense, have present at each hearing an electronic recording device or a qualified court reporter, for the purpose of making a permanent and complete report of the proceedings, including: evidence admitted or tendered and not admitted, testimony, offer of proof, objections, remarks of the hearing officer and of the parties and/or their representatives, all rulings of the hearing officer.
 - 2) Upon request and at his/her own expense any party may have a copy of the report of proceedings, from the court reporter, or transcribed from the electronic device by the Department at the statutory rate set forth in Section 5.5 of the Secretary of State Act [15 ILCS 305/5.5] and 2 Ill. Adm. Code 551.150, or the cost of an audio tape plus mailing.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.110 Orders ; Notification; Time Limits on Obtaining Relief

- a) The Department shall prepare a written order for all final determinations, which shall include the Findings of Fact, Conclusions of Law, Recommendations of the hearing officer, and the Order of the Secretary.
- b) The hearing officer shall prepare the Findings of Fact, Conclusions of Law, and Recommendations to the Secretary. The Findings of Fact and Conclusions of Law must be stated separately.
- c) The Order of the Secretary of State shall be the decision of the Office upon the application for relief.

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- d) The Department shall notify all parties and their agents personally, ~~or by regular mail~~ or by electronic mail, of the Findings of Fact, Conclusions of Law, Recommendations, and the Order within the statutory time limit specified in Section 2-118 of the Code. If it is the Order of the Secretary of State to grant driving relief, then the Department will also provide instructions on what steps the petitioner must take (such as, but not limited to, filing high-risk insurance, the payment of fees, taking driving tests, etc.) in order to obtain the relief. The failure to follow and complete these instructions will result in the denial of driving relief.
- 1) Petitioners who are granted a restricted driving permit must complete the requirements for obtaining the permit within 90 days after the date of the Secretary's Order. The Department reserves the discretion to extend this deadline in order to allow a petitioner to achieve compliance, when it is apparent that the petitioner is making a good faith effort or the petitioner demonstrates that he or she has experienced a change in circumstances that requires the petitioner to provide additional information (such as, but not limited to, a change in employment).
- 2) Petitioners who are granted the reinstatement of driving privileges must complete the requirements for effecting reinstatement within 365 days after the date of the Secretary's Order.
- e) An Order of Default shall be entered against the petitioner or respondent, who fails to appear for a hearing at the scheduled time and has failed to request or been granted a continuance in accordance with Section 1001.100(n).
- f) Orders resulting from formal hearings are final administrative orders within the meaning of the Administrative Review Law [735 ILCS 5/Art. III].
- ~~g) The Department will accept a Motion to Correct a Material Misstatement of Fact made in an Order. Such a motion must be submitted within 30 days after the date of the Order, shall recite with particularity the nature of the material misstatement of fact, and shall be accompanied by a filing fee of \$20, in the manner and form provided in Section 1001.70.~~

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

SUBPART B: ILLINOIS SAFETY RESPONSIBILITY HEARINGS

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Section 1001.220 Hearings; Notice; Location; Procedures; Record

- a) **Notice of Suspension; Right to a Hearing.** Subsequent to certification of an uninsured motorist by the Department of Transportation as provided by statute, and upon a preliminary finding that a *reasonable possibility of a civil judgement exists*, the Secretary shall institute a Notice of Suspension which advises the petitioner of his/her right to a hearing in lieu of deposit of security. Any petitioner by submitting a written request postmarked within 15 days after the mailing date of the Notice of Suspension, will be afforded a full, fair, and impartial hearing to contest the preliminary finding of the Secretary. [625 ILCS 5/7-205(a)] Any request for hearing will stay the effective date of the safety responsibility suspension pending the outcome of the hearing. Hearing requests received after the 15 day period will be granted; however, the suspension will not be stayed or removed pending the hearing.
- b) **Filing Fee**
- 1) Effective 15 October 2001, a petition for a hearing to contest a suspension will not be accepted for filing unless it is accompanied by a fee of \$50, as provided in **Section**§ 2-118 of the Illinois Vehicle Code. This filing fee must be submitted by each party who wishes to be made a petitioner in the proceeding, in the form of a money order, a cashier's or certified check, a check drawn on the account of an attorney of record or an attorney professional corporation of record in a hearing before the Department of Administrative Hearings, or a credit card charge (with a pre-approved card), made payable to the Secretary of State.
 - 2) This filing fee will not be refunded to any petitioner if the petitioner withdraws from the hearing or defaults.
 - 3) In cases where a hearing is continued, any petitioner who has paid a filing fee will not be required to submit another filing fee.
 - 4) In cases where a petitioner withdraws, the petitioner will be required to submit a filing fee before another hearing will be scheduled.
- c) **Decisionmaking Factors; Burden of Proof.** The decision resulting from the hearing shall be based upon the following factors: whether the petitioner, as a

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motor vehicle owner or operator, has been involved, or whose vehicle has been involved, in a motor vehicle accident occurring within the State of Illinois and which has resulted in bodily injury or death of any person or in which damage to the property of any one person exceeds the amount provided by statute; whether petitioner is exempt from the Safety Responsibility Law; and whether there exists a reasonable possibility of a civil judgment against the petitioner. The petitioner shall bear the burden of proof throughout the proceedings. The standard of proof shall be a preponderance of the evidence.

- d) Issuance of Notice of Hearing. The hearing shall be initiated by the issuance of a Notice of Hearing by the Secretary. The Notice shall be served upon the petitioner, as the person against whom action may be taken by the Secretary, any interested party, and any attorney of record.
- e) Notice of Hearing - Content. The Notice of Hearing shall be a written statement setting forth, but not limited to, the following information:
- 1) The name of the petitioner;
 - 2) The name and address of any interested party;
 - 3) The date, time, place, and nature of the hearing;
 - 4) The matters to be addressed at the hearing;
 - 5) The name of the hearing officer;
 - 6) The specific Sections of the Statutes involved;
 - 7) The statutory authority pursuant to which the hearing is being conducted;
 - 8) Notice to the petitioner that a failure to appear will result in the denial of any relief requested and that at any rehearing granted under Section 1001.260 the petitioner will be deemed to have waived the right to subpoena or cross-examine witnesses that testified at the original hearing.
- f) Location of Hearings; Notice of Change of Location. Hearings shall be conducted in the Counties of Cook, DeKalb, Will, Rock Island, Tazewell, Adams, Sangamon, Champaign, Coles, Kane, Marion, St. Clair, and Jackson, and in such

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other locations as the Secretary shall from time to time designate. If the Secretary determines to abandon or change the location of the hearing outside the counties specifically listed in this subsection, the Secretary shall publish in a local newspaper of general circulation in each county served by the Secretary, 20 days prior notice of the change. The notice shall indicate the reasons for the determination and shall identify the new location proposed to serve the county, if known at the time of publication.

- g) **Parties to a Hearing; Disqualification of Hearing Officer.** Every hearing shall be presided over by a hearing officer duly appointed by the Secretary. The Secretary may also appoint a representative to appear and participate in his behalf. Prior to the taking of evidence, a petitioner may request the disqualification of the hearing officer by making a motion for disqualification, stating the specific grounds upon which it is alleged that a fair and impartial hearing cannot be afforded the petitioner by the hearing officer. The hearing officer will rule upon the motion. If the motion is denied, the hearing will proceed. If the motion is granted, the case shall be transferred to another hearing officer for a same day hearing if possible. If not possible, a new hearing date will be established and another hearing officer shall be assigned by the Secretary. The hearing officer shall have authority to conduct the hearing, to rule on all motions, to administer oaths, to subpoena witnesses or documents at the request of any petitioner, to examine witnesses, and to rule upon the admissibility of testimony and evidence.
- h) **Petitioner's Rights.** Each petitioner to the hearing and the Secretary of State shall have the following rights:
- 1) The right to the issuance of subpoenas upon written request directed to the hearing officer at least 10 business days prior to the hearing;
 - 2) The right to call and examine witnesses;
 - 3) The right to cross-examine witnesses on any matter relevant to the issues, even though the matter was not covered on direct examination;
 - 4) The right to introduce exhibits; and
 - 5) The right to obtain in advance, upon written request, copies of all related police reports not designated confidential by State law. Requests must be submitted at least 10 business days prior to the hearing date to be

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considered. The petitioners may request copies of the related police reports at the hearing if the need for the copies could not be foreseen before the hearing, or the need for them arose because of the issues or allegations adduced at the hearing.

- i) Right to Counsel; Attorneys Must Be Licensed; 711 Students. The petitioner shall have the right to appear in person and be heard through an attorney at law licensed to practice in the State of Illinois or any law student licensed under Supreme Court Rule 711. If the petitioner does not testify on his/her own behalf, he/she may be called by the representative of the Secretary and examined as if under cross-examination.
- 1) Attorneys admitted to practice in states other than the State of Illinois may appear by special leave of the hearing officer appointed to conduct the hearing, upon the attorney's verbal representation or written documentation as to the attorney's admittance.
 - 2) A natural person may appear and be heard in his/her own behalf.
 - 3) A corporation, association, or partnership may appear and present evidence by any bona fide officer, employee, or representative.
 - 4) Only an attorney mentioned above properly licensed shall represent anyone else in any hearing in any matter involving the exercise of legal skill or knowledge. The standards of conduct shall be the same as before the Courts of the State of Illinois.
- j) Recording of Proceedings; Obtaining a Copy of the Record.
- 1) The proceedings shall be recorded by a suitable electronic method. The petitioner may furnish, at his/her own expense, a certified shorthand reporter. All records taken shall be properly cataloged and preserved by the Secretary for a period of at least 45 days from the entry of the hearing officer's order. Oral proceedings, or any part thereof, shall be transcribed upon the request of the petitioner, any party, or his/her counsel at the requesting party's personal expense as specified in 2 Ill. Adm. Code 551.150, or the cost of an audio tape, plus mailing.
 - 2) Persons who are not a party to a proceeding may obtain a copy of the file,

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a document in the file, or a transcript of the proceeding by filing with the Department a request for the record pursuant to, and subject to the restrictions and exemptions in, the Freedom of Information Act [5 ILCS 140].

- k) Record of a Hearing. The record of a hearing held pursuant to this Section shall include, but not be limited to, the following:
- 1) The notices, pleadings, and responses to pleadings;
 - 2) The motions and rulings on motions;
 - 3) The matters officially noticed;
 - 4) The offers of proof made and objections to and rulings on those offers;
 - 5) The opinions, recommendations, or reports by the hearing officer, Secretary, or Department; and
 - 6) A transcript of the proceedings.
- l) Interpreters; Hearing Impaired. The Secretary will provide an interpreter for hearing impaired petitioners and interested parties who wish to testify. However, it is the responsibility of the petitioner or interested parties to provide a language interpreter.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

SUBPART C: RULES ON THE CONDUCT OF INFORMAL HEARINGS IN
DRIVER'S LICENSE SUSPENSIONS AND REVOCATIONS

Section 1001.300 Applicability

- a) Lower Level Hearing; No Right to Appeal. This Subpart applies to informal hearings conducted by driver license hearing officers in the Department of Administrative Hearings of the Office of the Secretary of State in various locations throughout Illinois. They are a lower level hearing than the formal hearings conducted pursuant to Subpart A of this Part. There is no appeal from an informal hearing to a formal hearing because the formal hearing is a de novo

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proceeding. These informal hearings are limited to the consideration of and the making of recommendations on driver's license suspension and revocation matters and the recommendations may include any recommendation able to be made by a formal hearing.

- b) Petitions Not Subject of Informal Hearings. An informal hearing shall not, however, consider petitions in the following cases:
- 1) the current suspension, revocation, or cancellation resulted from an offense, the facts of which involved a death;
 - 2) for the rescission or modification of suspensions or revocations;
 - 3) the petitioner's driving privileges are currently revoked for driving under the influence or aggravated driving under the influence pursuant to Section 11-501 of the Code or similar provisions of local ordinances or out-of-state statutes, and the petitioner has another revocation for driving under the influence or aggravated driving under the influence pursuant to Section 11-501 of the Code or similar provisions of local ordinances or out-of-state statutes, and/or any~~the current suspension or revocation resulted from multiple convictions pursuant to Section 11-501 of the Code, multiple suspensions pursuant to Section 11-501.1 or 11-501.6 of the Code or similar provisions of local ordinances or out-of-state statutes, or any combination thereof~~ arising from separate incidents;
 - 4) an open revocation entered pursuant to Section 6-206(a)1 of the Code and 92 Ill. Adm. Code 1040.35.
- c) Jurisdiction of Informal Hearings - Renewal of Permits. An informal hearing may, however, consider, after initial approval or issuance at a formal hearing, a petition for the continuation/renewal of restricted driving permits in the above cases if:
- 1) a restricted driving permit was granted from a formal hearing;
 - 2) a permit is still in effect or has expired no more than 30 days from the date of the informal hearing;
 - 3) the petitioner has not been subsequently convicted or received court

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supervision for any of the following offenses: driving under the influence or aggravated driving under the influence, leaving the scene of a fatal or personal injury collision, drag racing, reckless driving, driving while suspended or revoked, fleeing or attempting to elude a peace officer, or any of the felony offenses listed in Section 6-206(a)28 of the Code~~any traffic violation classified as a misdemeanor or felony. (See Sections 6-601 and 11-202 of the Code.);~~

- 4) the petitioner has driven on the current permit for at least 75% of the length of the permit; and
- 5) the petitioner is now eligible for and requests the continuation of the previously issued permits.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.360 Decisions ; Time Limits on Obtaining Relief

- a) The decision at the informal hearing is not a final order and as such is not subject to administrative review pursuant to the Administrative Review Law. Following an adverse decision at the informal hearing, the petitioner may petition for a formal hearing conducted pursuant to Subpart A of this Part. Such a formal hearing shall constitute a de novo proceeding and is not an appeal of an adverse decision at the informal hearing.
- b) If a petitioner has had an informal hearing pursuant to this Subpart, neither a formal hearing nor another informal hearing on the same issues and/or regarding the same type of driving relief shall be held until at least 30 days have elapsed since the date of the last informal hearing.
- c) The Department shall notify the petitioner of the decision of the Secretary of State by regular or electronic mail. If it is the decision of the Secretary of State to grant driving relief, then the Department will also provide instructions on what steps the petitioner must take (such as, but not limited to, filing high-risk insurance, the payment of fees, taking driving tests, etc.) in order to obtain the relief. The failure to follow and complete these instructions will result in the denial of driving relief.
 - 1) Petitioners who are granted a restricted driving permit must complete the requirements for obtaining the permit within 90 days after the Department

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enters and mails the decision of the Secretary of State. The Department reserves the discretion to extend this deadline in order to allow a petitioner to achieve compliance, when it is apparent that the petitioner is making a good faith effort or the petitioner demonstrates that he or she has experienced a change in circumstances that requires the petitioner to provide additional information (such as, but not limited to, a change in employment).

