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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2016

Issue#	Rules Due Date	Date of Issue
1	December 21, 2015	January 4, 2016
2	December 28, 2015	January 8, 2016
3	January 4, 2016	January 15, 2016
4	January 11, 2016	January 22, 2016
5	January 19, 2016	January 29, 2016
6	January 25, 2016	February 5, 2016
7	February 1, 2016	February 16, 2016
8	February 8, 2016	February 19, 2016
9	February 16, 2016	February 26, 2016
10	February 22, 2016	March 4, 2016
11	February 29, 2016	March 11, 2016
12	March 7, 2016	March 18, 2016
13	March 14, 2016	March 25, 2016
14	March 21, 2016	April 1, 2016
15	March 28, 2016	April 8, 2016
16	April 4, 2016	April 15, 2016
17	April 11, 2016	April 22, 2016
18	April 18, 2016	April 29, 2016
19	April 25, 2016	May 6, 2016
20	May 2, 2016	May 13, 2016
21	May 9, 2016	May 20, 2016

22	May 16, 2016	May 27, 2016
23	May 23, 2016	June 3, 2016
24	May 31, 2016	June 10, 2016
25	June 6, 2016	June 17, 2016
26	June 13, 2016	June 24, 2016
27	June 20, 2016	July 1, 2016
28	June 27, 2016	July 8, 2016
29	July 5, 2016	July 15, 2016
30	July 11, 2016	July 22, 2016
31	July 18, 2016	July 29, 2016
32	July 25, 2016	August 5, 2016
33	August 1, 2016	August 12, 2016
34	August 8, 2016	August 19, 2016
35	August 15, 2016	August 26, 2016
36	August 22, 2016	September 2, 2016
37	August 29, 2016	September 9, 2016
38	September 6, 2016	September 16, 2016
39	September 12, 2016	September 23, 2016
40	September 19, 2016	September 30, 2016
41	September 26, 2016	October 7, 2016
42	October 3, 2016	October 14, 2016
43	October 11, 2016	October 21, 2016
44	October 17, 2016	October 28, 2016
45	October 24, 2016	November 4, 2016
46	October 31, 2016	November 14, 2016
47	November 7, 2016	November 18, 2016
48	November 14, 2016	November 28, 2016
49	November 21, 2016	December 2, 2016
50	November 28, 2016	December 9, 2016
51	December 5, 2016	December 16, 2016
52	December 12, 2016	December 27, 2016
53	December 19, 2016	December 30, 2016

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Developmental Disabilities Services
- 2) Code Citation: 89 Ill. Adm. Code 144
- 3) Section Number: 144.102 Proposed Action:
Amendment
- 4) Statutory Authority: Implementing Section 18.2 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/18.2] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5]
- 5) A Complete Description of the Subjects and Issues involved: 89 Ill. Adm. Code 144.102 provides qualifying criteria and methodology for rates for developmentally disabled clients that have high medical/high personal care needs. The proposed rulemaking eliminates language that disqualifies dually licensed facilities from qualifying for the enhanced rate for providing care to developmentally disabled clients that have high medical/high personal care needs. The proposed rulemaking provides parity to the Department's ICF/DD high medical/high personal needs provider community.
- 6) Published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking? None
- 7) Will this rulemaking replace an emergency rule currently in effect? Yes, see page 7855 in this issue.
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: 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: Interested persons may present their comments concerning these rules

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

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

217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Intermediate Care Facilities (ICFDD) that provide care to people with high medical needs
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because it was not anticipated by the Department when those agendas were published.

The full text of the Proposed Amendment is identical to that of the Emergency Amendment for this rulemaking and begins in this issue of the *Illinois Register* on page 7855:

OFFICE OF THE TREASURER

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procurement
- 2) Code Citation: 44 Ill. Adm. Code 1400
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1400.510	Amendment
1400.520	Amendment
1400.530	Amendment
1400.1005	Amendment
1400.1505	Amendment
1400.1515	Amendment
1400.2005	Amendment
1400.2010	Amendment
1400.2015	Amendment
1400.2020	Amendment
1400.2025	Amendment
1400.2030	Amendment
1400.2035	Amendment
1400.2040	Amendment
1400.2045	Amendment
1400.2505	Amendment
1400.2510	Amendment
1400.2515	Amendment
1400.2520	Amendment
1400.3005	Amendment
1400.3510	Amendment
1400.3520	Amendment
1400.3525	Amendment
1400.4005	Amendment
1400.4010	Amendment
1400.4015	Amendment
1400.4020	Amendment
1400.4510	Amendment
1400.4515	Amendment
1400.4520	Amendment
1400.4525	Amendment
1400.4526	New Section
1400.4530	Amendment
1400.4535	Repealed

OFFICE OF THE TREASURER

NOTICE OF PROPOSED AMENDMENTS

1400.4540	Amendment
1400.4545	Amendment
1400.4550	Amendment
1400.4555	Amendment
1400.4560	Amendment
1400.4565	Amendment
1400.5005	Amendment
1400.5030	Amendment
1400.5040	Amendment
1400.5045	Amendment
1400.5055	Amendment
1400.5060	Amendment
1400.6010	Repealed
1400.6035	Amendment

- 4) Statutory Authority: 30 ILCS 500/1-30 and 30 ILCS 525/1-6
- 5) A Complete Description of the Subjects and Issues Involved: These changes to the Treasurer's Procurement Rules are intended to update procedures and requirements to more closely align with changes in the Illinois Procurement Code, changes in technology, and similar rules used by other Constitutional Officers. Changes bring this Part into compliance with the Illinois Freedom of Information Act (FOIA). The small purchase limit is adjusted and linked to the Chief Procurement Officer for General Services limit. Additionally, the rulemaking provides that the Treasurer's office may enter into joint purchasing agreements pursuant to the Governmental Joint Purchasing Act.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

G. Allen Mayer
Deputy Legal Counsel
Illinois State Treasurer
219 State House
Springfield IL 62706

217/557-2673
Fax: 217/785-2777
email: AMayer@illinoistreasurer.gov

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The proposed amendments include an update to Section 1400.4560 Small Businesses to bring the criteria to be considered for a small business set aside in line with the definition of small business used in Section 45-45 of the Illinois Procurement Code. Thus, the Illinois State Treasurer's Office has determined that the proposed amendments do not have an adverse economic impact on small business.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on the most recent Regulatory Agenda because the need for the rulemaking was not known when the most recent Regulatory Agenda was prepared.

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

OFFICE OF THE TREASURER

NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, GRANTMAKING,
PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XXI: TREASURER

PART 1400
PROCUREMENT

SUBPART A: GENERAL

Section	Title
1400.505	Title
1400.510	Policy
1400.515	Applicability
1400.520	Definition of Terms
1400.525	Property Rights
1400.530	Governmental Joint Purchasing Act Department of Central Management Services

SUBPART B: PROCUREMENT AUTHORITY

Section	Title
1400.1005	Chief Procurement Officer
1400.1010	Purchasing Officer
1400.1015	Small Business Specialist

SUBPART C: PUBLICATION, SOLICITATION AND DOCUMENTATION

Section	Title
1400.1505	Publication
1400.1510	Solicitation
1400.1515	Documentation

SUBPART D: PROCUREMENT METHODS

Section	Title
1400.2005	Competitive Sealed Bidding
1400.2010	Multi-Step Sealed Bidding
1400.2015	Competitive Sealed Proposals
1400.2020	Small Purchases

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NOTICE OF PROPOSED AMENDMENTS

1400.2025	Sole Source Procurements
1400.2030	Emergency Procurements
1400.2035	Procurement of Professional and Artistic Services
1400.2040	Procurement of Real Property Leases
1400.2045	Other Methods of Source Selection

SUBPART E: GENERAL PROCUREMENT GUIDELINES

Section

1400.2505	General Provisions
1400.2510	Tie Bids and Proposals
1400.2515	Correction or Withdrawal of Proposals
1400.2520	Cancellation of Solicitations and Rejection of Offers

SUBPART F: SPECIFICATIONS AND SECURITY REQUIREMENTS

Section

1400.3005	Specifications
1400.3010	Security Requirements

SUBPART G: CONTRACTS

Section

1400.3505	Types of Contracts
1400.3510	Duration of Contracts
1400.3515	Contract Pricing
1400.3520	Contract Provisions
1400.3525	Prevailing Wage Requirements

SUBPART H: DISPUTES, PROTESTS AND CONTROVERSIES

Section

1400.4005	Disputes and Protests Regarding Solicitations and Awards
1400.4010	Contract Controversies
1400.4015	Remedies
1400.4020	Suspension

SUBPART I: PREFERENCES

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NOTICE OF PROPOSED AMENDMENTS

Section

1400.4505	Procurement Preferences
1400.4510	Resident Vendor Preference
1400.4515	Soybean Oil-based Ink
1400.4520	Recycled Supplies <u>Materials</u>
1400.4525	Recycled Paper
<u>1400.4526</u>	<u>Environmentally Preferable Procurement</u>
1400.4530	Correctional Industries
1400.4535	Sheltered Workshops for the Disabled (<u>Repealed</u>)
1400.4540	<u>Vehicles</u> Gas Mileage
1400.4545	Illinois Agricultural Products
1400.4550	Corn-based Plastics
1400.4555	Vehicles Powered by Agricultural Commodity-based Fuel
1400.4560	Small Businesses
1400.4565	Preferences for Veterans, Minorities, Females, and Persons with Disabilities

SUBPART J: ETHICS

Section

1400.5005	Purpose
1400.5010	Bribery
1400.5015	Felons
1400.5020	Conflicts of Interest
1400.5025	Negotiations for Future Employment
1400.5030	Revolving Door
1400.5035	Disclosure of Financial Interests and Potential Conflicts of Interest
1401.5040	Reporting Anticompetitive Practices
1400.5045	Confidentiality
1400.5050	Insider Information
1400.5055	Additional Provisions
1400.5060	Other Violations
1400.5065	Supply Inventory

SUBPART K: CONCESSIONS

Section

1400.5505	Concessions
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SUBPART L: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

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NOTICE OF PROPOSED AMENDMENTS

Section

1400.6005	Severability
1400.6010	Government Furnished Property (Repealed)
1400.6015	Inspections
1400.6020	No Waiver of Sovereign Immunity
1400.6025	Postage Stamps
1400.6030	Printing
1400.6035	Annual Reports

AUTHORITY: Implementing and authorized by Section 1-30 of the Illinois Procurement Code [30 ILCS 525/1-30].

SOURCE: Adopted by emergency rule at 22 Ill. Reg. 13169, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 15644, effective August 24, 1998; amended by emergency rule at 24 Ill. Reg. 358, effective January 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 8393, effective May 30, 2000; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1400.510 Policy

All procurements by the Treasurer's office will be accomplished in ~~at the most~~ competitive, expeditious, economical and commercially reasonable manner ~~that is in~~ accordance with law, this Part, and other applicable rules.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.520 Definition of Terms

Each term listed in this Section has the meaning below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in those Sections.

"Award" – The determination that a particular vendor has been selected from among other potential vendors to enter into negotiations for the purpose of finalizing a contract.

"Bid" – A response to an Invitation for Bids.

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"Bidder" – The person or entity submitting a bid.

"Brand Name or Equal Specification" – A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet Treasurer's office requirements, and that allows the submission of equivalent products.

"Brand Name Specification" – A specification limited to one or more items by manufacturer's names or catalogue numbers.

"Chief Legal Counsel" – An attorney for the Treasurer's office who reports directly to the Chief of Staff and is primarily responsible for the legal functioning of the Treasurer's office.

"Chief of Staff" – The Chief of Staff for the Treasurer's office.

"Chief Procurement Officer" – The employee of the Treasurer's office who is appointed by the Treasurer to be primarily responsible for the procurement of all goods and services by the Treasurer's office.

"Contract" – *All types of State agreements, regardless of what they may be called:*

for the procurement, use or disposal of supplies, services, professional or artistic services, or construction; or for leases of real property when the State is the lessee; or for capital improvements; and

including renewals, master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. [30 ILCS 500/1-15.30]

The term contract, as used in this Part, does not include supplies or services for which the governing terms are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission and for which there is no authorized competition. Any agreement or lease that requires the payment of State funds by the Treasurer's office in exchange for goods or services.

"Contractor" or "Vendor" – The terms contractor and vendor are used

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interchangeably for purposes of this Part. When appropriate, the term "vendor" shall also include subcontractors.

"Day" – Calendar day as opposed to business day. In computing any period of time, the day of the event from which the designated period of time begins to run is not included, but the last day of the period is included unless it is a Saturday, Sunday, or a State holiday, in which event the period runs to the end of the next business day.

"Deputy Treasurer" – An individual with the title Deputy Treasurer, appointed by the Treasurer, who reports directly to the Treasurer.

"Invitation for Bids" or "IFB" – A document prepared and distributed by the Treasurer's office soliciting bids for the provision of goods or services to the Treasurer's office.

"Offer" – A bid, proposal, or response solicited by the Treasurer's office.

"Offeror" – The person or entity submitting a bid, proposal or response solicited by the Treasurer's office.

"Procurement Review Board" – A board composed of the Chief of Staff, the Chief Legal Counsel, and the Deputy Treasurer~~Inspector General~~ for the Treasurer's office.

"Professional and Artistic Services" – Those services provided under contract to the Treasurer's office by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability. [30 ILCS 500/1-15.60]

"Proposal" – A response to a Request for Proposals.

"Proposer" – The person or entity submitting a proposal.

"Purchasing Officer" – One or more employees of the Treasurer's office that serve at the direction of the Chief Procurement Officer and are responsible for coordinating the procurement activity of the Treasurer's office.

"Request for Information" or "RFI" – The process of requesting information from

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NOTICE OF PROPOSED AMENDMENTS

~~interested parties to aid the Treasurer in decisionmaking. This type of RFI is not a procurement method and will not result in a participant receiving a contract. A document prepared and distributed by the Treasurer's office soliciting lease information for real property.~~

"Request for Information for Real Property" or "RFI-Real Property Leases" – The process of seeking proposals for leases of real property or capital improvements.

"Request for Proposals" or "RFP" – The process by which the Treasurer's office requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals~~A document prepared and distributed by the Treasurer's office soliciting proposals~~ for the provision of goods or services to the Treasurer's office.

"Respondent" – The person or entity submitting a response to a Request for Information from the Treasurer's office.

"Response" – A response to a Request for Information.

"Responsible Bidder, Proposer or Respondent" – A person or entity that is capable in all respects of performing fully the contract requirements and has the integrity and reliability that will assure good faith performance.

"Responsive Bidder" – A person or entity that has submitted a bid conforming in all material respects to an Invitation for Bids or Request for Proposal.

"Small Business Specialist" – An employee of the Treasurer's office who is responsible for assisting small businesses in submitting offers to the Treasurer's office for the provision of goods and services.

"Solicitation" – An Invitation for Bids, Request for Proposals or Request for Information.

"Solicitation Date" – The date that bids or proposals are solicited for the provision of goods or services to the Treasurer's office by communicating the solicitation orally, depositing the solicitation in the U.S. Mail or posting the solicitation electronically, whichever occurs first.

"Specification" – Any description of the physical, functional or performance

OFFICE OF THE TREASURER

NOTICE OF PROPOSED AMENDMENTS

characteristics or of the nature of a supply, a service, or construction items. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, a service, or construction item for delivery.

"Treasurer's Web Site" – The ~~website~~~~World Wide Web site~~ of the Office of the Illinois State Treasurer ~~at www.illinoistreasurer.gov or successor-at www.state.il.us/treas.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.530 Governmental Joint Purchasing Act~~Department of Central Management Services~~

- a) The Treasurer's office may, without soliciting independent bids, proposals, or responses, procure goods and services from vendors selected by the Department of Central Management Services (CMS) or another governmental unit in accordance with a competitive selection process established pursuant to by CMS under the Governmental Joint Purchasing Act~~Illinois Procurement Code~~ [30 ILCS 525].
- b) The Treasurer's office may enter into agreements to make joint purchases pursuant to the Governmental Joint Purchasing Act and may act as a lead state or a participant state. The purchases of all personal property, supplies and services under the Governmental Joint Purchasing Act shall be based on competitive, sealed bids. All purchases, orders or contracts shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles or services supplied, their conformity with the specifications, their suitability to the requirements of the participating governmental units and the delivery terms. [30 ILCS 525/4]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: PROCUREMENT AUTHORITY

Section 1400.1005 Chief Procurement Officer

The Chief Procurement Officer shall ~~ensure~~~~insure~~ that all procurements of the Treasurer's office are in accordance with this Part and in the best interest of the State. The Chief Procurement Officer is responsible for the activities of the Purchasing Officers and the Small Business

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Specialist who serve under his or her direction and supervision.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART C: PUBLICATION, SOLICITATION AND DOCUMENTATION

Section 1400.1505 Publication

- a) **Electronic Publication**

Every solicitation for bids, proposals, [requests for information](#), or responses required under this Part must be published on the Treasurer's Web Site at least 14 calendar days before the date set in the solicitation for the opening of the bids, proposals, or responses. Every notice of intention to enter into a sole source contract must be published on the Treasurer's Web Site at least 14 calendar days before the award of the contract. ~~Notices of the exercise of an option to renew a lease must be published on the Treasurer's Web Site at least 60 days prior to the exercise of the option.~~ All other documents required to be published under this Part must be published on the Treasurer's Web Site as soon as practicable and no later than 30 days from the date on which the document was produced. There is no fee assessed for access to the page of the Treasurer's Web Site containing procurement information.
- b) **Paper Publication**

All documents published on the Treasurer's Web Site ~~may~~**must** be ~~printed~~**published** in a paper format and made available upon request as of the date that it is published electronically. The Treasurer's office may charge a minimal fee that does not exceed the costs of postage and copying. The fee for postage and copying will not exceed the limits established by the Treasurer's Office ~~pursuant to the~~ Freedom of Information Act, [5 ILCS 140/1 et seq.](#) ~~requests at 2 Ill. Adm. Code 651.~~ The paper publication will be available for inspection free of charge at locations in Springfield and Chicago [by appointment](#).
- c) **Content of Publications**
 - 1) **Solicitations.** Every solicitation must include the following:
 - A) the date of the solicitation;
 - B) the specifications;

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- C) a procurement reference number if used;
 - D) the date, time, and location of any bidders' conferences;
 - E) the date, time, and location for making submissions, to the extent known at the time of solicitation;
 - F) method of source selection;
 - G) name of the Chief Procurement Officer and the Treasurer; and
 - H) instructions on how to obtain additional information.
- 2) Notices of Contract Awarded. Every notice of contract awarded must contain the following information:
- A) the name of the vendor selected for the award;
 - B) a brief description of what the vendor will do or provide;
 - C) the contract amount, which may be an amount not-to-exceed, along with the applicable rate and unit of measurement of the goods, supplies or services ~~price~~;
 - D) the number of unsuccessful vendors;
 - E) the date the solicitation was first published;
 - F) the date, time and location for making submissions that led to the contract award;
 - G) name of the Chief Procurement Officer and the Treasurer; and
 - H) instructions on how to obtain additional information.
- 3) Notices of Cancellation or Rejection. The notices of cancellation of a solicitation or rejection of offers must:

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NOTICE OF PROPOSED AMENDMENTS

- A) identify the solicitation;
 - B) briefly explain the reason for the cancellation or rejection; and
 - C) ~~when~~where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar goods or services.
- 4) Other Publications. All other publications required by this Part must contain any and all information that is required by this Part.
- 5) Publicizing Award
Successful bidders shall be notified of award and that notification may be in the form of a letter, purchase order or other clear communication. Notice of award shall be issued by either paper or electronic means to all offerors submitting responses to the solicitation.
- 6) Retention of Publication Information
Information published on the Treasurer's Web Site may be removed from the Treasurer's Web Site after a period of one year after first publication, provided that a copy of that information is maintained in the appropriate procurement file.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.1515 Documentation

- a) Minutes
Minutes of all meetings of the Procurement Review Board ~~and bidders'~~
~~conferences~~ will be created and made available for inspection and copying.
- b) Procurement File
All official procurement records, notices, contracts, written determinations, minutes, forms, and any other documents required under this Part must be made part of the procurement file maintained by the Chief Procurement Officer. The procurement file must be open to inspection and copying under conditions established by the Chief Procurement Officer.
- c) Contract Filing

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Filing of contracts with the Office of the Comptroller must be done in accordance with the rules promulgated by the Comptroller's office.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: PROCUREMENT METHODS

Section 1400.2005 Competitive Sealed Bidding

- a) Application
Competitive sealed bidding is the required method of source selection except as allowed by this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.
- b) The Invitation for Bids
 - 1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.
 - 2) Content. The Invitation for Bids must include, at a minimum, the following:
 - A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the Treasurer's office, and any other special information;
 - B) the specification, evaluation factors, delivery or performance schedule, and any inspection and acceptance requirements as are not included in the specification; and
 - C) the contract terms and conditions, including warranty, collateralization, bonding or other security requirements, as applicable.
 - 3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference if the Invitation for Bids specifies where the documents can be obtained.

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- 4) Publication and Documentation of the Invitation for Bids. The Invitation for Bids must be published as provided in Section 1400.1505 and made a part of the procurement file.
- c) Optional Bid Requirements
- 1) Bid Form. The Invitation for Bids may provide a form which includes a space in which the bid price may be inserted and which the bidder must sign and submit along with all other necessary submissions.
 - 2) Bid Samples and Descriptive Literature.
 - A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
 - B) Unsolicited bid samples or descriptive literature submitted at the bidder's risk may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the Treasurer's office.
- d) Prequalification
- 1) The Chief Procurement Officer may require that vendors be prequalified as a condition of being placed on the bid list. Any bid lists developed will be updated by June 30 of each year. Vendors will be given an opportunity to prequalify prior to each update of the list. The opportunity to prequalify and whether prequalification will be a condition of being awarded a contract must be published as provided in Section 1400.1505.
 - 2) The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
 - 3) Distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified.

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- e) **Bidders' Conferences**
Bidders' conferences may be conducted to enhance understanding of the procurement requirements. The conferences must be announced to all prospective bidders known to have received an Invitation for Bids. The conference may be designated as attendance mandatory or attendance optional. The conference must be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. ~~Only the written minutes of the conference are binding.~~ Nothing stated in the bidders' conference changes the Invitation for Bids unless a change is made by written amendment to the Invitation for Bids. ~~Minutes of the conference will be supplied upon request.~~
- f) **Amendments to Invitations for Bids**
- 1) **Form.** Amendments to Invitations for Bids must be identified and must require that the bidder acknowledge receipt of all amendments issued. The amendment must reference the portions of the Invitation for Bids it amends.
 - 2) **Distribution.** Amendments must be sent to all prospective bidders known to have received an Invitation for Bids.
 - 3) **Timeliness.** Amendments must be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If necessary, the Chief Procurement Officer may extend the response time in writing, or by ~~e-mail~~ faesimile or telephone and confirmed in writing.
- g) **Pre-Opening, Modification or Withdrawal of Bids**
- 1) **Procedure.** Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. ~~An e-mail~~ A faesimile modification or withdrawal, or withdrawal received by telephone prior to the time and date set for bid opening, will be effective if followed in writing.
 - 2) **Disposition of Bid Security.** If a bid is withdrawn in accordance with this Section, the bid security, if any, will be returned to the bidder.
 - 3) **Records.** All documents relating to the modification or withdrawal of bids

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must be made a part of the procurement file.

h) Receipt, Opening and Recording of Bids

- 1) Receipt. Upon its receipt, each bid and modification must be time-stamped but not opened and must be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file must so state.
- 2) Opening and Recording.
 - A) Bids and modifications must be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and any other information that the Chief Procurement Officer deems appropriate must be recorded.
 - B) The winning bid must be available for public inspection after award, along with the record of the other bids.
- 3) ~~Confidential Data. The Chief Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or other information, the bid must be rejected as nonresponsive.~~

i) Bid Evaluation and Award

- 1) General. The contract is to be awarded to the lowest bid by a responsible and responsive bidder, unless otherwise permitted in this subsection (i). No bid may be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.
- 2) Determination of Bidder as Responsible and Responsive. The Chief Procurement Officer ~~or Purchasing Officer~~ shall reach the determination of whether each bidder is responsible and responsive. The determination must be conducted to determine whether each bid is acceptable and appropriate for further evaluation and not for the purpose of determining whether one bidder's product or service capability is superior to another.

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If any bidder is determined to be nonresponsive and/or not responsible,
thatThe determination shall be reduced to~~in~~ writing and made part of the procurement file.

- 3) Product Quality or Service Capability. The Chief Procurement Officer ~~or Purchasing Officer~~ shall also evaluate and make a notation of any differences in the product quality or service capability among the responsible and responsive bidders before reaching the determination of the lowest bidder.
 - 4) Determination of Lowest Responsible and Responsive Bidder. Bids must be evaluated to determine which responsible and responsive bidder offers the lowest cost to the State in accordance with the evaluation criteria in the Invitation for Bids. Only objectively measurable criteria in the Invitation for Bids may be applied in determining the lowest bidder.
 - 5) Award. The Chief Procurement Officer ~~or Purchasing Officer~~ shall award the contract to the lowest responsible and responsive bidder, unless the differences in product quality or service capability suggest that the selection of another bid is in the best interest of the State.
 - 6) Price Negotiation. The Chief Procurement Officer or designee~~Purchasing Officer~~ may negotiate with the low bidder to obtain a lower price for the item bid.
- j) Notification, Publication and Documentation of Award
Following the award, a notice of contract must be provided to the successful bidder, published as provided in Section 1400.1505, and made a part of the procurement file. The notice of contract awarded must indicate if a bidder other than the lowest responsible and responsive bidder was selected and the basis for the selection.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2010 Multi-Step Sealed Bidding

When it is considered impracticable to initially prepare a definitive purchase description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under

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the criteria set forth in the first solicitation.

- a) **Description**
~~Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced offers to be evaluated by the Treasurer's office, and a second phase in which those bidders whose unpriced offers are determined to be acceptable during the first phase have their price bids considered.~~

- b) **Applicability of Requirements**
~~Except for the variations described in this Section, all the requirements for competitive sealed bidding in Section 1400.2005 apply to multi-step sealed bidding.~~

- e) **Conditions for Use**
~~The multi-step sealed bidding method may be used when it is considered impracticable by the Chief Procurement Officer or Purchasing Officer to initially prepare a specification to support an award based on price.~~

- d) **Procedure for Phase One of Multi-Step Sealed Bidding**
 - 1) ~~Form. Multi-step sealed bidding must be initiated by the issuance of an Invitation for Bids in the form required for competitive sealed bidding by Section 1400.2005 with the addition of the following information:~~
 - A) ~~that unpriced offers are requested;~~
 - B) ~~whether priced bids are to be submitted at the same time as unpriced offers in a separate sealed envelope;~~
 - C) ~~that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced offers are found acceptable in the first phase;~~
 - D) ~~the criteria to be used in the evaluation of the unpriced offers;~~
 - E) ~~that the Treasurer's office, to the extent the Chief Procurement Officer or Purchasing Officer finds necessary, may conduct oral or~~

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~~written discussions of the unpriced offers; and~~

- ~~F) that the item being procured must be furnished generally in accordance with the bidder's unpriced offer as found to be finally acceptable and must meet the requirements of the Invitation for Bids.~~
- 2) ~~Amendments to the Invitation for Bids. After receipt of unpriced offers, amendments to the Invitation for Bids will be distributed only to bidders who submitted unpriced offers, and they will be permitted to submit new unpriced offers or to amend those submitted. The Invitation for Bids may be cancelled in accordance with Section 1400.2520 and a new Invitation for Bids issued if, in the opinion of the Chief Procurement Officer, a contemplated amendment will significantly change the nature of the procurement.~~
- 3) ~~Receipt and Handling of Unpriced Offers. Unpriced offers submitted by bidders must be opened in the presence of at least one witness. The offers must not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.~~
- 4) ~~Evaluation of Unpriced Offers. The unpriced offers submitted by bidders must be evaluated solely in accordance with the criteria in the Invitation for Bids. The unpriced offers must be initially categorized as:~~
- ~~A) acceptable;~~
- ~~B) potentially acceptable; or~~
- ~~C) unacceptable, in which case the Chief Procurement Officer or Purchasing Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.~~
- 5) ~~Discussion of Unpriced Offers. The Chief Procurement Officer must initiate discussion with the vendors of the unpriced offers unless, in the Chief Procurement Officer's opinion, there are sufficient acceptable unpriced offers to assure effective price competition in the second phase without discussions, in which case he or she may initiate phase two of the~~

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~~procedure. The Chief Procurement Officer, or his or her designee, may conduct discussions with any vendor who submits an unpriced offer that is initially categorized as acceptable or potentially acceptable. During the course of the discussions the Chief Procurement Officer, or his or her designee, must not disclose any information derived from an unpriced offer to any other bidder. The Chief Procurement Officer may permit any bidder to submit supplemental information amending its offer.~~

- ~~6) Acceptability of Potentially Acceptable Unpriced Offer. Prior to phase two, the Chief Procurement Officer or Purchasing Officer shall determine whether the unpriced offers which were initially categorized as potentially acceptable are acceptable or unacceptable.~~
- e) ~~Procedure for Phase Two of Multi-Step Sealed Bidding~~
 - ~~1) Unless priced bids were submitted at the same time as the unpriced offers, phase two will be conducted by distributing an Invitation for Bids to those bidders whose unpriced offers were ultimately determined to be acceptable during the first phase, requesting priced bids in accordance with the initial or a revised specification.~~
 - ~~2) If priced bids were submitted at the same time as unpriced offers, the priced bids from the acceptable bidders will be opened in phase two.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2015 Competitive Sealed Proposals

- a) ~~Supplies and services may be procured through the competitive sealed proposal method of source selection, on a case-by-case basis, when it is determined by the Chief Procurement Officer that competitive sealed bidding is either not practicable or advantageous. Competitive sealed proposals may be used whenever permitted by this Part or when the Chief Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.~~
- b) The types of procurements for which the competitive sealed proposals method of source selection may be used without a ~~written~~ determination of the Chief Procurement Officer include the following:

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- 1) electronic data processing equipment, software, and services;
 - 2) telecommunications equipment, software, and services;
 - 3) consulting services; and
 - 4) banking services; ~~and~~
 - 5) ~~legal services.~~
- c) Generally, the Chief Procurement Officer should determine ~~in writing~~ that competitive sealed bidding is either not practicable or advantageous to the State, and enter into a contract by competitive sealed proposals where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration.
- 1) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits an award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the specification, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids.
 - 2) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding.
- d) Prequalification
The Chief Procurement Officer may require that vendors are prequalified in the manner described in Section 1400.2005 for competitive sealed bidding.
- e) Request for Proposals
- 1) Solicitation. Proposals must be solicited through a Request for Proposals

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~~that~~which must be prepared in accordance with the requirements for an Invitation for Bids for competitive sealed bidding in Section 1400.2005 and contain the following ~~additional~~ information:

- A) A requirement that proposals are submitted in two parts. The first part should cover all items except price and the second part should cover price.
 - B) A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably capable of being selected for award, but that proposals may be accepted without a discussion.
 - C) A statement of when and how price should be submitted.
- 2) Publication and Documentation of the Request for Proposals. The Request for Proposals must be published as provided in Section 1400.1505 and made part of the procurement file.
- f) Receipt, Opening and Recording of Proposals
~~The date and time of receipt of proposals~~Proposals and modifications must be ~~recorded~~~~time stamped~~ upon receipt, but the proposal and modifications must not be opened and shall be held in a secure place until the established due date. Proposals must be opened publicly in the presence of at least one witness at the time and place designated in the Request for Proposals, but proposals must be opened in a manner to avoid disclosure of their contents to competing offerors. A record of proposals must be prepared and must be open for inspection after contract is awarded. The ~~record~~register of proposals must include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The ~~record~~register of proposals must be made part of the procurement file and be open to public inspection after award of the contract. ~~Proposals and modifications may be shown only to personnel having a legitimate interest in them.~~
- g) Evaluation of Proposals
- 1) Evaluation Factors in the Request for Proposals. The ~~RFP~~Request for Proposals must state all of the evaluation factors, including price, ~~and their relative importance.~~ All evaluation factors stated will be considered

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equally unless otherwise indicated in the RFP.

- 2) Evaluation. The evaluation must be based on the evaluation factors in the RFP Request for Proposals. Factors not specified in the RFP Request for Proposals must not be considered. Numerical rating systems may be used but are not required. The first part of all proposals covering items other than price must be evaluated and ranked independently of the second part of all proposals.
 - 3) ~~Classifying Proposals. For the purpose of conducting discussions, proposals must be initially classified as:~~
 - A) ~~acceptable;~~
 - B) ~~potentially acceptable; or~~
 - C) ~~unacceptable, in which case the Chief Procurement Officer or Purchasing Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.~~
- h) Proposal Discussions with Individual Offerors
- 1) Offerors ~~may that are classified as acceptable or potentially acceptable~~ ~~must~~ be given a fair and equal opportunity to discuss their proposals.
 - 2) Purposes of Discussions. Discussions are held to:
 - A) promote understanding of the Treasurer's office requirements and the offerors' proposals; and
 - B) facilitate arriving at a contract that is most advantageous to the State taking into consideration price and the other evaluation factors in the Request for Proposals.
 - 3) Clarification of the Request for Proposals. If during discussions there is a need for any substantial clarification of, or change in, the Request for Proposals, the Request for Proposals must be amended to incorporate the clarification or change. Any substantial oral clarification of a proposal must be reduced to writing by the offeror.

