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Rebecca McDowell Cook

Secretary of State

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo Supp. 1998. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than 180 calendar days or 30 legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 3—Guidelines and Interpretation of Employment Anti-Discrimination Laws

EMERGENCY AMENDMENT

8 CSR 60-3.040 Employment Practices Related to Men and Women. The Missouri Commission on Human Rights proposes to amend subsection (B) and (C) of section (17) of this rule.

PURPOSE: This amendment deletes language that creates strict liability on the part of the employer for supervisor harassment and replaces it with language that adopts federal case law and Equal Employment Opportunity Commission Guidelines for Sexual Harassment.

*EMERGENCY STATEMENT: This emergency amendment is necessary to provide consistency with federal case law and EEOC Guidelines. Failure to implement this Emergency Amendment would require employers to be strictly liable for supervisor sexual harassment regardless of any effort to prevent and eliminate that harassment. The current regulation is outdated and at least twenty years old. The current regulation which was upheld by a Missouri court, would create a disincentive for preventing sexual harassment. The emergency regulation would allow employers to continue following the federal standard that encourages employers to prevent sexual harassment. For these reasons, the commission finds there is an immediate danger to public health, safety or welfare. The scope of this rule is limited to the circumstance creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. Therefor, the commission believes this Emergency Amendment to be fair to all interested persons under the circumstances. Emergency Amendment filed September 17, 1999, effective September 27, 1999, expires March 24, 2000.*

(17) Harassment on the basis of sex is a violation of Chapter 213, RSMo.

(A) Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when—

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or

3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(B) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made **by applying relevant federal case law and Equal Employment Opportunity Commission Guidelines and** from the facts, on a case-by-case basis.

(C) *[Applying general principles of Chapter 213, RSMo, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as employer) is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.]* The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

*AUTHORITY: sections 213.030(6) **and 213.075.3**, RSMo [1986] **Supp. 1998**. This rule was previously filed as 4 CSR 180-3.040. Original rule filed Oct. 31, 1973, effective Nov. 10, 1973. Amended: Filed July 1, 1980, effective Nov. 13, 1980. Emergency amendment filed Sept. 17, 1999, effective Sept. 27, 1999, expires March 24, 2000. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 3—Permits

EMERGENCY AMENDMENT

10 CSR 60-3.010 Construction Authorization, Final Approval of Construction, Owner-Supervised Program and Permit to Dispense Water. The commission is amending sections (1)–(3).

EMERGENCY STATEMENT: This amendment is necessary in order for the state of Missouri to meet the provisions of section 1420(a) of the Safe Drinking Water Act. This amendment requires compliance with the continuing operating authority and technical, managerial and financial emergency rules in 10 CSR 60-3 published in this issue of the ***Missouri Register****, for the purpose of providing the state of Missouri the means to ensure that all new community water systems and new non-transient non-community water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. If the state does not meet the requirements of section 1420(a) of the Safe Drinking Water Act, the state will receive only 80% of the funds it is entitled to receive, under section 1452, related to the State Revolving Loan Fund. If the deadline is missed, Missouri's share of the withheld federal funds will be reallocated to other states which have met this requirement. This rule is necessary to preserve a compelling governmental interest and protects the public health and safety of Missouri citizens.*

To assure fairness, drafts of this amendment have been distributed to and commented on by the Safe Drinking Water Commission, industry associations and persons requesting an opportunity to comment. This temporary emergency amendment will be replaced with a permanent amendment promulgated through the regular rulemaking process, including a public hearing and comment period. The proposed amendment was published in the August 2, 1999 ***Missouri Register****.*

The scope of the amendment is limited to the circumstances requiring emergency procedures. The procedure followed complies with the ***Missouri*** *and* ***United States Constitutions****.*

Emergency amendment filed September 20, 1999, effective September 30, 1999, expires March 27, 2000.

PURPOSE: This emergency amendment requires compliance with the continuing operating authority and technical, managerial and financial emergency rules promulgated in this issue of the ***Missouri Register****.*

(1) Community Water System Requirements.

(A) A supplier of water which operates a community water system must obtain written authorization from the department prior to construction, alteration or extension of any community water system, unless the project will be constructed under the provisions of 10 CSR 60-10.010(2)(C)2.**, and, for community water systems commencing operation after October 1, 1999, must comply with the requirements of 10 CSR 60-3.020 and 10 CSR 60-3.030.**

1. Two (2) copies of predesign studies pertaining to the project must be submitted to the department before plans and specifications for new water systems or for significant changes to existing water systems are reviewed for approval.

2. Construction authorization shall be requested by submitting written application and two (2) copies of the plans and specifications, as outlined in 10 CSR 60-10.010(2), for the proposed project to the department for review and approval.

3. Preparation of engineering reports, plans and specifications for community water systems and inspection of construction for the purpose of assuring compliance with drawings and specifications must be done by an engineer as defined by 10 CSR 60-2.015 (2)(E)2.

4. A construction authorization shall be valid for a period of two (2) years from the date of authorization. If construction is not commenced within two (2) years from the date of authorization, a new construction authorization must be obtained from the department.

(B) Final construction approval must be obtained from the department for all projects for which approval is required before that project is placed into service. A supplier of water which operates a community water system need not obtain construction approval for projects constructed under the provisions of 10 CSR 60-10.010(2)(C)2.

(C) A supplier of water which operates a community water system may establish a supervised construction program as specified in 10 CSR 60-10.010(2)(C)2.

(D) Except as *[outlined]* **exempted** in *[paragraph (1)(E)5.]***subsection (3)(A)** of this rule, no water may be dispensed or be made available to the public by any person without first applying for **in writing** and receiving a permit to dispense water.