- 2) Petitioners who are granted the reinstatement of driving privileges must complete the requirements for effecting reinstatement within 365 days after the Department enters and mails the decision of the Secretary of State.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

SUBPART D: STANDARDS FOR THE GRANTING OF RESTRICTED DRIVING PERMITS, REINSTATEMENT, AND THE TERMINATION OF CANCELLATIONS OF DRIVING PRIVILEGES BY THE OFFICE OF THE SECRETARY OF STATE

Section 1001.410 Definitions

"Abstinence" means to refrain from consuming any type of alcohol, from any source, alcoholic liquor or other drugs.

"Abstract" means a summary of a driver's record of traffic law violations, accidents, suspensions, revocations, cancellations, address and personal information of the driver, as contained in the files of the Office of the Secretary of State.

"Accredited educational course" means any class or course of instruction offered by an accredited educational institution that is either vocational in nature or is part of the matriculation process in receiving an academic degree, diploma, or certificate. It shall also include attendance at any required instructional class in an apprentice program.

"Accredited educational institution" means any school or institution, whether public or private, that offers classes or courses of instruction, and that is reviewed and approved or granted a waiver of approval by the controlling State agency.

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"Alcohol" means ethanol, commonly referred to as ethyl alcohol ~~or alcoholic beverage~~.

"Alcohol and drug evaluation (Investigative)" means a typewritten report which conforms to standards established by the Department, as specified in Section 1001.440(a)(6)(D) of this Subpart. The evaluation must be completed on a form prescribed by the Department. This evaluation will be conducted as required pursuant to Sections 1001.420(1) and 1001.430(d) of this Subpart, when:

the current loss of driving privileges is not related to a DUI arrest/disposition yet the petitioner's/respondent's driving record contains, or other evidence indicates the existence of, a prior DUI disposition or any other conviction or loss of driving privileges that was alcohol/drug related within the last 10 years for which the petitioner/respondent did not or was not required to submit to the Secretary an alcohol/drug evaluation to obtain driving privileges, or there is credible evidence that the petitioner had any arrest or implied consent suspension for boating or snowmobiling under the influence within the last 5 years, or the petitioner has an alcohol/drug-related criminal record, as defined in this Section; or

there is evidence that the petitioner/respondent may be a user of alcohol or any other drug to a degree which renders the person incapable of safely driving a motor vehicle. (See Section 6-103.4 of the Code.)

"Alcohol and drug evaluation (Out-of-state)" means a typewritten report which conforms to standards established by the Department as specified in Section 1001.440(a)(6)(C) of this Subpart.

"Alcohol and drug evaluation (Uniform Report)" means a typewritten report which conforms to standards established by the Illinois Department of Human Services, Division of Alcoholism and Substance Abuse (DASA). (See 77 Ill. Adm. Code 2060.503.) The evaluation must be completed on a form prescribed by DASA. The evaluation must be signed and dated by both the evaluator and the petitioner.

"Alcohol and drug evaluation (Update)" means a typewritten report which conforms to standards established by the Department, as specified in Section 1001.440(a)(6)(B) of this Subpart. The evaluation must be completed on a form prescribed by the Department. The update evaluation must be completed by a

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program in accordance with the provisions of Section 1001.440(a)(6)(A) of this Subpart.

"Alcohol and drug related driver risk education course" means an educational program concerning the effects of alcohol/drugs on drivers of motor vehicles, also referred to as a DUI driver remedial program, which conforms to the standards established by DASA. (See 77 Ill. Adm. Code 2060.505.)

"Alcohol/drug-related criminal record" means a petitioner's or respondent's record of being found guilty of violating the Cannabis Control Act [720 ILCS 550] or the Illinois Controlled Substances Act [720 ILCS 570] or being found guilty of the commission of a misdemeanor or felony offense while under the influence of, or impaired by the use of, alcohol or other drugs, or the facts of the offense indicate that it was committed for the purpose of obtaining alcohol or other drugs.

"Alcohol setpoint" means the minimum or nominal BrAC (0.025) at which a device is set to lock a vehicle's ignition.

"BAC" means blood alcohol concentration as determined by a chemical test administered by police authorities or medical personnel to measure the concentration of alcohol in the bloodstream.

"BAIID permittee " means a BAIID petitioner who has been issued an RDP as a result of a hearing.

"BAIID multiple offender " means anyone who is required to install an interlock device on all vehicles he or she owns, pursuant to Sections 6-205(h) and 11-501(i) of the IVC. Any petitioner whose current or most recent suspension or revocation is for an offense or offenses that are not alcohol/drug-related, and whose alcohol/drug use was the topic of previous hearings that resulted in a finding that the petitioner's alcohol/drug problem had been resolved and who, therefore, previously fulfilled the requirements of Sections 6-205(h) and 11-501(i), is not a BAIID multiple offender.

"BAIID petitioner" means anyone who, if issued restricted driving permits, may not operate a motor vehicle unless it has been equipped with an interlock device as defined in this Section, as required by Sections 6-205(c) and 6-206(c)3 of the IVC. Any petitioner whose current or most recent suspension or revocation is for an offense or offenses that are not alcohol/drug-related, and whose alcohol/drug

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use was the topic of previous hearings that resulted in a finding that the petitioner's alcohol/drug problem had been resolved, is not a BAIID petitioner.

"BAIID provider" means an entity authorized by the Secretary to contract with BAIID permittees and distribute, supply, install, maintain and monitor BAIID devices. A "BAIID provider" may be an authorized agent or representative of a manufacturer or an independent entity. "BAIID provider" may be synonymous with vendor, supplier, manufacturer, or installer.

"Breath Alcohol Ignition Interlock Devices (BAIID)" means a mechanical unit that is installed in a vehicle which requires the taking of a BrAC test prior to the starting of a vehicle. If the unit detects a BrAC test result below the alcohol setpoint, the unit will allow the vehicle ignition switch to start the engine. If the unit detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting. The unit or combination of units, to be approved by the Secretary, shall measure breath alcohol concentrations by breath analysis and shall include both simple and complex units.

"BrAC" means the w/v breath alcohol concentration.

"BUI" means boating under the influence, as defined in the Boat Registration and Safety Act [625 ILCS 45/5-1 through 5-21].

"Certified Controlled Reference Sample" means a suitable reference of known ethyl alcohol concentration.

"Chemical Test" means the chemical analyses of a person's blood, urine, breath or other bodily substance performed according to the standards promulgated by the Department of State Police. (See 20 Ill. Adm. Code 1286.)

"Circumvention" means an overt, conscious effort to bypass the BAIID or any other act intended to start the vehicle without first taking and passing a breath test.

"Clinical Impression" means a qualified treatment professional's (see Section 1001.440(b)(2) through (b)(6)) opinion regarding the effectiveness of substance abuse treatment provided to an individual and the likelihood of future alcohol/drug-related problems. This constitutes the treatment professional's most reasonable clinical judgment based on direct involvement with the individual throughout the course of treatment. It should not be interpreted as a definitive

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statement regarding the likelihood of future alcohol/drug-related problems.

"Code" or "IVC" means the Illinois Vehicle Code [625 ILCS 5].

"DASA" means the Illinois Department of Human Services, Division of Alcoholism and Substance Abuse.

"Decertification" means the removal or cancellation by the Secretary of the authorization to sell, rent, distribute, supply, install, service, repair, or monitor BAIIDs for BAIID permittees and BAIID multiple offenders. The Secretary may decertify a BAIID provider or a particular type of BAIID. "Decertification" is synonymous with disqualification.

"Department" means the Department of Administrative Hearings of the Office of the Secretary of State.

"Designated driver remedial or rehabilitative program" means an alcohol or drug evaluation, an alcohol or drug-related driver risk education course, an alcohol or drug treatment program, the Office driver improvement program, or any similar program intended to diagnose and change a petitioner's driving problem as evidenced by the petitioner's abstract. (See Sections 6-205(c) and 6-206(c)3 of the Code.)

"Device" means a breath alcohol ignition interlock device approved by the Secretary.

"Director" means the Director or Acting Director of the Department.

"Documentation of Abstinence" means testimony and documentation, in the form of affidavits, letters, etc., from individuals who have regular, frequent contacts with the petitioner (e.g., spouse, significant other, employer, co-workers, roommates) verifying that to the best of their knowledge the petitioner has been abstinent from alcohol/drugs for a specified period of time.

"Driver License Compact" is an agreement among signatory states that deals with the problems of: issuing drivers' licenses to people who move from one signatory state to another; and drivers who are licensed in one signatory state and convicted of traffic offenses in other such states. The Compact has been codified in Illinois and is found in Chapter 6, Article VII of the Code.

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"DUI" means driving under the influence.

"DUI disposition" means any conviction or supervision for DUI, or any conviction for reckless homicide when alcohol and/or drugs is recited as an element of the offense or other credible evidence indicates that the petitioner's/respondent's conduct causing death involved the use of alcohol or other drugs, or reckless driving reduced from DUI, or any statutory summary suspension or implied consent suspension. This definition applies to offenses that are committed in other states as well as in Illinois, and regardless of whether the offense has been recorded to the offender's Illinois criminal or driving record.

"Employ" or "employed" or "employment" shall all relate to activity for compensation to support oneself or one's dependents as well as activities ordered by a court in connection with a sentence that includes the completion of a term of community service. Employment need not be the sole or primary means of support for the petitioner or his/her dependents.

"Evaluator" means any person licensed to conduct an alcohol and drug evaluation by DASA. (See 77 Ill. Adm. Code 2060.201.) A treatment provider may be considered an evaluator for the purpose of completing an updated evaluation in accordance with Section 1001.440(a)(6)(A) of this Subpart.

"Failure to successfully complete a running retest" means any time the BAID Permittee registers a BrAC reading of 0.05 or more on a running retest or fails to perform a running retest that has been requested.

"Fee" means the statutory fees for restricted driving permits or reinstatement of driving privileges, as specified in Section 6-118 of the Code.

"Hearing" means informal hearings and/or formal hearings.

"High Risk" means the classification resulting from an alcohol and drug evaluation assigned to a petitioner with:

symptoms of substance dependence (regardless of driving record), referred to in this Part as High Risk Dependent; and/or

within the 10 year period prior to the date of the most current (third or

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subsequent) arrest, any combination of two prior convictions or court ordered supervisions for DUI, or prior statutory summary suspensions, or prior reckless driving convictions reduced from DUI, resulting from separate incidents, referred to in this Part as High Risk Nondependent. (See 77 Ill. Adm. Code 2060.503(g).)

"Immediate family" means a member of the petitioner's household, the petitioner's parents, grandparents, children, and significant other.

"Initial Monitor Report" means the monitor report obtained or required to be obtained within the first 30 days after initial installation of the device.

"Installer" means an individual trained by a BAIID provider or manufacturer to install, repair, maintain, or monitor a BAIID and employed by an authorized BAIID provider, service center, vendor or manufacturer. "Installer" is synonymous with an authorized entity providing installation, repair, or monitoring services to BAIID permittees through such trained individuals.

"JDP" means a Judicial Driving Permit, as defined by Section 6-206.1 of the Code, which may be ordered by the court of venue to "first offenders" as defined in Section 11-501.1 of the Code.

"Lockout" means the device must prevent engine ignition by a virtual lock with 90% certainty or near absolute lock at 99.5% certainty.

"Manufacturer" means the maker of a BAIID or ~~its~~ authorized representative.

"Medical or physical BAIID modification" means a demonstrated physical or medical condition documented in writing by a physician that consistently interferes with the normal operation of the BAIID by the BAIID permittee for which the Department may authorize a modification of the BAIID or its programming to accommodate the condition without violating the BAIID rules and statutory requirements .

"Medical or Physical BAIID Waiver" means a demonstrated physical or medical condition, documented in writing by a physician, that consistently interferes with or prevents the normal operation of the BAIID by the BAIID permittee for which the Department may authorize a waiver of the BAIID.

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"Minimal Risk" means the classification resulting from an alcohol and drug evaluation assigned to a petitioner who has:

no prior conviction or court ordered supervisions for DUI, no prior statutory summary suspensions, and no prior reckless driving conviction reduced from DUI; and

a blood alcohol concentration (BAC) of less than .15 as a result of the most current arrest for DUI; and

no other symptoms of substance abuse or dependence. (See 77 Ill. Adm. Code 2060.503(g).)

"Moderate Risk" means the classification resulting from an alcohol and drug evaluation assigned to a petitioner who has:

no prior conviction or court ordered supervisions for DUI, and no prior statutory summary suspensions, and no prior reckless driving conviction reduced from DUI; and

a blood alcohol concentration (BAC) of .15 to .19 or a refusal of chemical testing as a result of the most current arrest for DUI; and no other symptoms of substance abuse or dependence. (See 77 Ill. Adm. Code 2060.503(g).)

"Monitor report" means an electronic report or a printout of the activity of a device obtained by the manufacturer or installer at the time of an inspection of the device which shall include at a minimum the number of successful and unsuccessful attempts to start the vehicle and rolling retests, including each date, time, and BrAC reading, and any evidence of tampering or circumvention of the device.

"National Driver Register" means a central index, maintained by the U.S. Department of Transportation, of individuals whose driving privileges are denied, terminated or withdrawn, as reported by the states' driver licensing authorities.

"Office" means the Office of the Secretary of State and not any particular department address or location.