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- 4) Best and Final Offers. The Chief Procurement Officer may request best and final offers with a common date and time for submission of the offers. The Chief Procurement Officer, or his or her designee, may conduct additional discussions or change the Treasurer's office requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.
 - 5) Disclosure of Information. In conducting discussions there must be no disclosure of any information derived from proposals submitted by competing offerors. Any other information that is disclosed to any offeror must be provided to all competing offerors.
- i) Award
- 1) Determination. The award must be made by the Chief Procurement Officer ~~or Purchasing Officer~~ in accordance with a written determination showing the basis on which the award was found to be the most advantageous to the State, based on the Request for Proposals.
 - 2) Notification, Publication and Documentation of the Award. The successful offeror will be promptly notified of the award. The notification of the award and the written determination must be published as provided in Section 1400.1505 and made part of the procurement file.
 - 3) Unsuccessful offerors may be allowed a debriefing when determined by the Chief Procurement Officer to be in the best interests of the State.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2020 Small Purchases

- a) Application
- Any individual procurement of supplies or services that does not exceed \$80,000~~25,000~~ ~~or any individual procurement of professional or artistic services for a nonrenewable term of less than one year that does not exceed \$20,000~~, may, at the discretion of the Chief Procurement Officer, be made without notice,

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competition, publication, or use of any prescribed method of source selection. Each July 1 the small purchase maximum shall be subject to the annual cost of living increases set forth in subsection (b). Procurements of less than \$30,000 for professional and artistic services, and that have a nonrenewable term of one year or less, may, at the discretion of the Chief Procurement Officer, be made without advance notice, competition or use of any prescribed method of source selection.

b) Adjustment

~~The small purchase maximums may be adjusted~~Each July 1, the small purchase maximum established in subsection (a) will be adjusted for inflation as determined by the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor and rounded to the nearest \$100. for inflation as determined by the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor and rounded to the nearest \$100. In determining the annual small purchase maximums, the CPO may rely upon a published adjustment of the small purchase limits announced by the Chief Procurement Office for General Services pursuant to the procedure found at 44 Ill. Adm. Code 1.2020.

- c) In determining whether a contract is under the limit, the value of the contract for the full term and any optional renewals, as well as the stated value of the goods or services plus any optional goods and services, determined in good faith, must be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount must be calculated for a ~~12~~twelve-month period.
- d) Procurement requirements must not be artificially divided to avoid using one of the other source selection methods described in this Part.
- e) If, after signing the contract, the actual need is determined to be more than the limits provided in this Section, and the Chief Procurement Officer determines that procurement is not appropriate, the Chief Procurement Officer may follow the procedures for sole source or emergency procurement, if applicable, to obtain the additional supplies or services.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2025 Sole Source Procurements

- a) Application

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The provisions of this Section apply to procurement from a sole economically feasible source (referred to as sole source) that is above the limit for small purchases in Section 1400.2020 and does not qualify as an emergency procurement as defined in Section 1400.2030.

- b) **Conditions for Use of Sole Source Procurement**
Sole source procurement is permissible when a good or service is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item by itself does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole or sole economically feasible source procurement:
- 1) compatibility of equipment, accessories, replacement parts or service is a paramount consideration;
 - 2) items are needed for trial use or testing of that specific product or service;
 - 3) item is for commercial resale;
 - 4) noncompetitive public utility services;
 - 5) item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
 - 6) media for advertising;
 - 7) art, entertainment services or athletic events;
 - 8) radio and television broadcast rights;
 - 9) procurements related to training for continuing professional education, professional memberships and related expenses. These procurements may include, but are not limited to, dues and membership fees, travel and lodging, and facility usage fees;
 - 10) federal or State grant requires contract with named vendor;
 - 11) items required by franchise agreements; and

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12) changes to existing contracts (see subsection (c)).

- c) Changes to existing contracts germane to the original contract ~~that, which~~ are necessary or desirable to complete the project, and ~~that which~~ can be best accomplished by the contract holder, may be procured under this provision.
- d) The determination as to whether a procurement may be made as a sole source must be made by the Chief Procurement Officer in writing and must include an explanation of why no other source would be suitable or acceptable. The determination must be made part of the procurement file. ~~The Chief Procurement Officer shall also specify the application of the determination and the duration of its effectiveness.~~
- e) The Chief Procurement Officer shall, having defined a sole economically feasible source, issue a notice of intent to utilize the sole source method of procurement that sets forth a description of the item to be procured and the intended sole source contractor. A notice containing the following information must be published as provided in Section 1400.1505:
- 1) name of the Chief Procurement Officer ~~or Purchasing Officer~~, who made the determination to utilize~~performed~~ the sole source procurement;
 - 2) name of the vendor;
 - 3) brief description of what the vendor will do or provide;
 - 4) contract price (to the extent known); and
 - 5) reason why the vendor was determined to be the sole economically feasible source.
- f) If there is no challenge to the Chief Procurement Officer's determination or if the Chief Procurement Officer is convinced that the sole source designation is appropriate after considering the challenge, ~~at the~~ contract may will be executed with the selected sole source vendor on the scheduled date. If a challenge is received that convinces the Chief Procurement Officer that the sole source designation is not appropriate, the Chief Procurement Officer ~~or Purchasing Officer~~ shall commence a competitive method of procurement unless an

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emergency situation exists.

- g) **Negotiation in Sole Source Procurement**
The Chief Procurement Officer ~~or Purchasing Officer~~ shall conduct negotiations, as appropriate, in an effort to obtain the most favorable price, delivery and other terms and conditions available for the State.
- h) **Maintenance of Record**
The Chief Procurement Officer ~~or Purchasing Officer~~ shall maintain a record of sole source procurements in the procurement file showing:
- 1) the vendor's name;
 - 2) the amount and type of the contract; and
 - 3) a listing of the goods or services procured under each contract.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2030 Emergency Procurements

- a) **Applications**
The provisions of this Section apply to every procurement over the small purchase limit set in Section 1400.2020 that the Chief Procurement Officer determines is necessary under the following circumstances:
- 1) public health or safety, including if the health or safety of any particular person, is threatened;
 - 2) repairs are needed to State property to protect against further loss or damage to State property, or to prevent loss or damage to State property;
 - 3) action is needed to prevent or minimize serious disruption in the operation of the Treasurer's office;
 - 4) action is needed to ensure the integrity of State records;
 - 5) a supplier of needed goods or services makes an announcement that gives the Chief Procurement Officer reason to determine that making a purchase

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immediately is in the State's best interest, including but not limited to an announcement of bankruptcy, going out of business, or loss of franchise;

- 6) commodity items are available on the spot at prices that are favorable enough that good business judgment mandates a purchase;
 - 7) legal services to assist the Treasurer's office in the formulation of policy, in drafting or evaluating documents, or in determining the extent of statutory authority are needed more quickly than an alternative method of procurement under this Part would allow;
 - 8) escrow agent services for general obligation bonds and procurements for escrow agent services and registrar and paying agent services for college savings bonds are needed more quickly than an alternative method of procurement under this Part would allow; or
 - 9) bids or proposals received in accordance with a competitive sealed bid or competitive sealed proposal method are unreasonable, noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals.
- b) **Scope of Emergency Conditions**
Emergency procurements must be limited to those supplies, services, or construction items necessary to meet the emergency.
- c) **Authority to Make Emergency Procurements**
The Chief Procurement Officer ~~or Purchasing Officer~~ may make emergency procurements when the need cannot be met through normal procurement methods, but, whenever practicable, existing contracts ~~should~~must be utilized ~~and, whenever practicable, approval by the Chief Procurement Officer must be obtained prior to the procurement.~~
- d) **Source Selection Methods**
Any method of source selection, whether identified in this Part or not, may be used to conduct the emergency procurement. The procedure used must be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. As much competition as is practicable must be obtained.

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- e) Filing with the Auditor General
The Chief Procurement Officer ~~or Purchasing Officer~~ shall file an affidavit with the Auditor General within 10 days after making an emergency procurement setting forth the amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement. When only an estimate of the cost is available, the estimate should be provided in the affidavit and the actual cost must be reported immediately after it is determined.
- f) Determination, Record and Publication of Emergency Procurements
- 1) Determination. The Chief Procurement Officer ~~or Purchasing Officer~~ shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor.
 - 2) Record. A record of each emergency procurement must be made as soon as practicable and must include the following information:
 - A) the vendor's name;
 - B) the amount and type of the contract (if only an estimate of the amount is available immediately, the record must be supplemented with the final amount once known);
 - C) a description of what the vendor will do or provide;
 - D) the reasons for using the emergency procurement method of source selection;
 - E) the name of the Chief Procurement Officer ~~or Purchasing Officer~~.
 - 3) The written determination and the record of the emergency procurement must be made part of the procurement file and must be published as provided in Section 1400.1505 ~~of this Part~~.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2035 Procurement of Professional and Artistic Services

- a) The provisions of this Section apply to ~~the~~every procurement of professional and

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artistic services with the exception of the following:

- 1) sole source procurements;
- 2) emergency procurements; ~~and~~
- 3) any procurement of professional and artistic services less than ~~\$30,000~~20,000 for a nonrenewable term of less than one year made as a small purchase; and that the Chief Procurement Officer determines, in a writing that contains a brief explanation and is published as provided in Section 1400.1505, should be procured as a small purchase in accordance with Section 1400.2020.
- 4) architect, engineering and land surveying services procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

b) Forms

~~The Chief Procurement Officer shall develop forms for use in the solicitation, review, and acceptance of all professional and artistic services. The following details must be included among the forms:~~

- 1) ~~a description of the goal to be achieved;~~
- 2) ~~the services to be performed;~~
- 3) ~~the need for the service;~~
- 4) ~~the qualifications that are necessary; and~~
- 5) ~~a plan for post performance review.~~

~~The forms must be published as provided in Section 1400.1505.~~

e) Contract Requirements

~~Contracts must contain at least the following information:~~

- 1) ~~the details listed in subsection (b);~~

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- 2) ~~the duration of the contract, with a schedule of services, if applicable;~~
 - 3) ~~the method for charging and measuring cost;~~
 - 4) ~~the rate of remuneration;~~
 - 5) ~~the maximum price; and~~
 - 6) ~~any provisions that are required by the Chief Legal Counsel.~~
- d) ~~Written Determinations Required Prior to Request for Proposals~~
~~Prior to announcing the need for professional or artistic services, the Chief Procurement Officer or Purchasing Officer shall make a written determination that explains the nature of the services and how the Chief Procurement Officer or Purchasing Officer reached the determination that the services are professional or artistic. The written determination must be made part of the procurement file.~~
- e) ~~Prequalification~~
~~The Chief Procurement Officer may maintain a list of prequalified professional and artistic vendors. Vendors seeking to be added to the list shall submit a statement of qualifications in the following format:~~
- 1) ~~the name of the vendor, the location of the vendor's principal place of business and any other locations that may be used to perform a contract with the Treasurer's office;~~
 - 2) ~~educational qualifications and licenses;~~
 - 3) ~~general background and experience;~~
 - 4) ~~a listing and description of government contracts, including contracts with the Treasurer's office;~~
 - 5) ~~resumes of the persons who will be responsible for performance of any contract awarded;~~
 - 6) ~~statement of compliance with all State of Illinois requirements; and~~
 - 7) ~~any additional relevant information.~~

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~~Vendors may amend statements of qualifications at any time by filing a new statement.~~

- bf) Professional and artistic services shall be procured using a Request for Proposals.
- 1) Contents. The ~~RFP~~Request for Proposals must be drafted or approved by the Chief Procurement Officer and must contain at least the following information:
 - A) the type and scope of services required;
 - B) a date by which proposals for the performance of the services must be submitted;
 - C) the type of information and data required of each offeror;
 - D) how the price should be presented;
 - E) the factors to be used in the evaluation and selection process and their relative importance (all evaluation factors stated will be considered equally unless otherwise indicated in the RFP); and
 - F) when practicable, a draft contract with a notice to the vendors that by submitting a response they are consenting to the terms and conditions of the draft agreement and agree to be bound by a final agreement that is substantially similar to the draft.
 - 2) Evaluation. Proposals must be evaluated only on the basis of evaluation factors stated in the Request for Proposals. The relative importance of the evaluation factors will vary according to the type of services being procured. Factors may include~~The minimum factors are:~~
 - A) the plan for performing the required services;
 - B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

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C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

D) a record of past performance of similar work.

3) Publication and Filing. The Request for Proposal must be published as provided in Section 1400.1505 and must be made part of the procurement file.

~~cg~~)

Bidders' Conferences

Bidders' conferences may be conducted to enhance understanding of the procurement requirements. ~~They must be announced to all prospective proposers known to have received a Request for Proposal.~~ The conference may be designated as attendance mandatory or attendance optional. The conference should be held long enough after the Request for Proposals has been issued to allow proposers to become familiar with it, but sufficiently before the opening of proposals to allow consideration of the conference results in preparing their proposals. ~~Only the written minutes of the conference are binding.~~ Nothing stated in the bidders' conference changes the Request for Proposals unless a change is made by written amendment to the Request for Proposals. ~~Minutes of the conference must be supplied upon request.~~

~~dh~~)

Amendments to Requests for Proposals

1) Form. Amendments to Requests for Proposals must be published as provided in Section 1400.1505 and must be made part of the procurement file. ~~identified and must require that the proposer acknowledge receipt of all amendments issued. The amendment must reference the portions of the Request for Proposals it amends.~~

2) Distribution. Amendments must be sent to all prospective proposers known to have received a Request for Proposal.

3) Timeliness. Amendments must be ~~published~~distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If necessary, the Chief Procurement Officer may extend the response time by amending the RFP as provided for in this subsection

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~~(d)(3) in writing, or by facsimile or telephone and confirmed in the amendment.~~

- ~~e)~~ **Receipt and Handling of Proposals**
Proposals and modifications must be sent to the Chief Procurement Officer where they must be time-stamped upon receipt, but not opened, and held in a secure place until the established due date and time, at which time they will be opened by the Chief Procurement Officer. Proposals must not be opened publicly nor disclosed to unauthorized persons and must be opened in the presence of at least one witness. A record of proposals that includes the following must be established for all proposals: the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The ~~record register~~ of proposals must be open to public inspection only after award of the contract and must be made part of the procurement file at that time. ~~To the extent permitted by the contract entered into with the vendor, the successful proposal must be available for inspection by the public; however, proposals of offerors who are not awarded the contract must not be open to public inspection.~~
- ~~j)~~ **Request for Nondisclosure of Data**
~~If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Chief Procurement Officer shall examine the request in the proposal to determine its validity prior to entering into negotiations with the offeror. If the parties do not agree as to the disclosure of data in the contract, the Chief Procurement Officer may reject the proposal.~~
- ~~fk)~~ **Discussions**
- 1) **Discussions Permissible.** The Chief Procurement Officer ~~or Purchasing Officer~~ shall evaluate all proposals submitted and may conduct discussions with any proposer. The purposes of the discussions are to:
 - A) determine in greater detail the proposer's qualifications; and
 - B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

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- 2) No Disclosure of Information. No information derived from proposals submitted by an offeror may be disclosed to any other proposer.
 - 3) Best and Final Offers. The Chief Procurement Officer may request best and final offers with a common date and time for submission of the proposals. The Chief Procurement Officer may conduct additional discussions or change the specifications or other contract requirements and require another submission of best and final proposals. If a proposer does not submit either a notice of withdrawal or another best and final offer, the proposer's immediate previous proposal will be construed as its best and final proposal.
- g) Negotiation and Award of Contract
- 1) General. The Chief Procurement Officer, in conjunction with the Chief Legal Counsel or designee, or Purchasing Officer shall negotiate a contract with the best qualified proposer, based on the evaluation factors in the request for proposals, for the required services at compensation determined in writing to be fair and reasonable.
 - 2) Successful Negotiation of Contract with Best-Qualified Proposer. If compensation, contract requirements, and contract documents can be agreed upon with the best-qualified proposer, the contract must be awarded to that proposer, unless the procurement is cancelled.
 - 3) Failure to Negotiate Contract with Best-Qualified Offeror:
 - A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified proposer, a written record stating the reasons must be made part of the procurement file and the Chief Procurement Officer ~~or Purchasing Officer~~ shall advise that proposer of the termination of negotiations.
 - B) Upon failure to negotiate a contract with the best-qualified offeror, the Chief Procurement Officer ~~or Purchasing Officer~~ may enter into negotiations with the next most qualified offeror.
 - 4) Evaluation of Pricing Data

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Pricing submitted for all acceptable proposals timely submitted shall be opened and ranked.

- 1) If the low price is submitted by the most qualified vendor, the CPO may award to that vendor.
- 2) If the price of the most qualified vendor is not low and if it does not exceed \$30,000, the CPO may award to that vendor.
- 3) If the price of the best qualified vendor exceeds \$30,000, the CPO must state why a vendor other than the low priced vendor was selected and that determination shall be published as provided in Section 1400.1505 and must be made part of the procurement file.~~Ranking by Price. For contracts with annualized value that exceeds \$25,000, evaluation and ranking by price are required. The Chief Procurement Officer may, with the Treasurer's approval, select an offeror other than the offeror with the most favorable price, if the Chief Procurement Officer explains in a written decision why another offeror was selected. A copy of the decision must be forwarded to the Chief of Staff for review. The written decision must be made part of the contract and published as provided in Section 1400.1505.~~
- 5) Notice of Award. Written notice of award must be promptly provided to the successful offeror, published as provided in Section 1400.1505 and made a part of the procurement file. The notice must provide, at a minimum, the following:
 - A) the name of the Chief Procurement Officer ~~or Purchasing Officer~~;
 - B) the successful vendor;
 - C) the type of services to be provided~~a contract reference number or other identifier~~; and
 - D) the ~~amount~~value of the contract, ~~which may be an amount not-to-exceed, along with any applicable rates.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1400.2040 Procurement of Real Property Leases

- a) **Applicability**
This Section applies to all leases for real property, including office and storage space, buildings, and other facilities for the Treasurer's office, with the exception of the following:
- 1) property of less than 10,000 square feet;
 - 2) rent of less than \$100,000 per year;
 - 3) nonrenewable leases with a duration of less than one year;
 - 4) specialized space available at only one location; ~~or~~
 - 5) ~~renewal or~~ extension of any existing lease so long as the term of the lease, including the renewal or extension, does not exceed 10 years; or in effect before July 1, 1998 if:
 - A) ~~the Chief Procurement Officer determines in writing that the renewal or extension is in the best interest of the State;~~
 - B) ~~the Chief Procurement Officer submits his or her written determination and the renewal or extension to the Procurement Review Board;~~
 - C) ~~the Procurement Review Board does not object in writing to the renewal or extension within 30 days after its submission; and~~
 - D) ~~the Chief Procurement Officer publishes the renewal or extension as provided in Section 1400.1505.~~
 - 6) leases with other governmental units when deemed by the Chief Procurement Officer to be in the best interest of the Treasurer's office.
- b) **Request for Information – Real Property Leases**
Except as otherwise provided in this Section, all contracts for leases of real property must be awarded by the following Request for Information-Real

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Property Leases process. The RFI-Real Property Leases~~Request for Information~~ must include the following:

- 1) the type of property to be leased;
 - 2) the proposed uses of the property;
 - 3) the duration of the lease;
 - 4) the preferred location of the property; and
 - 5) a general description of the configuration desired.
- c) **Publication of Notice**
Notice of the Request for Information must be published as provided in Section 1400.1505 and must also be published in a newspaper of general circulation in the community or communities where the Treasurer's office is seeking space.
- d) **Evaluation of Responses**
The evaluation must be based on price and the ability of the respondent to meet the criteria in the Request for Information.
- e) **Negotiations with Individual Offerors**
- 1) For the purpose of conducting negotiations, proposals must be initially classified as:
 - A) acceptable;
 - B) potentially acceptable; or
 - C) unacceptable, in which case the Chief Procurement Officer ~~or Purchasing Officer~~ shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.
 - 2) Negotiations will be entered into with respondents who are classified as acceptable or potentially acceptable for the purpose of securing a lease that is in the best interest of the State.

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- 3) A written determination of the acceptability of each respondent and a report of the negotiations will be retained in the procurement file and will include the reasons for the final selection.
- f) Award
- The lease will be awarded to the respondent that the Chief Procurement Officer deems to be most capable of meeting the needs of the Treasurer's office. The notice of award must be promptly provided to the successful respondent and must be published as provided in Section 1400.1505. When the lowest proposer by price is not selected, the Chief Procurement Officer shall issue a written explanation for the selection of another proposer. The written explanation must also be published as provided in Section 1400.1505.
- g) Lease Agreements
- 1) All leases must be in writing and approved by the Chief Legal Counsel.
 - 2) Length of Leases:
 - A) Term. All leases must be for a term that does not exceed 10 years and must include a termination option in favor of the Treasurer's office after five years.
 - B) Renewal. Leases may include a renewal option if the leases and any renewals do not exceed a 10-year term. ~~An option to renew may be exercised only when the Chief Procurement Officer determines in writing that renewal is in the best interest of the State and notice of the exercise of the option is published as provided in Section 1400.1505.~~
- h) Purchase Option
- Initial leases of all space in entire, free-standing buildings must include an option to purchase exercisable by the State, unless the Chief Procurement Officer determines that inclusion of a purchase option is not in the State's best interest ~~and publishes that determination as provided in Section 1400.1505.~~
- i) Rent Without Occupancy
- Except when deemed by the Procurement Review Board to be in the best interest of the State, the Treasurer's office may not incur rental obligations before

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occupying the space rented.

- j) **Local Site Preference**
The Chief Procurement Officer may, in his or her discretion, give leasing preferences to sites located in enterprise zones, tax increment financing districts or redevelopment districts.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2045 Other Methods of Source Selection

- a) **State and Federal ~~CMS~~ Warehouses**
Prior to any equipment procurement, the Treasurer's office should consider property available from the State and Federal Surplus Warehouses that are under the jurisdiction of CMS.
- b) **State Agencies and Other Governmental Units**
Various goods and services are available from State agencies and other governmental units. These may be procured without notice and competition.
- c) **Auction**
Purchases may be made at an auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable will be the amount bid and accepted plus any required buyer's premium.
- d) **Donations**
With approval of the Chief Procurement Officer, if the Treasurer's office receives a donation that provides the majority of the funding for a particular project, it may follow any procurement or contracting requirements established as a condition of the donation, but must follow this Part whenever practicable.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: GENERAL PROCUREMENT GUIDELINES

Section 1400.2505 General Provisions

- a) **Late Bids, Proposals, Responses, Withdrawals and Modifications**

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- 1) Definition. Any bid, proposal or response received after the time, date and place set for receipt is late. Any withdrawal or modification of a bid, proposal or response received after the time and date set for opening of bids, proposals or responses at the place designated for opening is late.
 - 2) Treatment. No late bid, proposal or response, modification, or withdrawal will be considered unless it is received before contract award, and the bid, proposal, response, modification, or withdrawal would have been timely but for the action or inaction of Treasurer's office personnel.
 - 3) Records. Records must be made and kept for each late bid proposal, response, modification, or withdrawal.
 - 4) Any other submission that has a time or date deadline must be treated in the same manner as a late bid, proposal or response.
- b) Extension of Time
- 1) The date or time for submitting a bid, proposal, response, modification or withdrawal may be extended by the Chief Procurement Officer prior to the opening of bids, proposals, responses, modifications or withdrawals~~date or time~~ for the convenience of the Treasurer's office.
 - 2) After opening bids, proposals, or responses the Chief Procurement Officer may request that the offerors extend the time during which the State may accept their bids, proposals, or responses if, with regard to bids, no other change is permitted. The reasons for requesting the extension must be documented.
- c) Electronic ~~and Facsimile~~-Submissions
- 1) The Invitation for Bids, Request for Proposals, or Request for Information may state that electronic ~~and facsimile~~-submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the Invitation for Bids, Request for Proposals or Request for Information.
 - 2) Electronic submissions will be opened in accordance with electronic

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security measures in effect at the time of opening. Unless the electronic submission procedures provide for a secure receipt, the vendors assume the risk of premature disclosure due to submission in unsealed form.

~~3) Facsimile submissions must be placed in a sealed container upon receipt and opened as other submissions. The vendors assume the risk of premature disclosure due to submission in unsealed form.~~

d) Intent to Submit

The Invitation for Bids, Request for Proposals, or Request for Information may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid, proposal, or response. Bids, proposals, and responses submitted without complying with the notice of intent requirement will be rejected.

e) Only One Bid, Proposal or Response Received

If only one responsive bid, proposal, or response is received, an award may be made to the single offeror if the Chief Procurement Officer finds that the proposal and price submitted is fair and reasonable, and that either other prospective offerors had a reasonable opportunity to respond or there is not adequate time for resolicitation. Otherwise:

- 1) new bids, proposals or responses may be solicited;
- 2) the procurement may be cancelled; or
- 3) if the Chief Procurement Officer determines in writing that the need for the supply or service continues, but that ~~A) after attempting to negotiate a better price, the one offer is not fair and reasonable and there is no time for resolicitation,~~ ~~B) the vendor is not responsible,~~ or ~~C) resolicitation would likely be futile,~~ the procurement may be conducted with any vendor as a sole source procurement under Section 1400.2025 or as an emergency procurement under Section 1400.2030, as appropriate.

f) Unsolicited Offers

- 1) Defined. An unsolicited offer is any offer other than one submitted in response to a solicitation.
- 2) Conditions for Consideration. An unsolicited offer must be in writing and

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must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the State.

- 3) Evaluation. The unsolicited offer will be evaluated to determine its utility to the State and whether it would be to the State's advantage to enter into a contract based on the offer. An unsolicited offer that meets the requirements of subsection (f)(2) ~~above~~ may be considered for award if the procurement also meets the requirements of Section 1400.2020 for small purchases or Section 1400.2025 for sole source procurements, in which case those procedures must be followed as applicable.
- 4) Confidentiality. Any request for confidentiality of data contained in an unsolicited offer must be made in writing. If an award is made, confidentiality of data must be agreed upon by the parties and governed by the provisions of the contract. If agreement cannot be reached on confidentiality, the Chief Procurement Officer ~~or Purchasing Officer~~ shall reject the unsolicited offer.
- g) Clarification of Bids, Proposals and Responses
The Chief Procurement Officer ~~or Purchasing Officer~~ may request that a vendor clarify its bid, proposal or response as a part of the evaluation process. A vendor is not allowed to change its bid, proposal or response in response to a request for clarification without the written approval of the Chief Procurement Officer.
- h) Extension of Time on Indefinite Quantity Contracts
The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Chief Procurement Officer determines in writing that it is not practicable to award another contract at the time of the extension.
- i) Increase in Quantity on Definite Quantity Contracts
The quantity that may be ordered from a definite quantity contract may be increased by up to 20% provided the Chief Procurement Officer ~~or Purchasing Officer~~ determines that separate procurement of the additional quantity is not likely to achieve lower pricing. The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the small purchase threshold applicable to the type of good or service.
- j) Novation or Change of Name

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- 1) Assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, but a vendor may assign monies receivable under a contract after due notice to the State. Assignment may require the execution of a contract with the assignee that meets all requirements for contracting with the State.
 - 2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:
 - A) the transferee assumes all of the transferor's obligations;
 - B) the transferee meets all requirements for contracting with the State;
 - C) the transferor waives all rights under the contract as against the State; and
 - D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.
 - 3) Change of Name. When a vendor requests to change the name in which it holds a contract with the State, the Chief Procurement Officer shall, upon receipt of a document indicating the change of name, enter into an agreement with the requesting vendor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are changed.
- k) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate shall not exceed that established by law.
- l) [Information Exempt from Disclosure under FOIA](#)
- 1) [Vendors must clearly identify in writing any information submitted to the Treasurer's office claimed to be exempt from the disclosure requirement of](#)

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the Illinois Freedom of Information Act (FOIA) [5 ILCS 140] and must identify the basis of the claimed exemption and show how that basis applies to the request for exemption. Information submitted without a claim of exemption may be disclosed to the public without notice or permission. Information submitted with a claimed exemption may still be disclosed to the public if determined by the Treasurer's office, or other appropriate party, that the claimed exemption does not meet the requirements for withholding the information under FOIA. The Treasurer's office will attempt to provide to the vendor reasonable notice and opportunity to object prior to disclosure of any material claimed by the vendor to be exempt from FOIA.

- 2) The CPO may request that bidders, offerors and other respondents provide an additional copy of their bid, offer or response that omits or redacts information claimed to be exempt under FOIA. This copy may be used to respond to FOIA requests for a copy of the respective bid, offer or response.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2510 Tie Bids and Proposals

- a) Tie bids and proposals are those from responsive and responsible vendors that are identical in price or terms of the proposal.
- b) Tie bids and proposals are treated as follows:
 - 1) If the tied vendors include an Illinois resident vendor and a ~~nonresident~~~~non-resident~~ vendor, the Illinois resident vendor should be given the award. "Illinois resident vendor" has the meaning given in Section 1400.4510. In all other situations, the decision is made in accordance with subsections (b)(2) through (b)(5).
 - 2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award is made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State may be given additional consideration in determining responsibility if the Chief Procurement Officer ~~or Purchasing Officer~~ determines that dealing with a

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vendor that has knowledge of State requirements, contracts, job sites, payment practices and other similar factors, and with which there has been favorable past experience, increases the likelihood of successful performance.

- 3) If there is no significant difference in responsibility, but there is a difference in the quality of the goods or services offered, the vendor offering the best quality is accepted.
 - 4) If there is no significant difference in responsibility and no difference in quality of the goods or services offered, the vendor offering the earliest delivery time is accepted in any case in which the solicitation specified that the needs of the Treasurer's office require as early delivery as possible.
 - 5) If the bids or proposals are equal in every respect, the award is made by lot unless the Chief Procurement Officer determines that splitting the award among two or more of the tied bidders or proposers is in the best interest of the State. Awards may be split if all affected bidders or proposers agree, if splitting is feasible given the type of good or service requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.
- c) Record
- 1) Records must be made of all procurements on which tie bids or proposals are received and must be published as provided in Section 1400.1505, showing at least the following information:
 - A+) the identification number of the solicitation;
 - B2) the good or service; and
 - C3) a listing of all the bidders or proposers and the prices submitted.
 - 24) The records must be made part of the procurement file.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1400.2515 Correction or Withdrawal of Proposals

- a) **General**

Corrections to bids, proposals or responses are allowed, but only to the extent correction is not prejudicial to the interest of the State or fair competition as determined by the Chief Procurement Officer ~~or Purchasing Officer~~. Withdrawals of proposals are allowed as provided in this Section.
- b) **Mistakes Discovered Before Opening**

A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.
- c) **Confirmation of Mistake**

When the Chief Procurement Officer ~~or Purchasing Officer~~ knows or has reason to conclude that a mistake has been made, the officer should request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake in the bid, proposal or response, it may be corrected or withdrawn if the conditions in this Section, as applicable, are met.
- d) **Mistakes Discovered After Opening but Before Award**
 - 1) **Minor Mistakes.** A minor mistake is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid, proposal or response from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State. The Chief Procurement Officer ~~or Purchasing Officer~~ shall waive minor mistakes or allow the offeror to correct them depending on which is in the best interest of the State. Minor mistakes include insignificant mistakes where the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples of minor mistakes as to form include the failure of an offeror to:
 - A) return the number of signed bids, proposals, or responses required by the solicitation;
 - B) sign the bid, proposal or response, but only if the unsigned bid, proposal or response is accompanied by other material indicating

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the offeror's intent to be bound, including but not limited to signature on an auxiliary form, submission of a guarantee or submission of a signed transmittal letter; or

- C) acknowledge receipt of an amendment to the solicitation, but only if:
 - i) it is clear from the bid, proposal or response that the offeror received the amendment and intended to be bound by its terms; or
 - ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

- 2) Corrections of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
 - A) the mistake and the intended correct offer are clearly evident on the face of the bid, proposal or response, in which event the offer may not be withdrawn; or
 - B) the mistake is not clearly evident on the face of the bid, proposal or response, but the offeror submits adequate proof ~~that~~^{which} clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and that correcting the mistake would not be contrary to the fair and equal treatment of other offerors.

- 3) Withdrawal of Bids, Proposals or Responses. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the bid, proposal or response if:
 - A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 - B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

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- C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.
- e) **Determinations Required**
When a proposal is corrected or withdrawn, or correction or withdrawal is denied, the Chief Procurement Officer ~~should~~ ~~or Purchasing Officer shall~~ prepare a written determination documenting that relief was granted or denied in accordance with this Part.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.2520 Cancellation of Solicitations and Rejection of Offers

- a) **Scope of this Section**
~~The provisions of this Section govern the cancellation of any Invitation for Bids, Request for Proposals, Request for Information or any other solicitation issued by the Treasurer's office and the rejection of any or all bids, proposals or responses in whole or in part.~~
- ~~a~~b) **Policy**
Any solicitation may be cancelled without penalty, and any or all bids, proposals or responses may be rejected in whole or in part, when the Chief Procurement Officer ~~or Purchasing Officer~~ determines in writing that cancellation is in the State's best interest.
- ~~b~~e) **Notice, Publication and Documentation**
When a solicitation is cancelled or the offers are rejected, notice of the cancellation or rejection will be promptly provided to all affected vendors, published as provided in Section 1400.1505, and made part of the procurement file.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART F: SPECIFICATIONS AND SECURITY REQUIREMENTS

Section 1400.3005 Specifications

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- a) ~~The Chief Procurement Officer's Responsibilities Regarding Specifications~~
The Chief Procurement Officer shall write or authorize the writing of all specifications. ~~A Purchasing Officer may write specifications for procurements for the Treasurer's office, subject to approval of the Chief Procurement Officer.~~
- b) Specifications Prepared by Other Than State Personnel
- 1) Specifications may be prepared by other than Treasurer's office personnel, including, but not limited to, consultants, architects, engineers, designers, and other drafters of specifications for public contracts. Contracts for the preparation of specifications by other than State personnel must require the specification writer to adhere to State requirements.
 - 2) The person who prepared the specifications may not submit a bid or proposal to meet the procurement need unless the Chief Procurement Officer determines in writing that it would be in the best interest to accept a bid or proposal from that person and a notice to that effect is published as provided in Section 1400.1505.
- c) Procedures for the Development of Specifications
- 1) All procurements must be based on specifications that accurately reflect the State's needs. Specifications must clearly and precisely describe the salient technical or performance requirements.
 - 2) Specifications must not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate State needs. All specifications must be written in a manner that describes the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
 - 3) Any specifications or standards adopted by business, industry, a not-for-profit organization or governmental unit may be adopted by reference.
 - 4) A specification may provide alternate descriptions ~~when~~where two or more design, functional, or performance criteria will satisfactorily meet the State's requirements.