[(E)] The department shall issue permits to dispense water **to community water systems** under the following terms and conditions:

1. A supplier of water *[which]* establish*[es]***ing** a new community *[public water supply]* **water system must,** in order to obtain a permit to dispense water *[must]*—

A. Comply with the requirements of 10 CSR 60-10.010;

B. Present evidence of the ability to produce water meeting applicable maximum contaminant levels;

C. Present evidence of reliable water system operation, consistent with the type of treatment and the degree of automatic control provided; *[and]*

D. Complete an emergency operating plan as described in 10 CSR 60-12.010; **and**

E. For community water systems commencing operation after October 1, 1999, provide proof of continuing operating authority as set forth under 10 CSR 60-3.020 and meet the technical, managerial and financial capacity requirements of 10 CSR 60-3.030; and

2. *[A supplier of water which operates an existing community water supply holding a valid permit to dispense water at the time these regulations become effective and meeting the Missouri drinking water regulations will be issued a new permit to dispense water;*

3.] A supplier of water which operates an existing community water supply not holding a valid permit to dispense water **is operating in violation of the Missouri drinking water statutes and regulations and** must apply to the department in writing for a permit. Water suppliers in this category must—

A. Present evidence to the department of the ability to produce water meeting applicable maximum contaminant levels;

B. Present evidence of reliable water system operation, consistent with the type of treatment and the degree of automatic control provided;

C. Submit, in duplicate, certified plans and specifications describing the water source, any treatment facilities and the distribution system to the department. Certification must be either by the engineer preparing the information or if prepared by the owner, be a properly notarized affidavit;

D. Provide disinfection with an effective contact time for wells used as a source of supply which were constructed prior to October 1, 1979, and which do not meet community water system construction criteria or where construction cannot be verified by the owner; and

E. Complete an emergency operating plan as described in 10 CSR 60-12.010*[;*

4. Water systems serving subdivisions as defined in 10 CSR 60-2.015 (2)(S)8. are public water supplies and must have a permit to dispense water; and

5. A water supply meeting all the following conditions is not considered a public water supply and as such, is not required to have a permit if that water supply—

A. Consists only of distribution and storage facilities;

B. Obtains all of its water from, but is not owned or operated by a public water system to which the regulations apply;

C. Does not sell water to any person; and

D. Is not a carrier which conveys passengers in interstate commerce].

(2) Noncommunity Water System Requirements.

(A) A supplier of water which operates a noncommunity *[public water supply]* **water system** must apply in writing to the department for a permit to dispense water to the public. Noncommunity public water *[supply]* systems must present evidence **to the department of**—

1. *[To the department of t]* **T**he ability to produce water meeting applicable maximum contaminant levels; *[and]*

2. *[Of r]***R**eliable water system operation, consistent with the type of treatment and the degree of automatic control provided*[.]***; and**

3. For nontransient noncommunity water systems commencing operation after October 1, 1999, continuing operating authority meeting the requirements of 10 CSR 60-3.020 and technical, managerial and financial capacity meeting the requirements of 10 CSR 60-3.030.

(B) Each **noncommunity** supplier of water must notify the department, in advance, of the intent to construct a new or expand an existing water system.

1. *[W]* **Noncommunity w**ater *[supplies]* **systems** utilizing surface or ground water under the direct influence of surface water **and nontransient noncommunity water systems** must obtain written authorization from the department prior to construction, alteration or extension of the system*[, unless the project will be constructed under the provisions of 10 CSR 60-10.010(2)(C)2]* **and must comply with 10 CSR 60-3.020 and 10 CSR 60-3.030**.

2. *[W]* **Transient noncommunity w**ater *[supplies]* **systems** utilizing groundwater—

A. May be required, at the discretion of the department, to submit plans and specifications for approval;

B. Shall be constructed in accordance with the department's "Standards for Non-*[c]***C**ommunity Public **W**ater *[s]***S**upplies, 1982"; and

C. Must file with the department, within sixty (60) days of completion, a record of construction for all new or modified wells on forms provided by the department.

(3) Permits to Dispense Water *[Are Effective Until Revoked]*. The department may modify or revoke a permit to dispense water**,** subject to the appeal provisions of section *[640.130.4.,]* **640.130.5,** RSMo, upon a finding that any of the following *[events]* have occurred:

(A) The holder of a permit ceases to function as a public water supply;

(B) The holder of a permit fails to correct an operating deficiency or comply with these regulations within a reasonable time after receipt of notice from the department; *[or]*

(C) The department determines that an emergency condition exists in a water supply which endangers, or could be expected to endanger, the health of a person(s) consuming affected water.

AUTHORITY: sections 640.100 ***and 640.115****, RSMo [1994]* ***Supp. 1998****. Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed Aug. 13, 1982, effective Dec. 11, 1982. Amended: Filed Aug. 4, 1987, effective Jan. 1, 1988. Amended: Filed July 12, 1991, effective Feb. 6, 1992. Amended: Filed Feb. 1, 1996, effective Oct. 30, 1996. Amended: Filed July 1, 1999. Emergency rule filed September 20, 1999, effective September 30, 1999, expires March 27, 2000.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 3—Permits