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"Permanent lockout" means that feature of the device that prevents a vehicle with the device installed from starting after the lapse of the 5 days (see 92 Ill. Adm. Code 1001.442(b)(7)) and requires servicing by the manufacturer/installer of the device to make the vehicle operable for failure to take the vehicle with the device to the manufacturer or installer for any required monitor report or for any failure to send the device to the manufacturer within 5 days after any service or inspection notification.

"Petitioner" is the party who seeks or applies for relief from the Office from the suspension, revocation, cancellation, or denial of his/her driving privileges pursuant to the provisions of the Illinois Vehicle Code.

"RDP" means a restricted driving permit, as defined by Section 1-173.1 of the Code and limited as specified in Sections 6-205(c) and 6-206(c)3 of the Code.

"Reinstatement" means the restoration of driving privileges entitling the petitioner to apply for a new driver's license in accordance with the requirements of the Illinois Vehicle Code and this Chapter.

"Respondent" means a person against whom a complaint or petition is filed, or who, by reason of interest in the subject matter of a petition or application or the relief sought through that action, is made a respondent or to whom an order or complaint is directed by the department initiating a proceeding.

"Running retest" means that feature of the device that requires the driver to take additional BrAC tests after the initial test to start the vehicle.

"Secretary" means the Illinois Secretary of State or his designee.

"Service or inspection notification" means that feature of the device that advises or notifies the BAIID permittee to either take the vehicle with the device installed to the BAIID provider or installer or send the device to the BAIID provider or installer for the required inspection and the monitor report.

"Service center" means an authorized dealer, distributor, supplier, or other business engaged in the installation of BAIIDs and is synonymous with installer.

"Significant other" means any person with whom an individual is experiencing an ongoing, close association that represents a meaningful part of that individual's

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established life style (e.g., spouse, other family member, employer, co-worker, clergy member, roommate).

"Significant Risk" means the classification resulting from an alcohol and drug evaluation assigned to a petitioner who has:

one prior conviction or court ordered supervision for DUI, one prior statutory summary suspension, or one prior reckless driving conviction reduced from DUI; and/or

a blood alcohol concentration (BAC) of .20 or higher as a result of the most current arrest for DUI; and/or

other symptoms of substance abuse. (See 77 Ill. Adm. Code 2060.503(g).)

"Stressed" means conditions such as temperature extremes, vibration, and power variability.

"SUI" means snowmobiling under the influence, as defined in the Snowmobile Registration and Safety Act [625 ILCS 40/5-1 through 5-7.6].

"Support/recovery program" means specific activities which a recovering alcoholic/chemically dependent person has incorporated into his/her life style to help support his/her continued abstinence from alcohol and other drugs. This may include, but is not limited to, participating in a self-help program (Alcoholics Anonymous, Narcotics Anonymous, etc.) or a professional support group, or regularly and frequently engaging in religious or other activities which have a distinct and positive effect on an individual's continued abstinence. Any program and its relationship to the individual's ability to remain abstinent must be clearly identified and verified by proper documentation independent from an individual's self report (such as indicated in Section 1001.440(e) through (i) of this Part). The hearing officer shall determine the viability of the petitioner's program as a means of supporting continued abstinence, taking into account all the evidence brought forward at the hearing, as well as considering whether the program is substantially consistent with the following criteria:

The program encourages life style change which involves the replacement of substance using activity with non-substance using activity; a strong focus of the program is to provide ongoing assistance in identifying and

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resolving substance dependency-related issues that may jeopardize an individual's continued recovery;

The program encourages positive individual values of responsibility and honesty, as well as less self-centered thinking;

The program has demonstrated a durability and stability over time that reflects its usefulness in supporting long-term recovery.

"Tampering" means an overt, conscious attempt to disable or disconnect the interlock device.

"Treatment Needs Assessment" means an assessment of a petitioner's current need for alcohol/drug treatment, counseling, or other intervention services or rehabilitative activity, composed by a licensed treatment provider.

"24 Hour lockout" means that feature of the device that causes a vehicle with the device installed to become inoperable for a period of 24 hours any time the device registers 3 BrAC readings of 0.05 or more within a 30 minute period.

"Undue hardship as it relates to educational pursuits" means an extreme difficulty in getting to and from the location of the accredited education course, due to the loss of driving privileges. It is more than mere inconvenience to the petitioner, and pertains only to the petitioner. All other reasonable means of transportation must be unavailable to the petitioner. An undue hardship is not shown by the mere fact that the driving privileges are suspended or revoked.

"Undue hardship as it relates to employment" means, as used in the context of Sections 6-205(c) and 6-206(c)3 of the Code, an extreme difficulty in regard to getting to or from a petitioner's place of employment or to operate on a route during employment; e.g., as delivery person, because of the suspension, revocation, or cancellation of the petitioner's driving privileges. It is more than mere inconvenience on the petitioner and pertains only to the petitioner. All other reasonable means of transportation must be unavailable to the petitioner. An undue hardship is not shown by the mere fact that the driving privileges are suspended or revoked.

"Undue hardship as it relates to necessary medical care" means an extreme difficulty in regard to getting to and from a location where petitioner or a member

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of his/her immediate family receives examinations, therapy or treatment, etc., prescribed or recommended by a licensed physical or mental health care provider. It means more than mere inconvenience. There must be no other reasonable alternative means of transportation available. An undue hardship is not demonstrated by the mere fact that the petitioner's driving privileges are suspended or revoked.

"Undue hardship as it relates to support/recovery program" means an extreme difficulty in regard to getting to and from a location where a petitioner is participating in an ongoing support program. It means more than mere inconvenience. There must be no other reasonable alternative means of transportation available. An undue hardship is not demonstrated by the mere fact that the petitioner's driving privileges are suspended or revoked.

"Unsuccessful attempt to start the vehicle" means anytime the BAIID permittee registers a BrAC reading of 0.025 or more on the device when attempting to start the vehicle.

"Vehicle", for purposes of the Breath Alcohol Ignition Interlock Device Program, means every apparatus in, upon or by which any person or property is or may be transported or drawn upon a highway and that is self-propelled, except for apparatuses moved solely by human power, motorized wheelchairs, motorcycles and motor driven cycles.

"Vendor" means a retail or wholesale supplier of a device, and may include a service center.

"W/V" means weight of alcohol in the volume of breath based upon grams of alcohol per 210 liters of breath.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.420 General Provisions Relating to the Issuance of Restricted Driving Permits

- a) Burden of Proof. Petitioners who are not eligible for reinstatement of driving privileges at the time of their hearing must prove that there is no reasonable alternative means of transportation available, that they will not endanger the public safety and welfare, and that an undue hardship will result if they are not

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issued a restricted driving permit (RDP). The Secretary of State does not weigh the nature or extent of a petitioner's hardship against the risk he/she poses to the public safety and welfare. Rather, the petitioner must first carry his/her burden of proving that he/she will not endanger the public safety and welfare in order for the Secretary of State to consider whether the petitioner has an undue hardship.

b) RDP Classifications

- 1) **Employment.** A petitioner for an employment related RDP must be currently employed, or present a verifiable commitment for employment, and the employment must be verified upon forms prescribed by the Department. If the petitioner is self-employed, evidence of self-employment can include, but is not limited to, stationery, business card, official receipt, check, State or Federal tax returns or letters from business associates.
- 2) **Medical or Treatment.** A petitioner for an RDP for medical or treatment purposes must provide verifiable documentation from the licensed physical or mental health care provider involved that the petitioner or a member of his/her immediate family (who is unable to operate a motor vehicle) must receive or is receiving services on a regularly scheduled basis.
- 3) **Community Service.** A petitioner for an RDP for court ordered community service must provide certified court documents detailing the terms of the service, including but not limited to the place or places the service is performed, the hours during which the service is to be performed and the nature of the service.
- 4) **Educational.** A petitioner for an educational RDP must be currently enrolled, or intend to enroll for the next available session, in an accredited educational institution for the purpose of taking an accredited educational course or courses. Prior to the issuance of any educational RDP, the petitioner must submit verification of enrollment from the institution. The verification shall be on a form provided by the Secretary of State.
- 5) **Support/Recovery.**
 - A) A petitioner for a support/recovery program RDP must provide

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verifiable documentation, from members of the group or program, that he/she has been attending meetings on a regular basis.

- B) A petitioner who wishes to begin or resume participation in a support/recovery program, but who resides alone or in a household in which there is no other licensed driver and resides in a remote location in or near a community in which public transportation is not available, will be considered for a support/recovery program RDP if the petitioner proves that he/she has been abstinent from all alcohol and drugs for a minimum of 12 months and has satisfied the other provisions of this Subpart.
- 6) Revocations for Reckless Homicide and Aggravated DUI Involving a Fatality. A petitioner who has an open revocation for reckless homicide or aggravated driving under the influence that involved a fatality must submit, with the petition for driving relief, either a copy of the Order of the circuit court that states the sentence received upon conviction, certified by the Clerk of the Court, or a document from the Department of Corrections that reflects: the offense for which the petitioner was imprisoned; the date of release from imprisonment; and the terms of release or parole. For the purpose of determining a petitioner's eligibility for the issuance of a restricted driving permit pursuant to Sections 6-205(c) and 6-206(c)3 of the Code, the date of release from imprisonment refers to the imprisonment on the conviction for the offense and does not include release from imprisonment for a violation of parole or probation. It is the responsibility of the petitioner to provide documentation that clearly reflects the date of his/her release from imprisonment.
- c) Jurisdiction/Eligibility. An RDP may be granted only after suspension, revocation, or cancellation for the offenses listed in Sections 6-205, 6-206, 6-303, 6-201(a)5 as it relates to 6-103.4, 11-501.1, 11-501.6 and 11-501.8 of the Code. Petitioners who are eligible to apply for a JDP are not eligible for and will not be considered for an RDP.
- d) Undue Hardship. A petitioner must prove by clear and convincing evidence that an undue hardship is currently being suffered as a result of the inability to legally operate a motor vehicle. Mere inconvenience to the petitioner or family and friends is not undue hardship. The petitioner should produce clear and convincing evidence as to the unavailability of reasonable alternative means of transportation,

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such as but not limited to: walking, mass transit, car pools, or being driven; how the petitioner is currently getting to his/her destination; whether driving is required in the course of employment; the distance between the petitioner's residence and his/her destination; and similar factors relating to employment, necessary medical care, support/recovery program meetings, community service and/or educational pursuits.

- 1) Appropriate limits will be established for necessary on-the-job driving. The days, hours, and mileage limits will not exceed those absolutely necessary for the accomplishment of the petitioner's primary employment and shall be limited to a maximum of 12 hours per day and 6 days per week unless the request for increased limits is substantially documented, such as through an employer's verification of the petitioner's work schedule.
 - 2) A support/recovery program RDP may include attendance at no more than 3 meetings per week.
 - 3) An educational RDP will be subject to appropriate limits necessary to allow the petitioner to get to and from the subject institution/courses. The days and hours will not exceed those absolutely necessary for that purpose and shall be limited to a maximum of 12 hours per day and 6 days per week. Additional parameters to consider in setting these limits shall include whether the petitioner commutes daily to the courses, is required to participate in clinical or student teaching programs in order to fulfill the requirements for a degree in his/her chosen field, or lives on or within a radius of one mile from the campus and only needs to drive to and from the institution on an infrequent basis (less than once per week) and is then able to get to the courses by other means of transportation. The permit shall expire at the conclusion of the period for which it is granted.
- e) Factors Considered. Factors which will be considered by the Department in determining the propriety of granting a petitioner an RDP include, but are not limited to: the petitioner's age; whether the petitioner has driven while suspended or revoked; duration of present employment; number of years licensed to drive; number, severity, and frequency of accidents; frequency, type, and severity of traffic violations; efforts at rehabilitation or reform of past driving practices; demeanor of petitioner in the hearing; credibility of petitioner and witnesses in the hearing; credibility of and weight given to the petitioner's documentary evidence;

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petitioner's total driving record, including but not limited to reasons for violations, prior permits issued (unless such permits were issued pursuant to the order of a circuit or appellate court following an administrative review action) and driving record while on such permits; record of performance while driving with an interlock device; driving history in another state if licensed previously; any arrest or implied consent suspension for boating or snowmobiling under the influence; petitioner's alcohol/drug-related criminal record as defined in Section 1001.410; reports of probation and/or parole officers; and psychiatric reports where the evidence shows that petitioner is suffering or has suffered from a mental disorder which might affect his/her ability to operate a motor vehicle in a safe and responsible manner.

- f) Public Safety and Welfare. Pursuant to Sections 6-205(c) and 6-206(c)3 of the Code, the public welfare and safety must not be endangered by the issuance of an RDP. The evidence must show that the petitioner will operate a motor vehicle safely so as not to be a danger to himself or herself or others. The mere passage of time since the date of revocation is not sufficient evidence.
- g) Ticket Pending. An RDP will not be issued while any traffic offense ticket is pending against a petitioner in any court of this or any other state, unless the pending citation or citations are also the only cause of the current loss of driving privileges.
- h) Referral to Remedial Program. A petitioner who is otherwise eligible for an RDP may be referred to a remedial or rehabilitative program prior to the permit's issuance, if his/her driving record warrants these measures. (See Sections 6-205(c) and 6-206(c)3 of the Code.)
- i) Probationary RDP – Hardship Not Required. A petitioner otherwise eligible for reinstatement of driving privileges or termination of a cancellation under Section 6-201(a)5, as it relates to 6-103.4, may be issued an RDP for a probationary or trial period prior to reinstatement of driving privileges or termination of cancellation in cases where the petitioner has a poor driving record (evidenced by many minor violations or a few serious violations) or involvement as a driver in a traffic collision or collisions resulting in death or injury requiring immediate professional treatment in a medical facility or doctor's office to any person, or has been evaluated as Moderate Risk, Significant Risk or High Risk by an alcohol/drug evaluation. A petitioner is not required to prove an undue hardship in order to obtain a probationary RDP. The fact that a petitioner was not cited or

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arrested for, or convicted of, any traffic offense while driving on a probationary permit does not, in and of itself, entitle the petitioner to reinstatement.