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- d) Brand Name or Equal Specification
- 1) Brand name or equal specifications may be used when the Chief Procurement Officer ~~or Purchasing Officer~~ determines ~~in writing~~ that:
 - A) time does not permit the preparation of another form of specification, not including a brand name specification;
 - B) the nature of the product or the nature of the requirement makes use of a brand name or equal specification suitable for the procurement; or
 - C) use of a brand name or equal specification is in the State's best interest.
 - 2) Brand name or equal specifications must seek to designate more than one brand as "or equal", and must further state that substantially equivalent products to those designated will be considered for award.
 - 3) Required Characteristics. Unless the Chief Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, functional, or performance characteristics that are required.
 - 4) Nonrestrictive Use of Brand Name or Equal Specifications. When a brand name or equal specification is used in a solicitation, the solicitation must contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. The burden of proof that a product is equal is on the offeror.
- e) Brand Name Only Specification
- 1) Use. A brand name only specification may be used only when the Chief Procurement Officer makes a written determination that is made part of

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the procurement file that only the identified brand name item or items will satisfy the State's needs. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the Chief Procurement Officer. The Chief Procurement Officer may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time. For that period, the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

- 2) Competition. The Chief Procurement Officer ~~or Purchasing Officer~~ shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement must be made as a sole source procurement.
- 3) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under Sections 1400.2020 (small purchases) and 1400.2030 (emergency procurements).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART G: CONTRACTS

Section 1400.3510 Duration of Contracts

- a) General
 - 1) A multi-year contract for a term up to ~~10~~ten years is authorized when it is in the best interest of the State.
 - 2) A license agreement or other agreement may have a term longer than 10 years, including a perpetual term, provided the payment term is limited to no more than ~~10~~ten years.
- b) Each contract is contingent upon and subject to the availability of funds. The Treasurer, at his or her sole option, may terminate or suspend a contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation

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~~sufficient to pay that obligation or if funds needed are insufficient for any reason. Each contract payable in whole or in part by any funds appropriated by the Illinois General Assembly shall recite that the contract is subject to termination and cancellation for lack of, or insufficiency in, funding. A vendor will be notified in writing by the Chief Procurement Officer of a failure to receive or a reduction or decrease in any appropriation affecting the contract. The contractual obligation of the Treasurer's office in each fiscal period after the period in which a contract is executed is subject to appropriation and availability of funds for the obligation. Every contract that extends beyond the fiscal year that the contract is awarded must provide that, in the event that funds are not available for any subsequent fiscal period, the remainder of the contract may be cancelled by the State without penalty to or further payment being required by the State.~~ This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

c) Conditions for Use of Multi-year Contracts

A multi-year contract may be used when:

- 1) special production of definite quantities or the furnishing of long-term services are required to meet State needs; or
- 2) it is determined by the Chief Procurement Officer that a multi-year contract will serve the best interest of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors must be considered by the Chief Procurement Officer before making the determination:
 - A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion and will be encouraged to participate in the competition when they are assured of recouping the costs during the period of contract performance;
 - B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
 - C) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or

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- D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
- d) Multi-year Contract Procedure
The solicitation must state:
- 1) the proposed term;
 - 2) the amount of supplies or services required for the proposed contract period;
 - 3) whether offerors may submit prices for:
 - A) the first fiscal period only;
 - B) the entire time of performance only; or
 - C) both the first fiscal period and the entire time of performance.
 - 4) that a multi-year contract may be awarded and how award will be determined.
- e) Renewals
- 1) ~~When~~Where the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years and is by mutual agreement or the option is reserved solely to the State.
 - 2) ~~When~~Where the original procurement was silent as to renewals, a renewal must meet the requirements of Section 1400.2020 (small), 1400.2025 (sole source) or 1400.2030 (emergency) procurements.~~further procurement activity is required.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.3520 Contract Provisions

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a) Mandatory Provisions

The following provisions are required for all contracts entered into by the Treasurer's office, in addition to the requirements of State and federal law and the regulations of the Office of the Comptroller:

- 1) Subcontractors. Any contract granted hereunder must state whether the services of a subcontractor will be used. The contract must require the disclosure in writing of~~include~~ the names and address~~addresses~~ of each subcontractor having a subcontract with an annual value of more than \$50,000, the general type of work to be performed by each subcontractor,~~all subcontractors~~ and the expected amount of money each will receive under the contract. The contractor will be required to get approval from the Chief Procurement Officer prior to adding or changing subcontractors. *A subcontractor, or contractor on behalf of a subcontractor, may identify information that is deemed proprietary or confidential. If the Chief Procurement Officer determines the information is not relevant to the primary contract, the Chief Procurement Officer may excuse the inclusion of the information. If the Chief Procurement Officer determines the information is proprietary or could harm the business interest of the subcontractor, the Chief Procurement Officer may, in his or her discretion, redact the information. Redacted information shall not become part of the public record. [30 ILCS 500/20-120(a)]*
- 2) Subject to Appropriation. All leases must recite that they are subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the lease.
- 3) Right to Audit Books and Records:
 - A) *Maintenance of books and records. Every contract and subcontract ~~shall~~must require the contractor or subcontractor, as applicable, to maintain books and records relating to the performance of the contract or subcontract and necessary to support amounts charged to the State under the contract or subcontract. The books and records ~~shall~~must be maintained by the contractor or subcontractor for a period of at least 3 years from the later of the date of final payment under the contract or*

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completion of the contract or subcontract and ~~that the 3-year~~ period ~~shall~~~~must~~ be extended for the duration of any audit in progress at the time of that period's expiration. [30 ILCS 500/20-65(a)]

- B) *Audit. Every contract and subcontract ~~shall~~~~must~~ provide that all books and records required to be maintained under subsection (a) ~~shall~~~~must~~ be available for review and audit by the Auditor General and the Treasurer's office. Every contract and subcontract ~~shall~~~~must~~ require the contractor and subcontractor, as applicable, to cooperate fully with any audit. [30 ILCS 500/20-65(b)]*

b) **Optional Provision**

Any contract entered into by the Treasurer's office under this Part may contain a clause requiring that if more favorable terms are granted by the contractor to any similar governmental agency in any state in a contemporaneous agreement let under the same or similar financial terms and circumstances for comparable supplies or services, the more favorable terms ~~shall~~~~will~~ be applicable under the contract. [30 ILCS 500/25-30]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.3525 Prevailing Wage Requirements

a) **Applicability**

All services, as defined in subsection (b), furnished under service contracts of \$2,000 or more or \$200 or more per month and under printing contracts are subject to the following prevailing wage requirements:

- 1) *Not less than the general prevailing wage rate of hourly wages for work of a similar character in the locality in which the work is produced ~~shall~~~~may~~ be paid by the successful vendor to its employees who perform the work on the State contracts.*
- 2) *The offeror, in order to be considered to be a responsible offeror for the purposes of this Part, ~~shall~~~~must~~ certify to the Treasurer's office that wages to be paid to its employees are no less, and fringe benefits and working conditions of employees are not less favorable, than those prevailing in the locality where the contract is to be performed.*

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- 3) *Prevailing wages and working conditions shall be determined by the Director of the Illinois Department of Labor. [30 ILCS 500/25-60]*
 - 2) ~~Whenever a collective bargaining agreement is in effect between an employer, other than governmental body, and service or printing employees as defined in this Section who are represented by a responsible organization that is in no way influenced or controlled by the management, that agreement and its provisions will be considered as conditions prevalent in that locality and will be the minimum requirements taken into consideration by the Director of Labor.~~
 - 3) ~~Collective bargaining agreements between State employees and the State of Illinois will not be taken into account by the Department of Labor in determining the prevailing wage rate.~~
- b) *As used in this Section, "services" means janitorial cleaning services, window cleaning services, building and grounds services, site technician services, natural resources services, food services, and security services. "Printing" means and includes all processes and operations involved in printing, including but not limited to letterpress, offset, and gravure processes, the multilith method, photographic or other duplicating process, the operations of composition, platemaking, presswork, and binding, and the end products of those processes, methods, and operations. As used in this Part "printing" does not include photocopiers used in the course of normal business activities, photographic equipment used for geographic mapping, or printed matter that is commonly available to the general public from contractor inventory. [30 ILCS 500/25-60(b)]*
- c) For printing contracts, ~~"locality"~~location means one of the following areas:
- 1) Cook County.
 - 2) Boone, Bureau, Carroll, Champaign, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford.

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- 3) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson.
- 4) ~~When~~~~Where~~ the printing is performed in a plant outside the jurisdiction of this State, it is deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. ~~When~~~~Where~~ the printing is required to be delivered to more than one Illinois locality, it is deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.
- d) For janitorial services, window washing, building and grounds services, site technician services, natural resources services, and security guard services, location means the county in which the work is to be performed.
- e) *This Section does not apply to services furnished under contracts for professional or artistic services. [30 ILCS 500/25-60(e)]*
- f) *This Section does not apply to vocational programs of training for physically or mentally handicapped persons or to sheltered workshops for the severely disabled. [30 ILCS 500/25-60(f)]*
- g) The Prevailing Wage Act [820 ILCS 130] shall apply to any construction contract procured under this Part. It is the policy of the Treasurer's office that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of the Treasurer's office. [820 ILCS 130/1] Construction contracts shall include a provision notifying the vendor that the contract is subject to the Prevailing Wage Act unless the provisions of that Act exempt its application.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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SUBPART H: DISPUTES, PROTESTS AND CONTROVERSIES

Section 1400.4005 Disputes and Protests Regarding Solicitations and Awards

a) Procedures

Any person may submit a written protest related to the notice of the procurement, the solicitation document, any pre-bid/proposal meeting and any decision to reject a late bid or proposal. Any person who has submitted a bid or proposal may submit a written protest to a decision to reject the person's bid or proposal or to award to another person. In regard to the solicitation notice or solicitation document, including specifications, a protest must be received within 14 calendar days after the date the solicitation was posted to the Treasurer's Web Site and must be received by the Chief Procurement Officer before the date for opening bids or proposals. In regard to rejection of individual bids or proposals or awards, the protest must be received by close of business no later than 14 calendar days after the protesting party knows, or should have known, of the facts giving rise to the protest to ensure consideration and, in any event, must be received before execution of the applicable contract. Any notice posted to the Treasurer's Web Site establishes the "known or should have known" date for the subject matter of the notice. Any dispute or protest regarding solicitations and awards must be communicated to the Chief Procurement Officer by the vendors within 7 days after the protester knows or should have known of the facts giving rise thereto and before a contract is executed between the Treasurer's office and the successful vendor. The protesting party~~vendors~~ may be required to provide additional information to the Treasurer's office in order to process the dispute or protest. If the Chief Procurement Officer is unable to resolve the issue in a timely manner, then it will be referred to the Procurement Review Board for a final determination that will be communicated to the protesting party~~vendors~~ involved in the dispute or protest and made part of the procurement file within 7 days after the referral by the Chief Procurement Officer.

b) Procurement Delays

The investigation of a dispute or protest may cause a delay in the procurement process if deemed necessary by the Chief Procurement Officer. If an action concerning the protest has commenced in court, the Chief Procurement Officer will not act on the protest but will refer the protest to the Attorney General, unless the court requests, expects, or otherwise expresses interest in the decision of the Chief Procurement Officer.

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- c) Stay or Withdrawal of Award
An award may be stayed or withdrawn by the Chief Procurement Officer if the Procurement Review Board reaches a determination that to do so is necessary in fairness to the other offerors and to protect the interests of the State.
- d) Finality of Determinations
Except as otherwise provided in this Part, determinations made by the Chief Procurement Officer under this Part are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. [30 ILCS 500/20-70]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4010 Contract Controversies

Contract controversies must be promptly referred to the Chief Procurement Officer for resolution. If the Chief Procurement Officer is unable to resolve the controversy, the controversy will be referred to the Chief Legal Counsel who will attempt to resolve the matter. If the Chief Legal Counsel is unable to resolve the matter satisfactorily, and believes that litigation is probable or desirable, he or she may request the Attorney General's assistance in resolving the dispute. Every contract entered into by the Treasurer's office ~~should~~must have a provision that deals with any failures by the vendor to fully perform under the terms of the agreement.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4015 Remedies

- a) In all of the following cases the Chief Procurement Officer may, with the approval of the Treasurer and subject to the determination of the Chief Legal Counsel under subsection (b), terminate or rescind any contract entered into under this Part in the event:
- 1) The successful bidder or proposer fails to furnish a satisfactory performance bond within the time specified.
 - 2) The vendor fails to make delivery at the place or within the time specified in the contract or as ordered.
 - 3) Any goods or services provided under the contract are:

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- A) rejected (for not meeting the specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced or corrected by the vendor; or
 - B) repeatedly rejected, even though the vendor offers to replace the goods or services promptly.
- 4) There is sufficient evidence to show that the contract was obtained by fraud, collusion, conspiracy, or other unlawful means.
 - 5) The vendor is guilty of misrepresentation in connection with another contract for the sale of goods or services to the State ~~and cannot reasonably be depended upon to fulfill his or her obligations as a responsible vendor under any of his or her contracts with the State.~~
 - 6) The vendor is insolvent, is the subject of a bankruptcy filing, is should be adjudged bankrupt, or enters into a general assignment for the benefit of his or her creditors or receivership due to insolvency.
 - 7) The vendor disregards laws and ordinances, rules, or instructions of a contracting officer or acts in violation of any provision of the contract or this Part, or the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.
 - 8) Any other material breach of contract or other unlawful act by the vendor occurs.
- b) **Determination of Right to Terminate or Rescind Contract**
The Chief Legal Counsel shall determine in writing that a violation listed in subsection (a) has occurred prior to the termination or rescission of a contract under this Section.
 - c) Contracts that are terminated under this Section will be terminated at no cost to the State.
 - d) **Withholding Money to Compensate State for Damages**
If a contract is terminated or rescinded under this Section, the State may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it

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because of the vendor's breach of contract or other unlawful act on his or her part on which the cancellation is based.

- e) Damages
The damages for which the State may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy include, but are not limited to, the following:
- 1) the additional cost of goods or services bought elsewhere;
 - 2) cost of repeating the procurement procedure;
 - 3) any expenses incurred because of delay in receipt of goods or services;
and
 - 4) any other damages caused by the vendor's breach of contract or unlawful act.
- f) Effect of Declaring a Contract Null and Void
In all cases where a contract is voided, the Treasurer's office will endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments will be made under the contract.
- g) In lieu of terminating or rescinding the contract, when appropriate the Chief Procurement Officer may seek to negotiate an alternative resolution that is at least as beneficial to the State as termination or rescission, but the Chief Procurement Officer must not waive the right to terminate or rescind the contract if the situation does not improve.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4020 Suspension

- a) Application
This Section applies to all suspensions of vendors from consideration for award of contracts.
- b) The Chief Procurement Officer may suspend a vendor from doing business with the Treasurer's office for all or specific types of supplies or services. A suspension

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may be issued upon a determination by the Chief Procurement Officer that the vendor violated this Part or failed to conform to specifications or terms of delivery.

- c) When the Chief Procurement Officer determines that cause exists for suspension, a notice of suspension, including a copy of the determination, must be sent to the suspended vendor. Bids, proposals and responses will not be solicited from the suspended vendor, and, if they are received, they will not be considered during the period of suspension.
- d) A contractor may be suspended for any period of time commensurate with the seriousness of the offense. A suspension may be for an indefinite period of time subject to demonstration by the contractor that the suspension is no longer necessary.
- e) The suspension will be effective within seven calendar days after receipt of notice unless an objection is filed. If an objection were filed, the suspension would not become effective until the evaluation of the objection by the Chief Procurement Officer is completed.
- f) The Treasurer's office may consider suspensions and debarments by other State agencies and may choose to will not solicit or accept bids, proposals and responses from vendors on another agency's of the CMS master list of suspensions and debarments during the period of suspension or debarment.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: PREFERENCES

Section 1400.4510 Resident Vendor Preference

- a) "Illinois resident vendor", as used in this Section, means *a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State ~~whereat which~~ it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State ~~whereat which~~ it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised*

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or announced. [\[30 ILCS 500/45-10\(b\)\]](#)

- b) An Illinois resident vendor will be allowed a preference as against a ~~nonresident~~~~non-resident~~ vendor, which is equal to the preference, if any, that the state of the ~~nonresident~~~~non-resident~~ vendor affords vendors from that state.
- c) An Illinois resident vendor who would perform the services or provide the supplies from another state will be considered a resident of that other state as against an Illinois resident vendor who would perform the services or provide the supplies from Illinois, if that other state has an in-state preference.
- d) ~~*Federal Funds. This Section does not apply to any contract for any project as to which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation. [30 ILCS 500/45-10(c)] If an Illinois resident vendor produces or performs at least 51% of the goods or services in another state, that Illinois resident vendor will be considered a resident of that other state for purposes of application of this reciprocal preference when evaluating the offer of an Illinois resident vendor that produces or performs at least 51% of the goods or services in Illinois.*~~
- e) ~~The Chief Procurement Officer shall maintain a list of states with in-state preference that will be considered in all procurements involving out-of-state vendors. The Chief Procurement Officer may satisfy this requirement by maintaining and updating a list that has been created by CMS.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4515 Soybean Oil-based Ink

Contracts requiring the procurement of printing services ~~shall~~~~must~~ specify the use of soybean oil-based ink unless the Chief Procurement Officer ~~or Purchasing Officer~~ determines that another type of ink is required to assure high quality and reasonable pricing of the printed product. [\[30 ILCS 500/45-15\]](#)

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4520 Recycled ~~Supplies~~Materials

When a public contract is to be awarded to the lowest responsible bidder or offeror, an

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otherwise qualified offeror who will fulfill that contract through the use of products made of recycled supplies shall ~~materials may, on a pilot basis or in accordance with a pilot study, be given preference over other bidders or offerors unable to do so, provided that~~ if the cost included identified in the bid offer of supplies ~~products made of recycled materials is equal to or less than other bids or offers, unless the use of the product constitutes an undue practical hardship~~ not more than the cost of products not made of recycled materials. [30 ILCS 500/45-20]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4525 Recycled Paper

All paper purchased for use by the Treasurer's office must be recyclable paper unless recyclable paper cannot be used to meet the requirements of the Treasurer's office. [30 ILCS 500/45-25] The Treasurer's office will determine its paper requirements to allow the use of recyclable paper whenever practicable possible, including without limitation using plain paper rather than colored paper that is not recyclable.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4526 Environmentally Preferable Procurement

a) *Definitions. For the purposes of this Section:*

- 1) *"Supplies" means all personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies.*
- 2) *"Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance.*
- 3) *"Environmentally preferable supplies" means supplies that are less harmful to the natural environment and human health than substantially similar supplies for the same purpose. Attributes of environmentally preferable supplies include, but are not limited to, the following:*
 - i) *made of recycled materials, to the maximum extent feasible;*
 - ii) *not containing, emitting, or producing toxic substances;*

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- iii) constituted so as to minimize the production of waste; and
- iv) constituted so as to conserve energy and water resources over the course of production, transport, intended use, and disposal.
- 4) "Environmentally preferable services" means services that are less harmful to the natural environment and human health than substantially similar services for the same purpose. Attributes of "environmentally preferable services" include, but are not limited to, the following:
 - i) use of supplies made of recycled materials, to the maximum extent feasible;
 - ii) use of supplies that do not contain, emit, or produce toxic substances;
 - iii) employment of methods that minimize the production of waste; and
 - iv) employment of methods that conserve energy and water resources or use energy and water resources more efficiently than substantially similar methods.
- b) Award of Contracts for Environmentally Preferable Supplies or Services Notwithstanding any rule, regulation, statute, order, or policy of any kind, the Treasurer's office shall contract for supplies and services that are environmentally preferable. If, however, contracting for an environmentally preferable supply or service would impose an undue economic or practical hardship on the Treasurer's office, or if an environmentally preferable supply or service cannot be used to meet the requirements of the Treasurer's office, then the Treasurer's office need not contract for an environmentally preferable supply or service. Specifications for contracts, at the discretion of the Treasurer's office, may include a price preference of up to 10% for environmentally preferable supplies or services. [30 ILCS 500/45-26]

(Source: Added at 40 Ill. Reg. _____, effective _____)

Section 1400.4530 Correctional Industries

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The Treasurer's office may contract with any qualified source of supply, including the following special sources, from which procurements may be made without notice and competition:

- a) Illinois Correctional Industries (see 30 ILCS 500/45-30);
- b) State and Federal Surplus Warehouses under the jurisdiction of CMS. The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece;
- c) Qualified not-for-profit agencies for persons with severe disabilities (see 30 ILCS 500/45-35);
- d) State agencies and other governmental units.
- ~~a) The Chief Procurement Officer will develop a list of the goods or services available from the Department of Corrections and will identify those that must be purchased from Corrections.~~
- ~~b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the Chief Procurement Officer.~~
- ~~c) Procurements may be made from Corrections without seeking competition or giving public notice, if a record of all the purchases made from Corrections is made part of the procurement file.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4535 Sheltered Workshops for the Disabled (Repealed)

- ~~a) Supplies and services may be procured without advertising or calling for offers from any qualified not for profit organization for the severely handicapped that:
 - 1) ~~complies with Illinois laws governing private not for profit organizations;~~
 - 2) ~~is certified as a sheltered workshop by the Wage and Hour Division of the United States Department of Labor; and~~~~

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- 3) ~~meets the Illinois Department of Human Services just standards for rehabilitation facilities.~~
- b) ~~Sheltered Workshop List~~
~~The Chief Procurement Officer must maintain a list of all qualified sheltered workshops. The Chief Procurement Officer may rely on the list developed by CMS to satisfy this responsibility if a copy is maintained in the Treasurer's office and updated as necessary.~~
- e) ~~Requirements for Selection~~
~~In order to be selected as the offeror of a good or service, the not for profit organization must have indicated an interest in providing the supplies and services, must meet the specifications and needs of the Treasurer's office, and must set a fair market price that has been approved as provided in this Section.~~
- d) ~~Pricing Approval~~
- 1) ~~While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar goods or services, the policy of this Part to promote procurements from sheltered workshops, and other similarly relevant factors.~~
- 2) ~~The Procurement Review Board must approve contracts for reasonableness of price if:~~
- A) ~~the good or service would ordinarily be subject to competitive sealed bidding or competitive sealed proposals methods of source selection; or~~
- B) ~~the good or service is offered and the sheltered workshop is selected even though not the lowest responsible offeror.~~
- 3) ~~The Procurement Review Board approval is not required if:~~
- A) ~~the contract does not exceed the bid limit set in Section 1400.2020 for small purchases and no bidding was conducted; or~~

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- B) ~~the contract is let to the sheltered workshop under a competitive procedure.~~
- 4) ~~When the approval of the Procurement Review Board is required, it will be given or denied in an expeditious manner so as not to disrupt procurement activities.~~
- e) ~~Coordination with CMS
A Purchasing Officer will be assigned the task of coordinating with the committee that is created within CMS under the Illinois Procurement Code to insure that the Treasurer's office is aware of the activities, accomplishments and findings of the committee.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

Section 1400.4540 VehiclesGas Mileage

- a) Specification
Contracts for the purchase or lease of new passenger automobiles, other than station wagons, vans and four-wheel drive vehicles, ~~shall~~ must specify the procurement of a model that, according to the most current mileage study published by the U.S. Environmental Protection Agency, can achieve at least the minimum average fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act (15 USC 46). [35 ILCS 500/45-40(a)] Further, all vehicles purchased must be flexible fuel, fuel efficient hybrid vehicles using electricity and gasohol (hybrids or plug-in hybrids) or fueled by electricity. For purposes of this Section, "flexible fuel vehicles" are automobiles or light trucks that operate on either gasoline or E-85 (85% ethanol, 15% gasoline) fuel and "fuel efficient hybrid vehicles" are automobiles or light trucks that use a gasoline or diesel engine and an electric motor to provide power and gain at least a 20% increase in combined USEPA city-highway fuel economy over the equivalent or most-similar conventionally-powered model. [35 ILCS 500/25-75]
- b) North American-made Vehicles. All vehicles purchased by the Treasurer's office shall have a Vehicle Identification Number that begins with the number one, the number 2, the number 4, or the number 5.
- cb) Exemptions

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The Chief Procurement Officer may determine that certain vehicle~~exempt procurements are exempt from this Section based on intended use or other reasonable considerations such as health and safety of Illinois citizens.~~ [35 ILCS 500/25-75(c)] Nothing in this Section shall require the Treasurer's office to stop using any vehicle that exists in the State fleet of motor vehicles.~~from the requirement of subsection (a) when there is a demonstrated need, determined in writing and made part of the procurement file, for an automobile that does not meet the minimum average fuel economy standards. The Chief Procurement Officer must not exempt procurements from the requirement of subsection (a) unless it is clear that there is not a compliant vehicle available at a comparable price that will meet the needs of the Treasurer's office.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4545 Illinois Agricultural Products

In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois. [30 ILCS 500/45-50]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4550 Corn-based Plastics

In awarding contracts requiring the procurement of plastic products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of plastic products made from Illinois corn by-products. [30 ILCS 500/45-55]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4555 Vehicles Powered by Agricultural Commodity-based Fuel

In awarding contracts requiring the procurement of vehicles, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans. [30 ILCS 500/45-60]

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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Section 1400.4560 Small Businesses

- a) **Set-Aside**

The Chief Procurement Officer may designate as small business set-asides a fair proportion of contracts for the provision of goods and services for award to small businesses in Illinois. A set-aside designation may last indefinitely or for a stated period of time.
- b) **Required Use**

If the Treasurer's office wishes to make a procurement covered by a set-aside designation, the solicitation must note that responses are limited to those from responsible small businesses. Bids, proposals or responses received from large businesses will be rejected as nonresponsive.
- c) **Withdrawal of Set-Aside**

If the Chief Procurement Officer determines that acceptance of the best bid, proposal or response will result in the payment of an unreasonable price, the Chief Procurement Officer ~~or Purchasing Officer~~ will reject all bids, proposals or responses and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification must be published as provided in Section 1400.1505 with an explanation. After withdrawal of the small business set-aside, the procurement will be conducted in accordance with the requirements of this Part.
- d) **Criteria for Small Business**

Unless the Chief Procurement Officer provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

 - 1) Independently owned and operated.
 - 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

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- 3) With annual sales for the most recently ended fiscal year no greater than:
 - A) ~~\$13,000,000~~7,500,000 for wholesale business;
 - B) ~~\$8,000,000~~1,500,000 for retail business or businesses selling services; or-
 - C) \$14,000,000 for construction business.
- 4) With no more than 250 employees if a manufacturing business.
 - A) A manufacturing business must calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis for its most recently ended fiscal year.
 - B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period that it has been in existence.
- 5) If both a wholesaler and a retailer, the combined wholesale and retail annual sales for its most recently completed fiscal year may not exceed ~~\$16,000,000~~9,000,000. The retail component may not exceed ~~\$6,000,000~~1,500,000 and the wholesale component may not exceed ~~\$10,000,000~~7,500,000.
- 6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates must be included. Concerns are affiliates when either one directly or indirectly control or have the power to control the other, or when a third party or parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration must be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship does not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

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- e) **Reliance on the Determination of CMS**
The Treasurer's office may defer to the determination by CMS that a business is a small business.
- f) **Small Business Specialist**
The Small Business Specialist for the Treasurer's office shall assist small businesses seeking to provide goods or services to the Treasurer's office and is specifically responsible for the following:
- 1) Compiling and maintaining a comprehensive bidders list of small businesses and cooperating with the Federal Small Business Administration in locating potential sources for various products or services. The Small Business Specialist may rely on the bidders list developed by CMS to satisfy this responsibility ~~if a copy is maintained in the Treasurer's office and updated as necessary.~~
 - 2) Assisting small businesses in complying with the procedures for bidding, proposing or responding to solicitations of the Treasurer's office.
 - 3) Assisting in the development of small business set-asides if determined by the Chief Procurement Officer to be in the State's best interest.
 - 4) Making recommendations to the Chief Procurement Officer for the simplification of specifications and terms in order to increase the opportunities for small business participation.
 - 5) Assisting in investigations by the Treasurer's office to determine the responsibility of any offeror on any small business set-asides.
- g) **Small business annual report**
The Chief Procurement Officer shall annually before December 1 report in writing to the General Assembly concerning the awarding of contracts to small businesses. The report will include the total value of awards made in the preceding fiscal year under the designation of small business set-aside. The requirement for reporting to the General Assembly will be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act [25 ILCS 5/3.1].

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(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.4565 Preferences for Veterans, Minorities, Females, and Persons with Disabilities

This Part is subject to the applicable provisions of the Veterans Preference Act [330 ILCS 55] and the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575]. *It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified veterans and that qualified service-disabled veteran-owned small businesses (referred to as SDVOSB) and veteran-owned small businesses (referred to as VOSB) participate in the State's procurement process as both prime contractors and subcontractors. [30 ILCS 500/45-57] Upon direction of the CPO, the Treasurer's office may establish goals and other such preferences for contracting or subcontracting with certified SDVOSB and VOSB.* The Chief Procurement Officer shall do whatever is reasonably necessary to enable veterans, minorities, females, and persons with disabilities to participate in the procurement process. The Chief Procurement Officer may rely on the determination of CMS and/or the Department of Veterans' Affairs that a person or business qualifies for a preference under these Acts.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART J: ETHICS

Section 1400.5005 Purpose

It is the express duty of Chief Procurement Officer, ~~Purchasing Officers~~ and ~~their~~ designees to maximize the value of the expenditure of public moneys in procuring goods, services, and contracts for the Treasurer's office and to act in a manner that maintains the integrity and public trust of State government. In discharging this duty, they are charged to use all available information, reasonable efforts, and reasonable actions to protect, safeguard, and maintain the procurement process of the Treasurer's office.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.5030 Revolving Door

The Chief Procurement Officer ~~and the Purchasing Officers~~ may not engage in any procurement activity relating to the Treasurer's office for two years after terminating ~~his or her~~ ~~their~~ position as Chief Procurement Officer ~~or Purchasing Officer~~. This prohibition includes, but is not limited

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to, lobbying the procurement process or specifying, bidding or proposing bids, proposals or contract documents, on their own behalf or on behalf of any firm, partnership, association or corporation. This prohibition is in addition to the revolving door prohibitions of Section 5-45 of the State Officials and Employees Ethics Act [5 ILCS 430].

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.5040 Reporting Anticompetitive Practices

When, for any reason, any vendor, bidder, proposer, respondent or employee of the Treasurer's office, including the Chief Procurement Officer ~~and Purchasing Officers~~, suspects collusion or other anticompetitive practice among any bidders, proposers, respondents or employees of the Treasurer's office, a notice of the relevant facts must be transmitted to the Attorney General and the Chief Procurement Officer.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.5045 Confidentiality

The Chief Procurement Officer ~~Purchasing Officers~~, and ~~their~~ designees are subject to immediate dismissal and may be subject to criminal prosecution for willfully using or allowing the use of specifications, procurement documents or proprietary information to compromise the fairness or integrity of the procurement or contract process.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.5055 Additional Provisions

This Part is subject to applicable provisions of the following Acts:

- a) Article 33E of the Criminal Code of 1961 [720 ILCS 5/Art. 33E];
- b) the Illinois Human Rights Act [775 ILCS 5];
- c) the Discriminatory Club Act [775 ILCS 25];
- d) the Illinois Governmental Ethics Act [5 ILCS 420];
- e) the State Prompt Payment Act [30 ILCS 540];

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- f) the Public Officer Prohibited Activities Act [50 ILCS 105]; ~~and~~
- g) the Drug Free Workplace Act [30 ILCS 580];-
- h) the Procurement of Domestic Products Act [30 ILCS 517];
- i) the International Anti-Boycott Certification Act [30 ILCS 582];
- j) the State Prohibition of Goods from Forced Labor Act [30 ILCS 583];
- k) the State Prohibition of Goods from Child Labor Act [30 ILCS 584]; and
- l) the Information Technology Accessibility Act [30 ILCS 587].

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 1400.5060 Other Violations

Any employee of the Treasurer's office, including the Chief Procurement Officer ~~and Purchasing Officers~~, who willfully violates or allows the violation of this Part is subject to immediate dismissal.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART L: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 1400.6010 Government Furnished Property (Repealed)

~~If the Treasurer's office provides any property to the vendor in furtherance of the contract, the property will remain the property of the State but may be consumed by the vendor if necessary to complete the contract. The vendor shall issue a receipt for the property and will be responsible for its safekeeping and return of unused property to the State.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

Section 1400.6035 Annual Reports

Every printed annual report produced by the Treasurer's office must bear a statement indicating

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whether it was printed by the State of Illinois or by contract and indicating the printing costs per copy and the number of copies printed. ~~For every annual report prepared, a report must be prepared detailing the quantity of annual reports printed, the total cost, the cost per copy, and the cost per page of the annual report. The report will be submitted to the General Assembly on the fourth Wednesday of January in each year that a report is produced by the Treasurer's office and made part of the procurement file.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Reports of Child Abuse and Neglect
- 2) Code Citation: 89 Ill. Adm. Code 300
- 3) Section Number: 300.20 Adopted Action:
Amendment
- 4) Statutory Authority: 325 ILCS 5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7004; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: DCFS made only non-substantive technical changes.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is amended to include "step-grandparents" and "fictive kin" in compliance with recent Illinois statutory amendments. A definition of "fictive kin" is added. The definition of "godparent" is amended for clarification. These changes implement PA 98-846. The definition of "Siblings" is amended by adding "and share at least one parent in common" to the criteria for considering step-siblings.

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Several other definitions that quote a statute verbatim are updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

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TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 300

REPORTS OF CHILD ABUSE AND NEGLECT

Section

300.10	Purpose
300.20	Definitions
300.30	Reporting Child Abuse or Neglect to the Department
300.40	Content of Child Abuse or Neglect Reports
300.45	Five Year Demonstration of the Differential Response Program
300.50	Transmittal of Child Abuse or Neglect Reports
300.60	Special Types of Reports (Recodified)
300.70	Referrals to the Local Law Enforcement Agency and State's Attorney
300.80	Delegation of the Investigation
300.90	Time Frames for the Investigation
300.100	Initial Investigation
300.110	The Formal Investigative Process
300.120	Taking Children into Temporary Protective Custody
300.130	Notices Whether Child Abuse or Neglect Occurred
300.140	Transmittal of Information to the Illinois Department of Professional Regulation and to School Superintendents
300.150	Referral for Other Services
300.160	Special Types of Reports
300.170	Child Death Review Teams
300.180	Abandoned Newborn Infants
300.APPENDIX A	Acknowledgement of Mandated Reporter Status
300.APPENDIX B	Child Abuse and Neglect Allegations

AUTHORITY: Implementing and authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5], the Abandoned Newborn Infants Protection Act [325 ILCS 2] and Section 3 of the Consent by Minors to Medical Procedures Act [410 ILCS 210/3].

