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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

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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. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 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 within 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—The most recent version of the statute containing the section number and the date.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.435 Migratory Bird Hunting Permit. The commission proposes to amend this rule.

PURPOSE: This amendment removes the requirement for having a Migratory Bird Hunting Permit during the Conservation Order.

Required of any person sixteen (16) years of age or older in addition to the prescribed hunting permit to pursue, take, possess, and transport waterfowl, doves, snipe, woodcock, and rails, **except for blue, snow, or Ross's geese during the Conservation Order in accordance with federal regulations as prescribed in 3 CSR 10-7.440.** Fee: six dollars (\$6).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. **and section 252.240, RSMo 2000.** This rule was previously filed as 3 CSR 10-5.256. Original rule filed Sept. 10, 1991, effective Feb. 6, 1992. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 14, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David W. Erickson, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS Division 10—Division of Employment Security Chapter 2—Administration

PROPOSED RULE

8 CSR 10-2.010 Maintenance and Disposal of Records

PURPOSE: This rule provides information regarding the Division of Employment Security's Agency Records Disposition Schedule for the retention of certain records. This rule implements section 288.360, RSMo.

(1) The Division of Employment Security has adopted the Secretary of State's Records Management Division *Missouri General Retention and Disposition Schedule*, approved August 2, 2007, and the Department of Labor and Industrial Relations, Division of Employment Security *Agency Records Disposition Schedule*, approved December 17, 2008.

(2) Copies of the schedules may be obtained by sending a written request to Department of Labor and Industrial Relations, Administrative Services Section, PO Box 59, Jefferson City, MO 65104-0059.

AUTHORITY: sections 288.220 and 288.360, RSMo 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed April 14, 1980, effective July 11, 1980. Readopted: Filed Aug. 14, 2009.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Division of Employment Security, Attn: Gracia Y. Backer, Division Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs

PROPOSED RULE

9 CSR 30-4.0432 Assertive Community Treatment Programs

PURPOSE: This rule sets forth standards and regulations for the provision of assertive community treatment services in community psychiatric rehabilitation programs for adults.

PUBLISHER'S NOTE: The Department of Mental Health has determined that the publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Assertive Community Treatment (ACT) is a team-based approach to delivering comprehensive and flexible treatment, support, and services to individuals who have the most serious symptoms of severe mental illness and who have the greatest difficulty with basic daily activities.

(2) Agencies certified as Community Psychiatric Rehabilitation (CPR) providers may offer ACT services and shall use the *Assertive Community Treatment (ACT) Implementation Resource Kit* published in 2003 by the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services at PO Box 42557, Washington, DC 20015, Evaluation Edition 2003, to implement the ACT program. Agencies shall also use *A Manual for ACT Start-Up* by Deborah J. Allness, M.S.S.W. and William H. Knoedler, M.D., published in 2003 by National Alliance for the Mentally Ill (NAMI), Colonial Place Three, 2107 Wilson Blvd., Suite 300, Arlington, VA 22201-3042. A copy of the *ACT Implementation Resource Kit* and *A Manual for ACT Start-Up* is available at the Division of Comprehensive Psychiatric Services, Missouri Department of Mental Health and a copy may be obtained by contacting the Division of Comprehensive Psychiatric Services. The *ACT Implementation Resource Kit* and *A Manual for ACT Start-Up* that are incorporated by reference with this rulemaking do not include any later amendments or additions.

(3) Agencies providing ACT services shall comply with requirements set forth in Department of Mental Health Core Rules for Psychiatric and Substance Abuse Programs, 9 CSR 10-7.010 through 9 CSR 10-7.140.

(4) The agencies providing ACT services shall have policies approved by the governing body as defined in 9 CSR 10-7.090 that are consistent with the provision of effective evidence based interventions to guide the ACT services and be consistent with the ACT model of treatment.

