

November 2006

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Illinois Regulatory/Legislative
UPDATE
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CORPORATE

Indemnification of Directors

This Act amends the Business Corporation Act to require that when indemnification of a director is approved, the approval must be made by directors who are not parties. Thus, a decision to use corporate assets to protect directors will not be made by the same directors who are being sued. Effective Jan. 1, 2007. See *Public Act 94-889*

Changes to Solicitation for Charity Act

This Public Act amends the Solicitation for Charity Act. The changes require the registration of "contributions collection agents", who are defined as any person who, for compensation or other consideration, collects charitable contributions such as automobiles, motorcycles, boats and other vehicles, on behalf of a charitable organization, and oversees the resale of such property and the distribution of funds collected from the resale of the property to the charitable organization or trustee. Also provides that no person may register as a contributions collection agent who has been convicted of any felony or of a misdemeanor involving fiscal wrongdoing, breach of fiduciary duty, or a violation of the Act. Requires contributions collections agents to maintain accurate and detailed records regarding all property collected, including detailed schedules of all vehicles collected or

resold, along with the required financial report of professional fundraisers who conduct, manage, or carry on a fundraising campaign involving the collection or resale of any motor vehicle or watercraft. These documents shall be open to inspection at all reasonable times by the Attorney General or his or her duly authorized representatives. Also expands definitions of professional fundraiser and professional solicitor to include anyone who is paid to solicit, **receive or collect** contributions. Effective Jan. 1, 2007. See *Public Act 94-0749*

EMPLOYMENT

Healthcare Worker Background Check Act

This Public Act amends the Criminal Code of 1961, and creates the offense of sexual misconduct with a person with a disability. A person commits the offense when he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is in a residential program operated or supervised by a community agency. Additionally, the amendment provides that sexual misconduct with a person with a disability is a Class 3 felony and that any person convicted of the offense shall immediately forfeit their employment with the State or the community agency. Furthermore, this Public Act amends the Health Care Worker Background Check Act by prohibiting employing, hiring, or retaining for work involving direct care for clients, patients, or residents of a health care facility, those persons who have been

convicted of sexual misconduct with a person with a disability or an attempt to commit that offense. Effective July 24, 2006. *See Public Act 94-1053*

Employee Blood Donation Leave Rules

These rules implement the Employee Blood Donation Leave Act, which allows employees of units of local government, boards of election commissioners or private employers to take up to one hour of paid leave to donate blood, after obtaining approval from the employer. Effective June 28, 2006. *See 30 Ill. Reg. 12297*

Illinois Human Rights Act

This Public Act makes procedural changes to the Illinois Human Rights Act. If a complainant files a charge alleging a civil rights violation with the federal EEOC within 180 days of its occurrence, the charge will also be considered filed with the Illinois Department of Human Rights on the same date. The Department must notify the complainant that he or she may elect to proceed with the Department, but the complainant must make this election within 35 days after being notified or the Department must close the case.

If a complainant elects to proceed with the Department, it may not take action until the EEOC acts on the charge. After receiving the EEOC's determination, the Department must cause the charge to be filed. The Department may adopt the EEOC's determination or process the charge under the State Act. If the Department adopts the EEOC determination, it is also considered a determination under the State Act as well. These changes apply to all violations covered under the State Act except for real estate transactions.

If a claimant alleges a violation involving a real estate transaction, the department does not lose jurisdiction for its failure to do any of the following within 100 days after properly filing a charge: (1) complete the investigation, (2) make a determination, or (3) issue and file a complaint or order that no complaint be issued. Effective June 15, 2006. *See Public Act 94-857*

Hiring of Ex-Offenders and Veterans

The Illinois Procurement Code has been amended to encourage prospective vendors to the State to hire ex-offenders and veterans. As incentive, vendors who hire ex-offenders or veterans shall receive a credit of 5% of qualified wages paid by the taxpayer, up to a maximum of \$600. Effective Aug. 1, 2006. *See Public Act 094-1067*

Minimum Wage Act

The Minimum Wage Act has been revised to provide that any employee who is paid less than the wage they are entitled to may now also recover in a civil action damages of 2% of the amount of any underpayments for each month following the date of payment during which such underpayments remain unpaid. Effective July 14, 2006. *See Public Act 094-1025.*

HEALTHCARE

Advanced Practice Nurses

These changes allow all qualified Advanced Practice Nurses (APNs) to enroll as practitioners in the Medical Assistance Program and to be reimbursed at 100% of the physicians' rate for services. Currently, APNs are paid at 70% of the established physicians' rate and only four categories of APNs are eligible to receive medical assistance reimbursements. The changes will also allow APNs to participate in the Maternal and Child Health Program. Additionally, these amendments will allow encounter rates for Federally Qualified Health Centers (FQHCs) to be based on the higher of their current rates or rates based on their fiscal year 2002 and 2003 cost reports. These changes will more accurately reflect current costs related to the FQHC rates, and will promote continued access to care for the Department's medical assistance clients. Effective January 1, 2006. *See 30 Ill. Reg. 796*