SOURCE: Adopted and codified as 89 Ill. Adm. Code 302 at 5 Ill. Reg. 13188, effective November 30, 1981; amended at 6 Ill. Reg. 15529, effective January 1, 1983; recodified at 8 Ill. Reg. 992; peremptory amendment at 8 Ill. Reg. 5373, effective April 12, 1984; amended at 8 Ill.

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Reg. 12143, effective July 9, 1984; amended at 9 Ill. Reg. 2467, effective March 1, 1985; amended at 9 Ill. Reg. 9104, effective June 14, 1985; amended at 9 Ill. Reg. 15820, effective November 1, 1985; amended at 10 Ill. Reg. 5915, effective April 15, 1986; amended at 11 Ill. Reg. 1390, effective January 13, 1987; amended at 11 Ill. Reg. 1151, effective January 14, 1987; amended at 11 Ill. Reg. 1829, effective January 15, 1987; recodified from 89 Ill. Adm. Code 302.20, 302.100, 302.110, 302.120, 302.130, 302.140, 302.150, 302.160, 302.170, 302.180, 302.190, and Appendix A at 11 Ill. Reg. 3492; emergency amendment at 11 Ill. Reg. 4058, effective February 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12619, effective July 20, 1987; recodified at 11 Ill. Reg. 13405; amended at 13 Ill. Reg. 2419, effective March 1, 1989; emergency amendment at 14 Ill. Reg. 11356, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 17558, effective October 15, 1990; amended at 14 Ill. Reg. 19827, effective November 28, 1990; emergency amendment at 15 Ill. Reg. 14285, effective September 25, 1991; amended at 15 Ill. Reg. 17986, effective December 1, 1991; emergency amendment at 17 Ill. Reg. 15658, effective September 10, 1993, for a maximum of 150 days; emergency expired February 7, 1994; amended at 18 Ill. Reg. 8377, effective May 31, 1994; amended at 18 Ill. Reg. 8601, effective June 1, 1994; amended at 19 Ill. Reg. 3469, effective March 15, 1995; amended at 19 Ill. Reg. 10522, effective July 1, 1995; amended at 20 Ill. Reg. 10328, effective July 19, 1996; amended at 22 Ill. Reg. 18847, effective October 1, 1998; amended at 23 Ill. Reg. 13590, effective November 15, 1999; amended at 24 Ill. Reg. 7707, effective June 1, 2000; amended at 25 Ill. Reg. 12781, effective October 1, 2001; amended at 26 Ill. Reg. 7435, effective May 15, 2002; amended at 26 Ill. Reg. 11730, effective August 1, 2002; amended at 27 Ill. Reg. 1114, effective January 15, 2003; amended at 27 Ill. Reg. 9431, effective June 9, 2003; peremptory amendment at 29 Ill. Reg. 21065, effective December 8, 2005; amended at 33 Ill. Reg. 7862, effective June 15, 2009; amended at 34 Ill. Reg. 6373, effective May 1, 2010; amended at 35 Ill. Reg. 1599, effective January 15, 2011; amended at 35 Ill. Reg. 2861, effective February 8, 2011; amended at 36 Ill. Reg. 4026, effective March 5, 2012; amended at 36 Ill. Reg. 16756, effective November 15, 2012; emergency amendment at 38 Ill. Reg. 1100, effective January 1, 2014, for a maximum of 150 days; emergency expired May 30, 2014; amended at 38 Ill. Reg. 1962, effective December 31, 2013; amended at 38 Ill. Reg. 13214, effective June 11, 2014; amended at 40 Ill. Reg. 648, effective December 31, 2015; amended at 40 Ill. Reg. 7682, effective May 16, 2016.

Section 300.20 Definitions

"Abandonment" means parental conduct that demonstrates the purpose of relinquishing all parental rights and claims to the child. Abandonment is also defined as any parental conduct that evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.

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"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 [720 ILCS 5] or in the Wrongs to Children Act [720 ILCS 150], and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment;

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, against the child;

causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570] in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or

commits or allows to be committed the offense of involuntary servitude,

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involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services as defined in Section 10-9 of the Criminal Code of 2012 against the child.

A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2]. [325 ILCS 5/3]

"Act" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"Blatant disregard" means an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm. [325 ILCS 5/3]

"CANTS/SACWIS 8" or "C/S8" means the Department's document titled Notification of a Report of Suspected Child Abuse and/or Neglect. This document explains the Department's child abuse/neglect allegation investigation process.

"CANTS/SACWIS 9" or "C/S9" means the Department's document titled Notification of Intent to Indicate Child Care Worker for Report of Child Abuse and/or Neglect. This document is used to notify a person that the Department plans to indicate that person as a perpetrator of child abuse/neglect.

"CANTS/SACWIS 10" or "C/S10" means the Department's document titled Notice of Intent to Indicate a Child Care Worker for Report of Child Abuse and/or Neglect-Questions and Answers. This is an informational document explaining the impact of a determination of indicated child abuse/neglect and the appeal process.

"CANTS/SACWIS 11" or "C/S11" means the Department's document titled Notification of Indicated Decision in an Employment Related Report of Suspected Child Abuse and/or Neglect. This is the document by which the Department notifies a person that the Department has determined that there is credible evidence that he or she is responsible for the child abuse or neglect described in that document.

"Caregiver" means the child's parents, guardian, custodian or relative with whom

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the child lives and who has primary responsibility for the care and supervision of the child.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. [325 ILCS 5/3]

"Child care facility" means any person, group of persons, agency, association, organization, corporation, institution, center or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969 [225 ILCS 10], established and maintained for the care of children. "Child care facility" includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act of 1969. [225 ILCS 10/2.05]

"Child care worker" means any person who is employed to work directly with children and any person who is an owner/operator of a child care facility, regardless of whether the facility is licensed by the Department. Child care facilities, for purposes of this definition, include child care institutions; child welfare agencies; day care/night care centers; day care/night care homes; day care/night care group day care homes; group homes; hospitals or health care facilities; schools, including school teachers and administrators, but not tenured school teachers or administrators who have other disciplinary processes available to them; and before and after school programs, recreational programs and summer camps. "Child care worker" also means persons employed as full-time nannies. A child care worker may, at his or her discretion, be subject to this Part if alleged to be responsible for child abuse or neglect outside of his or her employment. "Child care worker" includes a person: currently employed as a child care worker; currently enrolled in an academic program that leads to a position as a child care worker; or who has applied for a license required for a child care worker position. A person will be considered to be "employed as a child care worker" under this Part if, at the time of the notice of the investigation, he or she: has applied for, or will apply within 180 days for, a position as a child care worker; is enrolled in, or will commence within 180 days, an academic program that leads to a position as a child care worker; or has applied for a license as a child care worker.

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"Child-placing agency" means a licensed public or private agency that receives a child for the purpose of placing or arranging for the placement of the child in a foster family home or other facility for child care, apart from the custody of the child's parents. [325 ILCS 2/10]

"Child Protective Service Unit" or "CPS" means certain specialized State employees of the Department assigned by the Director or his or her designee to perform the duties and responsibilities described under this Part. [325 ILCS 5/3]
CPS staff are also referred to as child protection staff.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"CPSW" means a Child Protective Service Worker.

"Collateral contact" means obtaining information concerning a child, parent, or other person responsible for the child from a person who has knowledge of the family situation but was not directly involved in referring the child or family to the Department for services.

"Contact between siblings" means contact between or among siblings who are residing apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication technology.

"Credible evidence of child abuse or neglect" means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.

"Delegation of an investigation" means the investigation of a report of child abuse or neglect has been deferred to another authority. The Department maintains responsibility for determining whether the report is indicated or unfounded, entering information about the report in the State Central Register and notifying the subjects of the report and mandated reporters of the results of the investigation.

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"Department" or "DCFS" means the Department of Children and Family Services.

"Determination" means a final Department decision about whether there is credible evidence that child abuse or neglect occurred. A determination must be either "indicated" or "unfounded".

"DR Specialist" means a Differential Response Specialist as described in Section 300.45(e)(1).

"Disfigurement" means a serious or protracted blemish, scar, or deformity that spoils a person's appearance or limits bodily functions.

"Ecomap" means a pictorial representation of family connections to different systems and community and other resources to identify significant people and/or systems around the family to illustrate the strengths, impact and quality of each connection. (Hartman, A., Diagrammatic Assessment of Family Relationships. Social Casework, 59, 465-476 (1978).)

"Emergency medical facility" means a freestanding emergency center or trauma center, as defined in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50]. [325 ILCS 2/10]

"Emergency medical professional" includes licensed physicians, and any emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, trauma nurse specialist, and pre-hospital RN, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Fire station" means a fire station within the State with at least one staff person. [325 ILCS 2/10]

"Formal investigation" means those activities conducted by Department child protection staff necessary to make a determination as to whether a report of suspected child abuse or neglect is indicated or unfounded. Those activities shall

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include: *direct contact with the subject or subjects of the report as soon as possible after the report is received; an evaluation of the environment of the child named in the report and any other children in the same environment; a determination of the risk to such children if they continue to remain in the existing environments, as well as a determination of the nature, extent and cause of any condition enumerated in such report; the name, age and condition of other children in the environment; and an evaluation as to whether there would be an immediate and urgent necessity to remove the child from the environment if appropriate family preservation services were provided. After seeing to the safety of the child or children, the Department shall forthwith notify the subjects of the report, in writing, of the existence of the report and their rights existing under the Act in regard to amendment or expungement.* [325 ILCS 5/7.4(b)(3)]

"Genogram" means a pictorial representation of an individual's family relationships.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 ([Relative Home Placement](#)) must be met.

"Hospital" has the same meaning as in the Hospital Licensing Act [210 ILCS 85].

"Indicated report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Initial investigation" means those activities conducted by Department child protection staff to determine whether a report of suspected child abuse or neglect is a good faith indication of abuse or neglect and, therefore, requires a formal investigation. Good faith in this context means that the report was made with the honest intention to identify actual child abuse or neglect.

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"Initial oral report" means a report alleging child abuse or neglect for which the State Central Register has no prior records on the family.

"Involved subject" means a child who is the alleged victim of child abuse or neglect or a person who is the alleged perpetrator of the child abuse or neglect.

"Legal custody" means the relationship created by a court order in the best interest of a newborn infant that imposes on the infant's custodian the responsibility of physical possession of the infant, the duty to protect, train, and discipline the infant, and the duty to provide the infant with food, shelter, education, and medical care, except as these are limited by parental rights and responsibilities. [325 ILCS 2/10]

"Local law enforcement agency" means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

"Mandated reporters" means those individuals required to report suspected child abuse or neglect to the Department. A list of these persons and their associated responsibilities is provided in Section 300.30.

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs. [325 ILCS 5/3]

"Neglected child" means any child:

who is not receiving the proper or necessary nourishment or medically indicated treatment, including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians, or otherwise is not receiving the proper or necessary support, or medical or other remedial care recognized under State law as necessary for a child's well-being (including when there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or

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who is subjected to an environment that is injurious insofar as:

the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and

the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or

who is abandoned by his or her parents or other persons responsible for the child's welfare without a proper plan of care; or

who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or

who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in Section 102(f) of the Illinois Controlled Substances Act [720 ILCS 570/102(f)] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or newborn infant.

A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time.

A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 5].

A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. ~~When~~[Where](#) the circumstances indicate harm or substantial risk of harm to the child's health or welfare and necessary medical care is not

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being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of the Act for the reporting of, investigation of, and provision of protective services with respect to the child and his or her health needs, and in such cases spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary.

A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code [105 ILCS 5]. [325 ILCS 5/3]

"Newborn infant" means a child who a licensed physician reasonably believes is 30 days old or less at the time the child is initially relinquished to a hospital, police station, fire station, or emergency medical facility, and who is not an abused or a neglected child. [325 ILCS 2/10]

"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

"Person responsible for the child's welfare" means:

the child's parent, guardian, foster parent or relative caregiver;

an operator, supervisor or employee of a public or private residential agency or institution or public or private profit or not-for-profit child care facility; or

any other person responsible for the child's welfare at the time of the alleged abuse or neglect, including:

any person that is the custodian of a child under 18 years of age who commits or allows to be committed, against the child, the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as provided in Section 10-9 of the Criminal Code of 2012; or

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any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy and volunteers or support personnel in any setting where children may be subject to abuse or neglect. [325 ILCS 5/3]

"Police station" means:

a municipal police station;

a county sheriff's office;

a campus police department located on any college or university owned or controlled by the State or any private college or private university that is not owned or controlled by the State when employees or the campus police department are present; or

any of the district headquarters of the Illinois State Police. [325 ILCS 2/10]

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5].

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt;

is the spouse, or party to a civil union, of such a relative;

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*is the child's step-father, step-mother, step-grandfather, step-grandmother,
or adult step-brother or step-sister; ~~or~~*

*is the partner, or adult child of a partner, in a civil union with the child's
mother or father; or-*

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Relinquish" means to bring a newborn infant, who a licensed physician reasonably believes is 30 days old or less, to a hospital, police station, fire station, or emergency medical facility and to leave the infant with personnel of the facility, if the person leaving the infant does not express an intent to return for the infant or states that he or she will not return for the infant. In the case of a mother who gives birth to an infant in a hospital, the mother's act of leaving that new born infant at the hospital:

without expressing an intent to return for the infant; or

stating that she will not return for the infant; is not a "relinquishment" under the Abandoned Newborn Infant Protection Act. [325 ILCS 2/10]

"Siblings" mean children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 was pending. Children continue to be considered siblings after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 [705 ILCS 405] immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter

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into substitute care together, ~~and~~ have a positive relationship and have at least one parent in common.

"Strengthening and Supporting Families service period" means a level of service intervention that will average 90 days, but no more than 120 days.

"State Central Register" is the record of child abuse and/or neglect reports maintained by the Department pursuant to the Act.

"Subject of a report" means any child reported to the child abuse/neglect State Central Register, and his or her parent, personal guardian or other person responsible for the child's welfare who is named in the report.

"SSF worker" means a Strengthening and Supporting Families worker.

"Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated by the Department, subject to review by the Court. Temporary protective custody cannot exceed 48 hours, excluding Saturdays, Sundays and holidays.

"Undetermined report" means any report of child abuse or neglect made to the Department in which it was not possible to complete an investigation within 60 days on the basis of information provided to the Department.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

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(Source: Amended at 40 Ill. Reg. 7682, effective May 16, 2016)

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- 1) Heading of the Part: Placement and Visitation Services
- 2) Code Citation: 89 Ill. Adm. Code 301
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
301.20	Amendment
301.80	Amendment
- 4) Statutory Authority: 20 ILCS 505
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7020; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In Section 301.20, the definition of "parents", the reference to "adoptive parents" was deleted to eliminate redundancy. The definition of "siblings" was amended by adding "and share at least one parent in common" to the criteria for considering step-siblings.

In Section 301.80, the Department added a Title IV-E requirement to attempt to locate and interview fictive kin, both maternal and paternal grandparents, custodial parents of siblings not in foster care, and other relatives to determine their interest and ability to be an appropriate placement or positive support. The permanency worker shall send written notice to each identified relative.

In Section 301.80, the Department added language that the child must be interviewed about persons named by the parent as a placement resource outside presence of parent and relatives. If the child does not know, trust or feel safe with a person named by the parent or identified as a relative the placing worker shall not place the child with that

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person. Supervisor will make "critical decision" regarding that placement resource supervisory staffing.

In Section 301.80(e)(1)(E), clarifies that, throughout the life of case, the permanency worker shall continue to collect information about other relative supports and connections as that information becomes available, in order to develop a network of individuals who commit to support the family toward reunification and ensure the children do not linger in foster care.

In Section 301.80 (a)(1) adds "best interests of the child" to the list of assessment factors.

In Section 301.80 (j), workers must discuss "supervision" and "discipline" with relative caregivers at each home visit.

In Section 301.80 (l) the final placement decision shall be based on the assessment criteria and conditions for placement set out in this Part.

In Section 301.80 (n), continued appropriateness of the relative placement is determined by ongoing reassessment of the best interests of the child and the relative as a placement resource as set out in this Part.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemakings:

In Section 301.20, definition of "relative" is broadened to include step-grandparents and "fictive kin" in compliance with legislation. Definitions of "fictive kin" and "placing worker" are added. These changes implement PA 98-846.

Definitions that quoted statutory language verbatim have been updated to comport with recent amendments to those statutes.

In Section 301.80, godparents and fictive kin may be considered "relatives" for purposes of placement of a child in DCFS custody or guardianship. "Fictive kin" must apply for a

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foster family home license within 6 months of a child's placement in their home. These changes implement PA 98-846.

Placing workers and permanency workers are required to identify and contact fictive kin, non-custodial parents, maternal and paternal grandparents and other relatives to determine their interest and ability to be an appropriate placement or

positive support for the child or family. The worker must send a written notice to each identified relative. These changes are IV-E requirements.

An assessment process has been added for determining whether a relative is appropriate for placement consideration. Continued appropriateness of the relative placement is determined by ongoing reassessment of the relative as a placement resource and the best interests of the child.

The age requirement for criminal background checks is changed from age 17 to 18 in compliance with a recent statutory amendment.

Throughout the life of case, information about additional relative supports and connections will be included in the case record, as that information becomes available, in order to develop a network of individuals who commit to support the child and family as they work toward reunification, ensure children do not linger in foster care, and help children build lifelong connections.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

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TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 301

PLACEMENT AND VISITATION SERVICES

Section

- 301.1 Purpose (Renumbered)
- 301.2 Definition (Repealed)
- 301.3 Foster Care Placement Goal (Renumbered)
- 301.4 Plans to Achieve This Goal (Renumbered)

SUBPART A: PLACEMENT SERVICES

Section

- 301.10 Purpose
- 301.20 Definitions
- 301.30 Introduction
- 301.40 Legal Authority to Place
- 301.50 Emergency Placement
- 301.60 Placement Selection Criteria
- 301.70 Sibling Placement
- 301.80 Relative Home Placement
- 301.90 Foster Family Home Care
- 301.100 Residential Care
- 301.110 Care in a Medical/Psychiatric Facility
- 301.120 Sharing Appropriate Information with the Caregiver
- 301.130 Medical Examinations for Children in Placement
- 301.140 Education of Children While in Placement

SUBPART B: VISITATION SERVICES

Section

- 301.200 Purpose
- 301.210 Family-Child Visitation
- 301.220 Sibling Visitation
- 301.230 Contact Among Siblings Placed Apart
- 301.240 Grandparents Visitation

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- 301.250 Sibling Visitation and Contact with Adopted Siblings and Siblings in Private Guardianship
301.255 Sibling Visitation with and Among Adult Siblings

SUBPART C: FOSTER CARE PLACEMENT GOAL

- Section
301.310 Purpose
301.320 Foster Care Placement Goal
301.330 Plans to Achieve This Goal

SUBPART D: FOSTER PARENT/RELATIVE CAREGIVER IDENTIFYING INFORMATION

- Section
301.410 Purpose
301.420 Confidentiality of Foster Parent/Relative Caregiver Identifying Information
301.430 Routine Disclosure of Foster Parent/Relative Caregiver Identifying Information
301.440 Specific Disclosure of Foster Parent/Relative Caregiver Identifying Information
301.450 Specific Notice of Disclosure
301.460 Disclosure Prohibited
301.470 Redislosure Prohibited

- 301.APPENDIX A Criminal Convictions which Prevent Placement of Children with Relatives

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; Section 1-103 of the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980 (42 USC 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50].

SOURCE: Adopted and codified at 7 Ill. Reg. 881, effective January 12, 1983; amended at 9 Ill. Reg. 9904, effective July 1, 1985; amended at 19 Ill. Reg. 9438, effective July 1, 1995; emergency amendment at 20 Ill. Reg. 3961, effective February 16, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 4602, effective March 15, 1996; amended at 20 Ill. Reg. 9036, effective July 11, 1996; amended at 20 Ill. Reg. 9518, effective July 5, 1996; amended at 21 Ill. Reg. 13580, effective October 1, 1997; amended at 23 Ill. Reg. 13062, effective October 20, 1999; emergency amendment at 24 Ill. Reg. 6427, effective March 27, 2000, for a maximum of

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150 days; emergency expired August 23, 2000; amended at 25 Ill. Reg. 841, effective January 5, 2001; amended at 25 Ill. Reg. 11803, effective September 14, 2001; amended at 26 Ill. Reg. 11739, effective August 1, 2002; amended at 34 Ill. Reg. 7898, effective May 31, 2010; amended at 36 Ill. Reg. 2098, effective January 30, 2012; amended at 36 Ill. Reg. 4039, effective March 5, 2012; expedited correction at 37 Ill. Reg. 19418, effective March 5, 2012; amended at 40 Ill. Reg. 666, effective December 31, 2015; amended at 40 Ill. Reg. 7699, effective May 16, 2016.

SUBPART A: PLACEMENT SERVICES

Section 301.20 Definitions

"Administrative case review" or "ACR" means case reviews required by 42 USC 675(1) and 20 ILCS 505/6a.

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of related children.

"Child only standard of need" means the assistance standard for cases in which no adult member is included, as established by the Illinois Department of Human Services in 89 Ill. Adm. Code 111 (Assistance Standards).

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents signed an adoptive surrender or voluntary placement agreement with the Department.

"Contact between siblings" means contact among siblings who are **residing** apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication technology.

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"Department" as used in this Part, means the Department of Children and Family Services.

"Diligent search", as used in this Part, means the efforts used by the Department to find a joint placement for siblings who must be placed apart from their families. Diligent search is further defined in Section 301.70(f).

"Family" means one or more adults and children, related by blood, marriage, civil union or adoption and residing in the same household.

"Father" means a man *presumed to be the natural father of a child if:*

he and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his consent, as the child's father on the child's birth certificate pursuant to Section 12 of the Vital Records Act [410 ILCS 535/12];

he and the child's natural mother have signed an acknowledgment of paternity in accordance with rules adopted by the Illinois Department of Healthcare and Family Services under Section 10-17.7 of the Illinois Public Aid Code [305 ILCS 5/10-17.7]; or

he and the child's natural mother have signed an acknowledgement of parentage or, if the natural father is someone other than the one presumed to be the father under this definition, an acknowledgement of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act. [750 ILCS 45/5]

A man can rebut a presumption of paternity only as provided in Section 5(b) of the Illinois Parentage Act of 1984 [750 ILCS 45/5(b)]. Father also means a man who adopts a child or has been determined by court or administrative adjudication to be the child's father.

"Federally-funded foster care" means foster care maintenance payments made in

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accordance with Title IV-E of the Social Security Act for which federal matching grants are received.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Final placement decision" means the decision made by the Department, within 90 days after the initial placement of a child with a relative, to leave or remove the child in the relative home based on the evaluation of the results of the criminal background check of the relative and household members and based on the best interest of the child.

"Foster care payment" means the amount paid by the Department for a child's room, board, clothing, and personal allowance in a licensed foster family home.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in Section 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in Section 301.80 (Relative Home Placement) must be met.

"Joint placement", in the context of sibling placement, means the siblings are placed in the same substitute care setting.

"LEADS" means Law Enforcement Agency Data System.

"Parents" means the child's legal parents whose parental rights have not been terminated. Biological fathers are considered legal parents when paternity has been established as required by the definition of "father" in this Section.

"Permanency goal" means the desired outcome of intervention and service, which is determined to be consistent with the health, safety, well-being, and best

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interests of the child. A permanent legal status is usually a component of the permanency goal.

"Permanent family placement" means placement in a foster family home or a relative home that is intended to last until the child reaches age 21 or until the child is capable of self-sufficiency. The Department may retain guardianship of the child or the foster parent or relative may assume guardianship of the child.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or a court of law.

"Placement Clearance Process" means the approval of a child's placement in foster care or unlicensed relative care from the Placement Clearance Unit.

"Placing worker" means the Child Protection Specialist, Permanency Worker or Intact Family Worker with responsibility to select the substitute care placement for a child.

"Region" means Cook County or any of the downstate Department of Children and Family Services regions.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or-

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is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Residential facility", for the purposes of the Aristotle P. Consent Decree, means all non-foster care or relative home care placements.

"Service plan" means a written plan on a form prescribed by the Department in the plan toward the permanency goal for the children required by 42 USC 675(5), 325 ILCS 5/8.2, and 89 Ill. Adm. Code 315 (Permanency Planning).

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 [705 ILCS 405] was pending. Children continue to be considered siblings after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 [705 ILCS 405] immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Substitute care" means the care of children who require placement away from their families. Substitute care includes foster family care, care of a child for whom the Department is legally responsible provided in a relative family home, care provided in a group home, and care provided in a child care or other institution.

"Visitation" means face-to-face contact:

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between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services which include placement.

(Source: Amended at 40 Ill. Reg. 7699, effective May 16, 2016)

Section 301.80 Relative Home Placement

- a) A child for whom the Department is legally responsible may be placed in the home of a relative when the Department has reason to believe that the relative can safely and adequately care for the child in the absence of formal licensing, including training. In determining whether relative home placement is in the best interests of the child, the placing worker shall consider the child's prior relationship with the relative, the comfort level of the child with the relative, and the extent to which the relative complies with the placement selection criteria of Section 301.60(b).
- b) The placing worker shall assess the prospective relative caregiver's willingness to help and support children in developing a relationship with their siblings, including siblings with whom the children do not yet have a relationship, and recognize the value of preserving family ties between siblings, including their need for stability and continuity of relationships, and the importance of sibling contact in the development of each child's identity. The worker shall document the results of this assessment in the case record.
- c) "Fictive kin" and "godparents", as defined in Section 301.20, are considered to be related to a child when the child is in the custody or guardianship of the Department and in need of a substitute care placement. Unless otherwise specified, the requirements in this Section pertaining to relative home placements

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also apply to placement with persons that the parents or child have identified as fictive kin or the child's godparents.

- d)e) The placing worker shall emphasize to prospective relative caregivers that it is preferable for children to be placed together in one home. However, the placing worker may consider a plan for placement with two or more relatives when the relatives indicate that they are willing and able to develop, nurture and support sibling relationships. When it is not possible to place all of the children together, the placing worker shall encourage substitute caregivers to encourage and facilitate contact among the siblings.
- e) Obtaining Information about Relatives
- 1) Child Entering Substitute Care
- A) The placing worker shall ask the parents whether there is a non-custodial parent or if there are relatives who may be positive placement resources or positive supports for the child. The placing worker shall ask the parents and/or child to identify grandparents and other relatives on both the maternal and paternal sides of the family. When the child is able to understand that he/she will be entering substitute care, the placing worker shall also ask the child, outside the presence of the parents or any relative, about each relative named by the parent as a placement resource. The placing worker shall document all identified relatives and shall not omit from this list anyone named by the parent or child.
- B) When considering a godparent as a placement resource, the placing worker may identify the godparent/godchild relationship by contacting one or both parents to confirm the fact that they did, in fact, designate the person as the child's godparent. If the parents are unavailable, the placing worker shall contact other close family members to identify the relationship. When the child is able to understand, the child shall also be asked to help identify his/her godparent. The placing worker must determine that the godparent established a close and caring relationship with the child prior to the child's placement with the godparent or is part of the family support system (see subsection (g)). When family members are not available or cannot confirm this relationship, and formal

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documentation is not available, a person claiming to be the child's godparent may be considered for placement as a fictive kin.

- C) When considering a fictive kin as a placement resource, the placing worker must determine that the fictive kin established a close and caring relationship with the child prior to the child's placement with the fictive kin or is part of the family support system (see subsection (g)).
- D) The placing worker shall contact the persons identified by the parent and child to attempt to locate an immediate placement for the child. The placing worker shall document each contact in a contact note.
- E) The assigned Permanency Worker shall continue discussions with the parents and child about any relatives who might be support resources for the child. The Permanency Worker shall ask the child, outside the presence of the parents or any relative, about each relative named by the parent as a placement resource.
- F) The Permanency Worker shall attempt to locate and interview each person named by the parents or child, within 5 days after case assignment, to determine his or her interest and ability to be an appropriate placement resource or positive support for the child. In these interviews, the Permanency Worker shall ask if the relative is aware of other relatives of the child who should be contacted. The Permanency Worker shall identify and contact all grandparents, all parents of a sibling of the child (when the parent has legal custody of the sibling), and other adult relatives identified by the family, even when an initial placement has been made with a relative caregiver. If the relative cannot be contacted, the Placing Worker shall document the reason the relative could not be contacted. All interviews shall be documented in a contact note. When contacted by a relative who the Permanency Worker has not already interviewed, the Permanency Worker shall meet with or call the relative. The Permanency Worker shall interview the relative and ask the relative to confirm how he/she is related to the child. If a sibling group is involved, the relative shall be asked how he/she is related to each of the children.

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G) The Permanency Worker shall send a written notice, via U.S. Mail, to each identified relative, informing the relative that a court order was issued for the child to be removed from the custody of the child's parents and placed in the custody of the Department of Children and Family Services. The written notice shall identify the child by first name, gender and age only. At initial placement, this written notice shall be sent within 30 days after obtaining protective custody. In all other circumstances, written notice shall be sent within 7 days after obtaining the relative's postal contact information. This notice shall not be sent to a relative for whom there is a police report, indicated finding or court finding of family or domestic violence. The Permanency Worker shall obtain a copy of the police report, indicated finding or court finding and place it in the record.

H) If the child does not know, trust or feel safe with a person named by the parent or identified as a relative, the placing worker shall not place the child with that person. The placing worker and supervisor shall convene a supervisory staffing to discuss the child's feelings and determine and validate the child's concerns. The supervisor shall make a Critical Decision regarding placement of the child with that relative and document the decision in a supervisory note.

I) Throughout the life of the case, the Permanency Worker shall continue to collect information about other relative supports and connections as that information becomes available, in order to develop a network of individuals who commit to support the family toward reunification and ensure the children do not linger in foster care.

2) Children in Substitute Care Requiring Change of Placement

A) The placing worker for the child shall continue to have discussions with the parents about relatives who may be willing to be positive placement resources for the child. When the child is able to understand, the placing worker shall also ask the child, outside the presence of the parents or any relative, about any relatives who

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might be support resources for the child and about any relative named by the parent as a placement resource.