(5) Personnel and Staff Development. ACT shall be delivered by a multidisciplinary team (team) responsible for coordinating a comprehensive array of services. The team shall include, but is not limited to, the following disciplines:

(A) The team shall have adequate prescribing capacity by meeting one (1) of the following:

1. A psychiatrist or an advanced practice nurse who shall be available sixteen (16) hours per week to no more than fifty (50) individuals to assure adequate direct psychiatric treatment;

2. A combination of a psychiatrist and an advanced practice nurse equaling sixteen (16) hours per week shall be available to no

more than fifty (50) individuals; or

3. In a service area designated as a Mental Health Professional Shortage Area, the psychiatrist shall be available ten (10) hours per week to no more than fifty (50) individuals; or an advanced practice nurse shall be available sixteen (16) hours per week to no more than fifty (50) individuals;

(B) The psychiatrist or advanced practice nurse shall attend at least two (2) team meetings per week either face-to-face or by teleconference;

(C) The team shall have adequate nursing capacity by meeting one (1) of the following:

1. A registered professional nurse with six (6) months of psychiatric nursing experience shall work with no more than fifty (50) individuals on a full-time basis during the first year of program operation; or

2. During the first year of program operation, a registered professional nurse shall work with no more than fifty (50) individuals as a seventy-five percent (75%) Full-Time Equivalent (FTE) for up to twelve (12) months;

(D) A team leader who is a qualified mental health professional as defined in 9 CSR 30-4.030(2)(HH) that is full time with one (1) year of supervisory experience and a minimum of two (2) years experience working with adults with serious mental illness in community settings;

(E) The team shall have adequate substance abuse treatment capacity by meeting one (1) of the following:

1. A substance abuse specialist who is a qualified substance abuse professional (QSAP) as defined in 9 CSR 10-7.140(2)(RR)1. or 2. with one (1) year of training or supervised experience in substance abuse treatment shall be assigned to no more than fifty (50) individuals; or

2. If the QSAP is not assigned to a team full time or is assigned to a team with less than fifty (50) individuals, the QSAP shall attend at least two (2) team meetings per week; or

3. A QSAP who has less than one (1) year experience in Integrated Dual Disorders Treatment (IDDT) shall be actively acquiring twenty-four (24) hours of training in IDDT-specific content and receive supervision from experienced IDDT staff;

(F) The team shall have adequate vocational specialization capacity by meeting one (1) of the following:

1. A vocational specialist who qualifies as a community support worker as defined in 9 CSR 30-4.034(2)(H)1. with one (1) year of experience and training in vocational rehabilitation and supported employment shall be available to no more than fifty (50) individuals; or

2. If the vocational specialist is not assigned to a team full time or is assigned to a team with less than fifty (50) individuals, the vocational specialist shall attend at least two (2) team meetings per week; or

3. A vocational specialist with six (6) months of vocational experience shall work with no more than fifty (50) individuals on a full-time basis during the first year of program operation;

(G) The team shall include a peer specialist which shall be self-identified as a present or former primary consumer of mental health services; be assigned full time to a team and shall participate in the clinical responsibilities and functions of the team in providing direct services; and serve as a model, a support, and a resource for the team members and individuals being served by the first year of program operation. Peer specialists, at a minimum, shall meet the qualifications of a community support assistant as defined in 9 CSR 30-4.030(2)(P) and 9 CSR 30-4.034(2)(H)2.;

(H) The team shall include a program assistant who shall have education and experience in human services or office management. The program assistant shall organize, coordinate, and monitor all non-clinical operations of the team including, but not limited to, the following:

1. Managing medical records;

2. Operating and coordinating the management information system; and

3. Triaging telephone calls and coordinating communication between the team and individuals receiving ACT services;

(I) Other team members may be assigned to work exclusively with the team and must qualify as a community support worker or a qualified mental health professional as defined in 9 CSR 30-4.034(2)(H)1. or 9 CSR 30-4.030(2)(HH); and

(J) In addition to training required in 9 CSR 30-4.034, team members shall receive ongoing training relevant to ACT services.

(6) Team Operations.

(A) The team shall function as the primary provider of services for the purpose of recovery from serious mental illness and shall have responsibility to help individuals meet their needs in all aspects of living in the community.