EMERGENCY RULE

10 CSR 60-3.020 Continuing Operating Authority

EMERGENCY STATEMENT: This rule is necessary in order for the state of Missouri to meet the provisions of section 1420(a) of the Safe Drinking Water Act and section 640.115 of the Missouri Safe Drinking Water Law. The purpose of the rule is to require all new water systems commencing operation after October 1, 1999, demonstrate a permanent organization exists to serve as continuing operating authority that will have and maintain the technical, managerial, and financial capacity as established in the emergency rules in 10 CSR 60-3 published in this issue of the ***Missouri Register****. If the state does not meet the requirements of section 1420(a), the state will receive only 80% of the funds it is entitled to receive, under section 1452, related to the State Revolving Loan Fund. If the deadline is missed, Missouri's share of the withheld federal funds will be reallocated to other states which have met this requirement. This rule is necessary to preserve a compelling governmental interest and protects the public health and safety of Missouri citizens.*

To assure fairness, drafts of this rule have been distributed to and commented on by the Safe Drinking Water Commission, industry associations and persons requesting an opportunity to comment. This temporary emergency rule will be replaced with a permanent rule promulgated through the regular rulemaking process, including a public hearing and comment period. The proposed rule was published in the August 2, 1999 ***Missouri Register****.*

The scope of the rule is limited to the circumstances requiring emergency procedures. The procedure followed complies with the ***Missouri*** *and* ***United States Constitutions****.*

Emergency rule filed September 20, 1999, effective September 30, 1999, expires March 27, 2000.

PURPOSE: This emergency rule establishes continuing operating authority requirements for community and non-transient non-community water systems.

(1) Applicability. This rule applies to community and non-transient non-community water systems commencing operation after October 1, 1999.

(2) Definitions.

(A) The terms and definitions in 10 CSR 60-2.015 apply to this rule.

(B) Continuing operating authority means the permanent organization, entity or person identified on the permit to dispense water who is responsible for the management, operation, replacement, maintenance and modernization of the public water system in compliance with the Missouri Safe Drinking Water Law and rules.

(3) Community and Non-transient Non-community Water Systems Commencing Operation After October 1, 1999. Owners/operators of community and non-transient non-community water systems applying for written construction authorizations or permits to dispense water, or both, shall show as part of their application, that a permanent organization exists which will serve as the continuing operating authority for the management, operation, replacement, maintenance and modernization of the facility for which the application is made. The department will not issue written construction authorizations and permits to dispense unless the applicant provides proof satisfactory to the department that a continuing operating authority exists that shall have jurisdiction over the facility.

Written construction authorizations and permits to dispense water will be issued to the continuing operating authority. The permit shall be valid only for the continuing operating authority to which the permit is issued.

(4) Continuing Operating Authority Responsibilities. To ensure the dispensing of safe and adequate supplies of drinking water to its customers, the continuing operating authority for each public water system subject to this rule shall be responsible for all necessary: source withdrawal facilities, treatment facilities, and/or distribution facilities which the public water system owns or leases. The continuing operation authority shall have such valid lease agreements, contracts and properly recorded easements, as necessary, to allow access for new construction, repair, replacement, maintenance, and operation of all facilities.

(5) Private Water Corporations. Private corporations which are not incorporated under the laws of the State of Missouri shall be represented by a registered agent in the State of Missouri before a written authorization to construct or a permit to dispense water will be issued by the department.

AUTHORITY: sections 640.100 and 640.115, RSMo Supp. 1998. Original rule filed July 1, 1999. Emergency rule filed Sept. 20, 1999, effective Sept. 30, 1999, expires March 27, 2000.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 3—Permits

EMERGENCY RULE

10 CSR 60-3.030 Technical, Managerial, and Financial Capacity

EMERGENCY STATEMENT: This rule is necessary in order for the state of Missouri to meet the provisions of section 1420(a). The purpose of the rule is for the state of Missouri to implement the means to ensure that all new community water systems and new non-transient non-community water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. If the state does not obtain this authority, the state will receive only 80% of the funds it is entitled to receive, under section 1452, related to the State Revolving Loan Fund. If the deadline is missed, Missouri's share of the withheld federal funds will be reallocated to other states which have met this requirement. This rule is necessary to preserve a compelling governmental interest and protects the public health and safety of Missouri citizens.

To assure fairness, drafts of this rule have been distributed to and commented on by the Safe Drinking Water Commission, industry associations and persons requesting an opportunity to comment. This temporary emergency rule will be replaced with a permanent rule promulgated through the regular rulemaking process, including a public hearing and comment period. The proposed rule was published in the August 2, 1999 ***Missouri Register***

The scope of rule is limited to the circumstances requiring emergency procedures. The procedure followed complies with the ***Missouri*** *and* ***United States Constitutions****.*

Emergency rule filed September 20, 1999, effective September 30, 1999, expires March 27, 2000.

PURPOSE: This emergency rule establishes minimum technical, managerial and financial capacity requirements for community and nontransient noncommunity water systems commencing operation after October 1, 1999.

(1) Applicability. This rule applies to community and nontransient noncommunity water systems commencing operation after October 1, 1999.

(2) General Requirements.

(A) Community and non-transient non-community water systems commencing operation after October 1, 1999 shall show, as part of their permit application, that the public water system will meet the requirements of this rule. The department will not issue a permit to dispense water until requirements of this rule are met.

(B) Community and non-transient non-community water systems commencing operation after October 1, 1999 shall show as part of their application that the public water system will meet the minimum technical, managerial, and financial capacity requirements of this rule. The department will not issue a written construction authorization until it determines that the proposed water system will meet the requirements of this rule.

(C) Community and non-transient non-community water systems shall maintain compliance with this rule and shall provide the department with information during sanitary surveys and upon written request for the department's use in assessing their compliance with this rule.

(D) Community and nontransient noncommunity water systems subject to this rule shall consider and plan for the potential impact of future regulations on their technical, managerial and financial capacity.

(3) Minimum technical, managerial, and financial capacity requirements.

(A) Minimum technical capacity requirements.

