

Senator John Kuehn
Committee Chair
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-2732

Legislative Performance Audit Committee

Legislative Audit Office
Martha Carter, Legislative Auditor
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-1282

Memorandum

To: Members of the Legislature
From: Legislative Audit Office
Date: August 3, 2018
Re: Overdue Regulations Report

Overview

By law, state agencies subject to the Administrative Procedure Act (APA) are required to report the status of regulations that are required by statute (“mandatory regulations”) to the Legislative Audit Office by July 1 each year.¹ Additionally, for regulations not developed within three years of a bills effective date, the law requires the relevant legislative standing committee to hold a public hearing on the regulations.

2018 Report

We received reports from all agencies except the Nebraska Commission on Indian Affairs. Four agencies reported overdue mandatory regulations. Those reports were sent to standing committees with jurisdiction and to the Appropriations Committee if they reported a related appropriation. Attached is a chart indicating the status of all reports the Audit Office received this year. Individual reports from agencies reporting overdue regulations are attached to this memorandum.

¹ Agencies are governed by the APA if they have the authority to make rules and regulations. The Legislature, Commission on Industrial Relations, Nebraska Workers’ Compensation Court, and the Adjutant General’s Office are not considered agencies under the Act. The Secretary of State is considered an agency, except when carrying out the requirements of the APA. The Parole Board may be considered an agency, but it is specifically exempt from the APA under Neb. Rev. Stat. § 83-199.

Agency Reports Status

Agency No.	Agency	Report Status
9	Secretary of State	Overdue regulations reported
21	Fire Marshal, State	Overdue regulations reported
25	Health and Human Services, Department of	Overdue regulations reported
46	Correctional Services, Department of	Overdue regulations reported
76	Indian Affairs, Nebraska Commission on	Did not submit a report
0	Fair, Nebraska State	No regulations to report
10	Auditor of Public Accounts	No regulations to report
11	Attorney General	No regulations to report
12	Treasurer, State	No regulations to report
13	Education, Department of	No regulations to report
13	Professional Practices Commission	No regulations to report
14	Public Service Commission	No regulations to report
16	Revenue, Department of	No regulations to report
18	Agriculture, Department of	No regulations to report
19	Banking and Finance, Department of	No regulations to report
22	Insurance, Department of	No regulations to report
23	Labor, Department of	No regulations to report
24	Motor Vehicles, Department of	No regulations to report
27	Transportation, Department of	No regulations to report
28	Veterans' Affairs, Department of	No regulations to report
29	Natural Resources, Department of	No regulations to report
30	Electrical Division, State	No regulations to report
32	Educational Lands and Funds, Board of	No regulations to report
32	Surveyor, State	No regulations to report
33	Game and Parks Commission	No regulations to report
34	Library Commission	No regulations to report
35	Liquor Control Commission	No regulations to report
36	Racing Commission, Nebraska State	No regulations to report
39	Brand Committee, Nebraska	No regulations to report
40	Motor Vehicle Industry Licensing Board	No regulations to report
41	Real Estate Commission	No regulations to report
45	Barber Examiners, Board of	No regulations to report
48	Postsecondary Education, Coordinating Commission for	No regulations to report
50	College System, Nebraska State	No regulations to report
53	Real Property Appraiser Board, Nebraska	No regulations to report
54	Historical Society	No regulations to report
56	Wheat Board, Nebraska	No regulations to report