(B) The team shall meet face-to-face at least four (4) times per week to review the status of each individual via the daily communication log, staff report, services, and contacts scheduled per treatment plans and triage.

(C) The team members shall be available to one another throughout the day to provide consultation or assistance.

(7) Admission Criteria. Individuals who receive ACT services typically have needs that have not been effectively addressed by traditional, less intensive mental health services. Individuals shall have at least one (1) of the following diagnoses, one (1) or more of the following conditions, and meet all other admission criteria as defined in 9 CSR 30-4.042:

(A) Schizophrenia.

1. Disorganized.

A. DSM IV code: 295.1X

B. ICD-9-CM code: 295.1X

2. Catatonic.

A. DSM IV code: 295.2X

B. ICD-9-CM code: 295.2X

3. Paranoid.

A. DSM IV code: 295.3X

B. ICD-9-CM code: 295.3X

4. Schizophreniform.

A. DSM IV code: 295.4X

B. ICD-9-CM code: 295.4X

5. Residual.

A. DSM IV code: 295.6X

B. ICD-9-CM code: 295.6X

6. Schizoaffective.

A. DSM IV code: 295.7X

B. ICD-9-CM code: 295.7X

7. Undifferentiated.

A. DSM IV code: 295.9X

B. ICD-9-CM code: 295.9X;

(B) Delusional Disorder.

1. DSM IV code: 297.1X

2. ICD-9-CM code: 297.1X;

(C) Bipolar I Disorders.

1. Single manic episode.

A. DSM IV code: 296.0X

B. ICD-9-CM code: 296.0X

2. Most recent episode manic.

A. DSM IV code: 296.4X

B. ICD-9-CM code: 296.4X

3. Most recent episode depressed.

A. DSM IV code: 296.5X

B. ICD-9-CM code: 296.5X

4. Most recent episode mixed.

A. DSM IV code: 296.6X

B. ICD-9-CM code: 296.6X;

(D) Bipolar II Disorders.

1. DSM IV code: 296.89

2. ICD-9-CM code: 296.89;

(E) Psychotic Disorders NOS.

1. DSM IV code: 298.9

2. ICD-9-CM code: 298.9;

(F) Major Depressive Disorder-Recur.

1. DSM IV code: 296.3X

2. ICD-9-CM code: 296.3X;

(G) The diagnosis may coexist with other psychiatric diagnoses in Axis II or other areas;

(H) For individuals exhibiting extraordinary clinical needs, the team may apply to the clinical director of the division to approve admission to ACT services; and

(I) The conditions shall include the following:

1. Recent discharge from an extended stay of three (3) months or more in a state hospital;

2. High utilization of two (2) admissions or more per year in an acute psychiatric hospital and/or six (6) or more per year for psychiatric emergency services;

3. Have a co-occurring substance use disorder greater than six (6) months duration;

4. Exhibit socially disruptive behavior with high risk of criminal justice involvement including arrest and incarceration;

5. Reside in substandard housing, is homeless, or at imminent risk of becoming homeless;

6. Have been identified through department data indicating high use of services or who are functioning poorly and do not attend office-based mental health programs consistently; or

7. Other indications demonstrating that the individual has difficulty thriving in the community.

(8) Admission Process.

(A) The team shall develop a process for identifying individuals who are appropriate for ACT services.

(B) When the team receives a referral for ACT services, the team leader confirms that the individual meets the ACT admission criteria.

(C) The team leader shall arrange an admission meeting that includes current providers of services, the team leader, and the individual. The meeting may also include, but is not limited to, the following:

1. Family members, significant others, or guardians, if the individual grants permission;

2. Team members who will be working with the newly enrolled individual; and/or

3. The team psychiatrist.

(D) At the admission meeting, team members shall introduce themselves and explain the ACT program.

(E) When the individual decides that he or she accepts ACT services, the team shall immediately open a record and schedule initial service contacts with the individual for the next few days.

(F) No more than six (6) new individuals shall be admitted to an ACT team per month unless approved by the department.