1. All community water systems subject to this rule must conform to the current "Standards for Community Public Water Supplies."

2. All nontransient noncommunity water systems subject to this rule must conform to the current "Standards for Non-Community Public Water Supplies."

3. All public water systems subject to this rule shall have a sufficient number of operators certified as required in 10 CSR 60-14 to provide proper operation and maintenance of all source, treatment, storage, and distribution facilities so that the public water system meets all requirements of sections 640.100-640.140, RSMo and regulations promulgated thereunder. These operators shall be properly trained and be provided all equipment needed, including safety equipment, to perform all tasks in their job duties.

4. All public water systems subject to this rule shall have and maintain an updated distribution system map and shall make the map available to the department on request.

(B) Minimum managerial capacity requirements.

1. Community and nontransient noncommunity water systems subject to this rule shall have an organization chart that shows every position that provides any drinking water function with the position title, name, business address, and telephone number of the person filling that position. This chart shall show clear lines of authority and supervision. Elected officials and managers that have overall jurisdiction shall also be shown on this chart. The chart shall state the name(s) of the persons or legal entity who own the public water system along with the business address and telephone number of the owner(s). This chart shall be publicly displayed and shall be updated within thirty (30) calendar days of any changes. An updated copy of the organization chart shall be made available to the department.

2. Community and nontransient noncommunity water systems subject to this rule shall designate a person or persons who will receive customer complaints and shall have a written procedure for receiving, investigating, resolving, and recording customer complaints. The name, title, business address, business telephone number and office hours of the person(s) designated to receive complaints shall be publicly displayed, along with the

written complaint procedure. Complaint records shall be kept for a minimum of five (5) years and shall be made available to the department upon request. Results of investigations shall be used as part of the planning process for future improvements.

3. Community and nontransient noncommunity water systems subject to this rule shall have a written rate structure and service fees, and the rate structure and service fees shall be publicly displayed and shall be made available to the department upon request.

4. Community and nontransient noncommunity water systems subject to this rule shall hold at least one (1) public meeting prior to changing the rate structure or service fees and shall notify the customers in advance of the public meeting by posting notice in the principal business office and providing notice in the area served, unless the rate increase procedure is regulated by other state or federal regulations. Records of customers notice and summary of the public meeting shall be kept for a minimum of five (5) years and shall be made available to the department upon request.

5. Community and nontransient noncommunity water systems subject to this rule shall designate a person to be responsible for compliance with the public drinking water regulations in 10 CSR 60, including reporting and public notice requirements. This person shall be trained in public drinking water regulation requirements and shall act as liaison with the department on drinking water issues. The department will refer compliance actions to this person. The name, position title, business address, business telephone number, and office hours for this person shall be made available to the department and the department shall be notified within thirty (30) calendar days of any change.

(C) Minimum financial capacity requirements.

1. Community and nontransient noncommunity water systems subject to this rule shall adhere to standard accounting practices in accordance with the Generally Accepted Accounting Principles and Practices, or the National Assocation of Regulated Utility Companies Uniform System of Accounts, as appropriate.

2. Community and nontransient noncommunity water systems subject to this rule shall develop and implement a system of collection of water fees that includes disconnection of service for nonpayment or other measures for obtaining payment. The total of uncollected fees and the percentage of uncollected fees compared to sum of collected and uncollected fees shall be recorded monthly. These records shall be made available to the department upon request.

3. Community and nontransient noncommunity water systems subject to this rule shall develop an annual budget showing public water system revenues and expenditures, shall prepare a report at the end of each fiscal year showing public water system revenues and expenditures for that year and a comparison with the annual budget prepared for that year, and shall prepare a five- (5) year budget and capital improvement plan that will be updated annually. The capital improvement plan shall include the potential financial impacts of future regulations. These records shall be kept for a minimum of ten (10) years and shall be made available to the department upon request.

4. Annual revenues shall cover all public water system costs for the system including operating costs, maintenance costs, debt service costs, operating reserves, debt service reserves, emergency equipment replacement reserves, and revenue collection costs.

5. Community and nontransient noncommunity water systems subject to this rule and not subject to state regulation of rates for water service, in addition to all other financial capacity requirements, shall have and maintain:

A. An operating reserve equal to or greater than one-tenth (1/10) of the annual operations and maintenance budget. The public water system must establish this reserve in at least annual payments not to exceed ten (10) years. Funds from the operating reserve shall be used for operating and maintenance expenses only and shall be replaced within ten (10) years from the date of use. This reserve shall be invested in an account with ready access to the funds. Records of this reserve shall be made available to the department upon request. Other private, state, or federal reserves may be applied to meet this requirement;

B. An emergency equipment replacement reserve equal to or greater than the replacement cost of the most expensive mechanical equipment item needed for operation. The public water system must establish this reserve in at least annual payments over a minimum of ten (10) years. Funds from the reserve shall be used for emergency equipment replacement expenses only and any funds so used shall be replaced within ten (10) years from the date of use. This reserve shall be invested in an account with ready access to the funds. Records of this reserve shall be made available to the department upon request. Other private, state, or federal reserves may be applied to meet this requirement; and

C. If there is debt on the public water system facilities, a debt service reserve no less than required in the bonding agreement. Funds from the debt service reserve shall be used for debt service expenses only and replaced no less than required in the bonding agreement. Records of this reserve shall be made available to the department upon request.