57	Oil and Gas Conservation Commission	No regulations to report
58	Engineers and Architects, Board of	No regulations to report
59	Geologists, Board of	No regulations to report
60	Ethanol Board, Nebraska	No regulations to report
61	Dairy Industry Development Board, Nebraska	No regulations to report
62	Land Surveyors, Board of Examiners	No regulations to report
63	Public Accountancy, Board of	No regulations to report
64	State Patrol, Nebraska	No regulations to report
65	Administrative Services, Department of	No regulations to report
66	Abstracters Board of Examiners	No regulations to report
67	Equal Opportunity Commission	No regulations to report
68	Latino American Commission	No regulations to report
69	Arts Council, Nebraska	No regulations to report
70	Foster Care Review Office	No regulations to report
71	Energy Office, Nebraska	No regulations to report
72	Economic Development, Department of	No regulations to report
73	Landscape Architects, Nebraska State Board of	No regulations to report
74	Power Review Board	No regulations to report
75	Investment Council, Nebraska	No regulations to report
78	Criminal Justice, Commission on Law Enforcement and	No regulations to report
81	Blind & Visually Impaired, Nebraska Commission for the	No regulations to report
82	Deaf & Hard of Hearing, Nebraska Commission for the	No regulations to report
84	Environmental Quality, Department of	No regulations to report
85	Nebraska Public Employees Retirement Systems	No regulations to report
86	Dry Bean Commission	No regulations to report
87	Accountability and Disclosure Commission, Nebraska	No regulations to report
88	Corn Board, Nebraska	No regulations to report
91	Tourism Commission	No regulations to report
92	Grain Sorghum Board, Nebraska	Reported regulations to which reporting statutes do not appear to apply.
93	Tax Equalization and Review Commission	No regulations to report
94	Public Advocacy, Commission on	No regulations to report

**Legislative Performance Audit Committee
2018 Regulations Report**

1. Agency: Nebraska Department of Correctional Services
2. Were any bills passed **in 2018** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2018		
2018		
2018		
2018		
2018		

3. Were any bills passed **in 2017** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2017					
2017					
2017					
2017					
2017					

4. Did any of the bills passed **in 2017** have an appropriation?

Yes

No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2017		
2017		
2017		
2017		
2017		

5. Does your agency have any regulations required by bills passed **prior to 2016** that have not yet gone into effect?

Yes

No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2015	LB 605	Medicaid suspension			(See question 6)

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table simply write “see above explanation”.

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
2015	LB 605	NDCS, in consultation with the Department of Health and Human Services, has fully implemented and is in full compliance with the Medicaid suspension process enacted by LB 605 and now codified in Neb. Rev. Stat. § 47-706. The statutory provisions of § 47-706 establish a comprehensive and detailed regulatory scheme that governs the Medicaid suspension process for inmates—so comprehensive and detailed that everything included in the proposed rules is already included in § 47-706. Thus, to the extent the rules are identical to existing law and because § 47-706 is so thoroughly prescriptive that it leaves nothing for NDCS to regulate, rules are not needed. The agency will seek repeal of the rulemaking requirement in the 2019 session.

7. Did any of the bills passed **prior to 2016** have an appropriation?

- Yes
- No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status

8. Who should our office contact with questions about this report?

Name: Dawn-Renee Smith
Email address: dawnrenee.smith@nebraska.gov
Phone number: 402-479-5713

NEBRASKA

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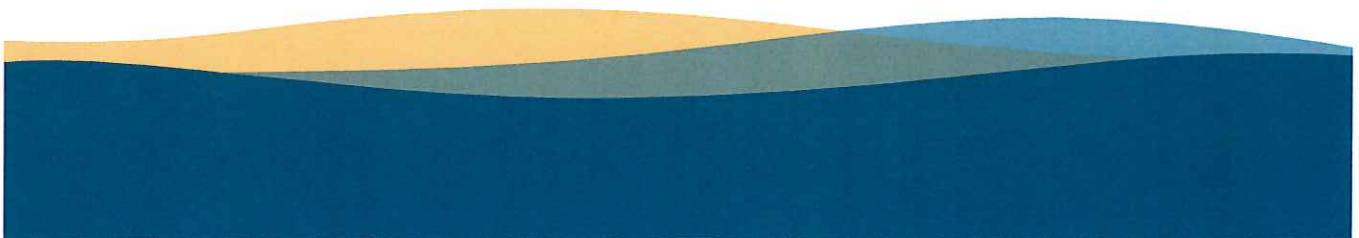
DEPT. OF HEALTH AND HUMAN SERVICES

Department of Health and Human Services

Rules and Regulations Report

7/2/18

Nebraska State Statute 84-910



2018 Regulations Report

1. Agency: HHS
2. Were any bills passed **in 2018** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2018		
2018		
2018		
2018		