(G) An initial assessment shall be completed on the day of admission. The initial assessment shall be based on information obtained from the individual, referring treatment provider, and family or other supporters who participate in the admission process and shall include, but not be limited to, the following:

1. The individual's mental and functional status;

2. The effectiveness of past treatment; and

3. The current treatment, rehabilitation, and support service needs.

(H) The initial treatment plan shall be completed on the day of admission, be used to support recovery, help the individual to achieve initial goals, be used by the team as a guide until the comprehensive assessment and treatment plans are completed, and include initial problems and interventions.

(I) The team shall ensure that the individual receiving services participates in the development of the treatment plan and signs the plan. The individual's signature is not required if signing would be

detrimental to the individual's well-being. If the individual does not sign the treatment plan, the team shall insert a progress note in the case record explaining the reason the individual did not sign the treatment plan.

(J) A psychiatrist shall approve the treatment plan. A licensed psychologist, as a team member, may approve the treatment plan only in instances when the individual is currently receiving no prescribed medications and the clinical recommendations do not include a need for prescribed medications. An advanced practice nurse may approve the treatment plan if he/she is providing medication management services to the individual.

(9) Comprehensive Assessment and Treatment Planning.

(A) To be in compliance with this standard, the team shall follow a systematic process including admission, comprehensive and ongoing assessment, and continuous treatment planning utilizing the assessment and treatment planning protocol and components included in the publication, *A Manual for ACT Start-Up*.

(B) The team shall conduct the comprehensive ACT assessment as they are working with the individual in the community delivering services outlined in the initial treatment plan.

(C) The comprehensive ACT assessment provides a guide for the team to collect information including the individual's history, past treatment, and to become acquainted with the individual and their family members. This assessment enables the team to individualize and tailor ACT services to ensure courteous, helpful, and respectful treatment. The comprehensive assessment includes seven (7) parts as follows:

1. Psychiatric history, mental status, and diagnosis;
2. Physical health;
3. Use of drugs or alcohol;
4. Education and employment;
5. Social development and functioning;
6. Activities of daily living; and
7. Family structure and relationships.

(D) The primary case manager and other members of the team, with supervision from the team leader, shall complete the comprehensive assessment within thirty (30) days of admission.

(E) The assessment is ongoing throughout the course of ACT treatment and consists of information and understanding obtained through day-to-day interactions with the individual, the team, and others, such as landlords, employers, friends, and others in the community.

(F) The comprehensive assessment is a daily and continuous process that is updated every six (6) months.

(G) A psychiatric and social functioning history timeline shall be developed using the protocol included in the publication, *A Manual for ACT Start-Up*.

(H) Treatment plans shall be developed utilizing information obtained from the psychiatric and social functioning history timeline and the comprehensive assessment.

(I) Treatment plans shall contain objective goals based on the individual's preferences and shall be person-specific.

(J) Treatment plans shall contain specific interventions and services that will be provided, by whom, for what duration, and location of the service.

(K) The comprehensive treatment plan shall be developed within thirty (30) days after admission.

(L) The treatment plan shall be reviewed and revised or re-written every six (6) months.

(10) Service Provision.

(A) ACT services shall be delivered seven (7) days per week including evenings and holidays based upon individual needs.

(B) ACT services shall be available at least two (2) hours of direct services each weekend day or holiday.

(C) A team member shall be on call at all hours.

(D) Crisis assessment is provided by the team or arranged for by an after-hours crisis intervention system, twenty-four (24) hours per

day. When the team is contacted, the team shall determine the need for team intervention either by phone or face-to-face with backup by the team leader and psychiatrist.

(E) Individuals are offered services on a time-unlimited basis, with less than ten percent (10%) graduating annually, excluding those who drop out of services.

(F) The team shall provide goal driven case management functions for all individuals enrolled in ACT including, but not limited to, the following:

1. Locating and maintaining safe, affordable housing with an emphasis on individual choice and independent community housing;
2. Assistance with financial management support, including the use of legal mechanisms when appropriate;
3. Support and skills training and illness management strategies to support activities of daily living;
4. Facilitating peer support and self-help programs as desired by the individual; and
5. Providing psycho-education to individuals and their family members, with the individual's permission, as appropriate.