AUTHORITY: sections 640.100 and 640.115, RSMo Supp. 1998. Original rule filed July 1, 1999. Emergency rule filed Sept. 20, 1999, effective Sept. 30, 1999, expires March 27, 2000.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights, and Responsibilities

EMERGENCY RULE

13 CSR 70-4.090 Uninsured Working Parents' Health Insurance Program.

PURPOSE: This rule establishes the Uninsured Working Parents' Health Insurance Program. This program will provide payment for health care coverage for uninsured, low income, working parents leaving welfare for work thereby reducing future dependence on welfare and reducing the possibility of a family's future dependence on welfare as authorized pursuant to section 208.040, RSMo. The program is also authorized pursuant to the award of the Missouri State Medicaid Section 1115 Health Care Reform Demonstration Proposal approved by the Health Care Financing Administration.

EMERGENCY STATEMENT: This emergency rule is necessary to implement the Uninsured Working Parents' Health Insurance Program. This program will provide payment for health care coverage for uninsured, low income, working parents leaving welfare for work, thereby reducing future dependence on welfare and reducing the possibility of a family's future dependence on welfare as authorized pursuant to section 208.040, RSMo. This emergency rule will provide clarity regarding who is and who is not eligible for the Uninsured Working Parents' Health Insurance Program and will enable those who meet the specified eligibility requirements outlined within this emergency rule to apply for and receive health insurance coverage, thereby protecting the public health, safety, and welfare of Missouri citizens. Without this emergency rule there will be confusion regarding who is and who is not eligible for the Uninsured Working Parents' Health Insurance Program. The Division of Medical Services finds the rule is necessary to preserve a compelling governmental interest that requires an early effective date to ensure the implementation of the uninsured working parents' health insurance program which is authorized pursuant to the award of the Missouri State Medicaid Section 1115 Health Care Reform Demonstration Proposal approved by the Health Care

*Financing Administration to provide health insurance coverage for more than 50,000 working uninsured Missouri parents. This emergency rule limits its scope to the circumstances creating the emergency and complies with the protection extended by the **Missouri** and **United States Constitutions**. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency rule filed September 13, 1999, effective September 23, 1999, expires March 21, 2000.*

(1) Definitions.

(A) Working Parents. Working parents are defined as having gross earned income above $234 per parent per month.

(B) Health Insurance. Any hospital and medical expense incurred policy, nonprofit heath care service for benefits other than through an insurer, nonprofit health care service plan contract, health maintenance organization subscriber contract, preferred provider arrangement or contract, or any other similar contract or agreement for the provision of health care benefits. The term "health insurance" does not include short-term, accident, fixed indemnity, limited benefit or credit insurance coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(C) Co-Payment. A cost-sharing arrangement in which a covered person pays a specified charge for a specified service, such as ten dollars ($10) for a professional service.

(D) Parents. For purposes of this regulations the term parents can refer to a custodial parent, custodial parents, non-custodial parent or the child's legal guardian or guardians.

(2) The following uninsured working parents' shall be eligible to receive medical services to the extent and in the manner provided in this regulation:

(A) Parents losing transitional medical assistance (TMA) who would not otherwise be insured or Medicaid eligible, with gross income below three hundred percent (300%) of the federal poverty level for the household size;

1. Eligibility for the Uninsured Working Parents' Health Insurance Program for parents losing TMA ends after twenty-four (24) total non-consecutive months.

2. After coverage ends, the parents have the option of staying in the MC+ health plan, where managed care is available, if the parents pay the cost of the state's cost for the time period covered by the Missouri Medicaid Section 1115 Health Care Reform Demonstration Proposal as approved by the Health Care Financing Administration.

(B) Uninsured non-custodial working parents with income below one hundred twenty-five percent (125%) of the federal poverty level for the household size who are current in paying their child support;

(C) Uninsured non-custodial parents who are actively participating in Missouri's Parents' Fair Share program;

(D) Uninsured custodial working parents with family income below one hundred percent (100%) of the federal poverty level for the household size; and

(E) Uninsured mothers who do not qualify for other medical assistance benefits, and would lose their Medicaid eligibility 60 days after the birth of their child, will continue to be eligible for family planning and limited testing of sexually transmitted diseases, regardless of income, for twenty-four (24) consecutive months after the pregnancy ends.

(3) Uninsured working parents who have had health insurance in the six (6) months prior to the month of application shall not be eligible.

(4) If the parents had health insurance and such health insurance coverage was dropped, within six months prior to the month of application, the parent is not eligible for coverage under this rule until six months after coverage was dropped.

(5) The six (6) month period of ineligibility would not apply to parents who lose health insurance due to:

(A) Employment with a new employer that does not provide an option for coverage;

(B) Expiration of the Consolidated Budget Reconciliation Act (COBRA) coverage period; or

(C) Lapse of health insurance when the lifetime maximum benefits under their private health insurance have been exhausted.

(6) Beneficiaries covered in Section (2) of this rule shall be eligible for service(s) from the date their application is received. No services(s) will be covered prior to the date the application is received.