- B) When considering a godparent as a placement resource, the placing worker may identify the godparent/godchild relationship by contacting one or both parents to confirm the fact that they did, in fact, designate the person as the child's godparent. If the parents are unavailable, the placing worker shall contact other close family members to identify the relationship. When the child is able to understand, the child shall also be asked to help identify his/her godparent. The placing worker must determine that the godparent established a close and caring relationship with the child prior to the child's placement with the godparent or is part of the family support system (see subsection (g)). When family members are not available or cannot confirm this relationship, and formal documentation is not available, a person claiming to be the child's godparent may be considered for placement as a fictive kin.
- C) When considering a fictive kin as a placement resource, the placing worker must determine that the fictive kin established a close and caring relationship with the child prior to the child's placement with the fictive kin or is part of the family support system (see subsection (g)).
- D) The placing worker shall contact all relatives identified by the parents or child, as well as any others previously contacted who expressed interest in being a placement resource. The placing worker shall reconsider any relative who expressed an interest in being a placement resource or, if previously considered, asks to be reconsidered for placement, as the circumstances of the relative or the child may have changed. Each contact shall be documented in a contact note.
- f)↔ The placing worker shall inform prospective relative caregivers that they may be contacted in the future regarding placement of the siblings of a child who may subsequently require placement, or contact with siblings in other living arrangements or living independently.
- g) Assessing Relatives as Placement Resources

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When assessing a relative as a placement resource, the placing worker shall also consider:

- 1) The best interests of the child as defined in Section 1-3 of the Juvenile Court Act [705 ILCS 405/1-3];
- 2) The nature and quality of the relative's relationship with the child. This includes the length of time the child has been in care and whether this relative has been part of the child's life during that time;
- 3) The relative's ability to protect the child from abusive parents and/or his or her own risk behaviors;
- 4) The relative's ability to understand the needs of the child and family and the indicated findings and court findings that have been made with regard to the child and family;
- 5) Whether the relative was involved with the family dynamics that led to the removal of the child from his/her parents;
- 6) The relative's role, if any, in resolving or intervening in the present situation;
- 7) The relative's willingness to work with the Permanency Worker and the Child and Family Team in implementing the Family Service Plan;
- 8) The relative's willingness to work towards the permanency goal and accept necessary services;
- 9) Adequacy of personal supports to ensure the relative's ability to care for and meet the child's identified needs;
- 10) In cases involving domestic violence, mental health and/or substance abuse, how placement with the relative supports the ability of the parents to meet the requirements of the service plan and/or have safe contact with the child; and
- 11) If siblings are being placed together and one of the siblings does not trust or feel safe with the relative, the placing worker shall ask the child (when

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verbal), outside the presence of the parents and any relative, about the relative.

h)e) No child under age 18 for whom the Department is legally responsible shall be placed with a relative unless the conditions for placement specified in this Section have been met prior to placement of the child with the relative. Staff of the placing agency shall meet with the relative and ascertain that the relative meets the following conditions for placement and signs an agreement to that effect. The relative:

- 1) will care for no more than the number of children consistent with the number and ages of children permitted in a licensed foster family home (89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes);
- 2) is willing and capable of protecting the children from harm by the parents or any other person whose actions or inactions allegedly threatened the children's safety or well-being as determined by a child abuse or neglect investigation pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5];
- 3) agrees not to transfer physical custody of the children to anyone, including parents or other relatives, unless previously authorized in writing by the Department;
- 4) agrees not to allow the indicated or alleged perpetrators of abuse or neglect to reside in the relative's home unless previously authorized in writing by the Department;
- 5) agrees to notify the Department of any changes in the household composition;
- 6) agrees to notify the Department of any change of address prior to moving;
- 7) agrees to seek the prior written consent of the Department for non-emergency medical, psychological, or psychiatric testing or treatment;
- 8) agrees to take the children out of state only if previously authorized in writing by the Department;

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- 9) agrees to abide by any conditions or limitations on the parent-child visitation plan;
 - 10) is willing to cooperate with the agency, the children's parents and other resource persons to help develop and achieve the permanency goal recorded in the children's service plan;
 - 11) agrees to adequately supervise the children so they are not left in situations or circumstances which are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate;
 - 12) agrees not to subject the child to corporal punishment, verbal abuse, threats, or derogatory remarks about the child or the child's family;
 - 13) agrees that any and all firearms and ammunition shall be locked up at all times and kept in places inaccessible to children. No firearms possessed in violation of a State or federal law or a local government ordinance shall be present in the home at any time; and
 - 14) agrees to sign, and have all members residing in the home age ~~18~~17 and over sign, an authorization for a criminal background check and agrees to be fingerprinted no later than 30 days after the placement for a final child placement decision.
- ~~i)~~ Prior to placement with a relative, staff of the placing agency shall visit the home of the proposed caregiver and shall determine whether the following conditions for placement are met:
- 1) background checks of the Child Abuse Neglect Tracking System (CANTS) as required by 89 Ill. Adm. Code 385 (Background Checks) and a check of the Statewide Child Sex Offender Registry have been completed on all adult members of the household and children age 13 and over, communicated to the supervising agency prior to placement, and appropriate decisions made. If a report of abuse or neglect exists, staff of the placing agency have made appropriate decisions whether the child should be placed with the relative based on the following considerations:
 - A) the type of indicated abuse and neglect;

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- B) the age of the individual at the time of the report;
 - C) the length of time that has elapsed since the most recent indicated report;
 - D) the relationship of the report to the ability to care for the related children; and
 - E) evidence of successful parenting;
- 2) a check of the Law Enforcement Agency Data System (LEADS) on all adult members of the household and children age 13 and over is completed prior to placement of the related children. If the results of the LEADS check identify prior criminal convictions listed in Appendix A for any adult member of the household, children shall not be placed in the relative's home unless a waiver has been granted in accordance with the requirements of Appendix A;
 - 3) the home is free from observable hazards;
 - 4) prescription and non-prescription drugs, dangerous household supplies, and dangerous tools are stored in places inaccessible to children;
 - 5) any and all firearms and ammunition are locked up at all times and kept in places inaccessible to children;
 - 6) basic utilities (water, heat, electricity) are in operation;
 - 7) sleeping arrangements are suitable to the age and sex of the children;
 - 8) meals can be provided daily to the related children in sufficient quantities to meet the children's nutritional needs;
 - 9) supervision of the related children can be assured at all times, including times when the relative is employed or otherwise engaged in activity outside of the home;
 - 10) the relative can provide basic necessities for themselves and their own

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children;

- 11) the relative can access health care and provide necessary in-home support for any health care needs of the related children;
- 12) no member of the household appears to have a communicable disease that could pose a threat to the health of the related children or an emotional or physical impairment that could affect the ability of the caregiver to provide routine daily care to the related children or to evacuate them safely in an emergency;
- 13) there is no evidence of current drug or alcohol abuse by any household member as determined by the placing agency's observations and statements provided by the relative;
- 14) the relative has the ability to contact the agency, if necessary, and the ability to be contacted;
- 15) the relative has immediate access to a telephone when the related child has medical or other special needs;
- 16) the relative shall cooperate with the supervising agency's educational and service plan for the child;
- 17) the relative is able to communicate with the child in the parent's or child's preferred language.

j) Address Supervision and Discipline with Relative Caregivers

- 1) At the initial visit, and at each subsequent home visit, the placing worker or permanency worker is required to discuss with the relative caregiver the importance of always using age-appropriate supervision and discipline that meet the child's identified needs. Caregivers are prohibited from using corporal punishment. The discussion must include information about trauma-based reactive behaviors and should emphasize the negative effects that result from the use of corporal punishment, as well as use of derogatory or demeaning language towards the child or his/her family members.

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- 2) To ensure that relative caregivers understand their responsibility to provide adequate supervision of the children in their home, Permanency Workers are also required to discuss supervision during monthly home visits.
- k) Fictive Kin: Requirement to Apply for Licensure
- 1) A fictive kin with whom a child is placed shall apply for licensure as a Home of Relative (HMR) foster family home within 6 months after the child's placement with the fictive kin.
- 2) A child may not be removed from the home of a fictive kin solely on the basis that the fictive kin failed to apply for licensure as an HMR foster family home within 6 months after the child's placement in the home, or failed to attain an HMR foster family home license. However, a fictive kin who fails to apply for or obtain an HMR foster family home license shall at all times be in compliance with 89 Ill. Adm. Code 301.80 (Relative Home Placement).
- ~~l)g)~~ Within 90 days after initial placement of a relative child, a final placement decision shall be determined by a supervisor of the placing agency based on the assessment criteria and conditions for placement listed in subsections (d), (e) and (f). The final placement decision shall also consider the results of a criminal background check ~~results~~ of all persons ~~18~~17 years and older who are living in the home and whether continued placement with that relative is in~~based on~~ the best ~~interests~~interest of the child.
- ~~m)h)~~ Prior to or concurrent with placement in a relative's home, staff of the placing agency shall document, on the form prescribed by the Department, that the conditions for placement prescribed by this Section have been met.
- ~~n)i)~~ The supervising agency shall reassess the appropriateness of the relative home placement on an on-going basis and at least prior to each administrative case review or at any point the supervising agency has reason to believe the relative caregiver can no longer safely or adequately care for the children. Appropriateness is determined by ongoing reassessment of the best interests of the child and the relative as a placement resource, as required in subsection (g), and the extent to which the home is in compliance with the conditions described in subsections (h)(e) and (i)(f) and by an evaluation of the continued safety of the

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children, including an evaluation of any pending criminal charges against any adult members of the household.

- [o\)j](#)) The Department may, after providing notice as required by 89 Ill. Adm. Code 337 (Service Appeal Process), move the child to another placement if the Department determines, based on the consideration and assessment of the safety and well-being of the child, the child's permanency goal, and the best interests or special needs of the child, that an alternative placement is necessary.
- [p\)k](#)) Only placements in licensed foster family homes receive the foster care payment rate. Relatives who care for children for whom the Department is legally responsible are encouraged to apply for licensure as a foster family home in accordance with the requirements of 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes). When a relative is licensed under Part 402, the relative will receive the established foster care payment rate appropriate for the number and ages of foster children placed in care. Relatives who are unlicensed receive the child only standard of need.

(Source: Amended at 40 Ill. Reg. 7699, effective May 16, 2016)

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- 1) Heading of the Part: Services Delivered by the Department of Children and Family Services
- 2) Code Citation: 89 Ill. Adm. Code 302
- 3) Section Number: 302.20 Adopted Action: Amendment
- 4) Statutory Authority: 20 ILCS 505
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7038; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In the definition of "parents", the reference to "adoptive parents" was deleted to eliminate redundancy. The definition of "siblings" was amended by adding "and share at least one parent in common" to the criteria for considering step-siblings.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulmakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is amended to include "step-grandparents" and "fictive kin" in compliance with recent Illinois statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is

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amended for clarification. These changes implement PA 98-846. The definitions of "parents" and "siblings" were amended to eliminate redundancy and clarify intent.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

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TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERYPART 302
SERVICES DELIVERED BY THE
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBPART A: GENERAL PROVISIONS

Section	Purpose
302.10	Purpose
302.20	Definitions
302.30	Introduction
302.40	Department Service Goals
302.50	Functions in Support of Services

SUBPART B: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT (RECODIFIED)

Section	Purpose
302.100	Reporting Child Abuse or Neglect to the Department (Recodified)
302.110	Content of Child Abuse or Neglect Reports (Recodified)
302.120	Transmittal of Child Abuse or Neglect Reports (Recodified)
302.130	Special Types of Reports (Recodified)
302.140	Referrals to the Local Law Enforcement Agency and State's Attorney (Recodified)
302.150	Delegation of the Investigation (Recodified)
302.160	The Investigative Process (Recodified)
302.170	Taking Children Into Temporary Protective Custody (Recodified)
302.180	Notification of the Determination Whether Child Abuse or Neglect Occurred (Recodified)
302.190	Referral for Other Services (Recodified)

SUBPART C: DEPARTMENT CHILD WELFARE SERVICES

Section	Purpose
302.300	Adoptive Placement Services (Repealed)
302.305	Adoption Listing Service for Hard-to-Place Children or Children with Disabilities for Whom the Department is Not Legally Responsible

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302.310	Adoption Assistance
302.311	Nonrecurring Adoption Expenses (Repealed)
302.315	Adoption Registry (Repealed)
302.320	Counseling or Casework Services
302.330	Day Care Services
302.340	Emergency Caretaker Services
302.350	Family Planning Services
302.360	Health Care Services
302.365	Mental Health Services (Repealed)
302.370	Homemaker Services
302.380	Information and Referral Services
302.390	Behavioral Health Services
302.400	Successor Guardianship (Repealed)
302.405	Subsidized Guardianship Program
302.410	Subsidized Guardianship (KinGap)

SUBPART D: INTENSIVE FAMILY PRESERVATION SERVICES

Section	Purpose
302.500	Purpose
302.510	Implementation of the Family Preservation Act
302.520	Types of Intensive Family Preservation Services
302.530	Phase In Plan for Statewide Family Preservation Services
302.540	Time Frames

302.APPENDIX A	Acknowledgement of Mandated Reporter Status (Recodified)
302.APPENDIX B	Calculating the Amount of Adoption Assistance (Repealed)

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; the Illinois Alcoholism and Dangerous Drug Dependency Act [20 ILCS 305]; the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50].

SOURCE: Adopted and codified at 5 Ill. Reg. 13188, effective November 30, 1981; amended at 6 Ill. Reg. 15529, effective January 1, 1983; recodified at 8 Ill. Reg. 992; peremptory amendment at 8 Ill. Reg. 5373, effective April 12, 1984; amended at 8 Ill. Reg. 12143, effective July 9, 1984; amended at 9 Ill. Reg. 2467, effective March 1, 1985; amended at 9 Ill. Reg. 9104, effective June 14, 1985; amended at 9 Ill. Reg. 15820, effective November 1, 1985; amended at 10 Ill. Reg.

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5557, effective April 15, 1986; amended at 11 Ill. Reg. 1390, effective January 13, 1987; amended at 11 Ill. Reg. 1551, effective January 14, 1987; amended at 11 Ill. Reg. 1829, effective January 15, 1987; recodified to 89 Ill. Adm. Code 300 at 11 Ill. Reg. 3492, Sections 302.20, 302.100, 302.110, 302.120, 302.130, 302.140, 302.150, 302.160, 302.170, 302.180, 302.190, Appendix A; amended at 13 Ill. Reg. 18847, effective November 15, 1989; amended at 14 Ill. Reg. 3438, effective March 1, 1990; amended at 14 Ill. Reg. 16430, effective September 25, 1990; amended at 14 Ill. Reg. 19010, effective November 15, 1990; amended at 16 Ill. Reg. 274, effective December 31, 1992; emergency amendment at 17 Ill. Reg. 2513, effective February 10, 1993, for a maximum of 150 days; emergency expired July 9, 1993; amended at 17 Ill. Reg. 13438, effective July 31, 1993; amended at 19 Ill. Reg. 9107, effective June 30, 1995; amended at 19 Ill. Reg. 9485, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10746, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; emergency amendment at 19 Ill. Reg. 16735, effective November 28, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 4606, effective March 15, 1996; amended at 20 Ill. Reg. 6670, effective May 1, 1996; emergency amendment at 21 Ill. Reg. 1033, effective January 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3265, effective March 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 6204, effective May 15, 1997; amended at 21 Ill. Reg. 10912, effective July 29, 1997; amended at 22 Ill. Reg. 7140, effective April 13, 1998; emergency amendment at 22 Ill. Reg. 7289, effective April 13, 1998, for a maximum of 150 days; emergency expired September 10, 1998; amended at 22 Ill. Reg. 8803, effective May 15, 1998; amended at 22 Ill. Reg. 21314, effective December 1, 1998; emergency amendment at 25 Ill. Reg. 4292, effective March 15, 2001, for a maximum of 150 days; emergency expired August 11, 2001; amended at 25 Ill. Reg. 11821, effective August 31, 2001; amended at 25 Ill. Reg. 16243, effective December 15, 2001; amended at 26 Ill. Reg. 11747, effective August 1, 2002; amended at 26 Ill. Reg. 16434, effective October 22, 2002; amended at 28 Ill. Reg. 2155, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 10405, effective July 8, 2004, for a maximum of 150 days; emergency expired December 4, 2004; amended at 29 Ill. Reg. 20354, effective November 30, 2005; amended at 30 Ill. Reg. 2323, effective February 2, 2006; amended at 32 Ill. Reg. 11611, effective July 10, 2008; emergency amendment at 33 Ill. Reg. 14310, effective October 1, 2009, for a maximum of 150 days; amended at 34 Ill. Reg. 3248, effective February 26, 2010; emergency amendment at 34 Ill. Reg. 13182, effective September 1, 2010, for a maximum of 150 days; emergency expired January 28, 2011; amended at 35 Ill. Reg. 2899, effective February 8, 2011; amended at 35 Ill. Reg. 8204, effective May 15, 2011; amended at 36 Ill. Reg. 4048, effective March 5, 2012; expedited correction at 37 Ill. Reg. 19427, effective March 5, 2012; amended at 40 Ill. Reg. 693, effective December 31, 2015; amended at 40 Ill. Reg. 7721, effective May 16, 2016.

SUBPART A: GENERAL PROVISIONS

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Section 302.20 Definitions

"Adoption assistance" or "adoption subsidy" means financial assistance from the Department that is provided to the adoptive parents after the finalization of an adoption.

"Adoption placement" means a living arrangement with a family that is directed toward establishing that family as the child's new legal parents. To be considered an adoptive placement the child must be placed in a licensed foster family home or a license-exempt relative home and either:

be legally free (parental rights have been terminated or both parents have surrendered their parental rights); or

be placed in a legal risk adoptive placement that has passed legal screening as described in 89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible).

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of the related children.

"Child welfare services" means public social services that are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of all children, including homeless, dependent, or neglected children;

preventing, remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems,

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and preventing breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

placing children in suitable adoptive homes, in cases where restoration to the biological family is not safe, possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning, so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance that contributes to the physical, emotional and social well-being of children for whom the Department is legally responsible who are pregnant and unmarried;

providing shelter and independent living services for homeless youth; and

placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, in a licensed shelter facility, or in a secure child care facility. The Department is not required to place or maintain children:

who are in a foster home,² or

who are persons with a developmental disability, as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5],³ or

who are female children who are pregnant, pregnant and

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parenting or parenting, or

who are siblings;

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5]

These services include but are not limited to: counseling, advocacy, protective and family maintenance day care, homemaker, emergency caretaker, family planning, adoption, placement, child protection, and information and referral.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Custodial Caregiver" means an individual with whom a child resides who is directly responsible for the day-to-day care of the child ensuring the child's safety and well-being.

"Department" means the Department of Children and Family Services.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed

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foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Level of care" means one of the following types of substitute care that would be appropriate for the child, if placed in foster care: regular foster care, intensive foster care, or specialized foster care.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education as required by law.

"Parents" means the child's legal parents whose rights have not been terminated ~~and adoptive parents~~. Biological fathers are considered legal parents when paternity has been established as required by the definition in this Section.

"Permanency goal" means the desired outcome of intervention and service that is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the permanency goal.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or a court of law.

"Pre-existing condition" means, for purposes of adoption assistance and subsidized guardianship, a disabling physical, emotional or mental health condition that the child had prior to the finalization of the adoption or transfer of guardianship. Such condition must be documented by a duly licensed or credentialed professional.

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5].

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

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is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; ~~or~~

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Service constellation" means a variety of services provided to a child and his/her family.

"Service plan" means a written plan on a form prescribed by the Department in the plan toward the permanency goal for the children.

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated or after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 immediately prior to the private adoption or

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guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Subsidized Guardianship Program" means a program of the Department that offers a financial subsidy to relative care or licensed foster home caregivers who are willing to assume private guardianship of children who are eligible for the program. The Subsidized Guardianship Program is further defined in Section 302.405 (Subsidized Guardianship) and Section 302.410 (Subsidized Guardianship (KinGap)).

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services that include placement.

(Source: Amended at 40 Ill. Reg. 7721, effective May 16, 2016)

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- 1) Heading of the Part: Access To and Eligibility for Child Welfare Services
- 2) Code Citation: 89 Ill. Adm. Code 304
- 3) Section Number: 304.2 Adopted Action:
Amendment
- 4) Statutory Authority: 20 ILCS 505/5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7049; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: This rulemaking amended the definition of "neglected child" to comport with recent statutory amendments.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include step-grandparents and "fictive kin" in compliance with recent Illinois statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERYPART 304
ACCESS TO AND ELIGIBILITY FOR CHILD WELFARE SERVICES

Section

304.1	Purpose
304.2	Definitions
304.3	Introduction to Child Welfare Services
304.4	Eligibility for Child Welfare Services
304.5	Access to Child Welfare Services
304.6	Decision Concerning Case Opening

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5]; Sections 2 and 2.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/2 and 5/2.1]; Section 1-2 of the Juvenile Court Act of 1987 [705 ILCS 405/1-2]; the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980, which amends Section 471 of the Social Security Act (42 USCA 671 (a) (14)).

SOURCE: Adopted and codified at 5 Ill. Reg. 13117, effective November 30, 1981; amended at 8 Ill. Reg. 12118, effective July 9, 1984; amended at 17 Ill. Reg. 251, effective December 31, 1992; amended at 19 Ill. Reg. 9429, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10738, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1569, effective January 10, 1996; amended at 22 Ill. Reg. 18843, effective October 1, 1998; amended at 26 Ill. Reg. 11756, effective August 1, 2002; amended at 36 Ill. Reg. 4058, effective March 5, 2012; amended at 40 Ill. Reg. 708, effective December 31, 2015; amended at 40 Ill. Reg. 7732, effective May 16, 2016.

Section 304.2 Definitions

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes

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death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 [720 ILCS 5] ~~as amended~~, or in the Wrongs to Children Act [720 ILCS 150], and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment;

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, against the child;

causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance, as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570], in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or

commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as defined in Section 10-9 of the Criminal Code of 2012, against the child.

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A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2]. [325 ILCS 5/3]

"Addicted minor" includes any minor who is an addict or an alcoholic as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/1-10].

"Adjudicated", as used in this Part, means that the Juvenile Court has entered an order declaring that a child is abused, neglected, dependent, a minor requiring authoritative intervention, a delinquent minor or an addicted minor.

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of related children.

"Child welfare services" means public social services that are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of all children, including homeless, dependent, or neglected children;

preventing or remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

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placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning, as described in Section 5(1-1) of the [Children and Family Services Act](#) [20 ILCS 505/5(1-1)] so that permanency may occur at the earliest opportunity. Consideration should be given so that, if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance ~~that~~which contribute to the physical, emotional and social well-being of children who are pregnant and unmarried;

providing shelter and independent living services for homeless youth; and

placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, in a licensed shelter facility, or secure child care facility. The Department is not required to place or maintain children:

who are in a foster home;

who are persons with a developmental disability as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5];

who are female children who are pregnant, pregnant and parenting or parenting; or

who are siblings, in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5(a)(3)]

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These services include, but are not limited to: counseling, advocacy, day care, homemaker, emergency caretaker, family planning, adoption, visitation, placement, child protection, and information and referral.

"Delinquent minor" means a minor who before his or her 18th birthday violated or attempted to violate a Federal or State law or municipal ordinance. Delinquent minor is further defined in the Juvenile Court Act of 1987 [705 ILCS 405].

"Department client" means a child or a family who is receiving child welfare services either directly from the Department or through the Department's purchase of service providers.

"Dependent minor" means any minor under 18 years of age:

who is without a parent, guardian or legal custodian;

who is without proper care because of the physical or mental disability of his parent, guardian or custodian;

who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian, provided that no order may be made terminating parental rights, nor may a minor be removed from the custody of his or her parents for longer than 6 months, pursuant to an adjudication as a dependent minor under Section 2-4(c) of the Juvenile Court Act of 1987, unless it is found to be in his or her best interest by the court or the case automatically closes as provided under Section 2-31 of that [Juvenile Court Act of 1987](#); or

who has a parent, guardian or legal custodian who with good cause wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 2-29 of the Juvenile Court Act of 1987.

This definition does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parent or parents, guardian or custodian or to a minor solely because his or her parent or parents or guardian has left the minor for any period of time in the care of

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an adult relative, who the parent or parents or guardian know is both a mentally capable adult relative and physically capable adult relative, as defined by the Juvenile Court Act of 1987. [705 ILCS 405/2-4]

"Family" means one or more adults and children, related by blood, marriage, civil union or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education required by law.

"Minor requiring authoritative intervention" or "MRAI" means *any minor under 18 years of age:*

who is:

absent from home without consent of parent, guardian or custodian, or

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beyond the control of his or her parent, guardian or custodian, in circumstances that constitute a substantial or immediate danger to the minor's physical safety; and

who, after being taken into limited custody for the period provided for in Section 3.3 of the Juvenile Court Act of 1987 and offered interim crisis intervention services, where available, refuses to return home after the minor and his or her parent, guardian or custodian cannot agree to an arrangement for an alternative voluntary residential placement or to the continuation of such placement.

Any minor taken into limited custody for the reasons specified in Section 3.3 of the Juvenile Court Act of 1987 may not be adjudicated an MRAI until the following number of days have elapsed from his or her having been taken into limited custody: 21 days for the first instance of being taken into limited custody and 5 days for the second, third, or fourth instances of being taken into limited custody. For the fifth or any subsequent instance of being taken into limited custody for the reasons specified in Section 3.3, the minor may be adjudicated as requiring authoritative intervention without any specified period of time expiring after his or her being taken into limited custody, without the minor's being offered interim crisis intervention services, and without the minor's being afforded an opportunity to agree to an arrangement for an alternative voluntary residential placement. Notwithstanding any other provision of Section 3.3, for the first instance in which a minor is taken into limited custody where one year has elapsed from the last instance of his having been taken into limited custody, the minor may not be adjudicated an MRAI until 21 days have passed since being taken into limited custody. [705 ILCS 405/3-3]

"Neglected child" means any child:

who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being (including where there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or

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who is subjected to an environment ~~that~~^{which} is injurious insofar as:

the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and

the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or

who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or

who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or

who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in Section 102(f) of the Illinois Controlled Substances Act [720 ILCS 570/102(f)] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant.

A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time.

A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 5].

A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. When the circumstances indicate harm or substantial risk of

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harm to the child's health or welfare and necessary medical care is not being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of the Abused and Neglected Child Reporting Act for the reporting of, investigation of, and provision of protective services with respect to the child and his or her health needs, and, in such cases, spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary.

A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code [105 ILCS 5/~~Art. 26~~]. [325 ILCS 5/3]

"Purchase of services provider" means an agency or individual offering services to a Department client through a signed contract with the Department.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt;

is the spouse, or party to a civil union, of such a relative;

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; ~~or~~

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

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"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Services delivered by the Department" means those social services provided either directly by Department of Children and Family Services staff or by purchase of service providers.

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services which include placement.

(Source: Amended at 40 Ill. Reg. 7732, effective May 16, 2016)

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- 1) Heading of the Part: Adoption Services for Children for Whom the Department of Children and Family Services Is Legally Responsible
- 2) Code Citation: 89 Ill. Adm. Code 309
- 3) Section Number: 309.20 Adopted Action: Amendment
- 4) Statutory Authority: 20 ILCS 505/4 and 5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule included any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7061; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: DPH only made non-substantive, technical changes.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with recent Illinois statutory amendments. The definitions of "fictive kin" and "godparent" are added. These changes implement PA 98-846. Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
e-mail: cfpolicy@idcfs.state.il.us

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 309

ADOPTION SERVICES FOR CHILDREN FOR WHOM THE DEPARTMENT OF
CHILDREN AND FAMILY SERVICES IS LEGALLY RESPONSIBLE

Section	
309.10	Purpose
309.20	Definitions
309.30	Recruitment of Adoptive Families
309.35	Good Faith Effort to Locate Siblings in Adoption and Subsidized Guardianship Placements
309.40	Adoption Listing Services
309.50	Identification of Children for Potential Adoption Planning
309.60	Legal Risk Placements
309.70	Freeing Children for Adoption
309.80	Termination of Parental Rights
309.90	Putative Father Registry
309.100	Preparation of Children for Adoption
309.105	Who May Adopt a Child
309.110	Preparation and Training of Adoptive Families
309.120	Preparation of the Child's Biological Parents
309.130	Placement Considerations
309.135	Post-Permanency Sibling Contact Agreement
309.140	Placement of Children with Adoptive Families
309.150	Providing Information to Adoptive Families
309.160	Post-Placement Services
309.170	Post-Adoption Services
309.180	Adoption Assistance
309.190	Adoption Registry

AUTHORITY: Implementing and authorized by Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5] and the Adoption Act [750 ILCS 50]; implementing the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq; 45 CFR 1356.40 and 1356.41); and the Adoption and Safe Families Act (42 USCA 1305).

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SOURCE: Adopted at 22 Ill. Reg. 8769, effective May 15, 1998; amended at 23 Ill. Reg. 11098, effective September 16, 1999; amended at 25 Ill. Reg. 11778, effective September 14, 2001; amended at 26 Ill. Reg. 16449, effective October 23, 2002; emergency amendment at 30 Ill. Reg. 17123, effective October 13, 2006, for a maximum of 150 days; emergency expired March 11, 2007; amended at 31 Ill. Reg. 8466, effective June 8, 2007; amended at 36 Ill. Reg. 4069, effective March 5, 2012; amended at 40 Ill. Reg. 720, effective December 31, 2015; amended at 40 Ill. Reg. 7744, effective May 16, 2016.

Section 309.20 Definitions

"Adoption assistance" or "adoption subsidy" means financial assistance and other services from the Department which are provided to the adoptive parents after the finalization of an adoption of a child with special needs as defined in Section 309.180.

"Adoption placement" means a living arrangement with a family that is directed toward establishing that family as the child's new legal parents.

"Adoption triad" means the adoptive family, the adoptee (child being adopted) and the biological family.

"Adult" means a person who has attained the age of 18.

"Agency" means a public child welfare agency or a licensed child welfare agency.

"Attachment" means the lasting psychological tie between two people who have significance for each other that endures through space and time and serves to join them emotionally.

"Best interests", as defined in the Juvenile Court Act of 1987 [705 ILCS 405], means consideration of the following factors, in the context of the child's age and developmental needs:

the physical safety and welfare of the child, including food, shelter, health, and clothing;

the development of the child's identity;

the child's background and ties, including familial and religious;

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the child's sense of attachments, including:

where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and sense of being valued);

the child's sense of security;

the child's sense of familiarity;

continuity of affection for the child;

the least disruptive placement alternative for the child;

the child's wishes and long-term goals;

the child's community ties, including church, school, and friends;

the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

the uniqueness of every family and child;

the risks attendant to entering and being in substitute care; and

the preferences of the persons available to care for the child. [705 ILCS 405/1-3]

"Certification training" means training directed toward preparing a family to adopt a child for whom the Department of Children and Family Services is legally responsible and may consist of the following different types of training:

six hours of standardized training for foster care conversion adoptions, ~~that~~^{which} means that a foster parent or relative caregiver is adopting a child who has been in his or her care; or

six hours of standardized training and an additional individualized training

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plan specific to the child's needs for adoptive parents who have not had the child in their care prior to the adoptive placement; or

training specified by private child welfare agencies who meet the standards of the Council on Accreditation of Services for Families and Children.

"Children for whom the Department of Children and Family Services is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Confidential intermediary" is an individual appointed by the court *for the purpose of exchanging medical information with one or more mutually consenting biological relatives, obtaining identifying information about one or more mutually consenting biological relatives, or arranging contact with one or more mutually consenting biological relatives. Additionally, in cases where an adopted or surrendered person is deceased, an adult child of the adopted or surrendered person or his or her adoptive parents or surviving spouse may file a petition under Section 18.3a of the Adoption Act [750 ILCS 50/18.3a] and in cases where the birth parent is deceased, an adult birth sibling of the adopted or surrendered person or of the deceased birth parent may file a petition under Section 18.3a for the purpose of exchanging medical information with one or more mutually consenting biological relatives of the adopted or surrendered person, obtaining identifying information about one or more mutually consenting biological relatives of the adopted or surrendered person, or arranging contact with one or more mutually consenting biological relatives of the adopted or surrendered person.* [750 ILCS 50/18.3a] The duties and responsibilities of a confidential intermediary are set out in Section 18.3a(i) of the Adoption Act.

"Consent to adoption by a specified person" is a voluntary act by the parents to relinquish all parental rights of a child to a person or persons specified by the parents in the specific consent document. Consent to adoption by a specified person is further described in Section 309.70 (Freeing Children for Adoption).

"Contact between siblings" means contact among siblings who are residing apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text

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messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication technology.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in Section 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in Section 301.80 (Relative Home Placement) must be met.

"Internal legal screening" means an internal review required by the Department prior to referring a case for termination of parental rights for the purpose of freeing a child for adoption. Depending on local practice, a representative of the State's Attorney's Office may participate in the screening. The purpose of the screening is to determine whether sufficient grounds for termination of parental rights exist and whether adoption is in the best interest of the child. Legal screening is further described in Section 309.80 (Termination of Parental Rights).

"Legal risk placement" means the placement with a family of a child, not yet legally free for adoption, made in the best interests of the child with the intent that the family will become an adoptive resource for the child should the child become legally free for adoption.

"Parental unfitness" means a finding by the court that a person is unfit to parent a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are described in Section 1(D) of the Adoption Act [750 ILCS 50/1(D)].

"Persons approved for adoption" means persons who have been licensed as a foster family home in accordance with 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes) or relative caregivers with whom children have been placed in accordance with 89 Ill. Adm. Code 301 (Placement and

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Visitation Services) and who also meet the certification requirements of Section 309.110(c).

"Post-adoption services" are services meant to assist and support the family in maintaining itself in a healthy and nurturing environment and in preserving the adoption. Post-adoption services may include, but are not limited to, social, psychological, psychiatric, health, educational and adoption preservation services. Financial services are available to families and adoptees following the legal consummation of the adoption, when they are eligible for adoption assistance. Post-adoption services also address the needs of adult adoptees and their biological families to seek information and contact, when desired.

"Putative father" means a male, regardless of age, who may be a child's father, but who was not married to the child's mother on or before the date that the child was or is to be born and for whom paternity of the child has not been established in a court proceeding.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or-

is a fictive kin as defined in this Section.

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"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 was pending. Children continue to be considered siblings after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Surrender for adoption" is a voluntary act by the parents to relinquish all parental rights of a child to an agency for the purpose of placing the child for adoption.

"Termination of parental rights" is a legal action of the court or a voluntary action by the parents that relieves the birth parents of a child of all parental responsibility for the child and deprives them of all legal rights with respect to the child.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

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(Source: Amended at 40 Ill. Reg. 7744, effective May 16, 2016)

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- 1) Heading of the Part: Permanency Planning
- 2) Code Citation: 89 Ill. Adm. Code 315
- 3) Section Number: 315.20 Adopted Action:
Amendment
- 4) Statutory Authority: 20 ILCS 505
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7070; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In the definition of "parents" the reference to "adoptive parents" was deleted to eliminate redundancy. The definition of "siblings" was amended by adding "and share at least one parent in common" to the criteria for considering step-siblings.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include step-grandparents and "fictive kin" in compliance with recent Illinois statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846. Several definitions that

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quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
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Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/ 524-3715
e-mail: cfpolicy@idcfs.state.il.us

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

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NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 315

PERMANENCY PLANNING

SUBPART A: PRINCIPLES OF PERMANENCY PLANNING

Section

- 315.10 Purpose
- 315.20 Definitions
- 315.30 Best Interests Health and Safety of the Child
- 315.40 Accountability
- 315.45 The Need for a Permanent Home
- 315.50 Reasonable Efforts/Reasonable Progress
- 315.60 The Child's Sense of Time
- 315.70 The Critical Decisions
- 315.80 Components of the Permanency Planning Process

SUBPART B: ASSESSMENT AND OTHER CASEWORK ACTIVITIES

Section

- 315.100 Assessment
- 315.110 Worker Interventions and Contacts
- 315.120 Family Meetings
- 315.125 Preservation of Sibling Relationships
- 315.130 Developing the Service Plan
- 315.140 Distributing the Service Plan
- 315.150 Revising the Service Plan
- 315.160 Case Reviews and Court Hearings

SUBPART C: SELECTING THE PERMANENCY GOAL

Section

- 315.200 Selection of the Permanency Goal
- 315.205 Return Home Within Five Months
- 315.210 Return Home Within One Year
- 315.215 Return Home Pending Status Hearing

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315.220	Substitute Care Pending Court Determination on Termination of Parental Rights
315.225	Adoption
315.230	Guardianship
315.235	Independence
315.240	Cannot Be Provided for in a Home Environment
315.241	Continuing Foster Care
315.245	Concurrent Planning
315.250	Applicability of Reunification Services

SUBPART D: EVALUATION AND DECISIONMAKING

Section

315.300	Evaluating Whether Children in Placement Should Be Returned Home
315.305	When Reunification Is Inappropriate
315.310	Termination of Services and Planning for Aftercare

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505], the Abused and Neglected Child Reporting Act [325 ILCS 5], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 670 et seq.), the Juvenile Court Act of 1987 [705 ILCS 405], and the Adoption Act [750 ILCS 50].

SOURCE: Adopted at 23 Ill. Reg. 2539, effective February 1, 1999; amended at 25 Ill. Reg. 11785, effective September 14, 2001; amended at 26 Ill. Reg. 7720, effective May 24, 2002; amended at 26 Ill. Reg. 11765, effective August 1, 2002; amended at 28 Ill. Reg. 8465, effective June 4, 2004; amended at 32 Ill. Reg. 8103, effective May 30, 2008; amended at 35 Ill. Reg. 14934, effective September 1, 2011; amended at 36 Ill. Reg. 4073, effective March 5, 2012; expedited correction at 37 Ill. Reg. 19431, effective March 5, 2012; amended at 40 Ill. Reg. 743, effective December 31, 2015; amended at 40 Ill. Reg. 7754, effective May 16, 2016.