(G) The team shall have a process to manage emergency funds for individual's served.

(H) Clinical staff to client ratio, excluding the psychiatrist, shall be 1:10.

(I) Clinical staff to client ratio shall be no more than 1:13 if the team continues to demonstrate outcomes in areas such as vocational, housing, and hospitalizations comparable to teams with lower case-loads.

(J) The clinical team shall be no smaller than five (5) FTE and no larger than ten (10) FTE.

(K) At a minimum, individuals shall be contacted face-to-face by the team an average of two (2) hours per week.

(L) For individuals who refuse services, the team shall attempt to engage individuals with at least two (2) face-to-face contacts per month for a minimum of six (6) months.

(M) Individuals who are experiencing marked symptoms shall be contacted multiple times daily by the team.

(N) At a minimum, seventy-five percent (75%) of team contacts shall occur out of the office.

(O) Individuals shall have direct contact with more than two (2) team members per month.

(P) Individuals with co-occurring substance abuse disorders shall be provided with an average of twenty-five (25) minutes per week of informal integrated mental health and substance abuse treatment.

(Q) The team shall monitor and, when needed, provide supervision, education, and support in the administration of psychiatric medications for all individuals.

(R) The team shall monitor symptom response and medication side-effects.

(S) The team shall educate individuals about symptom management and early identification of symptoms.

(T) The team shall have an average of four (4) or more contacts per month with family and support systems in the community, including landlords and employers, after obtaining the individual's permission.

(U) The team shall actively and assertively engage and reach out to family members and significant others to include, but not be limited to, the following:

1. Establishing ongoing communication and collaboration between the team, family members, and others;
2. Educating the family about mental illness and the family's role in treatment;
3. Educating the family about symptoms management and early identification of symptoms indicating onset of disease; and
4. Providing interventions to promote positive interpersonal relationships.

(V) At a minimum, the team supports, facilitates, or ensures the individual's access to the following services:

1. Medical and dental services;

2. Social services;
3. Transportation; and
4. Legal advocacy.

(W) Inpatient admissions shall be jointly planned with the team and the team, at a minimum, shall make weekly contact with individuals while hospitalized.

(X) The team shall participate in discharge planning.

(11) Discharge Criteria.

(A) Individuals shall have achieved community living goals for the previous six (6) months.

(B) Social supports shall have been in place for the previous six (6) months.

(C) Individual shall have stable housing for the previous six (6) months.

(D) A transition plan shall be developed incorporating graduated step down in intensity and including overlapping team meetings as needed to facilitate the transition of the individual.

(E) The individual shall be engaged in the next step of treatment and rehabilitation.

(F) Documentation of discharge shall include a systematic plan to maintain continuity of treatment at appropriate levels of intensity to support the individual's continued recovery and have easy access to return to the ACT team if needed.

(G) A discharge summary shall include, but is not limited to, the following:

1. Dates of admission and discharge;
2. Reason for admission and referral source;
3. Diagnosis or diagnostic impression;
4. Description of services provided and outcomes achieved, including any prescribed medication, dosage, and response;
5. Reason for or type of discharge; and
6. Medical status and needs that may require ongoing monitoring and support.

(H) An aftercare plan shall be completed prior to discharge. The plan shall identify services, designated provider(s), or other planned activities designed to promote further recovery.

(12) Records.

(A) The ACT provider shall implement policies and procedures to assure routine monitoring of individual records for compliance with applicable standards.

(B) All staff contacts with individuals are logged and easily accessible to team members.

(C) Each individual's record shall document services, activities, or sessions that involve the individual including—

1. The specific services rendered;
2. The date and actual time the service was rendered;
3. Who rendered the service;
4. The setting in which the services were rendered;
5. The amount of time it took to deliver the services;
6. The relationship of the services to the treatment regimen described in the treatment plan; and
7. Updates describing the individual's response to prescribed care and treatment.