3. Were any bills passed **in 2017** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2017	LB 18	Licensure and Scope of practice for dental assistants and dental hygienists	1-1-2018		Currently being drafted. This has been implemented.
2017	LB 225	Require training of foster parents on Sex Trafficking	4-28-2017 Background check provision		Drafted. This has been implemented. The contracts with the Agency Foster Care providers require training on sex trafficking. This allows for DHHS to ensure this is happening pending regulation promulgation.

			effective 9-3-2017		
2017	LB 417	For Division of Behavioral Health – authority for peer services and standards; For Division of Medicaid and Long-Term Care - State Unit on Aging	8-24-2017		Regulations are being drafted MLTC: Implemented the statutory changes BH: Peer support has been implemented.

4. Did any of the bills passed **in 2017** have an appropriation?

Yes

No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2017	LB 18A	Funds go towards total expenditures for permanent and temporary salaries and per diems from funds appropriated; shall not exceed \$24,500 for FY2017-18 or \$32,666 for FY2018-19.
2017	LB 225A	DHHS will have the ability to charge a fee when Central Registry searches are conducted. DHHS was allocated \$300K cash spending authority (no actual money) in each of FY18 and FY19 so DHHS could spend the money when we received it. Regulations were approved in May 2018, so fees will be charged effective June 19, 2018.
2017		
2017		

5. Does your agency have any regulations required by bills passed **prior to 2016** that have not yet gone into effect?

Yes

No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2016	LB 698	Fingerprint based background checks for providers	3-31-2016.	No date scheduled at this time	The statutory changes have been implemented. Regulations are being drafted.
2016	LB 746	Strengthening Families Act	7-1-2016	No date scheduled at this time	Drafted. Need to repeal inconsistent regulations as indicated under the bill. All other regulation requirements under the bill have been completed. This has been implemented.
2012	LB 1062	Adoption Assistance	7-19-2012		No regulations needed. The Agency will seek 2019 statute change. This has been fully implemented based on the language of the statute.
2013	LB 265	Change licensure requirements of child caring/placing agencies and kinship home provisions	5-25-2013		Regulations are being drafted. This has been implemented. The regulations will include uniform expiration dates for child caring/placing agencies and standards for levels of care per the bill. Kinship homes provisions have been promulgated in 395 NAC 3.
2014	LB 276	Early Intervention Act, school/Medicaid reimbursement	7-18-2014	No date scheduled at this time	The statutory changes have been implemented. Legislation required a new SPA to CMS, this was just approved by CMS on 1-25-18. Regulations are being drafted.
2014	LB 853	Extended Guardianship & Central Registry	7-18-2014		Extended Guardianship regulations are not needed. The Agency will seek 2019 statutory change. Central Registry (Alternative Response) regulations promulgated. The Alternative Response portion of the bill is implemented. The

					Alternative Response regulations are promulgated at 395 NAC 9. The extended guardianship program has been implemented.
2014	LB 908	Extended Guardianship	7-18-2014		Regulations are not needed. The Agency will seek 2019 statutory change. The extended guardianship program has been implemented.
2015	LB 37	Adopt the Prescription Drug Safety Act and change and transfer pharmacy, prescription, and drug provisions	8-30-2015	1 st Public Hearing December 14, 2016	Regulations drafted. Comments from public hearing resulted in substantive changes. Second hearing to be scheduled. This has been implemented.
2015	LB 80	Prove, change and eliminate anesthesia and sedation permit provisions under the Dentistry Practice Act	7-1-2016	1 st Public Hearing October 14, 2016	Comments from public hearing resulted in substantive changes. Second hearing was to be scheduled. The promulgation process was terminated. A new promulgation process will be initiated that will include changes from LB 80 (2015) and LB 18 (2017). Those changes are currently being drafted. This has been implemented.

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table simply write "see above explanation".

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
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2016	LB 698	MLTC has drafted regulations and provided draft versions to stakeholders for review. The division is working through the process the administrative procedure act requires for regulation promulgation.
2016	LB 746	See explanation above.
2015	LB 80	See explanation above.
2015	LB 37	See explanation above.
2014	LB 276	See explanation above.
2014	LB 853	See explanation above.
2014	LB 908	See explanation above.
2013	LB 265	See explanation above.
2012	LB 1062	See explanation above.