SUBPART A: PRINCIPLES OF PERMANENCY PLANNING

Section 315.20 Definitions

"Administrative case review" means a review of permanency planning open to the participation of the parents of the child, conducted by a person who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subjects of the review. (See 42 USC 675(6).) The administrative case review is also open to the participation of other professionals involved in assessing or treating the child, any legal representative of the parent or child, and the foster parents as specified in 89 Ill. Adm. Code 316 (Administrative

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Case Reviews and Court Hearings).

"Best interest of the child", as defined in the Juvenile Court Act of 1987, means consideration of the following factors:

the physical safety and welfare of the child, including food, shelter, health, and clothing;

the development of the child's identity;

the child's background and ties, including familial and religious;

the child's sense of attachments, including:

where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

the child's sense of security;

the child's sense of familiarity;

continuity of affection for the child;

the least disruptive placement alternative for the child;

the child's wishes and long-term goals;

the child's community ties, including church, school, and friends;

the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

the uniqueness of every family and child;

the risks attendant to entering and being in substitute care; and

the preferences of the persons available to care for the child. [705 ILCS

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405/1-3]

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Client service plan" means a written plan on a form prescribed by the Department that guides all participants in the plan of intervention toward the permanency goals for the children.

"Concurrent planning" means a process whereby the Department or its service provider works toward family reunification with a family whose children has been removed from the home while, at the same time, developing an alternative plan, if reunification with the family cannot be attained.

"Contact between siblings" means contact between or among siblings who are residing apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication technology.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Father" means a man *presumed to be the natural father of a child if:*

he and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his consent, as the child's father on the child's birth certificate pursuant to Section 12 of the Vital Records Act [410 ILCS 535/12];

he and the child's natural mother have signed an acknowledgment of

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paternity in accordance with rules adopted by the Illinois Department of Healthcare and Family Services under Section 10-17.7 of the Illinois Public Aid Code [305 ILCS 5/10-17.7] (~~see 89 Ill. Adm. Code 160 (Child Support Enforcement)~~);

he and the child's mother have signed an acknowledgement of parentage or, if the natural father is someone other than the one presumed to be the father under this Section, an acknowledgement of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act. [750 ILCS 45/5]

A man can rebut a presumption of paternity only as provided in Section 5(b) of the Illinois Parentage Act of 1984 [750 ILCS 45/5(b)]. Father also means a man who adopts a child or has been determined by court or administrative adjudication to be the child's father.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Guardian" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5].

"Individual Treatment Plan" or "ITP" or "Treatment Plan" as defined in 59 Ill. Adm. Code 132 (Medicaid Community Mental Health Services Program) means a

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written document developed by the appropriate service provider staff with the participation of the client with a mental illness and, if applicable, the client's guardian, which specifies the client's diagnosis, problems, and service needs to be addressed, the intermediate objectives and long-term goals for the services and the planned interventions for achieving these goals.

"Individualized Education Plan/Program" or "IEP" means the document prepared by the local school district, as a result of a Multi-disciplinary Conference, that identifies the specific special education services that will be provided to the child. The IEP also includes education goals, services, frequency, quantity and duration. IEP is further defined in 23 Ill. Adm. Code 226 (Special Education).

"Individualized Family Service Plan" or "IFSP" means a written working document developed for each child in order to facilitate the provisions of Early Intervention (EI) services. The IFSP is created by the family, an inter-disciplinary team, the core EI agency, and the case manager (service coordinator). The EI agency is responsible for coordinating the IFSP implementation.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare is able and willing to ensure that a child is healthy and safe, which includes ensuring that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education required by law.

"Parents" means the child's legal parents whose rights have not been terminated ~~and adoptive parents~~. Biological fathers are considered legal parents when paternity has been established as required by the definition in this Section.

"Permanency goal" means the desired outcome of intervention and service that is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the permanency goal.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or by a court of law.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the

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parent, who:

is currently related to the child in any of the following ways by blood, adoption, marriage, or civil union: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister ~~through a current marriage~~; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Service termination planning" means service planning that starts with the first contact with the family and that focuses on providing a smooth transition from Department guardianship or custody. It includes the receipt of child welfare services to discharge from guardianship or custody and the termination of Department funded services.

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 was pending. Children continue to be considered siblings after one or

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more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 [705 ILCS 405] immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Substitute care" means the care of children who require placement away from their families or private guardians. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301 (Placement and Visitation Services), Section 301.80 (Relative Home Placement), care provided in a group home, care provided in a maternity center or a child care, mental health or other institution, and care provided in an independent living arrangement.

"Termination of parental rights" means a court order that relieves the legal parents of parental responsibility for the child and revokes all legal rights with respect to the child. The termination order also frees the child from all obligations of maintenance and obedience with respect to the legal parents.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

(Source: Amended at 40 Ill. Reg. 7754, effective May 16, 2016)

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- 1) Heading of the Part: Administrative Case Reviews and Court Hearings
- 2) Code Citation: 89 Ill. Adm. Code 316
- 3) Section Number: 316.20 Adopted Action:
Amendment
- 4) Statutory Authority: 20 ILCS 505/5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7080; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In the definition of "parents", the reference to "adoptive parents" was deleted to eliminate redundancy. The definition of "siblings" was amended by adding "and share at least one parent in common" to the criteria for considering step-siblings.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definitions of "fictive kin", "godparent" and "relative" are added. These changes implement PA 98-846.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

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

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Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

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NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 316

ADMINISTRATIVE CASE REVIEWS AND COURT HEARINGS

Section

316.10	Purpose
316.20	Definitions
316.30	Administrative Case Review System
316.40	Frequency of Administrative Case Reviews
316.50	Conduct and Participation at Administrative Case Reviews
316.60	Notice of Administrative Case Reviews
316.70	Roles and Responsibilities of the Administrative Case Reviewer
316.80	Caseworker Responsibilities at the Administrative Case Review
316.90	Decision Review
316.100	Appealability of Decisions
316.110	The Department's Role in the Juvenile Court
316.120	Permanency Hearings
316.130	Caseworker Responsibilities at the Permanency Hearing
316.140	Compliance with the Client Service Planning Requirements

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5], Section 7.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.1], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 675), Section 2-5 of the Juvenile Court Act of 1987 [705 ILCS 405/2-5], and Section 1 of the Adoption Act [750 ILCS 50/1].

SOURCE: Adopted at 23 Ill. Reg. 2528, effective February 1, 1999; amended at 26 Ill. Reg. 16909, effective November 8, 2002; amended at 35 Ill. Reg. 14942, effective September 1, 2011; amended at 36 Ill. Reg. 4082, effective March 5, 2012; amended at 40 Ill. Reg. 767, effective December 31, 2015; amended at 40 Ill. Reg. 7764, effective May 16, 2016.

Section 316.20 Definitions

"Administrative case review" means a review of permanency planning open to the participation of the parents of the child, conducted by a person who is not responsible for the case management of, or the delivery of services to, either the

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child or the parents who are the subjects of the review. (See 42 USC 675(6)). The administrative case review is also open to the participation of other professionals involved in assessing or treating the child, any legal representative of the parent or child, and the foster parents as specified in this Part.

"Administrative case reviewer" means a trained professional who is not responsible for the case management of, or delivery of services to, either the child or the parents who are the subjects of the review.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Contact between siblings" means contact between or among siblings who are residing apart from one another and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Parents" means the child's legal parents, ~~including adoptive parents~~, whose rights have not been terminated. Biological fathers are considered legal parents when

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paternity has been established as required by the definition in 89 Ill. Adm. Code 315 (Permanency Planning).

"Permanency goal" means the desired outcome of intervention and service that is determined to be consistent with the health, safety, well-being and best interests of the child. A permanent legal status is usually a component of the permanency goal.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent ([as defined in this Section](#)), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, [step-grandfather](#), [step-grandmother](#), or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

[is a fictive kin as defined in this Section.](#)

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [\[20 ILCS 505/7\(b\)\]](#)

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"Service plan" means a written plan on a form prescribed by the Department that guides all participants in the plan toward the permanency goals for the children.

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 was pending. Children continue to be considered siblings after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 [705 ILCS 405] immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Substitute care" means the care of children who require placement away from their families. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301.80 (Relative Home Placement), care provided in a group home, care provided in a maternity center or a child care, mental health or other institution, and care provided in an independent living arrangement.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

(Source: Amended at 40 Ill. Reg. 7764, effective May 16, 2016)

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- 1) Heading of the Part: Interstate Placement of Children
- 2) Code Citation: 89 Ill. Adm. Code 328
- 3) Section Number: 328.2 Adopted Action:
Amendment
- 4) Statutory Authority: 45 ILCS 15
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7086; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Only non-substantive, technical changes were made.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with recent Illinois statutory amendments. The Definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORT

PART 328

INTERSTATE PLACEMENT OF CHILDREN

SUBPART A: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Section

328.1	Purpose
328.2	Definitions
328.3	Placement of Illinois Children
328.4	Placement of Children From Other States
328.5	Removal of Illinois Children

SUBPART B: INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

Section

328.100	Purpose
328.110	Interstate Compact
328.120	Definitions
328.130	Relocation of Adopted Children from Illinois to Other States
328.140	Relocation of Adopted Children from ICAMA Party State into Illinois

AUTHORITY: Implementing and authorized by the Interstate Compact on the Placement of Children Act [45 ILCS 15]; Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5]; Section 16 of the Child Care Act of 1969 [225 ILCS 10/16] and the Interstate Compact on Adoption Act [45 ILCS 17/5-1].

SOURCE: Adopted and codified at 7 Ill. Reg. 9207, effective August 5, 1983; amended at 23 Ill. Reg. 5245, effective May 1, 1999; amended at 26 Ill. Reg. 11773, effective August 1, 2002; amended at 40 Ill. Reg. 780, effective December 31, 2015; amended at 40 Ill. Reg. 7770, effective May 16, 2016.

SUBPART A: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Section 328.2 Definitions

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"Children for Whom the Department has Legal Responsibility" or "Department Wards", as used in this Part, means children for whom the Department of Children and Family Services has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Facility" means a person, group of persons, or corporation caring for children licensed under applicable laws. Facility includes, but is not limited to, child care institution, related or non-related foster family home or group home.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Interstate Compact on the Placement of Children" is a law, enacted by all 50 states and the territories of Guam and the Virgin Islands, for the purpose of establishing uniform procedures for handling the interstate placement of children in foster homes, adoptive homes, or other child care facilities.

"Placement", as used in this Part, means the arrangement for the continuing care of a child in a foster or adoptive family home, group home, child care institution, or other child care facility as defined by the Child Care Act of 1969 [225 ILCS 10]. Placements do not include care of a child in a medical facility, a mental health facility, a correctional facility or an educational facility.

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"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt;

is the spouse, or party to a civil union, of such a relative;

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or-

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

(Source: Amended at 40 Ill. Reg. 7770, effective May 16, 2016)

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- 1) Heading of the Part: Service Appeal Process
- 2) Code Citation: 89 Ill. Adm. Code 337
- 3) Section Number: 337.20 Adopted Action:
Amendment
- 4) Statutory Authority: 20 ILCS 505/4 and 5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7092; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The definition of "family" was amended to remove all of the added language and reinstate all of the stricken language. The proposed amendment unduly restricted the family members who may request a service appeal.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
337.20	Amendment	39 Ill. Reg. 12658; September 18, 2015
337.30	Amendment	39 Ill. Reg. 12658; September 18, 2015
337.80	Amendment	39 Ill. Reg. 12658; September 18, 2015
337.110	Amendment	39 Ill. Reg. 12658; September 18, 2015

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- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with recent Illinois statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
e-mail: cfpolicy@idcfs.state.il.us

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 337

SERVICE APPEAL PROCESS

Section	
337.10	Purpose
337.20	Definitions
337.30	The Service Appeal Process
337.40	Department and Provider Agency Responsibilities on Appealable Issues
337.50	The Right to a Service Appeal
337.60	Who May Appeal
337.70	What May Be Appealed
337.80	What May Not Be Appealed
337.90	Notices of Department or Provider Agency Decisions
337.100	How to Request a Service Appeal
337.110	Grounds for Dismissal of a Service Appeal Request
337.120	Time Frames for the Service Appeal Process
337.130	Continuing Services During the Service Appeal Process
337.140	Confidentiality During the Service Appeal Process
337.150	Notice Concerning a Service Appeal
337.160	Abandonment of a Service Appeal
337.170	Fair Hearing Appeal Rights
337.180	The Administrative Law Judge
337.190	Record of a Fair Hearing
337.200	Combined Hearings
337.210	Continuances Requested in a Combined Hearing
337.220	The Final Administrative Decision
337.230	Who Receives a Copy of the Final Administrative Decision
337.240	Notice of the Availability of Judicial Review
337.250	Severability of This Part

AUTHORITY: Implementing and authorized by Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5].

SOURCE: Adopted at 17 Ill. Reg. 1046, effective January 15, 1993; amended at 19 Ill. Reg. 7175, effective June 1, 1995; amended at 19 Ill. Reg. 10557, effective July 1, 1995; emergency

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amendment at 25 Ill. Reg. 4283, effective March 19, 2001, for a maximum of 150 days; emergency amendment repealed in response to an Objection of the Joint Committee on Administrative Rules at 25 Ill. Reg. 6735, effective May 8, 2001; amended at 26 Ill. Reg. 6246, effective June 1, 2002; amended at 26 Ill. Reg. 11778, effective August 1, 2002; amended at 36 Ill. Reg. 4388, effective March 7, 2012; amended at 40 Ill. Reg. 786, effective December 31, 2015; amended at 40 Ill. Reg. 7775, effective May 16, 2016.

Section 337.20 Definitions

"Adequate notice" means a notice that contains all of the elements identified in Section 337.90(c) of this Part.

"Administrative Hearings Unit" means the Department's unit responsible for receiving requests for and acting upon a service appeal and conducting fair hearings on appeal.

"Administrative law judge" means an attorney who is appointed by the Director of the Department and who is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for receiving requests for a service appeal and for coordinating the fair hearings.

"Appellant" means the person who requests a service appeal or on whose behalf a service appeal is requested.

"Authorized representative" means a person authorized in writing by the appellant to assist the appellant in the appeal process. If the appellant is unable to reduce such authorization to writing, the Department shall assist the appellant in doing so. The representative may be legal counsel or other spokesperson.

"Clinical Intervention for Placement Preservation" or "CIPP" means a regionally based, multidisciplinary team consisting of designated DCFS staff, the child (when age-appropriate), the child's family, extended family and others who have relevant and current information about the child, and professionals who are critical to achieve informed, sound decision-making.

"Clinical Intervention for Placement Preservation (CIPP) Action Plan" means a written document summarizing a clinical assessment of a child's or youth's service

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needs, identifying the resources required to meet those needs, and establishing time frames for their achievement.

"Child welfare services" means public social services that are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of all children, including homeless, dependent, or neglected children;

preventing, remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible, when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed by the provision of services to the child and the families, when the child can be cared for at home without endangering the child's health and safety;

placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning so that permanency may occur at the earliest opportunity. Consideration should be given so that, if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance that contributes to the physical, emotional and social well-being of children for whom the Department is legally responsible who are pregnant and unmarried;

providing shelter and independent living services for homeless youth; and

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placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility, or secure child care facility. The Department is not required to place or maintain children:

who are in a foster home; or

who are persons with a developmental disability, as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5];
or

who are female children who are pregnant, pregnant and parenting or parenting; or

who are siblings;

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5(a)(3)]

These services include but are not limited to: counseling, advocacy, day care, homemaker, emergency caretaker, family planning, adoption, visitation, placement, child protection and information and referral.

"Clinical placement review" means a process in which designated clinical Department staff will review a disputed decision by the Department or purchase of service agency to remove a child from the home of a foster family or relative caregiver, when the child will be placed in the home of another foster family or relative caregiver.

"Date of action" means the effective date of the action or proposed action by the Department or provider agency that resulted in the appeal.

"Date of appeal" means the postmark date or date of receipt of appellant's written request for an appeal, whichever is earlier, at the address specified in the notice.

"Date of notice" means the date on which the appellant receives written notice of

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the Department's intended action or decision or the date on which the appellant learns of the intended action or decision, if a written notice was not provided.

"Day care services" means care provided to children for less than 24 hours per day in facilities requiring licensure under the Child Care Act of 1969 [225 ILCS 10] in facilities exempt from licensure, in the homes of relatives, or in their own home.

"Department representative" means an attorney or designated individual responsible for presenting the Department's position in mediation, staffings and negotiations and at an emergency review and fair hearing.

"Emergency review" means a limited review of the actions or decisions of the Department or provider agency that may adversely affect an individual or individuals served by the Department. An emergency review provides for an interim decision pending a fair hearing.

"Fair hearing", as used in this Part, means a formal review of the action or decision of the Department or provider agency to determine whether that action or decision is in compliance with applicable laws and rules and will be in the best interests of the child.

"Family" means the biological or adoptive parents (provided a court has not terminated parental rights), legal guardian, or any relative who has assumed custody and control of the child in the absence of the child's biological or adoptive parents.

"Final administrative decision" means the Department's final decision, order, or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of appellants and that may be appealed in a circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Imminent risk of harm" means that individuals' actions, omissions or conditions endanger the life, or seriously jeopardize the physical or mental health or safety of themselves or others, if protective action would not be taken immediately.

"Individual legally acting on a person's behalf" means an individual who has been appointed by a court to act on behalf of a person when the person is incompetent, incapacitated, or otherwise unable to speak for himself or herself.

"Mediation" means a meeting open to all parties affected by the decision being appealed to attempt agreement on the issue in dispute with a mediator, who assists the parties in resolving issues and drawing up an agreement.

"Mediator" means a neutral third party appointed by the Director of the Department who conducts the mediation and assists the parties in resolving issues and drawing up an agreement.

"Parties" means the Department or its agents and those persons who have appealed the service decisions made by the Department or its agents.

"Preponderance of the evidence" means the greater weight of the evidence or evidence that renders a fact more likely than not.

"Provider agency" means an agency offering case management and/or casework services through a signed contract with the Department for paid services.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means *any person, 21 years of age or over, other than the parent, who:*

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; ~~or~~

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, [step-grandfather](#), [step-grandmother](#) or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; ~~or~~

[is a fictive kin as defined in this Section.](#)

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines, and documents, that it would be in the child's best interests to consider this person a relative, based upon the factors for determining best interests set forth in Section 1-3(4.05) of the Juvenile Court Act of 1987 [705 ILCS 405/1-3(4.05)]. [20 ILCS 505/7(b)]

"Request for an appeal" means the written request by an appellant for a fair hearing to review an action taken or a decision made by the Department or a provider agency on behalf of the Department. If the appellant is unable to request an appeal in writing, the Department or provider agency shall help the appellant put the request in writing.

"Reviewer" means the person appointed by the Department to conduct an emergency review.

"Service appeal process" means the appeal system offered by the Department to

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parents, children, guardians ad litem, foster parents and relative caregivers to challenge service decisions of the Department.

"Services" means child welfare or day care services, including placement services or benefits provided by the Department or its provider agencies under Titles IV and XX of the Social Security Act (42 USC 601 et seq. and 1397 et seq.) or the laws of the State of Illinois.

"Stay of action" means the action or decision made by the Department or its provider agency will not be implemented pending an emergency review or final administrative decision by the Department.

"Timely written notice" means a notice that complies with the requirements of Section 337.90(b).

(Source: Amended at 40 Ill. Reg. 7775, effective May 16, 2016)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) Heading of the Part: Appeal of Foster Family Home License Denials by Relative Caregivers
- 2) Code Citation: 89 Ill. Adm. Code 338
- 3) Section Number: 338.20 Adopted Action: Amendment
- 4) Statutory Authority: 20 ILCS 505/5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7102; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: DCFS only made non-substantive, technical changes to the rulemaking.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with recent statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
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The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORTPART 338
APPEAL OF FOSTER FAMILY HOME LICENSE DENIALS
BY RELATIVE CAREGIVERS

Section

338.10	Purpose
338.20	Definitions
338.30	Who May Appeal
338.40	What May Be Appealed
338.50	What May Not Be Appealed
338.60	Concurrent Jurisdiction
338.70	Notices of Department Decisions
338.80	The Appeal Process
338.90	Internal Review
338.100	The Administrative Hearing
338.110	Rights and Responsibilities in Administrative Hearings
338.120	Rules of Evidence
338.130	The Administrative Law Judge
338.140	Combined or Separate Hearings
338.150	Final Administrative Decision
338.160	Records of Administrative Hearings
338.170	Severability of This Part
338.180	Transition Provisions

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5].

SOURCE: Emergency rules adopted at 19 Ill. Reg. 12305, effective August 11, 1995, for a maximum of 150 days; adopted at 20 Ill. Reg. 1574, effective January 10, 1996; amended at 26 Ill. Reg. 11786, effective August 1, 2002; amended at 40 Ill. Reg. 796, effective December 31, 2015; amended at 40 Ill. Reg. 7785, effective May 16, 2016.

Section 338.20 Definitions

"Administrative hearing" in the context of this Part means a formal review of the

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Department's decision to deny a foster family home license to the relative who is serving as caregiver of children for whom the Department is legally responsible.

"Administrative law judge" means the person who is appointed by the Director of the Department and is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for coordinating the administrative hearing appeal process.

"Appeal file" means the correspondence, statements, reports, investigative files, documents and other written material submitted to the Administrative Hearings Unit and the appellant after the commencement of the appeal. It does not include any documents or other material that may be in the custody of any other unit of DCFS, unless the document or material has been submitted to both the appellant and the Administrative Hearings Unit.

"Appellant" means the person who requests a review or administrative hearing or in whose behalf a review and administrative hearing is requested.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Date of action" means the date on which any Department action becomes effective.

"Date of appeal" is the postmark date on the appellant's request to appeal the Department's decision to deny the application for a foster family home license.

"Date of notice" means the date of the written notice of the Department's decision.

"Department's representative" means an attorney or designated individual responsible for presenting the Department's case.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

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"Final administrative decision" means the Department's final decision, order or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of participants and that may be further appealed to the circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

"Full-time care" means the child is a resident of the household, whether on a temporary, emergency, or permanent basis, and is receiving family care usually provided by a parent or guardian.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"License" means a document issued by the Department of Children and Family Services which authorizes a relative caregiver to operate a foster family home in accordance with 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes) and the provisions of the Child Care Act of 1969 [225 ILCS 10] and rules promulgated thereunder.

"Party" to any administrative hearing or other proceeding in the Department is the Department or the appellant, as the case may be.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to

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each other), *godparent* (as defined in this Section), *great-uncle*, or *great-aunt*; or

is the spouse, or party to a civil union, *of such a relative*; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or;

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

(Source: Amended at 40 Ill. Reg. 7785, effective May 16, 2016)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) Heading of the Part: Authorized Child Care Payments
- 2) Code Citation: 89 Ill. Adm. Code 359
- 3) Section Number: 359.2 Adopted Action:
Amendment
- 4) Statutory Authority: 20 ILCS 505/5
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7109; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In the definition of "Relatives", step-grandparents were inadvertently omitted in original proposal and have now been added.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include step-grandparents and "fictive kin" in compliance with recent statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846.

Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
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The full text of the Adopted Amendment begins on the next page:

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TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER c: FISCAL ADMINISTRATIONPART 359
AUTHORIZED CHILD CARE PAYMENTS

Section

359.1	Purpose
359.2	Definitions
359.3	Introduction
359.4	Payments for Substitute Care Services
359.5	Payments for Family Preservation and Auxiliary Services
359.6	Payments for Independent Living Arrangements
359.7	Payments for Children's Personal and Physical Maintenance
359.8	Payments for Unmarried Mothers (Repealed)
359.9	Payments for Medical Care
359.10	Overpayments and Repayments

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5].

SOURCE: Adopted and codified at 5 Ill. Reg. 13129, effective November 30, 1981; amended at 9 Ill. Reg. 19705, effective December 16, 1985; amended at 10 Ill. Reg. 15575, effective September 19, 1986; amended at 19 Ill. Reg. 10464, effective July 1, 1995; emergency amendment at 21 Ill. Reg. 3259, effective March 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 10904, effective July 29, 1997; amended at 26 Ill. Reg. 11791, effective August 1, 2002; amended at 40 Ill. Reg. 802, effective December 31, 2015; amended at 40 Ill. Reg. 7791, effective May 16, 2016.

Section 359.2 Definitions

"Auxiliary services" means those services provided by the Department to children in their own homes as well as to children in placement which supplement or complement the primary service. For example, when advocacy services are provided to children in substitute care, this is an auxiliary service.

"Child only standard of need" means the assistance standard for cases in which no adult member is included, as determined by the Illinois Department of Human

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Services.

"Children for whom the Department has legal responsibility" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Contact between siblings" means contact between or among siblings who are placed apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook); and any other agreed upon forms of communication technology.

"Family preservation services" means those services provided to children and families who require social services to maintain the family unit intact.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Foster care payment" means the amount paid by the Department for a child's room, board, clothing, and personal allowance in a licensed foster family home.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Overpayment" means an amount paid for a service in excess of the actual incurred expenses or rate for that service or a payment for a service that is not rendered. This includes board payments for a child that continue after the child is

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no longer in the placement for which the payment is made.

"Relative", for purposes of placement of a child for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, [step-grandfather](#), [step-grandmother](#) or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; [or](#);

[is a fictive kin as defined in this Section.](#)

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated or after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute

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care together, ~~and~~ have a positive relationship and share at least one parent in common.

"Substitute care services" means those services provided to children who require placement away from their families or private guardians. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301.80 (Relative Home Placement), care provided in a group home, care provided in a maternity center or a child care facility, mental health or other institution, and care provided in an independent living arrangement.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

(Source: Amended at 40 Ill. Reg. 7791, effective May 16, 2016)

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- 1) Heading of the Part: Licensing Standards for Foster Family Homes
- 2) Code Citation: 89 Ill. Adm. Code 402
- 3) Section Number: 402.2 Adopted Action:
Amendment
- 4) Statutory Authority: 225 ILCS 10
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 7114; May 22, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In the definition of "relatives", step-grandparents have been added. A definition of "fictive kin" has been added. The definition of "godparent" has been amended. These amendments were inadvertently omitted from the original proposal.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The definition of "relative" is broadened to include step-grandparents and "fictive kin" in compliance with recent statutory amendments. The definition of "fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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Several definitions that quote a statute verbatim have been updated to comport with recent amendments to those statutes.

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
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The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 402

LICENSING STANDARDS FOR FOSTER FAMILY HOMES

Section

402.1	Purpose
402.2	Definitions
402.3	Effective Date of Standards (Repealed)
402.4	Application for License
402.5	Application for Renewal of License
402.6	Provisions Pertaining to Permits
402.7	Provisions Pertaining to the License
402.8	General Requirements for the Foster Home
402.9	Requirements for Sleeping Arrangements
402.10	Nutrition and Meals
402.11	Business and Employment of Foster Parents
402.12	Qualifications of Foster Family
402.13	Background Inquiry
402.14	Health of Foster Family
402.15	Number and Ages of Children Served
402.16	Meeting Basic Needs of Children
402.17	Health Care of Children
402.18	Religion
402.19	Recreation and Leisure Time
402.20	Education
402.21	Discipline of Children
402.22	Emergency Care of Children
402.23	Release of Children
402.24	Confidentiality of Information
402.25	Required Written Consents
402.26	Records to be Maintained
402.27	Licensing Supervision
402.28	Adoptive Homes
402.29	Director's Waivers
402.30	Severability of This Part

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402.APPENDIX A	Criminal Convictions That Prevent Licensure
402.APPENDIX B	Number and Ages of Children in Foster Family Home: No Child Requires Specialized Care
402.APPENDIX C	Number and Ages of Children in Foster Family Home: Child Requires Specialized Care

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10].

SOURCE: Adopted and codified at 5 Ill. Reg. 9548, effective October 1, 1981; emergency amendment at 6 Ill. Reg. 15580, effective December 15, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 3439, effective April 4, 1983; amended at 7 Ill. Reg. 13858, effective November 1, 1983; amended at 8 Ill. Reg. 23197, effective December 3, 1984; amended at 11 Ill. Reg. 4292, effective March 1, 1987; emergency amendment at 16 Ill. Reg. 11879, effective July 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 267, effective December 21, 1992; emergency amendment at 18 Ill. Reg. 8481, effective May 20, 1994, for a maximum of 150 days; emergency expired on October 17, 1994; amended at 19 Ill. Reg. 1801, effective February 1, 1995; amended at 19 Ill. Reg. 9463, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10743, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1589, effective January 10, 1996; emergency amendment at 20 Ill. Reg. 3954, effective February 16, 1996, for a maximum of 150 days; emergency expired July 15, 1996; amended at 21 Ill. Reg. 4548, effective April 1, 1997; amended at 22 Ill. Reg. 205, effective December 19, 1997; amended at 23 Ill. Reg. 7877, effective July 15, 1999; emergency amendment at 24 Ill. Reg. 6417, effective March 27, 2000, for a maximum of 150 days; emergency expired August 23, 2000; amended at 24 Ill. Reg. 17052, effective November 1, 2000; amended at 26 Ill. Reg. 2624, effective February 11, 2002; amended at 26 Ill. Reg. 11796, effective August 1, 2002; amended at 30 Ill. Reg. 6321, effective March 31, 2006; amended at 33 Ill. Reg. 11441, effective August 1, 2009; amended at 36 Ill. Reg. 4086, effective March 5, 2012; amended at 40 Ill. Reg. 808, effective December 31, 2015; amended at 40 Ill. Reg. 7797, effective May 16, 2016.

Section 402.2 Definitions

"Adoptive placement" means a living arrangement with a family that is directed toward establishing that family as the child's new legal parents. To be considered an adoptive placement, the child must be placed in a licensed foster family home or license exempt relative home for purposes of adoption and:

be legally free (parental rights have been terminated or both parents have surrendered their parental rights); or

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be placed in a legal risk adoptive placement that has passed legal screening as described in 89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible).

"Approved smoke detector" or "detector" means a smoke detector of the ionization or photoelectric type that complies with all the requirements of the rules and regulations of the Illinois State Fire Marshal. [425 ILCS 60/2]

"Approved in-service training" means:

Foster PRIDE module or other Department approved training;

foster parent conferences sponsored by the Department;

other conferences approved by the Department;

training provided under the auspices of a licensed child welfare agency when the agency's foster care program has been accredited by the Council on Accreditation of Services for Families and Children, Inc., 520 Eighth Avenue, Suite 2202B, New York NY 10018;

materials borrowed from the Department's Foster/Adoptive Parent Lending Libraries;

training toward first-aid, Heimlich maneuver, and/or cardiopulmonary resuscitation (CPR) certification; or

other training, substantially meeting the Department's Foster PRIDE/Adopt PRIDE training, approved in writing by the Department of Children and Family Services.

"Background check" means:

Individuals 17 years of age or older:

a criminal history check via fingerprints that are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI)

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for comparison to their criminal history records, as appropriate;
and

Individuals 13 years of age or older:

a check of the Statewide Automated Child Welfare Information System (SACWIS) and other state child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and

a check of the Statewide Child Sex Offender Registry.

"CANTS" means the Child Abuse and Neglect Tracking System that has been replaced by SACWIS .

"Child" means any person under 18 years of age. [225 ILCS 10/2.01]

"Child care assistant" means an adult, 18 years of age or older, (whether a volunteer or an employee) who assists a licensed foster parent in the care of children within the foster home.

"Child care facility" means any person, group of persons, agency, association, organization, corporation, institution, center or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969 [225 ILCS 10], established and maintained for the care of children. Child care facility includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act. [225 ILCS 10/2.05]

"Classifiable fingerprints" means fingerprints obtained through an electronic or ink printing process that were determined to provide sufficiently clear impressions to identify the individual from whom the prints were obtained.

"Common parentage" means having the same biological or adoptive father, the same biological or adoptive mother, or the same biological or adoptive father and mother.

"Complete application for foster family home license" means, at a minimum, a

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completed written application form; written authorization by the applicant and all adult members of the household to conduct a criminal background investigation; medical evidence in the form of a medical report, on forms prescribed by the Department, that the applicant and all members of the household are free from communicable diseases or physical and mental conditions that affect their ability to provide care for the child or children; the names and addresses of at least 3 persons not related to the applicant who can attest to the applicant's moral character; and fingerprints submitted by the applicant and all adult members of the applicant's household. [225 ILCS 10/4]

"Contact between siblings" means contact between or among siblings who are residing apart from one another, and may include, but is not limited to: telephone calls; video conferencing; in person visitation; sending/receiving cards, letters, emails, text messages, gifts, etc.; sharing photographs or information; use of any approved social media (e.g., Facebook), and any other agreed upon forms of communication technology.

"Corporal punishment" means hitting, spanking, beating, shaking, pinching, and other measures that produce physical pain.

"Department" means the Illinois Department of Children and Family Services. [225 ILCS 10/2.02]

"Discipline" means the process of helping children to develop inner controls so that they can manage their own behavior in socially acceptable ways. Discipline does not include the use of corporal punishment as defined in this Part.

"Educational advocacy training" means the 6-hour training that prepares foster parents to effectively advocate for the special educational needs of the children in their care by providing information on children's educational rights and foster parents' responsibility to protect those rights.

"Expanded capacity license" means the foster family home has been issued a license from the Department authorizing the foster family to accept more than six children for care (including the family's own children under age 18 and all other children under age 18 receiving full-time care) as permitted in Section 402.15(c) (for foster care placements) or (e) (for adoptive placements).

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown

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to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated or related to them, unless all the children are of common parentage, or residences of relatives who receive no more than 8 related or unrelated children placed by the Department, unless the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis, except the Director of Children and Family Services, pursuant to Department regulations, may waive the limit of 8 children unrelated to an adoptive family for good cause to facilitate an adoptive placement. The family's or relative's own children, under 18 years of age, shall be included in determining the maximum number of children served. [225 ILCS 10/2.17] The Department requires foster family homes to receive an expanded capacity license allowing them to receive more than six children, including their own children under age 18 and all other children under the age of 18 receiving full-time care.