(7) The following services are covered for beneficiaries of the Uninsured Working Parents' Health Insurance Program if they are medically necessary:

(A) Inpatient hospital services;

(B) Outpatient hospital services;

(C) Emergency room services;

(D) Ambulatory surgical center, birthing center;

(E) Physician, advanced practice nurse, and certified nurse midwife services;

(F) Maternity benefits for inpatient hospital and certified nurse midwife. The health plan shall provide coverage for a minimum of forty-eight (48) hours of inpatient hospital services following a vaginal delivery and a minimum of ninety-six (96) hours of inpatient hospital services following a cesarean section for a mother and her newly born child in a hospital or any other health care facility licensed to provide obstetrical care under the provision of Chapter 197, RSMo. A shorter length of hospital stay for services related to maternity and newborn care may be authorized if a shorter inpatient hospital stay meets with the approval of the attending physician after consulting with the mother and is in keeping with federal and state law. The health plan is to provide coverage for post-discharge care to the mother and her newborn. The physician's approval to discharge shall be made in accordance with the most current version of the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, or similar guidelines prepared by another nationally recognized medical organization and be documented in the patient's medical record. The first post-discharge visit shall occur within twenty-four (24) to forty-eight (48) hours. Post-discharge care shall consist of a minimum of two visits at least one of which shall be in the home, in accordance with accepted maternal and neonatal physical assessments, by a registered professional nurse with experience in maternal and child health nursing or a physician. The location and schedule of the post-discharge visits shall be determined by the attending physician. Services provided by the registered professional nurse or physician shall include, but not be limited to, physician assessment of the newborn and mother, parent education, assistance and training in breast or bottle feeding, education and services for complete childhood immunizations, the performance of any necessary and appropriate clinical tests and submission of a metabolic specimen satisfactory to the State laboratory. Such services shall be in accordance with the medical criteria outlined in the most current version of the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, or similar guidelines prepared by another nationally recognized medical organization. If the health plan intends to use another nationally

recognized medical organization's guidelines, the state agency must approve prior to implementation of its use;

(G) Family planning services;

(H) Pharmacy benefits;

(I) Dental services to treat trauma or disease;

(J) Laboratory, radiology and other diagnostic services;

(K) Prenatal case management;

(L) Hearing aids and related services;

(M) Eye exams and services to treat trauma or disease (one pair of glasses after cataract surgery only);

(N) Home health services;

(O) Emergent (ground or air) transportation;

(P) Non-emergent transportation only for members in ME Code 78 Parent's Fair Share;

(Q) Mental health and substance abuse services, subject to limitation of 30 inpatient days and 20 outpatient visits. One (1) inpatient day may be traded for two (2) outpatient visits;

(R) Services of other providers when referred by the health plan's primary care provider;

(S) Hospice services;

(T) Durable medical equipment (including but not limited to: orthotic and prosthetic devices, respiratory equipment and oxygen, enteral and parenteral nutrition, wheelchairs and walkers, diabetes supplies and equipment);

(U) Diabetes self management training for persons with gestational, Type I or Type II diabetes;

(V) Services provided by local health agencies (may be provided by the health plan or through an arrangement between the local health agency and the health plan);

1. screening, diagnosis, and treatment of sexually transmitted diseases;

2. HIV screening and diagnostic services;

3. screening, diagnosis, and treatment of tuberculosis;

(W) Emergency medical services. Emergency medial services are defined as those health care items and services furnished or required to evaluate or stabilize a sudden and unforseen situation or occurrence or a sudden onset of a medical or mental health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the failure to provide immediate medical attention could reasonably be expected by a prudent lay person, possessing average knowledge of health and medicine, to result in:

1. placing the patient's health (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; or

2. serious impairment of bodily functions; or

3. serious dysfunction of any bodily organ or part; or

4. serious harm to a member or others due to an alcohol or drug abuse emergency; or

5. injury to self or bodily harm to others; or

6. with respect to a pregnant woman who is having contractions: (1) that there is inadequate time to effect a safe transfer to another hospital before delivery or; (2) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(8) Parents losing TMA, uninsured non-custodial working parent(s) with family income below one hundred twenty-five percent (125%) of the federal poverty level who are current in paying their child support and uninsured custodial working parent(s) with family income below one hundred percent (100%) of the federal poverty level shall owe a ten dollar ($10) co-payment for certain professional services and a five dollar ($5.00) co-payment in addition to the recipient portion of the professional dispensing fee for pharmacy services required by 13 CSR 70.4.051.

(A) Providers may request payment of the mandatory co-payment(s) prior to service delivery.

(B) The co-payment amount will be deducted from the Medicaid Maximum Allowable amount for fee-for-service claims reimbursed by the Division of Medical Services.

(C) Service(s) may not be denied for failure to pay the mandatory co-payment.

(D) When a mandatory co-payment is not paid, the Medicaid provider will have the following options:

1. forego the co-payment entirely;

2. Make arrangements for future payment with the recipient; or

3. file a claim with the Division of Medical Services to report the non-payment of the mandatory co-payment and secure payment for the service from the Division of Medical Service.

(E) When the Division of Medical Services receives a claim from a Medicaid fee-for-service provider for non-payment of the mandatory co-payment, the Division will send a notice to the recipient requesting:

1. that the recipient reimburse the Division of Medical Services for the mandatory co-payment made on their behalf; or

2. an explanation from the recipient why the mandatory co-payment was not and cannot be made.

(F) The recipient will be allowed fourteen (14) calendar days to respond. If the recipient indicated there has been a change in the financial situation of the family, the state shall redetermine eligibility:

1. if the eligibility redetermination places the recipient in a non-mandatory co-payment category, there will be no co-payment due; or

2. if the eligibility redetermination does not place the recipient in a non-mandatory co-payment category another notice will be sent to the recipient about the mandatory co-payment provision of the program.

(G) Notice of non-payment of mandatory co-payment(s) sent to the recipient during the course of a year shall establish a pattern of not meeting the mandatory cost sharing requirement of the program. The process to terminate eligibility shall proceed with the third failure to pay in any one (1) year:

1. a year starts at the point the individual becomes eligible;

2. an individual who pays a delinquent co-payment or co-payments will be able to eliminate the failure to pay a mandatory co-payment or co-payments.

(H) Recipient(s) shall have access to a fair hearing process to appeal the disenrollment decision.