FY 2007 Dept. of Healthcare and Family Services Funding

This Public Act creates the FY'2007 Budget Implementation (Human Services) Act for the purpose of implementing the Governor's FY'2007 budget recommendations concerning human services. The Department of Healthcare and Family Services (HFS) is authorized to adopt emergency rules during FY'2007 to the extent necessary to administer HFS' responsibilities with respect to amendments and waivers to the State plans and Illinois waivers approved by the Centers for Medicare and Medicaid Services necessitated by the requirements of Title XIX and Title XXI of the Social Security Act, in order to provide for the expeditious and timely implementation of the provisions of the State's FY'2007 budget. The Act further authorizes the Department of Human Services to initiate a three-year pilot program of home and community-based medical services for persons who are medically fragile and technology-dependent. Effective June 6, 2006. *See Public Act 94-0838*

Illinois Public Aid Code Payments

This Public Act amends the Illinois Public Aid Code and provides that the Department of Healthcare and Family Services (HFS) may withhold payments, in whole or in part, to a Medical Assistance Provider or alternate payee upon receipt of credible evidence that the circumstances giving rise to the need for a withholding of payments may involve fraud or willful misrepresentation under the Illinois Medical Assistance program. The Department may deny, suspend or terminate the eligibility of any person or entity to participate as a vendor of goods or services to recipients under the medical assistance program if, after reasonable notice and opportunity for a hearing, HFS finds that (i) the vendor, (ii) a person with management responsibility for a vendor, (iii) an officer or person owing, either directly or indirectly, 5% or more of the shares of stock or other evidence of ownership in a corporate vendor, (iv) an owner of a sole proprietorship that is a vendor, or (v) a partner in a partnership that is a vendor, has been convicted of a felony offense related to either murder or a Class X felony under the Criminal

Code of 1961. A withholding of payment action shall not continue after a period of three years. Effective June 30, 2006. *See Public Act 94-0975*

Disposition of Remains Act

These amendments to the Disposition of Remains Act provide that the prioritized list of persons who have the right to control the disposition of the decedent's remains applies unless the decedent has left directions in writing or designated an agent to direct the disposition of his or her remains. Additionally, a person may designate an agent to direct his or her disposition of remains in a will, a prepaid funeral or burial contract, a power of attorney, a cremation authorization form, or in a written instrument that satisfies the provisions of the Act and that is signed by the person and notarized. Effective July 24, 2006. *See Public Act 94-1051*

Illinois Veterans' Homes Code

A licensed professional making a report of alleged abuse, neglect, or exploitation of an adult with disabilities, may receive the findings of the investigative assessment and subsequent referrals as authorized by OIG. OIG shall inform the alleged victim that information regarding the finding and referrals may be released. The alleged victim may refuse to consent to the release of that information. Effective March 17, 2006. *See 30 Ill. Reg. 5303*

Nursing Facilities

This amendment relates to the demonstration project for mental health services in nursing facilities, which was established in 2002 to evaluate the treatment of persons with severe mental illness who reside in Institutions for Mental Diseases (IMD's), and to evaluate standards and payment methods that are specific to the needs of these facilities. Effective November 4, 2005. *See 29 Ill. Reg. 18906*

Long Term Care Reimbursement Changes

This emergency amendment provides a 2.69% rate increase for intermediate care facilities for persons with developmental disabilities (ICF/MR) and a 3% rate increase for developmental training (DT) agencies. It also provides an annual increase for DHS of approximately \$9.5 million for ICFs/MRs and \$2.2 million for DT agencies. Effective Jan. 1, 2006. *See 30 Ill. Reg. 616*

Child Vision and Hearing Test Act

This Amendment provides that individuals conducting vision screening testing are required to give the child's parent written notification before the test is conducted that the test is not a substitute for a complete vision test. It provides coverage for children who are not eligible for Medicaid or other benefits. It requires HFS to purchase or provide health care benefits for eligible children. Effective Jan. 5, 2006. *See 30 Ill. Reg. 905*

Elder Abuse and Neglect Act

The Elder Abuse and Neglect Act has been modified to include a definition of self-neglect, which is defined as a condition that is the result of the person's inability, due to mental and/or physical impairment, to perform essential self-care tasks that substantially threaten the person's health. By January 1, 2008, the Department of Aging, in cooperation with the Elder Self-Neglect Steering Committee, will develop protocols, procedures and policies for responding to reports of self-neglect, protecting adults during investigations of self-neglect, and for collecting and sharing information. The definition of reports that need to be made by mandated reporters has been expanded to include reports of self-neglect. Effective Jan. 1, 2007 *See Public Act 094-1064*

INSURANCE

Illinois Insurance Code and Mental Health Benefits

This Public Act amends the Illinois Insurance Code and provides that a group health benefit plan shall provide coverage for sixty visits for outpatient treatment of

mental illness. Effective June 26, 2006. *See Public Act 94-0921*

Health Insurance Coverage for Military and Their Families

This Public Act amends the Illinois Insurance Code and provides rights for Illinois residents activated for military service and the spouse or dependent of the resident who becomes eligible for a federal government-sponsored health insurance program as a result of an activation. Neither the resident nor spouse or dependent may be denied reinstatement into their previous individual health insurance coverage with a health insurer that lapsed as a result of activation or becoming covered by the federal government-sponsored health insurance program. The insurer must receive the request for reinstatement within a certain time period and insurers must provide written notice to policyholders of the right to reinstatement. Effective July 20, 2006. *See Public Act 94-1037*