- j) Out-of-state Resident. An RDP will be issued to an out-of-state resident only if he/she has a valid license to drive issued by the jurisdiction in which he/she resides; he/she has a verified employment, medical, community service or educational related need to drive in Illinois; and he/she complies with all other requirements of this Subpart.
- k) New Resident of Illinois. An RDP will not be issued to a new resident of Illinois if his/her driving privileges are suspended in another jurisdiction until such time as that suspension is terminated. An RDP may be issued to a new resident of Illinois if his/her driving privileges are revoked in another jurisdiction, pursuant to Section 6-103.1 of the Code, under the following conditions:
- 1) At least one year has expired from the date of the revocation yet the revocation period has not expired; and
 - 2) ~~The petitioner submits written verification from the other jurisdiction indicating that an RDP or similar type of driving relief would be available if the petitioner were still a resident of that jurisdiction; and 3)~~The petitioner meets all other applicable requirements of this Subpart.
- l) Decision. The Director or a designee shall make the final decision, on each petition, on behalf of the Secretary. If relief was sought at a formal hearing, petitioners will receive a copy of the hearing officer's Findings of Fact, Conclusions of Law, and Recommendations, and the Secretary's Order.
- m) Investigative Evaluation.
- 1) A petitioner will be required to complete and submit an investigative alcohol and drug evaluation as part of the Secretary's investigative process, where the evidence, including the petitioner's driving record, indicates that:
 - A1) the current loss of driving privileges is not related to a DUI arrest/disposition yet the petitioner's/respondent's driving record contains, or other evidence indicates the existence of, a prior DUI disposition or any other conviction or loss of driving privileges that

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was alcohol/drug related within the last 10 years for which the petitioner/respondent did not or was not required to submit to the Secretary of State an alcohol/drug evaluation to obtain driving privileges, or there is credible evidence that the petitioner had any arrest or implied consent suspension for boating or snowmobiling under the influence within the last 5 years, or the petitioner has an alcohol/drug-related criminal record, as defined in Section 1001.410; or

B2) the petitioner/respondent may be a user of alcohol or any other drug to a degree which renders that person incapable of safely driving a motor vehicle. (See Section 6-103.4 of the Code.)

2) The petitioner will be required to complete any recommended rehabilitative activity or provide a waiver. Furthermore, if any rehabilitative activity (i.e., a driver risk education course, intervention, or treatment for alcohol/drug abuse) is recommended, then the petitioner must submit an updated evaluation, as provided in this Subpart D, until the petitioner's driving privileges are reinstated.

- n) Examination. A petitioner whose driving privileges have been revoked or cancelled or whose driver's license has expired will be required to submit to a driver's license examination prior to the issuance of an RDP.
- o) Fourth Conviction. Pursuant to Section 6-208(b)4, the Secretary of State will not issue a restricted driving permit to any person who has a fourth conviction and revocation for the offenses listed in that Section and who is, therefore, not eligible to apply for the reinstatement of driving privileges, if the arrest that resulted in the fourth conviction was made after the effective date of P.A. 90-738 (1/1/99).

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.430 General Provisions for Reinstatement of Driving Privileges after Revocation

- a) Conviction is Dispositive. In all cases, a conviction in a court of law in Illinois or any other state is dispositive of the guilt of a petitioner of the offense that which caused his/her revocation.

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- b) Cause Removed. If revocation was for a cause that has been removed, such as the reversal of a conviction upon which revocation was entered, the petitioner must demonstrate that fact by clear and convincing evidence.
- c) Hardship Not Required; Factors Considered. A petitioner who is otherwise eligible for reinstatement of driving privileges at the time of his/her hearing is not required to prove an undue hardship as a condition of being, or in order to be, reinstated. The factors that will be considered by the Department in determining the propriety of reinstating a petitioner whose driving privileges have been revoked include but are not limited to: The petitioner's age; whether the petitioner has driven while suspended or revoked; duration of present employment; number of years licensed to drive; number, severity, and frequency of accidents; frequency, type, and severity of traffic violations; efforts at rehabilitation or reform of past driving practices; demeanor of petitioner in the hearing; credibility of petitioner and witnesses in the hearing; credibility of and weight given to the petitioner's documentary evidence; petitioner's total driving record, including but not limited to reasons for violations, prior permits issued (unless such permit was issued pursuant to the order of circuit or appellate court following an administrative review action), and driving record while on any permit; record of performance while driving with an interlock device; driving history in another state if licensed previously; any arrest or implied consent suspension for boating or snowmobiling under the influence; petitioner's alcohol/drug-related criminal record, as defined in Section 1001.410; reports of probation and/or parole officers; and psychiatric reports where the evidence shows that petitioner is suffering or has suffered from a psychiatric disorder that might affect his/her ability to operate a motor vehicle in a safe and responsible manner. The fact that a petitioner was not cited or arrested for, or convicted of, any traffic offense while driving on a probationary permit does not, in and of itself, entitle the petitioner to reinstatement.
- d) Investigative Evaluation
- 1) A petitioner will be required to complete and submit an investigative alcohol drug evaluation as part of the Secretary's investigative process, where the evidence, including the petitioner's driving record, indicates that:
- A) the current loss of driving privileges is not related to a DUI arrest/disposition yet the petitioner's/respondent's driving record

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contains, or other evidence indicates the existence of, a prior DUI disposition or any other conviction or loss of driving privileges that was alcohol/drug related within the last 10 years for which the petitioner/respondent did not or was not required to submit to the Secretary of State an alcohol/drug evaluation to obtain driving privileges, or there is credible evidence that the petitioner had any arrest or implied consent suspension for boating or snowmobiling under the influence within the last 5 years, or the petitioner's has an alcohol/drug-related criminal record, as defined in Section 1001.410; or

- B) the petitioner/respondent may be a user of alcohol or any other drug to a degree that renders that person incapable of safely driving a motor vehicle. (See Section 6-103.4 of the Code.)
- 2) The petitioner will be required to complete any recommended rehabilitative activity or provide a waiver. Furthermore, if any rehabilitative (i.e., a driver risk education course, intervention, or treatment for alcohol/drug abuse) activity is recommended, then the petitioner must submit an updated evaluation, as provided in this Subpart D, until the petitioner's driving privileges are reinstated.
- e) Examination. A petitioner will be required to submit to a driver's license examination prior to the reinstatement of driving privileges if the test has not been successfully completed in the preceding 12 months.
- f) Public Safety and Welfare. In case of either subsection (b) or (c), the public welfare and safety must not be endangered by the reinstatement of the petitioner's driving privileges. The petitioner, if restored to full driving privileges, must operate a motor vehicle safely so as not to be a danger to himself or herself or other drivers on the road. The mere passage of time since the date of revocation is not sufficient evidence.
- g) Eligibility: New Residents of Illinois. A hearing for reinstatement will not be conducted at any time before the prescribed date of eligibility. The Secretary of State will not issue a driver's license to a new resident of Illinois while his/her driving privileges are revoked in another jurisdiction, pursuant to Section 6-103.1 of the Code.

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- h) Ticket Pending. The driving privileges of a petitioner shall not be reinstated while any traffic offense is pending against him/her in any court.
- i) 75% Rule. A petitioner who is driving on a ~~probationary~~ restricted driving permit at the time of his/her hearing will not be considered for reinstatement of driving privileges, regardless of the petitioner's ~~eligibility~~ date of eligibility for reinstatement, unless he/she has successfully completed driving on that permit for 75% of its length, or has driven continuously on the current permit and a previously issued permit for a total of at least 9 months at the time that the petitioner becomes eligible for the reinstatement ~~of driving privileges~~. However, a petitioner may appeal to the Director of the Department for a waiver of this provision when exigent circumstances warrant consideration of a waiver. An exigent circumstance is one that would prevent the petitioner from ever being able to meet this requirement, such as moving out of the State.
- j) Decision. The Director or a designee shall make the final decision, on each petition, on behalf of the Secretary. If relief was sought at a formal hearing, petitioners will receive a copy of the hearing officer's Findings of Fact, Conclusions of Law, and Recommendations, and the Secretary's Order.
- k) Out-of-state Petitioners. Notwithstanding any other provisions of this Subpart, the following provisions for reinstatement of the Illinois driving privileges for certain out-of-state petitioners shall apply:
- 1) Out-of-state petitioners whose driving privileges are revoked in Illinois shall be granted reinstatement of Illinois driving privileges upon a showing that:
 - A) he/she is not currently a resident of the State of Illinois and resides more than 30 miles from the Illinois border;
 - B) at the time of arrest or arrests in Illinois for the violations that led to the revocation of the Illinois driving privileges, the petitioner was not licensed to drive in Illinois, was a resident of a state or jurisdiction other than Illinois, and continues to reside in that or any other state or jurisdiction;
 - C) the petitioner is not currently seeking to reside in or be licensed to drive in the State of Illinois;

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- D) the state of residence and/or licensure of the petitioner at the time of the Illinois arrests did not take action, or took action against the driving privileges of the petitioner based upon the Illinois arrest and the action has terminated;
 - E) but for the revocation in Illinois, the petitioner is not prohibited from obtaining driving privileges in any state or jurisdiction other than Illinois; and
 - F) the petitioner has paid all necessary fees due the State of Illinois.
- 2) Out-of-state petitioners granted reinstatement under the provisions of this subsection (k), who subsequently apply for Illinois driving privileges and a driver's license within 3 years from the date of reinstatement in Illinois, shall be required to have an administrative hearing and meet all of the applicable requirements of this Subpart prior to the issuance of any Illinois driving privileges and a driver's license.
- 1) Revocations for Reckless Homicide and Aggravated DUI Involving a Fatality. A petitioner who has an open revocation for reckless homicide or aggravated driving under the influence that involved a fatality must submit, with his or her petition for driving relief, either a copy of the Order of the circuit court that states the sentence received upon conviction, certified by the Clerk of the Court, or a document from the Department of Corrections that reflects: the offense for which the petitioner was imprisoned; the date of release from imprisonment; and the terms of release or parole. For the purpose of determining a petitioner's eligibility for reinstatement pursuant to Section 6-208(b)1 of the Code, the date of release from imprisonment refers to the imprisonment on the conviction for the offense and does not include release from imprisonment for a violation of parole or probation. It is the responsibility of the petitioner to provide documentation that clearly reflects the date of his/her release from imprisonment.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.440 Provisions for Alcohol and Drug Related Revocations, Suspensions, and Cancellations

- a) Documents/Evidence Required. Except as provided in subsection (a)(1), in any

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application for reinstatement, an RDP, or the termination of an order of cancellation, all petitioners must submit an alcohol and drug evaluation and, where required, evidence of successful completion of an alcohol and drug-related driver risk education course and/or evidence of successful completion of treatment or proof of adequate rehabilitative progress.

- 1) An alcohol and drug evaluation and the evidence of successful completion of treatment submitted by a resident of Illinois must have been conducted by an individual or an agency licensed by DASA. An alcohol or drug-related driver risk education course completed by an Illinois resident must have been provided by an individual or agency licensed by DASA. (See 77 Ill. Adm. Code 2060.201.) Exceptions to these requirements will be allowed in the cases listed in subsections (a)(1)(A) and (B), as follows:—In such case, the evaluation and driver risk education course must be provided by an individual or agency accredited by the state in that the individual or agency operates:
 - A) If the petitioner is currently and has been temporarily residing outside the State of Illinois (except as provided in Section 1001.100(a)(2)), then the evaluation, treatment, and driver risk education course may be provided by an individual or agency accredited by the state in which the individual or agency operates;
or
 - B) If the petitioner currently resides in Illinois but received treatment for alcohol or drug abuse or dependence from a treatment program located outside the State of Illinois that has been appropriately accredited by the state in which it operates, then the petitioner may document the successful completion of that treatment in the manner provided by subsection (m) of this Section. However, the petitioner's evaluation and driver risk education course must be provided by an individual or agency licensed by DASA.
- 2) Out-of-state Petitioners. If the petitioner is a resident of another state at the time he or she files a petition for reinstatement of Illinois driving privileges and is, therefore, applying as an out-of-state resident pursuant to Section 1001.100(a), he/she may submit an evaluation, evidence of successful completion of an alcohol and drug-related driver risk education

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course and/or evidence of successful completion of treatment or proof of adequate rehabilitative progress from the state in which he/she resides or from any other state, so long as the agency that provides these services has been appropriately accredited by the state in which it operates.