(I) If the recipient fails to pay the mandatory co-payments three (3) times within a year and is disenrolled from coverage the recipient shall not be eligible for coverage for three (3) months after the department provides notice to the recipient of disenrollment for failure to pay mandatory co-payments.

(9) Uninsured non-custodial parents who are actively participating in Missouri's Parents' Fair Share program and uninsured mothers who do not qualify for other benefits, and would lose their Medicaid eligibility sixty (60) days after the birth of their child are not required to pay a co-pay for services.

(10) The Department of Social Services, Division of Medical Services shall provide for granting an granting an opportunity for a fair hearing to any applicant or recipient whose claim for benefits under the Missouri Medicaid Section 1115 Health Care Reform Demonstration Proposal is denied or disenrollment for failure to pay mandatory co-payments has been determined by the division.

AUTHORITY: sections 208.040, 208.152, 208.201, RSMo 1994 and 660.017, RSMo Supp. 1998. Original rule filed Aug. 16, 1999. Emergency rule filed Sept. 13, 1999, effective Sept. 23, 1999, expires March 21, 2000.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is amending section (13).

PURPOSE: This amendment outlines how the Fiscal Year 2000 trend factor will be applied to adjust per diem rates for nursing facilities participating in the Medicaid program.

*EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of nursing facility services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2000. The appropriation reflects the increased cost of providing nursing facility services and is dispersed in the form of an increase to the providers' per diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to over 26,500 Medicaid patients in nursing facilities. The Division of Medical Services finds that, due to the healthy national and state economy and the low unemployment rate, these per-diem rate adjustments are necessary on an emergency basis. Failure to implement these adjustments may result in diminished nursing facility services to Medicaid patients in nursing facilities. Therefore, the Division of Medical Services finds an immediate danger to public health which requires emergency action. The Division of Medical Services also finds that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed September 20, 1999, effective October 1, 1999, expires March 29, 2000.*

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per-Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per-diem rate adjustments. Global per-diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per-diem effective October 1, 1995, of 4.6% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of 3.7% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. NFRA. Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents ($2.45) to allow for the change in minimum wage. Utilizing fiscal year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents ($1.98) to allow for the change in minimum wage. Utilizing fiscal year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

*AUTHORITY: sections 208.153, 208.159, and 208.201, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 30,*

1999. Emergency amendment filed Sept. 20, 1999, effective Oct. 1, 1999, expires March 29, 2000.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services. The division is amending Section (4).

PURPOSE: This emergency amendment outlines how the State Fiscal Year 2000 trend factor, which is to be used only for increases for salaries and fringe benefits for direct care staff and their immediate supervisors, will be applied to adjust per diem rates for nonstate-operated ICF/MR facilities participating in the Medicaid program.

*EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of ICF/MR services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2000. The appropriation reflects the increased cost of providing ICF/MR services and is dispersed in the form of an increase to the providers' per-diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in nonstate-operated ICF/MRs. The Division of Medical Services finds that, due to the healthy national and state economy and the low unemployment rate, these per-diem rate adjustments are necessary on an emergency basis. Failure to implement these adjustments may result in diminished nursing facility services to Medicaid patients in nonstate-operated ICF/MRs. Therefore, the Division of Medical Services finds an immediate danger to public health which requires emergency action. The Division of Medical Services also finds that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protection extended by the **Missouri** and **United States Constitutions**. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed September 20, 1999, effective October 1, 1999, expires March 29, 2000.*

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's Medicaid program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the Missouri Medical Assistance program shall reimburse providers of these LTC services based on the individual Medicaid-recipient days of care multiplied by the Title XIX prospective per-diem rate less any payments collected from recipients. The Title XIX prospective per-diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per-diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per-diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per-diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per-diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per-diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per-diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate operated ICF/MR facilities shall be granted an increase to their per-diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per-diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred thirty-one dollars and ninety-three cents ($131.93).

*PUBLISHER'S NOTE: Subparagraph (4)(A)1.F. is reserved as ordered in the **Missouri Register** on October 15, 1999, to become effective in the **Code of State Regulations** on November 30, 1999.*

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per-diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per-diem rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the Medicaid agency to impose a rate adjustment in the case of fraudulent, misrepresented or inaccurate information in any way shall affect the Medicaid agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the Medicaid agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per-diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's Medicaid reimbursement rate is higher than either its private pay rate or its Medicare rate, the Medicaid rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control and the circumstances are not experienced by the nursing home or ICF/MR industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both;

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 1994. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Feb. 23, 1999, effective March 5, 1999, expired Aug. 31, 1999. Amended: Filed May 27, 1999. Emergency amendment filed Sept. 20, 1999, effective Oct. 1, 1999, expires March 29, 2000.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.050 Pediatric Nursing Care Plan. The division is amending paragraph (3)(E)4.

PURPOSE: This amendment increases the maximum amount that may be paid to Pediatric Nursing Facilities and provides a mechanism to update reimbursement based on increases granted to other nursing facilities.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to pediatric nursing facility providers included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2000. The appropriation reflects the increased cost of providing pediatric nursing facility services and is dispersed in the form of an increase to the providers' per-diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in pediatric nursing facilities. The Division of Medical Services finds that, due to the healthy national and state economy and the low unemployment rate, these per-diem rate adjustments are necessary on an emergency basis. Failure to implement these adjustments may result in diminished nursing facility services to Medicaid patients in pediatric nursing facilities. Therefore, the Division of Medical Services finds an immediate danger to public health which requires emergency action. The Division of Medical Services also finds that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the ***Missouri*** *and* ***United States Constitutions****. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed September 20, 1999, effective October 1, 1999, expires March 29, 2000.*

(3) General Principles.