Expansion of Benefits Under Children's Health Insurance Program

These amendments expand medical benefits for adults enrolled in the FamilyCare program and provide medical coverage to parents and caretaker relatives who are 19 years old or older, who have incomes up to 185% of the Federal Poverty Level, and who are responsible for children enrolled in the Children's Health Insurance Program. Effective May 26, 2006. *See 30 Ill. Reg. 10134*

Health Maintenance Organization Act

This amendment subjects health maintenance organizations to the provisions of a section of the Illinois Insurance Code concerning mental and emotional disorders. Effective January 1, 2007. *See Public Act 94-0906*

Construction and Filing of Accident and Health Insurance Policy Forms

This reorganizes portions of the Department of Financial and Professional Regulation rules and categorizes them to apply to either individual health insurance, group, or to both. It prohibits all policies from containing language reserving the sole discretion to interpret policy provisions. It also changes standards for judicial review determination from one of reasonableness to arbitrary and capricious. Effective July 1, 2005. *See 29 Ill. Reg 10172*

MENTAL HEALTH

SASS Changes

These amendments revise the Screening, Assessment and Support Services (SASS) system to include a Service Accessibility Assurance Payment to supplement current billing efforts since most providers have experienced problems in successfully submitting billing claims since the SASS program started. The SASS program is designed to serve children and adolescents who are experiencing a mental health crisis and whose care requires public funding. Effective Sept. 30, 2005. *See 29 Ill. Reg. 14957*

Patient Refusal of Mental Health Services

This Public Act amends the Mental Health and Developmental Disabilities Code. The Act provides that whenever a patient refuses mental health or developmental disability services, the physician shall determine and state in writing the reasons why the recipient did not meet the criteria for involuntary treatment and whether the recipient meets the standard for authorized involuntary treatment under the appropriate provisions of the Code. If the physician determines that the recipient meets the standard for authorized involuntary treatment, the facility director shall petition the court for authorized involuntary treatment unless it is determined that such a petition is not warranted. In determining whether a person meets the specified criteria for authorized involuntary treatment, the court may consider evidence of the

person's history of serious violence, repeated past pattern of specific behavior, actions related to the person's illness, or past outcomes of various treatment options. Effective August 2, 2006. *See Public Act 94-1066*

SUBSTANCE ABUSE

Illinois Advisory Council on Alcoholism and Other Drug Dependency

This Public Act amends the Alcoholism and Other Drug Abuse and Dependency Act. The Act provides that the Illinois Advisory Council on Alcoholism and Other Drug Dependency shall meet quarterly or at the call of the Department of Human Services (DHS). The duties and powers of the Council are expanded to include: (i) advising DHS in the planning, development, and coordination of programs among all agencies and departments of State government; (ii) promoting and encouraging participation by the private sector in programs to prevent alcoholism and other drug abuse and dependency; (iii) encouraging the implementation of programs to prevent alcoholism and other drug abuse and dependency in the public and private schools and educational institutions; (iv) gathering information, conducting hearings, and making recommendations to the Secretary concerning additions, deletions, or rescheduling of substances under the Illinois Controlled Substances Act; and (v) reporting annually to the General Assembly regarding the activities and recommendations made by the Council. The Council's membership is expanded to include the Director, Secretary, or other chief administrative officer, ex officio, or his or her designee, of each of the following: the Department on Aging, DCFS, the Department of Corrections, the Department of Juvenile Justice, the Department of Healthcare and Family Services, the Department of Revenue, the Department of Public Health, the Department of Financial and Professional Regulation, the Department of State Authority, and the Department of Transportation. Effective July 1, 2007. *See Public Act 94-1033*

Illinois Controlled Substances Act

Amends the Act to provide that any drug containing dextromethorphan may not be sold, delivered, distributed or possessed except in a prescription. Sale, delivery, distribution or possession is a Class 2 Felony. Exempted from this Amendment is any drug containing dextromethorphan that is sold in certain OTC cough and cold medicines. Persons registered with the DEA to manufacture or distribute shall maintain adequate security. Effective Jan. 1, 2007. *See Public Act-94-0800*

Methamphetamine Acts

Amends the Methamphetamine Control and Community Protection Act to create the offense of methamphetamine trafficking. A person commits the offense when they knowingly bring, or cause to be brought, into the State anhydrous ammonia or a methamphetamine precursor with the purpose or intent to manufacture or deliver methamphetamine. Also amends the Methamphetamine Precursor Control Act to provide that it is lawful to provide small quantities of targeted methamphetamine precursors to immediate family members for legitimate medical purposes. Effective June 5, 2006. *See Public Act 94-0830*