"Full-time care" means the child is a resident of the household, whether on a temporary, emergency, or permanent basis, and is receiving family care usually provided by a parent or guardian.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"In-service training" means approved training provided to currently licensed foster parents.

"License" means a document issued by the Department of Children and Family Services that authorizes child care facilities to operate in accordance with

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applicable standards and the provisions of the Child Care Act.

"License applicant" means the operator or person with direct responsibility for daily operation of the facility to be licensed. [225 ILCS 10/4.4]

"Licensed physician" means a person licensed to practice medicine in the State of Illinois.

"Licensee" means those individuals, agencies, or organizations who hold a license or permit issued by the Department of Children and Family Services.

"Licensing representative" means persons authorized by the Department under the Child Care Act to perform licensing activities.

"Licensing study" means a written review and assessment of an application for license, on-site visits, interviews, and the collection and review of supporting documents to determine compliance with the Child Care Act of 1969 and the standards prescribed by this Part.

"Member of the household" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, or receiving mail at the household address, or using identification with the household address.

"Minor traffic violation" means a traffic violation, under the laws of the State of Illinois or any municipal authority in Illinois or another state or municipal authority, that is punishable solely by fines as a petty offense.

"Multi-purpose room" means a room in the foster family home that has been designed for several purposes. A multi-purpose room that is temporarily converted into a bedroom may only be a pass through room in the home if the privacy of the children using the room for a bedroom can be ensured. Activities within the room shall be normal bedroom activities such as sleeping, dressing and playing while used as a bedroom.

"Non-active status" means a licensed foster home has no foster placements and maintains continuous compliance with this Part that, by mutual written agreement with the Department, does not receive regular licensing monitoring visits by the Department or supervising agency.

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"Permit" means a one-time only document issued by the Department of Children and Family Services for a two month period to allow the individuals to become eligible for an initial foster family home license.

"Petty offense" means any offense for which a fine only is provided, and a sentence of imprisonment is not an authorized disposition. [730 ILCS 5/5-1-17]

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin second cousin (children of first cousins are second cousins to each other), godparent godparent (as defined in this Section), great-uncle or great-aunt, or great-uncle or great-aunt, or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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consider this person a relative. [20 ILCS 505/7(b)]

"Reputable character" means there is satisfactory evidence that the moral character of the applicant is trustworthy.

"Respite foster care" means temporary (not to exceed 30 days), full-time care in a licensed foster family home, group home, or child care institution, or in a license exempt relative home, when such temporary, full-time care is provided to foster children. Respite foster care is provided to foster children in order to give the full-time caregivers a rest from caregiving responsibilities.

"Responsible" means trustworthy performance of expected duties that serves the best interests of the foster children as evidenced by established child welfare standards, State and federal law, and the rules of the Department.

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Illinois Department of Children and Family Services that replaced the Child Abuse and Neglect Tracking System (CANTS).

"Siblings" means children who have at least one parent in common. Children continue to be considered siblings after parental rights are terminated, if parental rights were terminated while a petition under Article II of the Juvenile Court Act of 1987 was pending. Children continue to be considered siblings after one or more of the children are adopted or placed in private guardianship, if they were in the custody or guardianship of the Department pursuant to Article II of the Juvenile Court Act of 1987 [705 ILCS 405] immediately prior to the adoption or guardianship. Step-siblings may be considered "siblings" when the children enter into substitute care together and have a positive relationship.

"Specialized care" or "specialized foster care services" means care provided to *a child in the custody or guardianship of the Department who requires such services due to emotional, behavioral, developmental or medical needs, or any combination thereof, or any other needs that require special intervention services, the primary goal being to maintain the child in foster care or in a permanency setting.* [20 ILCS 505/5.30(a)] Specialized foster care services are further described in 89 Ill. Adm. Code 301.90 (Foster Family Home Care).

"Supervising agency", for the purpose of this Part, means a licensed child welfare agency, a license-exempt agency, or the Department of Children and Family

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Services.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

"Visitation" means face-to-face contact:

between parents and their children who are in substitute care;

between siblings in substitute care who are placed apart from one another;
or

between siblings in substitute care with siblings who are not in substitute care (e.g., emancipated, case closed due to independence, adopted, placed in private guardianship, living in home of parent, etc.).

(Source: Amended at 40 Ill. Reg. 7797, effective May 16, 2016)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Operation of Watercraft Carrying Passengers For Hire on Illinois Waters
- 2) Code Citation: 17 Ill. Adm. Code 2080
- 3) Section Number: 2080.75 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 2-1, 2-2, 5-18, 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9 and 8-3 of the Boat Registration and Safety Act [625 ILCS 45/2-1, 2-2, 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9 and 8-3]
- 5) Effective Date of Rule: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including all material incorporated by reference is on file in the Department of Natural Resources' principal office and is available for public inspection.
- 9) Notice of Proposal published in the Illinois Register: 40 Ill. Reg. 3161; February 19, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This Part has been amended to comply with the provisions of the Boat Registration and Safety Act regarding the operation of rented watercraft in compliance with 625 ILCS 45/5-189(f).

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

Shelly Knuppel, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENT

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER e: LAW ENFORCEMENTPART 2080
OPERATION OF WATERCRAFT CARRYING PASSENGERS
FOR HIRE ON ILLINOIS WATERS

Section	
2080.10	Introduction
2080.20	Definitions
2080.30	Applicability
2080.40	Dry Dock Inspection
2080.50	Dockside Inspection
2080.60	Licensing Requirements
2080.70	License and Decal
2080.75	Rental Boats
2080.80	Misuse of License or Decal
2080.90	Suspension and Revocation of Decals and Licenses

AUTHORITY: Implementing and authorized by Sections 2-1, 2-2, 5-18, 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9 and 8-3 of the Boat Registration and Safety Act [625 ILCS 45/2-1, 2-2, 5-18, 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9 and 8-3].

SOURCE: Adopted at 20 Ill. Reg. 15697, effective December 2, 1996; amended at 22 Ill. Reg. 10491, effective June 1, 1998; amended at 23 Ill. Reg. 9062, effective July 28, 1999; amended at 24 Ill. Reg. 3594, effective February 17, 2000; amended at 30 Ill. Reg. 14529, effective August 24, 2006; amended at 40 Ill. Reg. 7809, effective May 16, 2016.

Section 2080.75 Rental Boats

- a) The operators of boat rental services shall be authorized to rent only vessels designated by the license and only on bodies of water designated on the license.
- b) The operators of boat rental services shall provide to the Department, each time their license is renewed, a statement certifying that each boat offered for rent is of sound construction and is safe for use on the water. All rental boats shall be subject to periodic, unannounced inspections by the Department to ensure that they are being suitably maintained for safe public use under the safety

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requirements set out in the Boat Registration and Safety Act [625 ILCS 45].

- c) The operators of boat rental services shall offer abbreviated Department and National Association of State Boating Law Administrators (NASBLA) approved operating and safety instruction specific to the type of watercraft being rented to the renter and all potential operators of the rented vessel, unless the renter/operators can demonstrate compliance with the Illinois Boating Safety Certificate requirements (see 625 ILCS 45/5-18). Operators of boat rental services shall:
- 1) maintain records of persons renting a watercraft for a period of at least one year. Those records shall contain proof of boat safety education card or, if taking the abbreviated safety instruction, a minimum of the renter's name, date of birth, driver's license number (if available) and signature.
 - 2) provide a receipt to the renter indicating the abbreviated safety course was completed.
 - 3) allow inspection of required records by an authorized employee of the Department or by an authorized State or federal law enforcement officer during reasonable business hours.
- d) It shall be unlawful for any boat rental service to provide false or fictitious information on records related to this Section.
- e) It shall be unlawful for any person renting a watercraft from a licensed boat rental service to provide false or fictitious information required by this Section to that rental service. Operators of rented watercraft shall have in their possession proof of abbreviated safety instruction or an Illinois Boating Safety Certificate.
- f) Violation of this Section is a petty offense.

(Source: Amended at 40 Ill. Reg. 7809, effective May 16, 2016)

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- 1) Heading of the Part: Specialized Mental Health Rehabilitation Facilities (SMHRFs)
- 2) Code Citation: 77 Ill. Adm. Code 1126
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1126.110	New Section
1126.120	New Section
1126.130	New Section
1126.140	New Section
1126.210	New Section
1126.310	New Section
1126.320	New Section
1126.410	New Section
1126.420	New Section
1126.430	New Section
1126.440	New Section
1126.510	New Section
1126.APPENDIX A	New Section
1126.APPENDIX B	New Section
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960/12]
- 5) Effective Date of Rules: May 16, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposed published in the *Illinois Register*: 39 Ill. Reg. 10577; July 31, 2015
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between Proposal and Final Version:
 - A) In the last line of Section 1126.120(d), changed "20 ILCS 3960/12(16)" to "20 ILCS 3960/12(17)".

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- B) In the last line of Section 1126.210(e), changed "77 Ill. Adm. Code 1127" to "77 Ill. Adm. Code 1126".
- C) In the last line of Section 1126.310(a)(3), changed "the area population's insurance" to "the population area's insurance".
- D) In the last line of Section 1126.310(b), deleted "and/".
- E) In the first line of Section 1126.410(a), deleted "proposing" and change "10.5" to "1-101.5".
- F) In the second line of Section 1126.410(a), changed "12(16)" to "12(17)".
- G) In Section 1126.410(b)(1), added "[20 ILCS 3960/5 and (12)(17)" after the word "services".
- H) In the first line of Section 1126.410(b)(2), changed "action" to "establishment, erection, building, alteration, reconstruction, modernizations, improvement, or extension of a SMHRF".
- I) In Section 1126.410(b)(2), added "(See 20 ILCS 3960/5)." after the period at the end of the paragraph.
- J) In Section 1126.410(c), changed "20 ILCS 3960/12(16)" to "20 ILCS 3960/12(17)".
- K) At the end of Section 1126.430(b)(1)(A), changed "210 ILCS 49/10.5" to "210 ILCS 49/1-101.5".
- L) At the end of Section 1126.430(b)(1)(B), changed "20 ILCS 3960/12(16)" to "20 ILCS 3960/12(17)".
- M) In Section 1126.430(c)(1), changed "20 ILCS 3960/12(16)" to "20 ILCS 3960/12(17)".
- N) In the last sentence of Section 1126.430(c)(1), added "the" after the word "and".
- O) In Section 1126.430(c)(2)(A)(ii), changed "20 ILCS 3960/12(16)" to "20 ILCS 3960/12(17)".

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- P) In Section 1126.510(c)(5)(B)(ii), changed "the liquidation of" to "liquidating".
- Q) In the fifth line of Section 1126.APPENDIX A, added a "," after the word "only".
- R) In Section 1126.APPENDIX B(a)(3), changed "2008" to "2015".
- S) In second line of text in Section 1126.APPENDIX B(a)(4), changed "upon" to "on".
- T) In the third line of text in Section 1126.APPENDIX B(a)(4), changed "upon" to "on".
- U) In the table after the explanation of Cushion Ratio in Section 1126.APPENDIX B(b)(6), in the second column header, changed "Cusion" to "Cushion".
- V) In the second and third sentences in the HFSRB NOTE section in Section 1126.APPENDIX B(b)(6), added "it shall provide" after the phrase "line of credit,".
- W) In the fourth line of the HFSRB Note section in Section 1126.APPENDIX B(b)(6), deleted "shall be provided" after the word "documentation".
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The proposed rules establish review criteria for relocating an existing Specialized Mental Health Rehabilitation Facility (SMHRF) to a planning area that does not have SMHRF services.
- 16) Information and questions regarding these adopted rules shall be directed to:

Jeannie Mitchell
Assistant General Counsel
Health Facilities and Services Review Board

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69 W. Washington Street, Suite 3501
Chicago IL 60602

312/814-6226
e-mail: Jeannie.Mitchell@illinois.gov

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

HEALTH FACILITIES AND SERVICES REVIEW BOARD

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TITLE 77: PUBLIC HEALTH
CHAPTER II: HEALTH FACILITIES AND SERVICES REVIEW BOARD
SUBCHAPTER b: OTHER BOARD RULES

PART 1126
SPECIALIZED MENTAL HEALTH REHABILITATION FACILITIES (SMHRFs)

SUBPART A: AUTHORITY

- Section
1126.110 Statutory Authority
1126.120 Introduction
1126.130 Definitions
1126.140 HFSRB Procedural Rules

SUBPART B: PLANNING POLICIES

- Section
1126.210 Specialized Mental Health Rehabilitation Category of Service – Planning Policies

SUBPART C: GENERAL INFORMATION REQUIREMENTS

- Section
1126.310 Purpose of the Project – Information Requirements
1126.320 Alternatives to the Proposed Project – Information Requirements

SUBPART D: SPECIALIZED MENTAL HEALTH REHABILITATION
FACILITIES – REVIEW CRITERIA

- Section
1126.410 Introduction
1126.420 Discontinuation of a SMHRF
1126.430 Establishment of a SMHRF in an Underserved Planning Area
1126.440 Modernization

SUBPART E: FINANCIAL AND ECONOMIC FEASIBILITY – REVIEW CRITERIA

- Section
1126.510 Estimated Total Project Cost

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- 1126.APPENDIX A Project Size Standards – Square Footage
1126.APPENDIX B Financial and Economic Review Standards

AUTHORITY: Authorized by Section 12 of, and implementing, the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Adopted at 40 Ill. Reg. 7813, effective May 16, 2016.

SUBPART A: AUTHORITY

Section 1126.110 Statutory Authority

This Part is promulgated by authority granted to the Illinois Health Facilities and Services Review Board under the Illinois Health Facilities Planning Act [20 ILCS 3960].

Section 1126.120 Introduction

- a) After the effective date of this Part, all applications in the review process and all projects for which permits have been issued, but have not yet been completed, shall be subject to this Part.
- b) The HFSRB rules in effect on the date of alleged violation of the Act or rules shall be applicable concerning all considerations and issues of compliance with HFSRB requirements.
- c) *At no time shall the total number of licensed beds under the Specialized Mental Health Rehabilitation Act of 2013 (SMHRA) [210 ILCS 49] exceed the total number of licensed beds existing on July 22, 2013. [210 ILCS 49/10.5]*
- d) *No new facilities licensed under SMHRA shall be established after June 16, 2014 except in connection with the relocation of an existing facility to a new location. [20 ILCS 3960/12(17)]*

Section 1126.130 Definitions

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

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"Adverse Action" means a disciplinary action taken by IDPH, federal Centers for Medicare and Medicaid Services (CMMS), or any other State or federal agency against a person or entity that owns and/or operates a licensed or Medicare or Medicaid certified SMHRF in the State of Illinois. These actions include, but are not limited to, a financial penalty, probation, revoked license, restricted license or the inability to be licensed or relicensed as set forth in SMHRA Section 4-109 and 77 Ill. Adm. Code 380.750.

"Agency" or "IDPH" means the Illinois Department of Public Health.

"Applicant" means one or more persons, as defined in the Act, who apply for a permit or exemption. (See 77 Ill. Adm. Code 1130.220 to determine what parties must jointly apply for an application.)

"Authorized Representative" means a person who has authority to act on behalf of the legal entity or person that is the applicant or permit holder. Authorized representatives are, in the case of a:

corporation, any of its officers or members of its board of directors;

limited liability company, any of its managers or members (or the sole manager or member when two or more managers or members do not exist);

partnership, any of its general partners (or the sole general partner when two or more general partners do not exist);

estate or trust, any of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and

sole proprietor, the individual who is the proprietor.

"Capital Expenditure" means an expenditure made by or on behalf of a SMHRF (as such a facility is defined in the Act) that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part, and that exceeds the capital expenditure minimum. For purposes of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other

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activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the capital expenditure minimum. Donations of equipment or facilities to a SMHRF that, if acquired directly by that facility would be subject to review under the Act shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review. [20 ILCS 3960/3]

"Capital Expenditure Minimum" means the dollar amount or value that would require a permit for capital projects and major medical equipment. Capital expenditure minimums are annually adjusted to reflect the increase in construction costs due to inflation under 77 Ill. Adm. Code 1130.310.

"CMMS" means the federal Centers for Medicare and Medicaid Services.

"Chairman" means the presiding officer of HFSRB.

"Change of Ownership" means a change in the person who has operational control of an existing SMHRF or *a change in the person who has ownership or control of a SMHRF's physical plant and capital assets. A change of ownership is indicated by, but not limited to, the following transactions: sale, transfer, acquisition, leases, change of sponsorship or other means of transferring control.* [20 ILCS 3960/3] Examples of change of ownership include:

a transfer of stock or assets resulting in a person obtaining majority interest (i.e., over 50%) in the person who is licensed or certified (if the facility is not subject to licensure), or in the person who owns or controls the SMHRF's physical plant and capital assets;

the issuance of a license by IDPH to a person different from the current licensee;

a change in the membership or sponsorship of a not-for-profit corporation;

a change of 50% or more of the voting members of a not-for-profit corporation's board of directors, during any consecutive 12 month period,

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that controls a SMHRF's operations, license, certification (when the facility is not subject to licensing), or physical plant and capital assets;

a change in the sponsorship or control of the person who is licensed or certified (when the facility is not subject to licensing) to operate, or who owns the physical plant and capital assets of a governmental SMHRF; or

any other transaction that results in a person obtaining control of a SMHRF's operations or physical plant and capital assets, including leases.

"Charity Care" means care provided by a SMHRF for which the provider does not expect to receive payment from the patient/resident or a third party payer. [20 ILCS 3960/3]

"Clinical Service Area" means a department and/or service that is directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the SMHRF. A clinical service area's physical space shall include those components required under the facility's licensure or Medicare and/or Medicaid certification, and/or as outlined by documentation from the facility as to the physical space required for appropriate clinical practice.

"Combined Service Area Project" means a project that consists of both clinical service areas and nonclinical service areas.

"Completion Date" or "Project Completion Date" means the date established by the applicant for the completion of the project, as stated in the CON permit application.

"Construction" or "Modification" means the establishment, erection, building, alteration, reconstruction, modernization, improvement, extension, discontinuation, change of ownership of or by a SMHRF, or the purchase or acquisition by or through a SMHRF of equipment or service for diagnostic or therapeutic purposes or for facility administration or operation or any capital expenditure made by or on behalf of a SMHRF that exceeds the capital expenditure minimum; however, any capital expenditure made by or on behalf of a SMHRF for the construction or modification of a facility licensed under the Assisted Living and Shared Housing Act [210 ILCS 9] or a conversion project undertaken in accordance with Section 30 of the Older Adult Services Act [320

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ILCS 42] *shall be excluded from any obligations under the Act.* [20 ILCS 3960/3]

"Contested Case" has the meaning ascribed in Section 1-30 of the Illinois Administrative Procedure Act [5 ILCS 100].

"Control" means a person possesses any of the following discretionary and nonministerial rights or powers:

In the case of an entity, the ability to direct the management and policies of the entity, whether through the voting of securities, corporate membership, contract or otherwise. Examples of control include, without limitation:

holding 50% or more of the outstanding voting securities of an issue;

in the case of an entity that has no outstanding voting securities, having the right to 50% or more of the profits or, in the event of dissolution, the right to 50% or more of the assets of the entity;

having the power to appoint or remove 50% or more of the governing board members of an entity;

having the power to require or approve the use of funds or assets of the entity; or

having the power to approve, amend or modify the entity's bylaws or other governance documents.

In the case of capital assets or real property, the power to direct or cause the direction of the personal property, real property or capital assets that are components of the project (i.e., fixed equipment, mobile equipment, buildings and portions of buildings). Examples of control include, without limitation:

ownership of 50% or more in the property or asset;

serving as lessee or sublessee.

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"Director" means the Director of the Department of Public Health.

"Due Diligence" means to take actions toward the completion of a project for which a permit has been issued with that diligence and foresight that persons of ordinary prudence and care commonly exercise under like circumstances. An accidental or unavoidable cause that cannot be avoided by the exercise of due diligence is a cause that reasonably prudent and careful persons, under like circumstances, do not and would not ordinarily anticipate, and whose effects under similar circumstances they do not and would not ordinarily avoid.

"Entity" means any corporation, company, partnership, joint venture, association, trust, foundation, fund or other legally recognized organization, public body or municipality.

"Establish" or "Establishment" *means the construction of a new SMHRF, the licensing of unlicensed buildings or structures as a SMHRF, the replacement of an existing SMHRF on another site, or the initiation of a category of service defined by the Board.* [20 ILCS 3960/3]

"Estimated Project Cost" or "Project Cost" means the sum of all costs, including the fair market value of any equipment or other real property (whether acquired by lease, donation or gift) necessary to complete a project, including:

preplanning costs;

site survey and soil investigation fees;

site preparation costs;

off-site work;

construction contracts and contingencies (including demolition);

capital equipment included in construction contracts;

architectural and engineering fees;

consultant and other professional fees that are related to the project;

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capital equipment not in construction contracts;

bond issuance expenses;

net interest expense during construction; and

all other costs that are to be capitalized.

"Ex Parte Communication" means a communication between a person who is not a State Board member or employee that reflects on the substance of a formally filed State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of a pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by State Board employees to the applicant. Once an application is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file. [20 ILCS 3960/4.2]

"Fair Market Value" means the dollar value of a project or any component of a project that is accomplished by lease, donation, gifts or any other means that would have been required for purchase, construction or acquisition.

"Final Decision" or "Final Administrative Decision" or "Final Determination" means:

the decision by HFSRB to approve or deny an application for permit.
Action taken by HFSRB to deny an application for permit is subsequent to an administrative hearing or to the waiver of an administrative hearing; or

the decision by HFSRB on all matters other than the issuance of a permit.

HFSRB NOTE: The decision is final at the close of business of the HFSRB meeting at which the action is taken.

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"Final Realized Costs" means all costs that are normally capitalized under generally accepted accounting principles that have been incurred to complete a project for which a permit or exemption was issued. These costs include all expenditures and the dollar or fair market value of any component of the project, whether acquired through lease, donation or gift.

"Financial Commitment" means the commitment of at least 33% of total funds assigned to cover total project cost, which occurs by:

The actual expenditure of 33% or more of the total project cost; or

The commitment to expend 33% or more of the total project cost by signed contracts or other legal means.

"Financial Commitment Date" means the date on which the permit holder expended or committed to expend by contract or other legal means at least 33% of the total project cost.

"Hearing Officer" means the person with authority to conduct public hearings and to take all necessary steps to assure the proper completion of public hearings and to assure compliance with requirements of the Act. Responsibilities include: determining the order and time allotment for public testimony; maintaining order; setting and announcing new hearing dates, times and places, as necessary; determining the conclusion of the hearing and assuring that all documents, exhibits and other written materials presented or requested at the hearing are in the hearing officer's custody; and preparing a report for submittal to HFSRB.

"HFSRB " or "State Board" means the Illinois Health Facilities and Services Review Board.

"HFSRB Inventory" or "Inventory" means the HFSRB Inventory of Health Care Facilities and Services and Need Determinations, located at HFSRB's website (www.hfsrb.illinois.gov).

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Intent to Deny" means the negative decision of HFSRB, following its initial consideration of an application for permit that failed to receive the number of affirmative votes required by the Act.

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"Major Construction Project" means:

Projects for the construction of new buildings;

Additions to existing facilities;

Modernization projects whose cost is in excess of \$1,000,000 or 10% of the facility's operating revenue, whichever is less; and

such projects as HFSRB shall define and prescribe pursuant to the Act.
[20 ILCS 3960/5]

"Medicaid Certified" or "Medicare Certified" or "Medicaid Certification" or "Medicare Certification" means approval for a facility to receive reimbursement under Title XVIII (Medicare) and/or XIX (Medicaid) of the Social Security Act (42 USC 1395).

"Modification of an Application" or "Modification" means any change to an application during the review period (i.e., prior to a final HFSRB action). These changes include, but are not limited to:

changing the proposed project's physical size or gross square feet;

the site within a planning area;

the operating entity when the operating entity is not the applicant;

the number of proposed beds;

the categories of service to be provided;

the cost;

the method of financing;

the proposed project completion date;

the configuration of space within the building; or

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any change in the person who is the applicant, including the addition or deletion of one or more persons as co-applicants.

HFSRB NOTE: A change of site to a site outside the planning area originally identified in the application is not considered a modification and invalidates the application.

"Newspaper of General Circulation" means newspapers other than those intended to serve a particular, defined population, such as the publications of professional and trade associations.

"Newspaper of Limited Circulation" means a newspaper intended to serve a particular or defined population of a specific geographic area within a Metropolitan Statistical Area such as a municipality, town, village, township or community area, but does not include publications of professional and trade associations. [20 ILCS 3960/8.5(a)]

"Non-Substantive Projects" means projects that have been classified as non-substantive under 77 Ill. Adm. Code 1110.40. HFSRB will review a non-substantive project within 60 days.

"Notification of HFSRB Action" means the transmittal of HFSRB decisions to the applicant or permit or exemption holder. Notification shall be given to the applicant's or permit holder's designated contact person, legal representative or chief executive officer.

"Operational" means that a permit holder is providing the services approved by HFSRB and, for a new SMHRF, licensure or Medicare and/or Medicaid certification has been obtained and residents/patients are utilizing the facility or equipment or are receiving service.

"Permit" means authorization to execute and complete a project related to a SMHRF, as reviewed and approved by HFSRB and as specified in the Act.

"Person" means any one or more natural persons, legal entities, governmental bodies other than federal, or any combination thereof. [20 ILCS 3960/3]

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"Proposal" or "Project" means any proposed construction or modification of a long term care facility or any proposed acquisition of equipment to be undertaken by an applicant.

"Related Person" means *any person that:*

is at least 50% owned, directly or indirectly, by either the SMHRF or a person owning, directly or indirectly, at least 50% of the SMHRF;

owns, directly or indirectly, at least 50% of the SMHRF [20 ILCS 3960/3];

is otherwise controlled or managed by one or more SMHRFs;

controls or manages the SMHRF; or

is otherwise, directly or indirectly, under common management or control with one or more SMHRFs.

"Review Period" means the time from the date an application for permit or exemption is deemed complete until HFSRB renders its final decision.

"Site" means the physical location of a proposed project and is identified by address or legal property description.

"SMHRA" means the Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]

"SMHRF" means Specialized Mental Health Rehabilitation Facility.

"Square Feet" or "SF" or "Square Footage" means a unit of measure of physical service areas or buildings considered by HFSRB.

Departmental Gross Square Feet (DGSF) means the designation of physical areas for departments and services. It consists of the entirety of space dedicated to the use of that department or service, including walls, shafts and circulation.

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Building Gross Square Feet (BGSF) means the designation of physical area of an entire building. It includes all exterior walls and space within those walls.

"Substantially Changes the Scope or Changes the Functional Operation of the Facility" means:

the addition of a category of service;

a change of a material representation made by the applicant in an application for permit or exemption subsequent to receipt of a permit that is relied upon by HFSRB in making its decision. Material representations are those that provide a factual basis for issuance of a permit and include:

withdrawal or nonparticipation in the Medicare and/or Medicaid programs;

charge information;

other representations made to HFSRB as stipulated or agreed upon in the public record and specified in the application or the permit approval letter.

"Substantive Projects" means types of projects that are defined in the Act and classified as substantive. *Substantive projects shall include no more than the following:*

Projects to construct a new or replacement facility located on a new site or a replacement facility located on the same site as the original facility and the costs of the replacement facility exceed the capital expenditure minimum;

Projects proposing a new service or discontinuation of a service, which shall be reviewed by the Board within 60 days;

Projects proposing a change in the bed capacity of a SMHRF by an increase in the total number of beds or by a redistribution of beds among various categories of service or by a relocation of beds from one facility to another by more than 20 beds or more than 10% of total bed capacity, as

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defined by HFSRB, whichever is less, over a 2 year period. [20 ILCS 3960/12]

"Technical Assistance" means help provided by an employee of HFSRB to a person, SMHRF or the State Board, and is not considered ex parte communication as defined in Section 4.2 of the Act. Technical assistance may be provided to any person regarding pre-application conferences, the filing of an application, or other request to HFSRB provided that the communication is *not intended to influence any decision on the application*. Technical assistance may be provided for the benefit of HFSRB to clarify issues relevant to an application or other business of HFSRB. The assistance may be in the form of written correspondences, conversations, site visits, meetings, and/or consultations with independent experts. *Once an application or exemption is filed and deemed complete, a written record of any communication between staff and an applicant shall be prepared by staff and made part of the public record, using a prescribed, standardized format, and shall be included in the application file, within 10 business days after the assistance is provided. [20 ILCS 3960/4.2]*

"Temporary Suspension of Facility or Category of Service" means a facility that has ceased operation or that has ceased to provide a category of service (see 77 Ill. Adm. Code 1100.220 for category of service definition) for a period not to exceed one year, due to unanticipated or unforeseen circumstances (such as the loss of appropriate staff or a natural or unnatural disaster). The time period may be extended upon finding that the resumption of facility operation or category of service has proceeded with due diligence and HFSRB approval of the requested extension. The facility administrator shall file notice to HFSRB of a temporary suspension of service, in compliance with the requirements described in Section 1130.240(d).

"Underserved" means a planning area in Illinois that does not have another Specialized Mental Health Rehabilitation Facility.

Section 1126.140 HFSRB Procedural Rules

The Certificate of Need review process and all applicable procedures and requirements are contained in 77 Ill. Adm. Code 1130.

SUBPART B: PLANNING POLICIES

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Section 1126.210 Specialized Mental Health Rehabilitation Category of Service – Planning Policies

- a) Category of Service: Specialized Mental Health Rehabilitation
- b) Planning Areas: Health Service Areas are used for SMHRF services.
- c) Occupancy Targets:
 - 1) Modernization: 80%;
 - 2) Establishment: 90%.
- d) Bed Capacity: For facilities licensed pursuant to SMHRA, the bed capacity is the licensed bed capacity for the service.
- e) Bed Need Determination for the Specialized Categories of Service: No bed need formula for the SMHRF category of service has been developed. It is the responsibility of the applicant to document the need for the service by complying with all applicable review criteria contained in 77 Ill. Adm. Code 1126.

SUBPART C: GENERAL INFORMATION REQUIRMENTS

Section 1126.310 Purpose of the Project – Information Requirements

The applicant shall document that the project will provide health services that improve the well-being of the market area population to be served. The applicant shall identify the proposed planning area.

- a) 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 shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project. Examples of this information include:
 - 1) The area's demographics or characteristics (e.g., rapid area growth rate, increased SMHRF population) that may affect the need for services in the future;

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- 2) The incidence of various diseases in the area;
 - 3) The population's financial ability to access SMHRF services (e.g., financial hardship, increased number of charity care patients/residents, changes in the population area's insurance or managed care status);
 - 4) The physical accessibility to necessary SMHRF services (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).
- b) 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, academic or other independent sources).
 - c) The applicant shall detail how the project will address or improve the issues listed in subsection (a), 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.

Section 1126.320 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 SMHRF needs of the population to be served by the project.

- a) The applicant shall address alternatives to the proposed project. Examples of alternative options include:
 - 1) Proposing a project of greater or lesser scope and cost;
 - 2) Pursuing a joint venture or similar arrangement with one or more providers; and
 - 3) Developing alternative settings to meet all or a portion of the project's intended purposes.
- b) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of cost, resident/patient access,

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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.

- c) The applicant shall provide empirical evidence, including quantified outcome data that verifies improved quality of care, as available.

SUBPART D: SPECIALIZED MENTAL HEALTH REHABILITATION
FACILITIES – REVIEW CRITERIA

Section 1126.410 Introduction

- a) Facilities to be licensed pursuant to SMHRA Section 1-101.5 are subject to the requirements of Section 12(17) of the Health Facilities Planning Act and HFSRB rules (77 Ill. Adm. Code 1126 and 1130).
- b) A Certificate of Need permit is required for:
 - 1) the relocation of an existing SMHRF to a planning area that does not have SMHRF services (see 20 ILCS 3960/5 and 12(17)); or
 - 2) any establishment, erection, building, alteration, reconstruction, modernizations, improvement, or extension of a SMHRF with a total estimated project cost that exceeds the capital expenditures minimum (for facilities that are licensed by statutory requirement other than the Hospital Licensing Act [210 ILCS 85] or the Nursing Home Care Act [210 ILCS 45]). The current threshold is determined under 77 Ill. Adm. Code 1130.Appendix A and is posted on HFSRB's website (www.hfsrb.illinois.gov). (See 20 ILCS 3960/5.)
- c) *No new facilities licensed under SMHRA shall be established after June 16, 2014 except in connection with the relocation of an existing facility to a new location.* [20 ILCS 3960/12(17)]
- d) The process for relocating an existing SMHRF to a new, underserved location involves two actions, as follows:
 - 1) Discontinuation of a licensed SMHRF at its current location; and

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- 2) Establishment of a new SMHRF in an underserved planning area (i.e., one that does not currently have a SMHRF).

Section 1126.420 Discontinuation of a SMHRF

- a) Discontinuation – Information Requirements
 - 1) The applicant shall provide at least the following information:
 - A) Identification of the number of SMHRF beds that are to be discontinued;
 - B) Identification of all other clinical services that are to be discontinued;
 - C) The anticipated date of discontinuation for each identified service or for the entire facility;
 - D) The anticipated use of the physical plant and equipment after discontinuation occurs; and
 - E) The anticipated disposition and location of all medical records pertaining to the services being discontinued and the length of time the records will be retained. For applications involving discontinuation of an entire facility, certification by an authorized representative that all questionnaires and data required by HFSRB or IDPH (e.g., annual questionnaires, capital expenditures surveys, etc.) will be provided through the date of discontinuation and that the required information will be submitted no later than 60 days following the date of discontinuation.
 - 2) Reasons for Discontinuation
The applicant shall document that the discontinuation is justified by providing data that verifies that one or more of the following factors (and other factors, as applicable) exist with respect to each service being discontinued:
 - A) Insufficient volume or demand for the service;

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- B) Lack of sufficient staff to adequately provide the service;
 - C) The facility or the service is not economically feasible, and continuation impairs the facility's financial viability;
 - D) The facility or the service is not in compliance with licensing or certification standards.
- 3) Impact on Access
- The applicant shall document that the discontinuation of the entire facility will not have an adverse impact upon access to care for residents of the facility's market area. The applicant shall provide copies of impact statements received from other resources or health care facilities located within 45 minutes travel time that indicate the extent to which the applicant's workload will be absorbed without conditions, limitations or discrimination. Factors that indicate an adverse impact upon access to service for the population of the facility's market area include, but are not limited to, the following:
- A) The service will no longer exist within 45 minutes travel time of the applicant facility;
 - B) Discontinuation of the service will result in creating or increasing a shortage of beds or services, as calculated in the Inventory of Health Care Facilities, which is described in 77 Ill. Adm. Code 1100.70 and found on HFSRB's website.