7. Did any of the bills passed **prior to 2016** have an appropriation?

Yes

No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2016	LB 698	The funds are being used in accordance with the appropriation. The funds are used to implement the new fingerprinting and background check requirements as directed by the legislation. Funds are also used towards administration costs for the program staff as well as aid for the claims payment.
2015	LB 243	The funds are being used in accordance with the appropriation. The funds are used to implement a new category of eligibility for Medicaid as directed by the legislation. The Subsidized Adoption and Guardianship Assistance (SAGA) program for youth between the ages of 19-21 who entered an adoption or guardianship after the age of 16. Funds are used towards administration costs for the program staff as well as aid for the claims payment.
2015	LB 566A	The funds are being used in accordance with the appropriation. The funds were used for the hiring of an ICWA Program Specialist to develop methods and processes for monitoring the Department's compliance with ICWA. This position has been filled and the Program Specialist is performing these duties.
2014	LB 276	The funds are being used in accordance with the appropriation. The funds are used to implement the Medicaid In Public Schools, services, and Administrative Claiming as directed

		by the legislation. Funds are also used towards administration costs for the program staff as well as aid for the claims payment.
2014	LB 853	Funds are being used in accordance with the appropriation. The funds are used for Alternative Response services and for Alternative Response staff.

8. Who should our office contact with questions about this report?

Name: Jaime Hegr

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Phone number: 402-471-7240

**Legislative Performance Audit Committee
2018 Regulations Report**

1. Agency: State Fire Marshal Agency
2. Were any bills passed **in 2018** that will require your agency to promulgate regulations?

Yes

No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2018	889	Adoption of a State Fire Code
2018		
2018		
2018		
2018		

3. Were any bills passed **in 2017** that required your agency to promulgate regulations?

Yes

No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2017	263	One Call System	8/24/17	N/A	Received draft from One Call Board 6/7/18
2017					
2017					
2017					
2017					

4. Did any of the bills passed **in 2017** have an appropriation?

Yes

No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
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2017		
2017		
2017		
2017		

5. Does your agency have any regulations required by bills passed **prior to 2016** that have not yet gone into effect?

Yes

No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2010	880	Fireworks	10/1/10	N/A	Changes are being incorporated into State Fire Code Changes

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table simply write “see above explanation”.

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
2010	880	Original drafts were presented for review but customer requested changes in the Electronic Application system required pulling the regs back, second drafts were made but changes to the required NFPA codes were suspended at the National Level, now changes to the required Fire Code adoption will affect what sections and requirements are in the Firework Regulations

7. Did any of the bills passed **prior to 2016** have an appropriation?

- Yes
 No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2010	880	There was a \$20,000.00 cash fund appropriation which has never been used

8. Who should our office contact with questions about this report?

Name: Regina Shields

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Phone number: 402-471-9477

**Legislative Performance Audit Committee
2018 Regulations Report**

1. Agency:

2. Were any bills passed **in 2018** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2018		
2018		
2018		
2018		
2018		

3. Were any bills passed **in 2017** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
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2017					
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2017					
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4. Did any of the bills passed **in 2017** have an appropriation?

- Yes
- No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
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2017		
2017		
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5. Does your agency have any regulations required by bills passed **prior to 2016** that have not yet gone into effect?

- Yes
- No (If no, go to question 8.)

If yes, what is the bill number, year passed, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Effective Date of Bill	Date of Public Hearing	Status of Regulation
1996	964	Special Elections by Mail 32-202(12)			Regulations have not been promulgated as the procedures for special elections by mail are outlined in statute.
1947	Laws 1947 c. 253 §1, p. 831	Tax related to musical compositions 59-1403			This duty has been transferred to the Department of Revenue effective July 19, 2018 pursuant to LB 1120 (2018)

6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table simply write “see above explanation”.

Year Passed	Bill Number	Explanation for Timeframe of Promulgation
		see above explanation

7. Did any of the bills passed **prior to 2016** have an appropriation?

Yes

No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status

8. Who should our office contact with questions about this report?

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