(D) In addition to documentation required under subsection (12)(C), for medication services, the ACT provider shall provide additional documentation for each service episode, unit, or, as clinically indicated, for each service provided to the individual as follows:

1. Description of the individual's presenting condition;
2. Pertinent medical and psychiatric findings;
3. Observations and conclusions;
4. Individual's response to medication, including identifying and tracking over time one (1) or more target symptoms for each medication prescribed;
5. Actions and recommendations regarding the individual's ongoing medication regimen; and

6. Pertinent/significant information reported by family members or significant others regarding a change in the individual's condition, an unusual or unexpected occurrence in the individual's life, or both.

(E) The team shall review the treatment plan, goals, and objectives on a regular basis, as determined by department policy.

1. The review shall determine the individual's progress toward the treatment objectives, the appropriateness of the services being furnished, and the need for the individual's continued participation in specific community psychiatric rehabilitation services.

2. The team shall document the review in detail in the individual's record.

3. The ACT provider shall make the review available as requested for state or federal review purposes.

4. The ACT provider shall ensure the individual participates in the treatment plan review.

(F) The ACT program also shall include other information in the individual record, if not otherwise addressed in the intake/annual evaluation or treatment plan, including—

1. The individual's medical history, including—

A. Medical screening or relevant results of physical examinations; and

B. Diagnosis, physical disorders, and therapeutic orders;

2. Evidence of informed consent;

3. Results of prior treatment; and

4. Condition at discharge from prior treatment.

(G) Any authorized person making any entry in an individual's record shall sign and date the entry, including corrections to information previously entered in the individual's record.

(H) The ACT provider shall establish and implement a procedure that assures the intercenter transfer of referral and treatment information within five (5) working days.

(I) The ACT provider shall provide information, as requested, regarding individual characteristics, services, and costs to the department in a format established by the department.

(J) Each agency that is certified shall be subject to recoupment of all or part of department payments when—

1. The individual's record fails to document the service paid for was actually provided;

2. The individual's record fails to document the service paid for was provided by a qualified staff person, as defined in the Department of Mental Health Purchase of Service Catalog;

3. The individual's record fails to document the service that was paid meets the service definition, as defined in the Department of Mental Health Purchase of Service Catalog;

4. The individual's record fails to document the amount, duration, and length of service paid for by the department; or

5. The individual's record fails to document the service paid for was delivered under the direction of a current treatment plan that meets all the requirements for treatment plans set forth in 9 CSR 10-7.030.

(13) Quality Improvement—The agency's quality improvement plan shall include monitoring compliance with the ACT standards.

(A) Records shall show evidence that the team monitors hospitalization, housing, employment, and criminal justice contacts for all individual's using a tracking form approved by the department and submitted to the division on a quarterly basis.

(B) The agency shall conduct an annual fidelity self-assessment.

(C) The team shall participate in fidelity reviews conducted by the division.

(D) Team members or a designee(s) are expected to meet with the department and stakeholder groups and collaborate as needed.

AUTHORITY: section 630.050, RSMo Supp. 2008 and sections 630.655 and 632.050, RSMo 2000. Original rule filed Aug. 14, 2009.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule to Julie Carel, Division of Comprehensive Psychiatric Services, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand delivered, comments must be brought to the Department of Mental Health, 1706 E. Elm Street, Jefferson City, Missouri 65101. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

PROPOSED AMENDMENT

11 CSR 50-2.320 School Bus Inspection. The division is amending section (2) of the rule.

PURPOSE: This amendment updates requirements for stop signal arms and provides additional rejection criteria for second stop signal arms on buses.

(2) Lighting Equipment and Signalling Devices.