- 3) Choice of Programs. The choice of these programs is within the discretion of the petitioner. The evidence submitted must be typewritten, although the evaluator may testify at any hearing.
- 4) Evaluation Standards. The alcohol and drug evaluation (uniform report), as defined in Section 1001.410, must conform to all current standards for an evaluation set by DASA, where applicable, and/or to all current Secretary of State requirements set forth in this Subpart D. (See 77 Ill. Adm. Code 2060.503.) The evaluation must be signed and dated by both petitioner and evaluator. The ~~evaluation uniform report~~ must include a recitation of: the petitioner's alcohol/drug use history, from first use to present use; any out-of-state DUI disposition, regardless of whether the offense has been recorded to the offender's Illinois driving record; any arrests or implied consent suspensions for boating or snowmobiling under the influence that occurred within the last 5 years; and the petitioner's alcohol/drug-related criminal record, as defined in Section 1001.410.
- 5) Driver Risk Education Course. The alcohol and drug-related driver risk education course must, at a minimum, conform to the standards for alcohol/drug driver risk education courses set by DASA. (See 77 Ill. Adm. Code 2060.505.) Any alcohol or drug related driver risk education course required by this Part must be completed ~~on a date~~ after the date of the most recent arrest for DUI ~~disposition~~ arrest date.
- 6) Evaluation Must Be Current. The alcohol and drug evaluation must be current, which is defined as having been completed within 6 months prior to the date of the hearing.
 - A) Updated Evaluation. An updated evaluation shall be conducted only by means of an in-person interview and only by the same program ~~that~~ which conducted the original evaluation. Exceptions to the latter requirement will be allowed under the following circumstances:

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- 1) Transfer of File. If the petitioner's evaluation or treatment case file or copies of all evaluation or treatment file material are transferred to another evaluation or treatment program ~~that~~which prepares the update. The program agency that conducts the updated evaluation should explain, either in a separate cover letter or in the body of the updated evaluation, how, when and why the petitioner's file was transferred to it. The transfer will be considered acceptable only if the original evaluating program can no longer provide evaluation services for reasons such as a suspended or revoked license or voluntarily terminating evaluation business operations, or if an individual service provider leaves the program that conducted the original Uniform Report and the petitioner wishes to continue receiving services from that individual, or if the petitioner relocates to another part of the state. In the latter case, the petitioner carries the burden of proving that he or she relocated at least 50 miles from the original service provider's nearest location. When transferring a file, the sending program agency shall not allow it to be delivered by the petitioner to the receiving agency. If an update cannot be obtained by reviewing the original case file information, another original evaluation must be submitted.
 - 2) Treatment Provider. If the petitioner completes treatment recommended as a result of the most recent alcohol and drug evaluation, the program providing the treatment may prepare any subsequent updated evaluation from its own case file information without obtaining the information from the evaluating program that made the treatment recommendation. Furthermore, a chronological alcohol/drug use history may be prepared by the program that provided the treatment, when one is requested by the petitioner, the Secretary or a hearing officer in a decision entered as a result of a formal or informal hearing, to be submitted as part of the petitioner's evidence at his/her next hearing.
- B) Updated Evaluation – Content. An updated evaluation shall

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contain, at a minimum, the following: a description of alcohol/drug use and/or abuse covering the time since the last evaluation or update; the facts of any arrest or citation for a traffic or criminal offense that is, in any way, alcohol/drug-related; any impairment of significant life areas since the last evaluation or update; the evaluator's previous and current alcohol/drug-use classification of the petitioner; any current recommendations and the rationale for such recommendations; and an indication of whether the petitioner has completed all prior recommendations. If the petitioner's Uniform Report did not include the alcohol/drug use history required by subsection (a)(4), then it may be provided in an updated evaluation. The updated evaluation must be corroborated by an interview with a family member or significant other. The information obtained must be summarized and the evaluator should indicate whether it corroborates the data provided by the petitioner. The updated evaluation must be typewritten, on a form provided by the Department, and verified by the evaluator. (See subsection (a)(1) of this Section.)

- 1) Any updated evaluation that reclassifies a petitioner to or within a Moderate, Significant or High Risk classification shall include a referral to a treatment provider for the purpose of determining the need, if any, for additional rehabilitative activity. Any waiver of additional rehabilitative activity by the treatment provider must be in writing and include the rationale for the waiver. Any recommendation for additional rehabilitative activity must be complied with before relief will be granted.
- 2) A petitioner may not submit an updated evaluation if the uniform report evaluation being updated does not discuss the most recent DUI disposition. In such case the petitioner must submit a uniform report evaluation.
- 3) An updated evaluation may not reclassify a petitioner from a previous classification unless the evaluator believes that the previous classification was improper or in error and justifies and explains in detail why the previous classification was improper or in error and why the new

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classification is proper and appropriate.

- C) Out-of-state Evaluation - Content. An out-of-state alcohol and drug evaluation shall contain, at a minimum, the following: a complete alcohol and drug use history, from first use to present use; a history of any alcohol and drug-related offenses (including all DUI dispositions, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record); a current alcohol/drug use classification of the petitioner and the rationale for that classification; any recommendations and the rationale for such recommendations. The evaluation must be corroborated by an interview with a significant other and by the administration of an objective test. The information obtained must be summarized and the evaluator should indicate whether it corroborates the data provided by the petitioner. The evaluation must be verified by the evaluator. The individual or agency that completes the evaluation must be properly accredited or licensed in the state in which the individual or agency operates.
- D) Investigative Evaluation - Content. An investigative alcohol and drug evaluation shall contain, at a minimum, the following: a complete alcohol and drug use history, from first use to present use; a history of alcohol and drug-related driving, boating, snowmobiling, and criminal offenses (including all DUI dispositions, regardless of where the offense occurred or whether it has been recorded to the offender's Illinois driving record); a clinical impression of what the evaluation data indicates and the rationale for that conclusion; any recommendations and the rationale for such recommendations. The evaluation must be corroborated by an interview with a significant other and by the administration of an objective test. The information must be summarized and the evaluator should indicate whether it corroborates the data provided by the petitioner. The evaluation must be typewritten, on a form provided by the Department, and verified by the evaluator. The program that completes the evaluation must meet the same standards as programs qualified to prepare uniform report evaluations. (See subsection (a)(1).)

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E) Update of an Investigative Evaluation. If the evaluator concludes that the petitioner does not need any rehabilitative activity (i.e., a driver risk education course, intervention, or treatment for alcohol/drug abuse), and the Secretary accepts this conclusion, then the petitioner is not required to submit an updated evaluation at future hearings (assuming that there are no intervening alcohol/drug-related arrests or incidents that might cause the Secretary to question this conclusion). However, if the evaluator recommends any rehabilitative activity, then the petitioner must submit an updated evaluation, as provided in this Subpart D, until the petitioner's driving privileges are reinstated.

FE) Updated Evaluation Not Required. Petitioners classified at High Risk who have driven successfully on a restricted driving permit for at least 3 years after submitting an original evaluation are not required to provide an updated evaluation if:

- i) the petitioner files for an extension of the RDP or for another hearing during the term of the current RDP; or
- ii) the current RDP is expired for no more than 30 days at the time the petitioner files for an extension of the RDP or for another hearing. All other documentation required by this Subpart D must be submitted.

~~All other documentation required by this Subpart D must be submitted.~~

- b) Burden of Proof. Before any driving relief will be granted, the petitioner must prove by clear and convincing evidence: that he/she does not have a current problem with alcohol or other drugs; that he/she is a low or minimal risk to repeat his/her past abusive behaviors and the operation of a motor vehicle while under the influence of alcohol or other drugs; and that he/she has complied with all other standards as specified in this Subpart D. If the evidence establishes that the petitioner has had an alcohol/drug problem, the petitioner must also prove that the problem has been resolved.
- 1) Minimal Risk. Petitioners whose use of alcohol/drugs has been classified under this Section as Minimal Risk must document successful completion

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of a 10 hour alcohol/drug driver risk education course by submission of a document that reflects the completion of the requirements contained in 77 Ill. Adm. Code 2060.505.

- 2) Moderate and Significant Risk. Petitioners whose use of alcohol/drugs has been classified under this Section as Moderate or Significant Risk must document successful completion of an alcohol/drug driver risk education course as specified in subsection (b)(1) and the treatment recommended by the evaluator or other qualified professional recommended on referral by the evaluator. The treatment must be provided by an individual or agency licensed to provide such treatment by DASA or the Department of Public Health, or an individual therapist who is licensed as a private practitioner by the Illinois Department of [Financial and Professional Regulation - Division of Professional Regulation](#), or an out-of-state individual therapist or agency properly licensed by the state in which he/she operates.
- 3) High Risk Dependent. Petitioners classified under this Section as High Risk Dependent must document abstinence as required in subsection (e); the completion of treatment provided by a facility or facilitator licensed by DASA or the Illinois Department of Public Health, an individual therapist who is licensed as a private practitioner by the Illinois Department of [Financial and Professional Regulation - Division of Professional Regulation](#), or an out-of-state individual therapist or agency properly licensed by the state in which he/she operates; the establishment of an ongoing support/recovery program; and compliance with any additional recommendations of his/her evaluator or treatment provider.
- 4) High Risk Nondependent. Petitioners classified under this Section as High Risk Nondependent must document: non-problematic use as provided in subsection (f); treatment provided by a facility or facilitator licensed by DASA or the Illinois Department of Public Health, an individual therapist who is licensed as a private practitioner by the Illinois Department of [Financial and Professional Regulation - Division of Professional Regulation](#), or an out-of-state individual therapist or agency properly licensed by the state in which he/she operates; compliance with any additional recommendations of his/her evaluator or treatment provider, including abstinence; and a detailed explanation by the treatment provider as to why dependency was ruled out.

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- 5) Investigative Evaluation. Petitioners who obtain an investigative alcohol/drug evaluation must document the completion of any recommended intervention or treatment provided by a facility or facilitator licensed by DASA or the Illinois Department of Public Health, an individual therapist who is licensed as a private practitioner by the Illinois Department of Financial and Professional Regulation - Division of Professional Regulation, or an out-of-state individual therapist or agency properly licensed by the state in which he/she operates. If found to be chemically dependent, then the petitioner must prove abstinence as required in subsection (e) and the establishment of an ongoing support/recovery program, and compliance with any additional recommendations of his/her evaluator or treatment provider. Furthermore, if rehabilitative activity (i.e., a driver risk education course, intervention, or treatment for alcohol/drug abuse) is recommended, then the petitioner must submit an updated evaluation, as provided in this Subpart D, until the petitioner's driving privileges are reinstated.
- 6) Treatment Waiver Required. In the event that a treatment provider does not require an individual classified Moderate, Significant or High Risk to complete at least the minimum amount and type of intervention or treatment specified by DASA, the treatment provider must supply the Department with a detailed explanation of the rationale for that decision.
- 7) Treatment Needs Assessment Required. Whenever a service provider conducts and composes a Uniform Report, it is required to refer the petitioner to a treatment provider for an assessment of whether intervention or treatment for alcohol/drug abuse is warranted, pursuant to DASA rules at 77 Ill. Adm. Code Section 2060.503(h). The petitioner must provide a Treatment Needs Assessment whenever another Uniform Report is composed, regardless of whether the petitioner successfully completed intervention or treatment after the previous Uniform Report, in order to inform the Secretary whether additional intervention or treatment is warranted as a result of the information obtained during the course of the subsequent Uniform Report. The Treatment Needs Assessment shall be composed on the treatment provider's letterhead stationery.

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- A) The Treatment Needs Assessment must be provided regardless of whether the petitioner has committed any traffic or criminal offense that mandates the composition of a Uniform Report.
- B) The reasons for which a subsequent Uniform Report may be composed include, but are not limited to: at the request of a petitioner or petitioner's legal counsel (to, for example, start the rehabilitative process over); to obtain a second opinion on the nature and extent of a petitioner's alcohol/drug use; because the previous Uniform Report is several years old; because the program that composed the previous Uniform Report has ceased operations without transferring the petitioner's file to another program; because evidence at a previous hearing indicates the need for additional treatment or raises questions as to the adequacy of the treatment received; or because the petitioner has lost his/her copy of the Uniform Report and is not able to verify its authenticity or correctness.
- c) Rebuttable Presumption. The presence of more than one DUI disposition on a petitioner's abstract shall create a rebuttable presumption that the petitioner suffers from a current alcohol/drug problem and should, therefore, be classified at least Significant Risk.
- d) Evidence Considered. Evidence which shall be considered in determining whether the petitioner has met his/her burden of proof and has overcome the presumption of a current alcohol/drug problem includes, but is not limited to, the following, where applicable:
- 1) The factors enumerated in Section 1001.430(c);
 - 2) The similarity of circumstances between alcohol or drug-related arrests;
 - 3) Any property damage or personal injury caused by the petitioner while driving under the influence;
 - 4) Changes in life style and alcohol/drug use patterns following alcohol/drug-related arrest, and the reasons for the change;
 - 5) The chronological relationship of alcohol/drug-related arrests;

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- 6) Length of alcohol/drug abuse pattern;
- 7) Degree of self-acceptance of alcohol/drug problem;
- 8) Degree of involvement in or successful completion of prior treatment/intervention recommendations following alcohol/drug related arrests and in a support/recovery program;
- 9) Prior relapses from attempted abstinence;
- 10) Identification, treatment and resolution of the cause of the high risk behavior of any petitioner classified High Risk Nondependent;
- 11) The problems, pressures and/or external forces alleged to have precipitated the petitioner's abuse of alcohol or other drugs on the occasion of each alcohol/drug-related arrest, and the present status of the same, particularly whether they have been satisfactorily resolved;
- 12) The petitioner's explanation for his/her multiple arrests and/or convictions for offenses involving alcohol/drugs, particularly for allowing the second and subsequent arrests/convictions to occur;
- 13) In out-of-state petitions, the evaluator's rationale for classifying a petitioner with multiple DUI dispositions as a Minimal or Moderate Risk. In these cases it is particularly important that the evaluator's classification be based on complete and accurate information;
- 14) The petitioner's criminal history, particularly drug offenses or offenses that in any way involved alcohol/drugs;
- 15) The petitioner's chemical test results of the petitioner's blood, breath or urine from all previous arrests or all previous alcohol/drug-related offenses (not just traffic offenses) in addition to the chemical test results of the most recent arrest;
- 16) The extent to which, in terms of completeness and thoroughness, a petitioner and his/her service providers have addressed every issue raised by the hearing officers in previous hearings;

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- 17) It is particularly important that the evaluator's classification be based on complete, accurate and consistent information, especially all of the petitioner's DUI arrests and BAC test results. The probative value of evaluations that deviate from this standard will be diminished. The degree to which their probative value will be diminished will depend upon the degree to which the evaluation deviates from this standard and the standards imposed by DASA;
 - 18) The petitioner's record of performance while driving with an interlock device and his/her record of compliance with the terms and conditions of the breath alcohol ignition interlock device program;
 - 19) Written or verbal statements from members of the public, including crime victims as defined in the Code of Criminal Procedure [725 ILCS 120/3] or family members of victims of offenses committed by a petitioner, so long as the statement is relevant to the issues at the hearing;
 - 20) The service provider's clinical rationale or justification for changing the classification of a petitioner's alcohol/drug use, or for giving a classification that is different than that given in other evaluation or treatment documents or by other service providers.
- e) Documentation of Abstinence
- 1) Petitioners classified as High Risk Dependent, or any other petitioner with a recommendation of abstinence by a DASA licensed evaluator or treatment provider, must have a minimum of 12 consecutive months of documented abstinence. Documentation of abstinence must be received from at least 3 independent sources. The sources should not be fellow members of a support group unless those members have regular and frequent contact with the petitioner outside the group meetings. The hearing officer shall determine the weight to be accorded the documentation, taking into account the credibility of the source and the totality of the evidence adduced at the hearing. Letters or witness testimony establishing abstinence should contain, at a minimum, the following:
 - A) The person's relationship to petitioner (friend, family member,

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fellow employee, etc.).