(E) The Medicaid per-diem rate shall be the lesser of—

1. The average private pay rate;

2. The Medicare (Title XVIII) per-diem rate, if applicable;

3. The per-diem rate as determined in accordance with section (11); or

4. The level-of-care ceiling. *[The level-of-care ceiling in effect on December 1, 1992, shall be the weighted average Medicaid-allowable cost for all participating pediatric nursing facilities as determined from their 1991 cost report. This weighted average amount is two hundred twenty dollars and ninety-nine cents ($220.99). On and after July 1, 1993, the level-of-care ceiling shall be increased by the same percent amount that long-term care (LTC) facilities in 13 CSR 70-10.010 receive prospectively as a trend factor.]* **Effective July 1, 1999, the level-of-care ceiling shall be the weighted average Medicaid allowable cost for all participating pediatric nursing facilities as determined from their 1992 cost reports adjusted by the same percentages stated in 13 CSR 70-10.015 for 1992 cost reports and any negotiated trend factors effective through July 1, 1999. The weighted average rate is three hundred twenty-one dollars and forty five cents ($321.45) as of July 1, 1999. The level-of-care ceiling shall be adjusted by the negotiated trend factor given in subsection (13)(A) or any global adjustment in section (13) of 13 CSR 70-10.015.**

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 1994. Original rule filed Sept. 26, 1989, effective Feb. 11, 1990. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed May 27, 1999. Emergency amendment filed Sept. 20, 1999, effective Oct. 1, 1999, expires March 29, 2000.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services. The division is amending section (13).

PURPOSE: This amendment outlines how the Fiscal Year 2000 trend factor will be applied to adjust per diem rates for HIV nursing facilities participating in the Medicaid program.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of HIV nursing facility services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2000. The appropriation reflects the increased cost of providing HIV nursing facility services and is dispersed in the form of an increase to the providers' per diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in HIV nursing facilities. The Division of Medical Services finds that, due to the healthy national and state economy and the low unemployment rate, these per-diem rate adjustments are necessary on an emergency basis. Failure to implement these adjustments may result in diminished nursing facility services to Medicaid patients in HIV nursing facilities. Therefore, the Division of Medical Services finds an immediate danger to public health which requires emergency action. The Division of Medical Services also finds that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and

*complies with the protections extended by the **Missouri** and **United States Constitutions**. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed September 20, 1999, effective October 1, 1999, expires March 29, 2000.*

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per-Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per-diem rate adjustments. Global per-diem rate adjustments shall be added to the specified cost component ceiling.

1. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents ($1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

2. FY-98 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. FY-99 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustment detailed in paragraph (13)(A)1.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

4. FY-2000 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustment detailed in paragraph (13)(A)1. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

*AUTHORITY: section 208.153, RSMo 1994. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 30, 1999. Emergency amendment filed Sept. 20, 1999, effective Oct. 1, 1999, expires March 29, 2000.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance. The division is amending sections (1) and (2).

PURPOSE: This amendment provides for the Nursing Facility Reimbursement Allowance of $7.04, effective October 1, 1999.

*EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased Nursing Facility Reimbursement Allowance (NFRA) for providers of nursing facility services for State Fiscal Year 2000. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to over 26,500 Medicaid patients in nursing facilities. The Division of Medical Services finds that, due to the healthy national and state economy and the low unemployment rate, these per-diem rate adjustments are necessary on an emergency basis. Failure to implement these adjustments may result in diminished nursing facility services to Medicaid patients in nursing facilities. Therefore, the Division of Medical Services finds an immediate danger to public health which requires emergency action. The Division of Medical Services also finds that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed September 20, 1999, effective October 1, 1999, expires March 29, 2000.*

(1) Nursing Facility Reimbursement Allowance (NFRA). NFRA shall be assessed as described in this section.

(B) Each nursing facility, except any nursing facility operated by the Department of Mental Health, engaging in the business of providing nursing facility services in Missouri shall pay a Nursing Facility Reimbursement Allowance (NFRA). The NFRA r**ates** shall be calculated by the department *[on an annual basis, as detailed below, and is effective from October 1 through September 30, except for the initial NFRA implemented January 1, 1995, effective January 1, 1995 through September 30, 1995. The NFRA rates for each year]* **and** are included in section (2) NFRA *[r]***R**ates.

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(A) The NFRA will be two dollars and seventy-six cents ($2.76) per patient occupancy day for the period January 1, 1995 through September 30, 1995, and collected over nine (9) months (February 1995 through October 1995);

(B) The NFRA will be three dollars and fifty-five cents ($3.55) per patient occupancy day for the period October 1, 1995 through September 30, 1996, and collected over twelve (12) months (November 1995 through October 1996);

(C) The NFRA will be five dollars and thirty cents ($5.30) per patient occupancy day for the period October 1, 1996 through September 30, 1997, and collected over twelve (12) months (November 1996 through October 1997);

(D) The NFRA will be five dollars and eighty-eight cents ($5.88) per patient occupancy day for the period October 1, 1997 through September 30, 1998, and collected over twelve (12) months (November 1997 through October 1998); and

(E) The NFRA will be five dollars dollars and eighty-eight cents ($5.88) per patient occupancy day for the period October 1, 1998

through September 30, 1999, and collected over twelve (12) months (November 1998 through October 1999).

(F) The NFRA will be seven dollars and four cents ($7.04) per patient occupancy day, effective October 1, 1999.

*AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433 and 198.436, RSMo [Supp. 1997] **Supp. 1998** and 208.201, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 30, 1999. Emergency amendment filed Sept. 20, 1999, effective Oct. 1, 1999, expires March 29, 2000.*