Section 1126.430 Establishment of a SMHRF in an Underserved Planning Area

- a) Background of the Applicant – Review Criterion
All applicants shall comply with the requirements of this Section.
- 1) An applicant shall demonstrate that it is fit, willing and able, and *has the qualifications, background and character, to adequately provide a proper standard of SMHRF services for the community.* [20 ILCS 3960/6] In evaluating the qualifications, background and character of the applicant, HFSRB will consider whether adverse action has been taken against the applicant, or against any SMHRF owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the

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application. A SMHRF is considered "owned or operated" by every person or entity that 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 that person or entity.

- 2) Examples of Facilities Owned or Operated by an Applicant
 - A) The applicant, Partnership ABC, owns 60% of the shares of Corporation XYZ that manages the Good Care SMHRF under a management agreement. The applicant, Partnership ABC, owns or operates Good Care SMHRF.
 - B) The applicant, Healthy SMHRF, a corporation, is a subsidiary of Universal Health, the parent corporation of Healthcenter Services, its wholly-owned subsidiary. The applicant, Healthy SMHRF, owns and operates Healthcenter Services.
 - C) Dr. Wellcare is the applicant. His wife is the director of a corporation that owns a SMHRF. The applicant, Dr. Wellcare, owns or operates the SMHRF.
 - D) Drs. Faith, Hope and Charity own 40%, 35% and 10%, respectively, of the shares of Healthfair, Inc., a corporation, that is the applicant. Dr. Charity owns 45% and Drs. Well and Care each own 25% of the shares of Sunny Day SMHRF. The applicant, Healthfair, Inc., owns and operates Sunny Day SMHRF.
- 3) The applicant shall submit the following information:
 - A) A listing of all SMHRFs currently owned 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 or operated by the applicant during the three years prior to the filing of the application; and
 - C) Authorization permitting HFSRB and IDPH access to any documents necessary to verify the information submitted,

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including, but not limited to, official records of IDPH or other State agencies, the licensing or certification records of other states, when applicable, and the 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 HFSRB.

- 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 Section. In these 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) Service Demand
- The applicant shall document that the number of beds to be relocated is necessary to serve the planning area population, based on the following:
- 1) Bed Need Determination
 - A) *At no time shall the total number of licensed beds under SMHRA exceed the total number of licensed beds existing on July 22, 2013. [210 ILCS 49/1-101.5]*
 - B) *No new facilities licensed under SMHRA shall be established after June 16, 2014 except in connection with the relocation of an existing facility to a new location. [20 ILCS 3960/12(17)]*
 - 2) Service to Planning Area Residents
 - A) The applicant shall document that the primary purpose of the project will be to provide necessary SMHRF services to the residents of the planning area in which the proposed project will be physically located. The applicant shall document that at least 50% of the projected resident volume will be from residents of the area.

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- B) The number of beds being established is necessary to improve access for planning area residents. The applicant shall document that no SMHRFs currently exist in the proposed planning area.
- 3) Projected Referrals
The applicant shall submit the number of projected annual referrals, as follows:
- A) An applicant proposing to establish a new SMHRF in an underserved area shall submit letters from referral sources (hospitals, physicians, social services and others) that attest to an estimated number of prospective residents whom the referral sources will refer annually to the applicant's facility within a 24-month period after project completion;
 - B) The anticipated number of referrals cannot exceed the referral sources' documented historical SMHRF caseload. Referral sources shall verify their projections and the methodology used;
 - C) Each referral letter shall contain the referral source's chief executive officer's notarized signature, the typed or printed name of the referral source, and the referral source's address; and
 - D) Verification by the referral sources that the prospective resident referrals have not been used to support another pending or approved Certificate of Need (CON) application for the subject services.
- c) Community Relationships
- 1) *An application for a new location shall not be approved unless there are adequate community services accessible to the consumers within a reasonable distance, or by use of public transportation, so as to facilitate the goal of achieving maximum individual self-care and independence. [20 ILCS 3960/12(17)]* The applicant shall document the community services that are accessible to the SMHRF residents, including travel distances from the SMHRF and the forms of available public transportation.
 - 2) Re-establishment of a Facility

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- A) *An application for the re-establishment of a SMHRF in connection with the relocation of the SMHRF shall not be granted unless the applicant has a contractual relationship with at least one hospital to provide emergency and inpatient mental health services required by SMHRF consumers and at least one community mental health agency. Under the contract, the hospital and agency shall provide:*
- i) *oversight and assistance to SMHRF consumers while living in the SMHRF; and*
 - ii) *appropriate services, including case management, to assist them to prepare for discharge and reside stably in the community after discharge. [20 ILCS 3960/12(17)]*
- B) The applicant shall submit signed and dated contractual agreements that address all of the requirements stated in subsection (c)(2)(A).

- 3) The applicant shall document cooperation with, and the receipt of the endorsement of, community groups in the town or municipality where the SMHRF is proposed to be located, such as, but not limited to, social, economic or governmental organizations or other concerned parties or groups. Documentation shall consist of copies of all letters of support from those organizations.

d) Unnecessary Duplication/Maldistribution

The applicant shall document that no SMHRFs currently exist in the proposed planning area, to verify that the proposed project:

- 1) will not result in an unnecessary duplication of SMHRF services; and
- 2) will not result in maldistribution of SMHRF services. (Maldistribution of services exists when an identified area within the planning area has an excess supply of SMHRFs, beds and services, as compared to other identified areas within the planning area.)

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- e) **Staffing Availability**
The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that staffing requirements of licensure, certification and applicable accrediting agencies can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.
- f) **Project Size**
The applicant shall document that the amount of physical space proposed for the project is necessary and not excessive. The proposed gross square footage (GSF) cannot exceed the GSF standards of Appendix A, 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 A;
 - 3) The project involves the conversion of existing bed space that results in excess square footage.
- g) **Zoning**
The applicant shall document one of the following:
- 1) The property to be utilized has been zoned for the type of facility to be developed;
 - 2) Zoning approval has been received; or
 - 3) A variance in zoning for the project is to be sought.
- h) **Assurances**
The applicant representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that, by the second

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year of operation after the project completion, the applicant will achieve and maintain the occupancy standards specified in Section 1127.210(c).

Section 1126.440 Modernization

- a) If the project involves modernization of SMHRF service, the applicant shall document that the bed areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, due to factors such as, but not limited to:
 - 1) High cost of maintenance;
 - 2) Noncompliance with licensing or life safety codes;
 - 3) Changes in standards of care (e.g., private versus multiple bed rooms); or
 - 4) Additional space for diagnostic or therapeutic purposes.
- b) Documentation shall include the most recent:
 - 1) IDPH and CMMS inspection reports; and
 - 2) Accrediting agency reports.
- c) Other documentation shall include the following, as applicable to the factors cited in the application:
 - 1) Copies of maintenance reports;
 - 2) Copies of citations for life safety code violations; and
 - 3) Other pertinent reports and data.
- d) Projects involving the replacement or modernization of a SMHRF shall meet or exceed the occupancy standards for the categories of service, as specified in Section 1127.210(c).

SUBPART E: FINANCIAL AND ECONOMIC FEASIBILITY – REVIEW CRITERIA

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Section 1126.510 Estimated Total Project Cost

- a) All applicants shall address the requirements listed in this Section, as applicable, in their permit application. The applicant shall provide project cost information for each of the following components as is applicable. When a project or any component of a project is to be accomplished by lease, donation, gift or any other means, the fair market value or dollar value that would have been required for purchase, construction or acquisition shall be included in the estimated total project cost.
- 1) Preplanning Costs – includes costs incurred prior to the submission of an application, such as development and feasibility studies, market studies, legal fees, bid solicitation, etc.;
 - 2) Site Survey and Soil Investigation Fees – includes costs for surrounding surveying of a proposed project site and resulting soil investigation fees;
 - 3) Site Preparation – includes costs of rental equipment for earthwork, concrete, lifting and hoisting, site drainage, utilities, demolition of existing structures, clearing, grading and earthwork;
 - 4) Off-site Work – includes costs of drainage, pipes, utilities, sewage, roads and walks;
 - 5) Construction and Modernization Contracts – includes expenses covered under the construction contract, including major medical and other fixed equipment, contractor's overhead and profit;
 - 6) Contingencies – means an allowance for unforeseeable events relating to construction or modernization;
 - 7) Architectural & Engineering Fees – includes fees associated with the development and implementation of drawings and design materials for a proposed project;
 - 8) Consulting and Other Fees – includes charges for the services of various types of consulting and professional expertise, including environmental impact, acoustical studies, computer software fees, etc.;

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- 9) Movable Capital Equipment not in Construction Contracts – includes the cost of all movable capital equipment, including any movable major medical equipment and the cost of installation of the equipment, excluding any trade-in allowances on existing equipment;
 - 10) Bond Issuance Expense – includes all costs associated with the issuance of bonds to finance a project, including issuer's fees, bond counsel's fees, official statements (feasibility study), official statement printing, printing of bonds, survey of the collateral site, title insurance to property, auditor's fees, trustee fees, underwriters' discount and government fees (if applicable);
 - 11) Net Interest Expense During Construction – means the difference between interest earned on funds for construction and interest expense on the amount of borrowed funds;
 - 12) Other Costs to be Capitalized – includes miscellaneous fees and working capital expenses related to the project; and
 - 13) Acquisition of Buildings or Other Property – includes the cost incurred for (or the fair market value of) the acquisition of buildings or property for the project. Any acquisition that has occurred within two years prior to the date the application for permit is submitted shall be included as part of project costs.
- b) Related Cost Data
- 1) Land Acquisition Cost – The applicant shall provide the purchase price or fair market value, whichever is applicable, for the acquisition of land that is required in order to undertake the project. Acquisition of land is not a capital expenditure and is not included as part of project costs.
 - 2) Operating Start-Up Cost – The applicant shall provide a schedule of estimated non-capitalized operating start-up costs and an estimate of any initial operating deficit. Any capitalized costs that are related to the start-up costs of a facility shall be included in the total estimated project cost.
 - 3) Construction and Modernization Costs and Schedule – The applicant shall provide a construction or project completion schedule that details the

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anticipated dates and percent of project construction or modernization completion at the 25th, 50th, 75th, 95th and 100th percentile of project funds expended.

- 4) Debt Service Relief Fund – Applicants shall provide the amount that will be placed in a debt service reserve fund and shall also provide the terms and conditions of uses of the fund.
- c) Information Requirements for Financial Feasibility
- 1) The applicant shall provide (for the SMHRF or for the person who controls the SMHRF) documentation of a U.S. Department of Housing and Urban Development (HUD) insured mortgage commitment, historical financial statements, or evidence of financial resources to fund the project.
 - 2) Historical Financial Statements – The applicant shall provide (for the SMHRF or for the person who controls the SMHRF) the most recent three years' financial statements (if available) that include the following:
 - A) Balance sheet;
 - B) Income statement;
 - C) Changes in fund balance; and
 - D) Change in financial position.
 - 3) Projected Capital Costs – The applicant shall provide the annual projected capital costs (depreciation, amortization and interest expense) for:
 - A) The first full fiscal year after project completion; or
 - B) The first full fiscal year when the project achieves or exceeds the average occupancy rate in the market area (or target occupancy), whichever is later.
 - 4) Projected Operating Costs – The applicant shall provide projected operating costs (excluding depreciation, stated in current dollars based on the full-time equivalents, and other resource requirements) for the first full

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fiscal year after project completion or the first full fiscal year when the project achieves or exceeds the average occupancy rate in the market area (or target occupancy), whichever is later, including:

- A) Annual operating costs; and
 - B) Annual operating costs change (increase or decrease) attributable to the project.
- 5) Availability of Funds – The applicant shall document that financial resources will be available and be equal to or exceed the estimated total project cost and any related cost. An applicant that has no documented HUD insured mortgage commitment shall document that the project and related costs will be:
- A) Funded in total with cash and equivalents, including investment securities, unrestricted funds, and funded depreciation as currently defined by the Medicare statute (42 USC 1395 et seq.); or
 - B) Funded in total or in part by borrowing because:
 - i) A portion or all of the cash and equivalents shall be retained in the balance sheet asset accounts in order that the current ratio does not fall below 2.0; or
 - ii) Borrowing is less costly than liquidating existing investments.
- 6) Operating Start-up Costs – The applicant shall document that financial resources will be available and be equal to or exceed any start-up expenses and any initial operating deficit.
- 7) Financial Viability – The applicant shall demonstrate the financial feasibility of the project based upon the projection of reasonable Medicare, Medicaid and private pay charges, expenses of operation, and staffing patterns relative to other facilities in the market area in which the proposed project will be located.

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- 8) Previous Certificate of Need Projects – The applicant shall describe its previous record of implementing CON-approved LTC projects.
- 9) Financial and Economic Review Standard Ratios for New Facilities – The proposed project shall comply with the ratio standards cited in Appendix B. Applicants not in compliance with any of the viability ratios shall document the reasons for noncompliance.

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Section 1126.APPENDIX A Project Size Standards – Square Footage

The following standards apply to new construction, the development of freestanding facilities, modernization, and the development of facilities in existing structures, including the use of leased space. For new construction, the standards are based on the inclusion of all building components and are expressed in building gross square feet (BGSF). For modernization projects, the standards are based upon interior build-out only, and are expressed in departmental gross square feet (DGSF). Spaces to be included in the applicant's determination of square footage shall include all functional areas minimally required for the applicable service areas, by the appropriate rules, required for IDPH licensure and/or federal certification and any additional spaces required by the applicant's operational program.

Service Areas	Square Feet/Unit
Specialized Mental Health	435-713 BGSF/Bed
Rehabilitation Facility	350-570 DGSF/Bed

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Section 1126.APPENDIX B Financial and Economic Review Standards

a) Reasonableness of Project and Related Costs Standards

- 1) Preplanning Costs shall not exceed 1.8% of construction and modernization contracts, plus contingencies, plus equipment costs.
- 2) Site Survey and Preparation Costs shall not exceed 5% of construction and contingency costs.
- 3) New Construction and Modernization Costs per Gross Square Foot (GSF) SMHRF cost standards are derived from the RSMeans Building Construction Cost Data (Means) publication (RSMeans, 63 Smiths Lane, PO Box 800, Kingston MA 02364-9988, 800/334-3509; 2015, no later amendments or editions included) and will be adjusted (for inflation and location) for each project to the current year (www.rsmeans.com).

HFSRB NOTE: HFSRB staff will review the cost per square foot data submitted in the application to determine compliance with the latest available cost standards of the RSMeans publication.

HFSRB NOTE: Modernization includes the build out of leased space and shall include the cost of all capital improvements contained in the terms of the lease. These standards are based on 2008 data.

Type of Facility	New Construction	Modernization
SMHRF	Adjusted Means 3 rd Quartile	70% of Adjusted Means 3 rd Quartile

- 4) Contingencies
Contingency costs for projects (or for components of projects) are based on a percentage of new construction or modernization costs and are based on the status of a project's architectural contract documents.

Status of Project	New Construction	Modernization
Contract Documents	Components	Components
Schematics	10%	10-15%

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

Preliminary	7%	7-10%
Final	3-5%	5-7%

5) New Construction or Modernization Fees and Architectural & Engineering (A&E) Fees

Current fees for services for projects or components of projects involving new construction or modernization (total amount of construction and contingencies, A&E fees for SMHRFs and total fees for site work) can be found in the Centralized Fee Negotiation Professional Services and Fees Handbook (available at www.cdb.state.il.us or by contacting the Capital Development Board, 401 South Spring Street, Springfield, Illinois 62706). HFSRB shall, for all calculations, consider the latest version of the handbook as released on the Capital Development Board website.

A) Projects or Components of Projects Involving New Construction

Total Amount of Construction and Contingencies	SMHRF
under \$100,000	10.59-15.89%
\$ 200,000	9.99-14.99%
\$ 300,000	9.48-14.22%
\$ 400,000	9.03-13.55%
\$ 500,000	8.65-12.99%
\$ 700,000	8.21-12.33%
\$ 900,000	7.89-11.85%
\$ 1,000,000	7.79-11.69%
\$ 1,250,000	7.62-11.44%
\$ 1,500,000	7.49-11.25%
\$ 1,750,000	7.36-11.06%
\$ 2,500,000	7.06-10.60%
\$ 3,000,000	6.89-10.35%
\$ 5,000,000	6.42-9.64%
\$ 7,000,000	6.11-9.17%
\$ 9,000,000	5.94-8.92%
\$ 10,000,000	5.90-8.86%
\$ 15,000,000	5.76-8.66%
\$ 20,000,000	5.64-8.48%

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

\$ 25,000,000	5.52-8.28%
\$ 30,000,000	5.37-8.07%
\$ 40,000,000	5.12-7.68%
\$ 50,000,000	4.86-7.30%
\$100,000,000 and over	3.59-5.39%

B) Projects or Components of Projects Involving Modernization

Total Amount of Construction and Contingencies	A&E Fees for SMHRF
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under \$100,000	10.76-16.16%
\$ 200,000	10.16-15.26%
\$ 300,000	9.65-14.49%
\$ 400,000	9.20-13.80%
\$ 500,000	8.81-13.23%
\$ 700,000	8.36-12.56%
\$ 900,000	8.04-12.06%
\$ 1,000,000	7.93-11.91%
\$ 1,250,000	7.76-11.66%
\$ 1,500,000	7.63-11.45%
\$ 1,750,000	7.50-11.26%
\$ 2,000,000	7.40-11.12%
\$ 2,500,000	7.19-10.79%
\$ 3,000,000	7.02-10.54%
\$ 5,000,000	6.54-9.82%
\$ 7,000,000	6.22-9.34%
\$ 9,000,000	6.04-9.08%
\$ 10,000,000	6.00-9.02%
\$ 15,000,000	5.87-8.81%
\$ 20,000,000	5.74-8.62%
\$ 25,000,000	5.62-8.44%
\$ 30,000,000	5.48-8.22%
\$ 40,000,000	5.21-7.83%
\$ 50,000,000	4.95-7.43%
\$100,000,000 and over	3.65-5.49%

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

- 6) **Capital Equipment Not Included in Construction Contracts**
Standards for capital equipment not included in construction contracts are established by type of facility and are derived from the third quartile costs of previously approved projects for which data are available. The standards apply only to the following types of projects: establishment of new facilities, expansion of existing facilities (e.g., bed additions), and modernization of existing facilities involving replacement of existing beds, relocation of existing facilities, etc. The standard in this subsection (a)(6) is calculated for the year 2013.

HFSRB NOTE: Modernization includes the build out of leased space and shall include the cost of capital equipment included in the terms of the lease.

SMHRFs per Bed

\$7,524.83

- 7) **Inflation Factor**
Costs for construction and modernization contracts and equipment are to be adjusted for projected inflation. The projected inflation rate is to be calculated to the midpoint of construction. For construction midpoint of up to 3 years, the inflation rate shall be an average of the previous 3 years annual inflation rates for construction as determined by RSMeans. For construction midpoints beyond 3 years, the inflation rate shall be the lesser of this rate or 3% for the period of time beyond 3 years.

b) **Financial Viability Standards**

- 1) **Current Ratio = Current Assets/Current Liabilities**

Type of SMHRF	Current Ratio
Not-For-Profit, System	1.5 or more
Not-For-Profit, Non-System	1.5 or more
For-Profit, System	1.5 or more
For-Profit, Non-System	1.5 or more
Governmental	1.5 or more

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

- 2) Net Margin Percentage = (Net Income/Net Operating Revenues) X 100

Type of SMHRF	Net Margin
Not-For-Profit, System	2.5% or more
Not-For-Profit, Non-system	2.5% or more
For-Profit, System	2.5% or more
For-Profit, Non-system	2.5% or more
Governmental	0% or more

HFSRB NOTE: Net Margin Percentage for For-Profits is before the provision for income taxes. Net income is the excess of revenues over expenses from operations, before non-recurring income or expense.

- 3) Long-Term Debt to Capitalization = (Long-Term Debt/Long-Term Debt plus Net Assets) X 100

Type of SMHRF	Long Term Debt to Capitalization
Not-For-Profit, System	80% or less
Not-For-Profit, Non-system	80% or less
For-Profit, System	50% or less
For-Profit, Non-system	50% or less
Governmental	NA

HFSRB NOTE: For SMHRFs and for-profit facilities, the applicant shall explain the rationale of the use of debt rather than the issuance of stock (if this is the case).

- 4) Projected Debt Service Coverage = Net Income plus (Depreciation plus Interest plus Amortization)/Principal Payments plus Interest Expense for the Year of Maximum Debt Service after Project Completion

Type of SMHRF	Project Debt Service Coverage
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HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

Not-For-Profit, System	1.5 or more
Not-For-Profit, Non-system	1.5 or more
For-Profit, System	1.5 or more
For-Profit, Non-system	1.5 or more
Governmental	1.5 or more

HFSRB NOTE: Net Income is the excess of revenues over expenses from operations, before non-recurring income or expense.

- 5) Days Cash on Hand = (Cash plus Investments plus Applicant Board Designated Funds)/(Operating Expense less Depreciation Expense)/365 days

Type of SMHRF	Days Cash on Hand
Not-For-Profit, System	45 or more days
Not-For-Profit, Non-system	45 or more days
For-Profit, System	45 or more days
For-Profit, Non-system	45 or more days
Governmental	45 or more days

HFSRB NOTE: The Days Cash on Hand requirement can be met by a combination of cash and investments held by the facilities or available funds from the backup line of credit.

- 6) Cushion Ratio = (Cash plus Investments plus Board Designated Funds)/(Principal Payments plus Interest Expense for the Year of Maximum Debt Service after Project Completion)

Type of SMHRF	Cushion Ratio
Not-For-Profit, System	3.0 or more
Not-For-Profit, Non-system	3.0 or more
For-Profit, System	3.0 or more
For-Profit, Non-system	3.0 or more

HEALTH FACILITIES AND SERVICES REVIEW BOARD

NOTICE OF ADOPTED RULES

Governmental

NA

HFSRB NOTE: The applicant may also include in the numerator the amount of funds available from an existing or proposed backup line of credit. If the applicant includes funds available from a line of credit, it shall provide documentation regarding the terms and conditions of the line.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Developmental Disabilities Services
- 2) Code Citation: 89 Ill. Adm. Code 144
- 3) Section Number: 144.102 Emergency Action: Amendment
- 4) Statutory Authority: Implementing Section 18.2 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/18.2] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5]
- 5) Effective Date of Rule: May 13, 2016
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department: May 13, 2016
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Due to the high costs associated with caring for clients who have the most severe developmental disabilities, this emergency rulemaking will allow providers to qualify for the enhanced rate for providing care to developmentally disabled clients that have high medical/high personal care needs and will help providers maintain operations by eliminating significant losses associated with caring for those clients. The increased rate will prevent clients with exceptional needs from most likely being transferred to unknown environments/settings or from being institutionalized in a State Operated Developmental Center at a much higher cost and further away from their families, friends and community. Studies have shown that the stress and anxiety of having to move from their homes compounded with the fragile medical conditions of many could have significant negative health consequences, including death. For these reasons, the Department finds that a threat exists to the public's safety and welfare. This rulemaking will address this threat by allowing providers to continue providing services and will increase the amount of funding eligible for federal, Medicaid matching funds.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- 10) A Complete Description of the Subject and Issues Involved: 89 Ill. Adm. Code 144.102 provides qualifying criteria and methodology for rates for developmentally disabled clients that have high medical/high personal care needs. The rulemaking eliminates language that disqualifies dually licensed facilities from qualifying for the enhanced rate for providing care to developmentally disabled clients that have high medical/high personal care needs. The rulemaking provides parity to the Department's ICF/DD high medical/high personal needs provider community.
- 11) Are there any other rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective (if applicable): This rulemaking does not create or expand a State mandate.
- 13) Information and questions regarding this emergency rule shall be directed to:

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

217/ 785-9772

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

TITLE 89: SOCIAL SERVICES
 CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
 SUBCHAPTER d: MEDICAL PROGRAMS

PART 144
 DEVELOPMENTAL DISABILITIES SERVICES

Section

144.1	Incorporation By Reference
144.5	Determination of Program (Active Treatment) Costs
144.25	ICF/MR Service Criteria
144.50	Inspection of Care and Rate Setting Appeal Process
144.75	Comprehensive Functional Assessments and Reassessments (Repealed)
144.100	Exceptional Care Needs of Clients with Developmental Disabilities
144.102	High Medical/High Personal Care Needs of Individuals with Developmental Disabilities
<u>EMERGENCY</u>	
144.105	Individual Program Plan (IPP) (Repealed)
144.125	Specialized Care – Behavior Development Programs
144.150	Specialized Care – Health and Sensory Disabilities
144.160	Base Nursing in Facilities Licensed as ICF/DD-16s including Small Scale (4 and 6 bed) ICF/DD-16s
144.165	Medication Administration in Facilities Licensed as ICF/DD-16s including Small Scale Residential Facilities (4 and 6 beds) ICF/DD-16s
144.175	Functional Needs
144.200	Service Needs – Medical Care (Repealed)
144.205	Service Needs – Medical and Therapy Services (Repealed)
144.225	Individual Rights (Repealed)
144.230	Reconciliation of Resident Funds
144.250	Discharge Planning/Maximum Growth Potential Plan (Repealed)
144.275	Reimbursement for Program (Active Treatment) Costs in Residential Facilities for Clients with Developmental Disabilities
144.300	Reimbursement for Program (Active Treatment) Costs in Small Scale Residential Facilities (4 and 6 bed) ICF/DD-16s
144.325	Capital Rate Calculation
144.TABLE A	Overview of Staff Intensity Scale of Maladaptive Behaviors
144.TABLE B	Staff Intensity Scale

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

144.TABLE C	IPP Outcomes (Repealed)
144.TABLE D	Guidelines for Determining Levels of Functioning
144.TABLE E	Standardized Adaptive Functional Assessment

AUTHORITY: Implementing Section 18.2 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/18.2] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

SOURCE: Adopted at 14 Ill. Reg. 4166, effective March 9, 1990; Section 144.275 recodified from 89 Ill. Adm. Code 146.225 at 14 Ill. Reg. 7651; amended at 14 Ill. Reg. 17988, effective October 29, 1990; amended at 15 Ill. Reg. 14084, effective September 24, 1991; emergency amendment at 15 Ill. Reg. 16148, effective October 22, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3497, effective February 28, 1992; amended at 16 Ill. Reg. 5898, effective March 20, 1992; amended at 17 Ill. Reg. 8478, effective June 1, 1993; amended at 17 Ill. Reg. 11480, effective July 16, 1993; emergency amendment at 17 Ill. Reg. 15126, effective September 2, 1993, for a maximum of 150 days; emergency amendment suspended effective October 12, 1993; emergency amendment repealed at 17 Ill. Reg. 22582, effective December 20, 1993; emergency amendment at 18 Ill. Reg. 11314, effective July 1, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16619, effective October 27, 1994; amended at 19 Ill. Reg. 2890, effective February 22, 1995; amended at 19 Ill. Reg. 7906, effective June 5, 1995; amended at 20 Ill. Reg. 6916, effective May 6, 1996; emergency amendment at 20 Ill. Reg. 7426, effective May 24, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 9072, effective June 28, 1996; amended at 20 Ill. Reg. 11326, effective August 1, 1996; amended at 20 Ill. Reg. 12465, effective August 30, 1996; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 22 Ill. Reg. 9287, effective May 15, 1998; amended at 23 Ill. Reg. 932, effective January 6, 1999; emergency amendment at 24 Ill. Reg. 6431, effective March 31, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13404, effective August 18, 2000; emergency amendment at 34 Ill. Reg. 16983, effective November 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. 4005, effective February 23, 2011; emergency amendment at 40 Ill. Reg. 7855, effective May 13, 2016, for a maximum of 150 days.

Section 144.102 High Medical/High Personal Care Needs of Individuals with Developmental Disabilities

EMERGENCY

- a) For services provided on or after July 1, 2010, daily rates for qualifying ICFs/MR shall have their own reimbursement rates adjusted pursuant to this Section.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

b) Qualifying Criteria

In order to receive rate adjustments under this Section, facilities must meet the criteria specified in this subsection ~~(b)~~. As of ~~April 1, 2016~~May 1, 2010, and on a continuing basis thereafter, the facility must:

- 1) Be a licensed ICF/MR, as defined in 77 Ill. Adm. Code 350, with more than 16 licensed beds and is not:
 - A) An SNF/PED, as defined in 77 Ill. Adm. Code 390; or
 - B) ~~A dually licensed facility with one or more portions of the facility licensed under different Parts of Title 77 of the Illinois Administrative Code; or~~C) A campus facility, as defined under 89 Ill. Adm. Code 140.583.
- 2) For the immediately preceding month, as documented in the remittance advice report, have:
 - A) An occupancy level of at least 93 percent of licensed ICFDD bed capacity; and
 - B) At least 93 percent of the ICFDD facility residents eligible for, and enrolled in, medical assistance under 89 Ill. Adm. Code 120.
- 3) Based on the most recently conducted annual inspection of care survey, at least 60 percent of the residents of the facility must qualify as Medical Level III.

c) Adjustment Methodology

The program and support components of the per diem rate for qualifying facilities shall be replaced with the adjusted program and support components, determined as follows:

- 1) Adjustment Factor
The adjustment factor for a facility shall be the product of the difference between the Medical Level III percentage and 60 percent and:
 - A) For facilities with a Medical Level III percentage less than 80 percent – 0.600; or

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- B) For all other facilities – 1.700.
- 2) Adjusted Program Component
The adjusted program component shall equal the product of the following:
- A) The program component of the per diem rate, as determined under Section 144.275; and
- B) The sum of 1.000 plus the adjustment factor for the facility, as determined in subsection (c)(1).
- 3) Adjusted Support Component
The adjusted support component shall equal the SNF/PED ceiling for the geographic area in which the facility is located.
- 4) Subsequent Adjustments
Adjusted program and support components shall be redetermined when:
- A) Changes to the program or support rate components are required in accordance with 89 Ill. Adm. Code 153; and
- B) The percentage of the residents who are classified as Medical Level III changes as a result of the facility's annual inspection of care survey. The adjusted program component shall be recalculated and effective the first day of the month following the Medical Level III determinations.
- C) The percentage of residents who are classified as Medical Level III changes as a result of the facility's annual inspection of care survey. The adjusted program component shall be recalculated and effective the first day of the month following the Medical Level III determinations.
- D) All high medical/high personal care rates for residents classified as Medical Level III will be reviewed and updated for changes in the facility population at least once annually upon issuance of respective facility Inspection of Care surveys.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

(Source: Amended by emergency rulemaking at 40 Ill. Reg. 7855, effective May 13, 2016, for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF NATURAL RESOURCES

Heading of the Part: Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote, and Woodchuck (Groundhog) Hunting

Code Citation: 17 Ill. Adm. Code 550

Section Numbers: 550.10 550.20 550.25 550.30

Date Originally Published in the *Illinois Register*: 1/22/16
40 Ill. Reg. 1413

At its meeting on May 10, 2016, the Joint Committee on Administrative Rules considered the above-referenced rulemaking and recommended that the Department, in limiting the number of bobcat hunting and trapping permits issued, and limiting the geographical area open to hunting and trapping, take into consideration that the bobcat has recently been removed from protected status.

The rulemaking extended this Part to the bobcat.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF NATURAL RESOURCES

Heading of the Part: Muskrat, Mink, Raccoon, Opossum, Striped Skunk, Weasel, Red Fox, Gray Fox, Coyote, Badger, River Otter, Beaver and Woodchuck (Groundhog) Trapping

Code Citation: 17 Ill. Adm. Code 570

Section Numbers: 570.15 570.20 570.30 570.31 570.35 570.40

Date Originally Published in the *Illinois Register*: 1/22/16
40 Ill. Reg. 1430

At its meeting on May 10, 2016, the Joint Committee on Administrative Rules considered the above-referenced rulemaking and recommended that that the Department in limiting the number of bobcat hunting and trapping permits issued, and limiting the geographical area open to hunting and trapping, take into consideration that the bobcat has recently been removed from protected status.

The rulemaking extended this Part to the bobcat.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

ILLINOIS RACING BOARD

Heading of the Part: Entries, Subscriptions, and Declarations

Code Citation: 11 Ill. Adm. Code 1413

Section Numbers: 1413.130 1413.138

Date Originally Published in the *Illinois Register*: 2/16/16
40 Ill. Reg. 2907

At its meeting on 5/10/16, the Joint Committee on Administrative Rules objected to the above-referenced rulemaking because it is no longer consistent with IRB policy, as evinced in its recent adoption of new policy in an emergency rule. This rulemaking should now be withdrawn.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of May 10, 2016 through May 16, 2016. The rulemakings are scheduled for review at the Committee's June 14, 2016 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start of First Notice</u>	<u>JCAR Meeting</u>
6/22/16	<u>Department of Central Management Services,</u> Pay Plan (80 Ill. Adm. Code 310)	3/25/16 40 Ill. Reg.5047	6/14/16
6/25/16	<u>Secretary of State,</u> School Bus Driver Permit (92 Ill. Adm. Code 1035)	3/4/16 40 Ill. Reg.3493	6/14/16
6/26/16	<u>Illinois Labor Relations Board,</u> General Procedures (80 Ill. Adm. Code 1200)	2/5/16 40 Ill. Reg.2414	6/14/16

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 40, Issue 22 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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JCAR REVIEW OF EXISTING RULES

STATEMENT OF RECOMMENDATIONS

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JCAR REVIEW OF EXISTING RULES

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