- B) How long the person has known the petitioner.
 - C) How often the person sees the petitioner (daily, weekly, monthly, etc.).
 - D) How long the person knows the petitioner has abstained.
 - E) Each letter must be dated and signed by its authors. All letters must be submitted in their original form and should be dated no more than 45 days prior to the hearing date. Telephone facsimiles and photocopies of original letters will be admitted into evidence pending the submission of the original within a reasonable number of days as determined by the presiding hearing officer.
- 2) Waivers of the rule requiring 12 months of abstinence are discretionary when considering an RDP but shall not be granted unless the petitioner proves at least 6 months continuous abstinence at the time of the hearing.
- f) Documentation of Non-Problematic Use
- 1) Petitioners classified as High Risk Nondependent must demonstrate at least 12 consecutive months of non-problematic alcohol use, or abstinence, and abstinence from the use of illegal drugs. This evidence must be submitted from at least 3 independent sources and generally comply with the standards set forth in subsection (e).
 - 2) Waivers are discretionary when considering an RDP, but shall not be granted unless the petitioner demonstrates at least 6 months of non-problematic alcohol use, or abstinence, and abstinence from the use of illegal drugs.
- g) Documentation of Support/Recovery Program
- 1) If the petitioner has been attending a support/recovery program, the petitioner must present at least 3 dated and signed letters or witness testimony from fellow support/recovery program members documenting at a minimum the following:

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- A) How long the person has known the petitioner;
 - B) How long the person knows that the petitioner has attended the program;
 - C) How often the petitioner attends the program.
- 2) The hearing officer shall determine the weight to be accorded the documentation, taking into account the credibility of the source and the totality of the evidence adduced at the hearing. Each letter must be dated and signed by its authors. All letters must be submitted in their original form and should be dated no more than 45 days prior to the hearing date. Telephone facsimiles and photocopies of original letters will be admitted into evidence pending the submission of the original within a reasonable number of days as determined by the presiding hearing officer.
- h) Internet Support/Recovery Programs. A petitioner's participation in internet Alcoholics Anonymous, Narcotics Anonymous or other support/recovery program "chat rooms" or any other support/recovery program services available over the internet ~~may be is not~~ an acceptable substitute for the regular attendance of meetings in person. The factors to be considered by the hearing officer and the Secretary in evaluating the effectiveness and probative value of this form of support include, but are not limited to, the following: the petitioner's reasons for not attending meetings in person; the petitioner's alcohol/drug use history and history of relapse; the length of the petitioner's abstinence at the time of the hearing; the proximity of A.A. and N.A. meetings to the petitioner's residence and workplace; the petitioner's physical/medical condition, as it affects his/her ability to travel; the availability of public and private transportation to meetings; whether the petitioner has attended meetings in person in the past, and the length of that attendance; whether the petitioner's evaluator and treatment provider are aware and approve of the petitioner's participation in this form of support; the extent of the petitioner's knowledge of, commitment to, and involvement in the program; the extent of the petitioner's knowledge of the disease process of alcoholism/chemical dependence; the extent of the petitioner's acceptance of his/her alcoholism/chemical dependence. However, such participation will be considered as probative of the extent of the petitioner's involvement in a support/recovery program; i.e., as a supplement to the regular attendance of meetings in person. ~~The participation in internet support/recovery program chat~~

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rooms is not favored by the Secretary of State. Therefore, substantial documentation and testimony regarding this method of support is required in order for the petitioner to carry his/her burden of proof on this issue, including identification of the specific websites that the petitioner uses and verification of the petitioner's participation by chat room members.

- i) Non-Traditional Support/Recovery Programs
 - 1) If the petitioner's support/recovery program does not involve a structured, organized, recognized program such as A.A. or N.A., the petitioner is required to identify what that program is and explain how it works and keeps petitioner abstinent. The petitioner is required to present either witness testimony or written verification of the program from at least three independent sources involved in the program. If the verification is in the form of letters, those letters should be signed and dated. All such evidence must contain, at a minimum, the following:
 - A) The person's relationship to the petitioner (friend, family member, fellow employee, etc.);
 - B) How long the person has known the petitioner;
 - C) How often the person sees the petitioner (daily, weekly, monthly, etc.);
 - D) How the person is involved in the petitioner's recovery program and what role the person plays in helping the petitioner abstain from alcohol/drugs;
 - E) What changes the person has seen in the petitioner since petitioner's abstinence.
 - 2) The hearing officer shall determine the weight to be accorded the documentation, taking into account the credibility of the source and the totality of the evidence adduced at the hearing. Each letter must be dated and signed by its authors. All letters must be submitted in their original form and should be dated no more than 45 days prior to the hearing date. Telephone facsimiles and photocopies of original letters will be admitted into evidence pending the submission of the original within a reasonable

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number of days as determined by the presiding hearing officer.

- j) Support/Recovery Program Sponsor. If the petitioner has a support/recovery program sponsor, a letter should be obtained (or the testimony submitted) from his/her sponsor documenting the data in subsection (g)(1). The purpose of a letter or the testimony of an A.A. sponsor is to provide the Secretary with substantial detail regarding the petitioner's progress and development in the A.A. program. However, this letter or testimony can also be used to satisfy the requirements of subsection (g). The submission of a letter from a petitioner's sponsor is not mandatory, but is strongly recommended. A petitioner's failure to submit a letter from his/her sponsor is not, by itself, a sufficient basis upon which to deny driving relief.
- k) RDP for Support/Recovery Program - Information Required. In cases where a petitioner seeks a restricted driving permit to allow him/her to drive to support/recovery program meetings, he/she must provide specific information identifying, at a minimum, the following:
 - 1) The locations of the meetings he/she wishes to attend;
 - 2) The days of the week when meetings are held at these locations;
 - 3) The hours of the day when these meetings are held.
- l) Early Intervention - Information Required. If the petitioner has undergone early intervention (Moderate Risk classification), he/she must provide a narrative summary that includes, at a minimum, the following:
 - 1) The name, address, and telephone number of the licensed service provider;
 - 2) The dates the petitioner began and completed early intervention, as well as the number of days or hours he/she was involved in the intervention process;
 - 3) A summary discussion of the intervention provided and its outcome, specifically, those issues that were addressed or explored and the provider's perception of what the petitioner gained from the experience and his/her ability to avoid future development of alcohol problems;

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- 4) The rationale for any modification in the early intervention requirements specified by DASA;
 - 5) The dated signature of the professional staff person providing the early intervention information.
- m) Treatment - Information Required. If the petitioner has had alcohol or drug related treatment, he/she must provide the following information:
- 1) A narrative summary that includes, at a minimum:
 - A) The name, address, and telephone number of treatment center;
 - B) The date the petitioner entered treatment and the date the petitioner was discharged from treatment; the number of days or hours the petitioner was involved in treatment; the admitting and discharge diagnosis;
 - C) The type of treatment received (e.g., outpatient, intensive outpatient, or inpatient treatment; individual or group therapy);
 - D) A clinical impression or prognosis of either a Moderate or Significant Risk petitioner's ability to maintain a non-problematic pattern, or a High Risk petitioner's ability to maintain a stable recovery where applicable. Specifically, the treatment provider's perception of ~~what~~ the petitioner gained from the treatment experience and whether the experience was sufficient to substantially minimize the possibility of a recurrence of alcohol/drug related problems;
 - E) Any recommendations for continuing care or follow-up support, and an indication of the petitioner's participation, if applicable;
 - F) The rationale for any modification in the treatment requirements specified by DASA;
 - G) The dated signature of the professional staff person providing the treatment information.

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- 2) Copies of the following documents required by DASA:
 - A) Individualized Treatment Plan. (See 77 Ill. Adm. Code 2060.421.)
 - B) Discharge Summary and Continuing Care Plan. (See 77 Ill. Adm. Code 2060.427.)
- 3) A current status report regarding the petitioner's involvement in continuing care. This report must discuss the petitioner's level of progress in completing follow-up activities outlined in the Continuing Care Plan. If continuing care has been completed, a summary report must be provided that discusses the petitioner's progress throughout the course of completing all follow-up activities detailed in the Continuing Care Plan. If continuing care has been determined to be unnecessary, a report must be provided that discusses the clinical rationale for that decision.
- 4) If the petitioner is unable to provide the required information, he/she must provide documentary evidence of his/her attempts to obtain the information and the reason for its unavailability.
- 5) The information required in subsection (m)(1) should be provided in the "Treatment Verification" form composed, published, and distributed to treatment providers by the Department. However, a petitioner's failure to submit a Treatment Verification form is not a sufficient basis, in and of itself, to deny driving relief, so long as the information required in subsection (m)(1) is submitted in some other format or in the other documents required to be submitted.
- n) Evaluation Written for Court. If a petitioner presents an alcohol/drug evaluation that was obtained as a condition precedent to either obtaining a JDP or the disposition of a DUI charge, that evaluation must meet the requirements of this Section in order to be accepted by the Secretary of State.
- o) Out-of-state Petitioners - Evaluation Not Required. Out-of-state petitioners whose last arrest for driving under the influence occurred more than 10 years from the date of the current application for relief may be excused from the requirement of an evaluation if the other evidence required of the petitioner, as set out in this subsection, indicates that the petitioner does not have a current problem with alcohol or other drugs; that, if the petitioner has had an alcohol problem, it

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has been resolved; that the petitioner is now a low or minimum risk to repeat his/her past abusive behaviors and the operation of a motor vehicle while under the influence of alcohol or other drugs; and that the petitioner can now be considered a safe and responsible driver. The rationale for this subsection is that the length of time since the petitioner's last DUI arrest indicates he/she is no longer a dangerous driver, and that Illinois' interest in a driver who no longer resides in this State is less than in one who resides in Illinois. Therefore, this exception does not apply to petitioners who reside within 30 miles of the Illinois border.

- 1) Petitioner must submit, at a minimum, the following evidence:
 - A) An affidavit regarding his/her alcohol/drug use, on a form provided by the Secretary of State;
 - B) At least 3 letters of reference that, at a minimum, verify the frequency and amount of the petitioner's alcohol/drug use for at least the last 12 months prior to the hearing. The letters should also discuss the petitioner's character and ability to be a safe and responsible driver. The author must state how long he/she has known the petitioner, how often he/she sees, speaks to, or otherwise has contact with the petitioner, the nature of the contact, and the nature of their relationship;
 - C) If the petitioner was required to participate in an alcohol/drug evaluation after his/her last arrest for driving under the influence, then the petitioner must submit a copy of that evaluation;
 - D) If the petitioner has received treatment for alcohol/drug abuse, then he/she must submit a copy of the discharge summary of that treatment (written by the agency that provided the treatment);
 - E) Petitioners who have been identified as or believe themselves to be alcoholic/chemically dependent must fulfill the requirements of subsection (b)(3) pertaining to abstinence and the establishment of an ongoing support/recovery program;
 - F) Credible evidence of his/her driving record in the current state of residence. The Secretary of State may also obtain this evidence;

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- G) Any other relevant evidence the petitioner desires to provide.
- 2) Upon receipt of this evidence, it shall be reviewed by the Director of the Department, or a duly appointed hearing officer designated by the Director, for the purpose of determining whether the requirement of an alcohol/drug evaluation should be waived and the out-of-state petition disposed of based upon the evidence listed in subsection (o)(1). The factors recited in subsection (d) shall be utilized and applied in making this determination.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.441 Procedures for Breath Alcohol Ignition Interlock Device Conditioned RDPs

- a) BAIID Required for RDP; Fee Required
- 1) The issuance of RDPs to a BAIID petitioner shall be conditioned upon the use of a Breath Alcohol Ignition Interlock Device (BAIID), as required by Sections 6-205, 6-206 and/or 11-501 of the IVC. As provided in these Sections, a BAIID petitioner must pay a non-refundable fee of \$20 per month on an annual basis, for a total annual payment of \$240. This total annual payment must be paid in advance and prior to the issuance of any permit. Payment must be submitted in the form of a money order, check, or a credit card charge (with a pre-approved card), made payable to the Secretary of State. ~~This fee must be paid by all petitioners for the issuance of restricted driving permits at any hearing conducted on or after 9 November 2001. The payment of the fee also applies to any petitioner who was issued a BAIID permit prior to 9 November 2001 and whose driving record requires that he/she install an interlock device according to the definition set forth in P.A. 92-418 (see Sections 6-205(c) and (d) and 6-206(c)3 of the IVC), and who petitions for a hearing to renew his/her restricted driving permits on or after 9 November 2001. Anyone driving on a BAIID permit on 9 November 2001 and whose driving record does not require that he/she operate a vehicle with a BAIID according to the definition set forth in P.A. 92-418, must nonetheless drive with the BAIID until the expiration of his/her permits (without payment of the above-referenced fee). Thereafter, such a petitioner is entitled to renew the~~

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~~restricted driving permits without the installation of the interlock device.~~

- 2) A BAID petitioner who is renewing restricted driving permits and who also is eligible for the full reinstatement of driving privileges less than 12 months from the date of the expiration of the current restricted driving permits at the time he/she renews the permits, shall not be required to make an annual payment. If the petitioner has been scheduled for a formal hearing on a petition for reinstatement at the time of renewal, then petitioner shall pay the above-referenced fee in an amount equal to the number of months between the date of renewal and date of the hearing, plus an additional 3 months (not to exceed 12 months), times \$20. If the petitioner does not have a formal hearing on a petition for reinstatement scheduled at the time of renewal, then the fee shall be paid for 9 months. If, however, the petitioner is denied full reinstatement, then the petitioner must resume payment on an annual basis.
- b) Notification of BAID Requirements. The Secretary shall notify any BAID petitioner who requests a hearing of the procedures for obtaining a BAID and the BAID requirements. Notification may be accomplished in one of the following ways, though not limited thereto: informal hearing officer; phone contact; written notification, or by electronic mail.
- c) Type of Hearing Required. All hearings involving a BAID petitioner seeking driving relief shall be formal hearings. Any extension or modification of an RDP issued under this Section may be done at an informal hearing. Any hearing involving a BAID petitioner shall be conducted as any other hearing under this Part and all other applicable standards shall apply.
- d) Petitioner Must Meet Requirements of Subpart D. The Secretary shall issue an RDP to a BAID petitioner if, through the hearing process, the petitioner is determined to meet all of the requirements of this Subpart D and installs and utilizes a device in all motor vehicles operated by the BAID petitioner and, where applicable, all motor vehicles owned by the BAID petitioner as required by the RDP issued under this Subpart D. BAIDs shall not be installed on and BAID permittees shall not operate motorcycles or motor driven cycles.
- e) Hearing Officer's Responsibilities; Petitioner's Responsibilities. Prior to the taking of evidence at the hearing:

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- 1) The hearing officer shall make sure that the BAIID petitioner understands: all of the provisions and requirements of receiving a BAIID permit; that to obtain an RDP the BAIID petitioner must minimally meet all of the requirements of Section 1001.440 of this Subpart D and install and utilize the device; that a BAIID petitioner's agreement to install a BAIID or willingness to comply with the BAIID requirements does not guarantee issuance of an RDP; and that all costs associated with the device are the responsibility of the BAIID petitioner; and
 - 2) The BAIID petitioner shall advise the hearing officer that he/she understands all of the provisions and conditions of the BAIID requirements and whether he/she agrees to comply with the BAIID requirements. If the BAIID petitioner is unwilling to use the device, or comply with this Section, he/she shall be advised that restricted driving permits cannot be granted.
- f) Decision. After the hearing, the hearing officer shall consider the evidence and the relief requested and make a recommendation as in any other hearing under this Part.
- 1) If the hearing officer does not determine that the relief requested should be granted, an order denying relief shall be prepared.
 - 2) If the hearing officer determines that an RDP should be granted, an order granting a RDP shall be prepared with the additional requirement that the RDP is conditioned upon the installation and continued use of the device. All RDPs issued under this Section shall require continued use of the device until the driving privileges of the petitioner are reinstated.
- g) Installation of BAIID. Upon the issuance of an RDP under this Section, the Secretary shall send a list of certified BAIID providers to the BAIID permittee. In addition to the other requirements under this Part, the BAIID Permittee may operate the vehicle for 14 days from the issuance of the RDP without the device installed only for the purpose of taking the vehicle to a BAIID provider or installer for installation of the device. The installer or BAIID provider must notify the Secretary that a device has been installed in the vehicles designated by the BAIID permittee within 7 days from the date of the installation of the device. Proof of installation shall be by such means as determined by the Secretary from the installer or BAIID provider. Failure to comply with these requirements will

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result in the denial of driving relief and the cancellation of any RDP issued.

- h) Petitioner's Responsibilities – Driving with BAIID. Any BAIID petitioner receiving an RDP under this Section must comply with the following requirements:
- 1) Operate only vehicles with an installed, operating device authorized by the Secretary whether the vehicle is owned, rented, leased, loaned, or otherwise in the possession of the BAIID permittee as required by the RDP issued under this Section.
 - 2) Take the vehicle with the device installed to the BAIID provider or installer or send the appropriate portion of the device to the BAIID provider or installer within the first 30 days for an initial monitor report to help the BAIID permittee learn how to correctly use the device, and thereafter not longer than every 60 days for the purposes of calibration and having a monitor report of the device's activity prepared and sent to the Secretary by the BAIID provider or installer.
 - 3) Take the vehicle with the device installed to the BAIID provider or installer or send the appropriate portion of the device to the BAIID provider or installer as instructed for a monitor report within 5 working days after any service or inspection notification.
 - 4) Maintain a journal of events surrounding unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, or any problems with the device. If BAIIDs have been installed on multiple vehicles pursuant to Section 1001.443, a separate journal must be kept for each vehicle, recording unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, or any problems with the device, and recording the name of the driver operating the vehicle at the time of the event.
 - 5) May not have an interlock device removed or deinstalled from his or her vehicle without first notifying the Secretary and surrendering to the Secretary or his designee the permittee's restricted driving permit.
- i) Review of Monitor Reports; Sanctions for Failure to Comply. Upon receipt or nonreceipt of the monitor reports, the Secretary shall review them and take the

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following action. The failure of the BAIID permittee to comply with the requirements of this Subpart D will be made part of his/her record of performance to be considered at future formal hearings.

- 1) For any BAIID permittee whose monitor reports show 10 or more unsuccessful attempts to start the vehicle, or a failure to successfully complete a running retest, during the initial monitor period, send a warning letter to the BAIID permittee indicating that future unsuccessful attempts to start the vehicle or failure to successfully complete a running retest will result in the Secretary sending a letter to the BAIID permittee asking for an explanation of the unsuccessful attempts to start the vehicle or the failure to successfully complete a running retest;
- 2) For any BAIID permittee whose monitor reports show 10 or more unsuccessful attempts to start the vehicle after the initial monitor report period, send the BAIID permittee a letter asking for an explanation of the unsuccessful attempts to start the vehicle. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of his/her record of performance;
- 3) For any BAIID permittee whose monitor reports show a failure to successfully complete a running retest, after the initial monitor report period, send the BAIID permittee a letter asking for an explanation of the failure to successfully complete a running retest. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonable assure the Secretary, the failure to comply will be made part of his/her record of performance;
- 4) For any BAIID permittee whose monitor reports show a BrAC reading of 0.05 or more or a pattern of BrAC readings consistent with the use of alcoholic beverages, regardless of any other provision contained in this Section, there shall arise a rebuttable presumption that the BAIID permittee consumed alcoholic beverages. The presumption may result in the cancellation of the RDP if the BAIID permittee is required to abstain

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from alcohol/drugs (whose alcohol/drug use was classified at High Risk-Dependent). In every case, the Secretary shall send a letter asking for an explanation of the BrAC reading or the pattern of BrAC readings consistent with the use of alcoholic beverages. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that the BAIID permittee did not consume alcoholic beverages, no further action will be taken. If a response from a BAIID permittee whose alcohol/drug use was classified at High Risk-Dependent is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of his/her record of performance and the Secretary shall cancel the RDP and authorize the immediate removal/deinstallation of any BAIID. If a response from a BAIID permittee whose alcohol/drug use was classified at something other than High Risk-Dependent is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of his/her record of performance;

- 5) For any BAIID permittee who was arrested/stopped by the police for an alcohol/drug related offense, failed a running retest, or failed to take a running retest, if the police officer's report indicates the use of alcoholic beverages and/or drugs, the Secretary shall send the BAIID permittee a letter asking for an explanation of the incident. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of his/her record of performance;
- 6) For any BAIID permittee whose initial monitor or monitor reports show any tampering with or unauthorized circumvention of the device or physical inspection by an installer shows any tampering with or unauthorized circumvention of the device, the Secretary shall send the BAIID permittee a letter asking for an explanation of the tampering or unauthorized circumvention. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, then the Secretary shall immediately cancel the RDP and authorize the immediate removal/deinstallation of the device.

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- j) Immediate Cancellation of BAIID Permit. Any one of the following shall also be grounds for immediate cancellation of an RDP issued under this Section:
- 1) Any law enforcement report showing operation of a vehicle by a BAIID permittee without a device as required by the RDP issued under this Section. The law enforcement officer shall, at the time of the stop, confiscate the RDP and send it, or a copy of it, along with the report, to the Secretary;
 - 2) Notification from a BAIID provider or installer on a removal/deinstallation report form stating that the device installed in a BAIID permittee's vehicle has been removed and/or is no longer being utilized by the permittee, as required by subsection (d), including a removal or deinstallation caused by the BAIID permittee's failure to pay lease or rental fees due to the BAIID provider, unless the permittee has notified the Secretary that he or she is no longer utilizing the device and surrendered the BAIID permit to the Secretary as required in subsection (h). This notification shall be sent to the Secretary no more than 7 days after the removal/deinstallation;
 - 3) Failure to submit a BAIID for monitoring in a timely manner. Unless notified by a BAIID provider pursuant to subsection (j)(2), all monitor reports shall be submitted to the Secretary within 67 days after the previous monitor report. If the Secretary fails to receive a BAIID permittee's monitor reports in the 67 days, then the Secretary will conduct an informal inquiry (will attempt to contact the BAIID provider and permittee by telephone or e-mail) for the purpose of determining the cause for this failure. If it is determined or if it appears that the BAIID permittee failed to take in a vehicle with the device for timely monitor reports or failed to send the appropriate portion of the device, utilizing a traceable package delivery service, to the BAIID provider or installer for timely monitor reports, then the Secretary will send a letter to the BAIID permittee stating that if the device is not taken in for a monitor report within 10 days after the date of the letter, then any permits issued to the BAIID permittee will be cancelled;
 - 4) Any law enforcement report involving a DUI arrest or other law enforcement report indicating use of alcohol in violation of Subpart D. |

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- 5) The Secretary reserves the discretion to cancel a BAIID permittee's driving privileges if monitor reports, which are processed after a hearing is conducted or after the reinstatement of driving privileges, show a violation of the terms and conditions of the BAIID permit.
- k) Hearing to Contest Cancellation of BAIID Permit. Any BAIID permittee whose RDP is cancelled as provided for in this Section may request a hearing to contest the cancellation within 60 days from the effective date of the cancellation. Such a hearing will be scheduled and held on an expedited basis. The hearing will be conducted as any other formal hearing under this Part. Any BAIID permittee whose RDP is cancelled under the provisions of this Section and who is required to abstain from alcohol/drugs (whose alcohol/drug use was classified at High Risk-Dependent) and who admits to consuming alcoholic beverages may not request a hearing to contest the cancellation.
- l) No Hearing for 12 Months After Cancellation. Any BAIID permittee whose RDP is cancelled for any reason as provided for in this Section shall not be granted another hearing for any type of driving relief for one year from the date of the cancellation, except to contest the cancellation as provided in subsection (k). This provision does not apply to BAIID permittees who: voluntarily have surrendered their RDPs; have not committed any offense or act that would be grounds for the cancellation of their RDPs; or are able to demonstrate that he/she was not the perpetrator of the offense or conduct that otherwise would be grounds for the cancellation of his/her RDPs.
- m) Formal Order – Content. Any formal order entered that grants the issuance of an RDP as provided for in this Section shall, in addition to all other requirements, clearly indicate the following:
- 1) That the RDP is issued conditioned upon BAIID installation and proper usage of the BAIID by the permittee; and
 - 2) That the BAIID permittee is aware of all conditions and terms of BAIID installation and proper usage of the BAIID, and he or she accepts those conditions and terms as conditions precedent to the issuance of the RDP.
- n) RDPs – Content. Any RDPs issued as provided for in this Section shall, in addition to all other requirements, clearly indicate:

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- 1) That the RDP is issued pursuant to the BAIID requirements of this Section, and that a vehicle operated by a BAIID permittee must be equipped with an installed, properly operating device;
 - 2) That the provisions of the RDP also allow the BAIID permittee to drive to and from the BAIID provider or installer for the purposes of installing the device within 14 days after the issuance of the RDP, or obtaining monitor reports, and any necessary servicing.
- o) Use of Monitor Reports. The Secretary shall gather all monitor reports and any other information relative to the permittee's performance and compliance with the BAIID requirements under this Subpart D. Such reports may be used as evidence at any administrative hearing conducted by the Secretary under this Part.
- p) Modification or Waiver of BAIID. The Secretary may make a medical or physical BAIID modification or waiver for RDPs issued under this Section.
- q) Employment Exemption from BAIID Requirements. In determining whether a BAIID permittee is exempt from the BAIID requirements pursuant to the waiver provided for in Sections 6-205 and 6-206 of the IVC, the following shall apply:
- 1) The term "employer" shall not include an entity owned or controlled in whole or in part by the permittee or any member of the permittee's immediate family, unless the entity is a corporation and the permittee and the permittee's immediate family own a total of less than 5% of the outstanding shares of stock in the corporation. Immediate family shall include spouse, children, children's spouses, parents, spouse's parents, siblings, siblings' spouses and spouse's siblings;
 - 2) The exemption shall not apply where the employer's vehicle is assigned exclusively to the BAIID permittee and used solely for commuting to and from employment.
- r) Decertification of BAIID Providers and BAIID Device. The Secretary must notify the BAIID permittee of the decertification of a BAIID provider or the decertification of a particular type of BAIID. The BAIID permittee must then select a new BAIID provider or type of BAIID from the list of approved BAIID providers maintained by the Secretary. The BAIID permittee must inform the

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Secretary of that selection within 7 days after the receipt of notification from the Secretary. The BAIID permittee must complete registration with a new BAIID provider and/or installation of a new BAIID within 21 days after the receipt of the notification from the Secretary. Failure to complete these steps within the 21-day period may result in cancellation of the BAIID permittee's RDP. All costs related to any change in BAIID provider or BAIID shall be paid by the BAIID permittee.

- s) Reciprocity with Other States. The Secretary will honor the BAIID requirements imposed by other states on Illinois drivers and drivers licensed in other states, for offenses committed in other states, and will reciprocate other states' recognition of BAIID requirements imposed by Illinois on drivers licensed in Illinois, or licensed in other states for offenses committed in Illinois.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.443 Breath Alcohol Ignition Interlock Device Multiple Offender - Compliance with Interlock Program

- a) Ownership Defined. For the purposes of this Section, a person "owns" a vehicle when it is registered in his or her name, regardless of whether it is registered solely in his or her name or jointly with another person or persons.
- b) ~~Certification of~~ Installation Required
- 1) Anyone who is required to install an interlock device on all vehicles which he or she owns, pursuant to §§ Sections 6-205(h) and 11-501(i) of the IVC, and who is granted any driving relief pursuant to Subpart D of this Part, shall ~~have certify to the Secretary, in the manner stated in subsection (c), that he or she has installed~~ an interlock device installed on all vehicles he or she owns within 14 days after the issuance of driving relief. The offender must maintain an interlock device on each vehicle for a period of 365 consecutive days~~12 consecutive months~~.
 - 2) For purposes of subsection (b)(1), the period of 365 consecutive days~~12 consecutive months~~ begins on the date ~~the petitioner certifies~~ that an interlock device ~~is has been~~ installed on all vehicles he or she owns and ends 365 days~~12 months~~ later. This shall be known as the "base period". The base period remains the same regardless of whether the petitioner

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adds or replaces vehicles during the 365 consecutive days~~12 consecutive months~~.

~~e)~~ Manner of Certification—Affidavit Required

- ~~1) A BAIID multiple offender shall certify compliance with the interlock program by filing an affidavit with the Secretary which states that the offender installed an interlock device on all vehicles he or she owns and which lists, by make, model, and registration plate number, each and every vehicle that the offender owns, the name and address of the installer, the date installed, and any other information deemed necessary by the Secretary. The offender must submit one certification listing all of the vehicles that he or she owns on a form provided by the Secretary. This certification must be submitted within 7 days after the date of the final installation. The failure to submit this certification within the time allowed will result in the immediate cancellation of the driving relief issued.~~
- ~~2) The offender must submit another, complete affidavit whenever he or she buys another vehicle, sells a vehicle listed on the affidavit, or changes the installer. This new certification must be submitted within 7 days after the date that one of these transactions is finalized. The failure to submit this certification within the time allowed will result in the immediate cancellation of the driving relief issued.~~

cd) Verification of Compliance. The Secretary shall verify compliance by conducting periodic ~~random~~ checks of the vehicle registration records of information contained in the affidavits filed by BAIID multiple offenders, and by monitoring compliance with the terms and conditions of the interlock requirements as provided in Section 1001.441.

- 1) If the Secretary finds evidence of non-compliance with the installation affidavit requirements by a BAIID multiple offender, then the Secretary will send the offender a letter asking for an explanation for the alleged violation. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will result in the immediate cancellation of the driving

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relief issued. The cancellation ~~will not be terminated~~~~shall continue~~ until the offender ~~comes into compliance~~~~submits the proper affidavit~~. BAIID multiple offenders whose driving privileges are cancelled due to violation of the ~~installation affidavit~~ requirements will be required to ~~come into~~~~certify installation of another BAIID and~~ compliance ~~and maintain compliance with the affidavit requirements of this Section~~ for another 365 consecutive days~~12 consecutive months from the date that their compliance is re-certified~~.

- 2) If the Secretary finds evidence of non-compliance with the installation requirements by a BAIID multiple offender who is also a BAIID permittee as defined in Section 1001.410 and who, therefore, is issued a restricted driving permit, then the Secretary will send the offender a letter asking for an explanation for the alleged violation. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred or the violation has been rectified, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will result in the immediate cancellation of the driving relief issued. Pursuant to Section 1001.441(g) and (l), the BAIID permittee will not be granted another hearing for one year from the date of the cancellation, except to contest the cancellation.
- 32) If the Secretary finds evidence of non-compliance with the terms and conditions of the interlock requirements by a BAIID multiple offender whose driving privileges have been reinstated, then the offender's driving privileges will be cancelled for a term of 3 months on the first violation, 6 months on the second violation, and 12 months on the third and subsequent violations. At the end of the period of cancellation, the offender will be required to ~~come into and maintain~~~~certify installation of another BAIID and~~ compliance ~~with the affidavit requirements of this Section~~ for another 365 consecutive days~~12 consecutive months from the date that his/her compliance is re-certified~~;
- 43) The Secretary reserves the discretion to cancel a BAIID multiple offender's driving privileges if monitor reports, processed after a hearing is conducted or after the reinstatement of the BAIID multiple offender's driving privileges, show a violation of the terms and conditions of the interlock requirements. The offender may contest a cancellation entered

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~~pursuant to this Section by filing a petition for a formal hearing pursuant to §2-118 of the Code.~~

- d) The offender may contest a cancellation entered pursuant to this Section by filing a petition for a formal hearing pursuant to Section 2-118 of the Code.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.450 New Hearings

- a) Relief Denied. If a petitioner is denied relief after a formal hearing conducted pursuant to Subpart A, either for cause (including the failure to satisfy the requirements to obtain a restricted driving permit within the time allowed) or upon default, another formal hearing will not be ~~held granted to that petitioner~~ regarding the same relief requested at the last hearing until at least ~~90~~20 calendar days have elapsed since the date of the hearing. Furthermore, a request for another formal hearing will not be accepted for 30 days from the date of the last hearing. A petitioner who is denied relief after a formal hearing must wait 30 calendar days before presenting himself or herself for an informal hearing on a petition for the same relief requested at the formal hearing.
- b) Decision Pending. The Department will not accept a request for a hearing from a petitioner or a party requesting a hearing to contest an action taken by a department of the Secretary of State while a decision is pending on a hearing regarding the same issue or issues.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

SUBPART F: ZERO TOLERANCE SUSPENSION OF DRIVING PRIVILEGES;
PERSONS UNDER THE AGE OF 21 YEARS; IMPLIED CONSENT
HEARINGS; RESTRICTED DRIVING PERMITS

Section 1001.600 Applicability

The hearings referred to in this Subpart F are conducted pursuant to Section 2-118 of the Illinois Vehicle Code, the authority granted to the Secretary of State in Section 11-501.8(e) of the Code, and this Part. This Subpart applies to any hearing conducted pursuant to Section 11-501.8 of the Illinois Vehicle Code, hereinafter referred to as the Code (625 ILCS 5/11-501.8).

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(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.670 Petitions for Restricted Driving Permits

- a) **Investigative Evaluation Required.** Petitioners who apply for a restricted driving permit pursuant to Section 11-501.8(e) of the Code must submit to an investigative alcohol/drug evaluation, as defined in Section ~~1001.410~~~~1001.400 of Subpart D~~ of this Part, as part of the Secretary's investigative process, when the evidence ~~shows~~~~indicates~~ that:
- 1) the petitioner, on any occasion, submitted to ~~the requested~~ or preliminary breath test and registered an alcohol concentration between 0.04 and 0.08; or
 - 2) the petitioner may be a user of alcohol or any other drug to a degree which renders him/her incapable of safely driving a motor vehicle (see Section 6-103.4 of the Code).
- b) **Uniform Report Required.** Petitioners who apply for a restricted driving permit pursuant to of Section 11-501.8(e) of the Code must submit to an alcohol/drug evaluation uniform report, as defined in Section ~~1001.410~~~~1001.400 of Subpart D~~ of this Part, as part of the Secretary's investigative process, when the evidence ~~shows~~~~indicates~~ that:
- 1) the petitioner, on any occasion, submitted to ~~the requested~~ or preliminary breath test and registered an alcohol concentration of 0.08 or more; or
 - 2) the petitioner's driving record reflects a DUI disposition, as defined in Section 1001.400 ~~of Subpart D~~ of this Part.
- c) **Rehabilitative Activity Required; Waiver.** The petitioner is required to complete any recommended and/or required rehabilitative activity ~~that~~~~which~~ pertains to the evaluation's classification of his/her use/abuse of alcohol/drugs or provide a written waiver thereof, prior to the issuance of any restricted driving permit.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

Section 1001.680 Form and Location of Hearings

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- a) Formal Hearing Required to Contest Suspension. The implied consent hearings conducted pursuant to Section 11-501.8 of the Code (to contest the suspension) shall be conducted as formal hearings pursuant to Subpart A of this Part.
- 1) A request for an implied consent hearing conducted pursuant to Section 11-501.8 must be sent to one of the following four (4) locations:
 - A) Office of the Secretary of State, Dept. of Administrative Hearings, 17 North State Street, Suite 1200, Chicago, Illinois 60602, 312/793-3722.
 - B) Office of the Secretary of State, Dept. of Administrative Hearings, 54 North Ottawa Street~~605 Maple Road, 1st Floor~~, Joliet, Illinois 60432, 815/740-7171.
 - C) Office of the Secretary of State, Dept. of Administrative Hearings, Michael J. Howlett Bldg., Rm. 207, Springfield, Illinois 62756, 217/524-0124.
 - D) Office of the Secretary of State, Dept. of Administrative Hearings, 218 South 12th Street, Mount Vernon, Illinois 62864, 618/242-8986.
 - 2) The request must be in writing, preferably on a form supplied by the Secretary. In any event, it must contain, at a minimum, the petitioner's name, address, driver's license number, which of the above four locations would be preferred by the petitioner, and specify which issues the petitioner will raise at the hearing.
 - 3) The hearing shall be held at a location designated by the Department. The factors that will be considered are, but not limited to: the venue of the citation issued; the location preferred by the petitioner; the location of the witnesses, including the police officer who issued the citation which led to the request to submit to the chemical test and the police officer who administered the test; the availability of a hearing location.
- b) Petitions for Restricted Driving Permits. The hearings on petitions for restricted driving permits conducted pursuant to Section 11-501.8 of the Code may be

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENTS

conducted as formal hearings, pursuant to Subpart A of this Part, or as informal hearings, pursuant to Subpart C of this Part, according to the preference of the petitioner.

- 1) Petitioners are encouraged, however, to begin the hearing process with an informal hearing.
 - 2) If the petitioner requests a formal hearing to obtain a restricted driving permit, said formal hearing shall be held at one of the four locations set forth in subsection (a)(1) of this Section as designated by the petitioner.
 - 3) Such a hearing may only be held within ~~forty-five (45)~~ days after the date that the Secretary may issue a permit as provided in Section 6-208.2 of the Code.
 - 4) Every petitioner is required to bring a copy of his/her sworn report evidencing the suspension to any informal hearing.
- c) Hearings Conducted Separately. The implied consent hearings will be conducted separately from the hearings for restricted driving permits.

(Source: Amended at 31 Ill. Reg. 6185, effective May 1, 2007)

STATE UNIVERSITIES RETIREMENT SYSTEM

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Universities Retirement
- 2) Code Citation: 80 Ill. Adm. Code 1600
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1600.150	Amendment
1600.151	Amendment
1600.152	Repealed
1600.153	Amendment
1600.154	Amendment
1600.155	Amendment
1600.156	Amendment
1600.158	Amendment
1600.159	Amendment
1600.161	Amendment
1600.163	Amendment
- 4) Date Notice of Proposed Amendments Published in the Illinois Register: 30 Ill. Reg. 17284; November 3, 2006
- 5) Reason for withdrawal: Before entering into Second Notice, the System would like to re-submit first notice to allow the public to view substantial changes made.

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

- 1) Heading of the Part: Procedures and Standards
- 2) Code Citation: 92 Ill. Adm. Code 1001
- 3)

<u>Section Numbers:</u>	<u>Action:</u>
1001.220(j)(2)	Modification
1001.410	Modification
- 4) Date Notice of Proposed Rules Published in the Illinois Register: August 18, 2006; 30 Ill. Reg. 13757
- 5) Date JCAR Statement of Objection Published in the Illinois Register: January 26, 2007; 31 Ill. Reg. 2032
- 6) Summary of Action Taken by the Agency: The SOS Department of Administrative Hearings was notified of the Committee's Objection in a letter dated January 9, 2007. Enclosed was the "Statement of Objection", which specifies that the Department used "a style of statutory citation that differs from that normally used in the *Illinois Administrative Code*, thereby creating unnecessary confusion for the public".

In Section 1001.220(j)(2), the Department of Administrative Hearings will modify its rulemaking in compliance with the request of the Joint Committee on Administrative Rules, as follows:

Change ", at 5 ILCS 140/1.1, et seq." to "[5 ILCS 140]".

In Section 1001.410, the Department of Administrative Hearings will modify this Section to meet the Objection of the Committee, as follows:

In the definition of "Alcohol/drug-related criminal record", change ", 720 ILCS 550/1 et seq.," to "[720 ILCS 550]" and change ", 720 ILCS 570/100 et seq.," to "[720 ILCS 570]".

In the definition of "BUI", the Department of Administrative Hearings will use the following citation: "[625 ILCS 45/5-1 through 5-21.]".

In the definition of "SUI", the Department of Administrative Hearings will use the following citation: "[625 ILCS 40/5-1 through 5-7.6.]".

The Department of Administrative Hearings filed a Notice of Adoption of this rulemaking for this issue of the *Illinois Register*.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF AGENCY RESPONSE TO THE RECOMMENDATION
OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Procedures for Operation of the Non-Hazardous Solid Waste Fee System
- 2) Code Citation: 35 Ill Adm. Code 858
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
858.101	Agreement with JCAR
858.102	Agreement with JCAR
858.103	Agreement with JCAR
858.107	Agreement with JCAR
858.201	Agreement with JCAR
858.207	Agreement with JCAR
858.208	Agreement with JCAR
858.301	Agreement with JCAR
858.308	Agreement with JCAR
858.309	Agreement with JCAR
858.310	Agreement with JCAR
858.401	Agreement with JCAR
858.402	Agreement with JCAR
- 4) Date Originally Published in the Illinois Register: September 15, 2006; 30 Ill. Reg. 14700
- 5) JCAR Statement of Recommendation Published in the Illinois Register: December 29, 2006; 30 Ill. Reg. 19736
- 6) Summary of Action Taken by the Agency: On December 12, 2006, the Joint Committee on Administrative Rules considered the above-cited rulemaking and issued a Recommendation that that the Agency be more timely in updating its rules to reflect statutory changes. The Agency agreed with the Recommendation and will strive to be more timely in updating its rules to reflect statutory changes.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of April 3, 2007 through April 9, 2007 and have been scheduled for review by the Committee at its May 15, 2007 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
5/16/07	<u>Department of Public Health</u> , Illinois Home Health Agency Code (77 Ill. Adm. Code 245)	1/19/07 31 Ill. Reg. 1804	5/15/07
5/17/07	<u>Department of Commerce and Economic Opportunity</u> , Economic Development for a Growing Economy Program (EDGE) (14 Ill. Adm. Code 527)	2/9/07 31 Ill. Reg. 2535	5/15/07
5/17/07	<u>Department of Transportation</u> , Minimum Safety Standards for Construction of Type II School Buses (92 Ill. Adm. Code 442)	2/16/07 31 Ill. Reg. 2932	5/15/07
5/20/07	<u>Department of Human Services</u> , Temporary Assistance for Needy Families (89 Ill. Adm. Code 112)	1/5/07 31 Ill. Reg. 3	5/15/07

ILLINOIS ADMINISTRATIVE CODE Issue Index - With Effective Dates

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