(G) Stop Signal Arm. School buses shall have a red octagon signal arm, eighteen inches by eighteen inches (18" × 18"), installed on the left outside of the body with the word STOP plainly displayed. **All Type C and D buses manufactured after June 30, 2007, shall be equipped with a second stop signal arm of the same size, color, and shape on the left outside of the body near the rear of the bus. Except that the rear stop signal arm shall have no words or images on the forward-facing side, [T]the signal arm may contain a white border with lettering and background of a reflective material meeting United States Department of Transportation standards. The stop signal arms shall contain either one (1) alternately flashing red lamp at the top and one (1) at the bottom visible to the front and rear or light emitting diodes (LEDS) that flash and spell out the word STOP.**

(I) Observe Function of Lights and Signalling Devices.

1. Reject vehicle if:

A. Not equipped with required lights, reflectors, and signalling devices;

B. Any lighting device or reflector is obstructed;

C. Any required light, reflector, or signalling device fails to function properly;

D. Any light, reflector, or signalling device is not securely mounted;

E. Any light, reflector, or signalling device shows a color contrary to these regulations;

F. A lens or reflector is badly broken or if any part is missing or is incorrectly installed./;

G. The rear stop signal arm contains any words or images on the forward-facing side.

AUTHORITY: section[s] 307.360.2, RSMo 2000 and section 307.375, RSMo Supp. [2005] 2008. Original rule filed Nov. 4, 1968, effective Nov. 14, 1968. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 12, 2009.

PUBLIC COST: This proposed amendment will not cost state agen-

cies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Public Safety, Missouri State Highway Patrol, Post Office Box 568, Jefferson City, MO 65102-0568. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation,
Reimbursement and Procedure of General Applicability**

PROPOSED AMENDMENT

13 CSR 70-3.030 Sanctions for False or Fraudulent Claims for [Title XIX] MO HealthNet Services. The division is amending the rule title, the purpose statement, and sections (1)–(3).

PURPOSE: This amendment changes the rule title and purpose statement to make it clear that it applies to all MO HealthNet services, amends the way adult critical care is billed by removing the clock time requirements from the definition of adequate documentation for certain procedure codes, and clarifies documentation requirements for targeted case management services administered through the Department of Mental Health. It also updates incorporated by reference material and corrects reference to copayment regulations.

PURPOSE: This rule establishes the basis on which certain claims for [Title XIX] MO HealthNet services or merchandise will be determined to be false or fraudulent and lists the sanctions which may be imposed and the method of imposing those sanctions.

(1) Administration. The [Missouri] MO HealthNet program shall be administered by the Department of Social Services, MO HealthNet Division. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the division and shall be included in the MO HealthNet provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website www.dss.mo.gov/mhd, [October 1, 2007] **September 15, 2009**. This rule does not incorporate any subsequent amendments or additions.

(2) The following definitions will be used in administering this rule:

(A) "Adequate documentation" means documentation from which services rendered and the amount of reimbursement received by a provider can be readily discerned and verified with reasonable certainty. "Adequate medical records" are records which are of the type and in a form from which symptoms, conditions, diagnosis, treatments, prognosis, and the identity of the patient to which these things relate can be readily discerned and verified with reasonable certainty. All documentation must be made available at the same site at which the service was rendered. An adequate and complete patient record is a record which is legible, which is made contemporaneously with the delivery of the service, which addresses the patient/client specifics, which include, at a minimum, individualized statements that support the assessment or treatment encounter, and shall include documentation of the following information:

1. First name, *[and]* last name, and either middle initial or date of birth of the MO HealthNet participant;

2. An accurate, complete, and legible description of each service(s) provided;

3. Name, title, and signature of the MO HealthNet enrolled provider delivering the service. Inpatient hospital services must have signed and dated physician or psychologist orders within the patient's medical record for the admission and for services billed to MO HealthNet. For patients registered on hospital records as outpatient, the patient's medical record must contain signed and dated physician orders for services billed to MO HealthNet. Services provided by an individual under the direction or supervision are not reimbursed by MO HealthNet. Services provided by a person not enrolled with MO HealthNet are not reimbursed by MO HealthNet;

4. The name of the referring entity, when applicable;

5. The date of service (month/day/year);

6. For those MO HealthNet programs and services that are reimbursed according to the amount of time spent in delivering or rendering a service(s) (except for services **American Medical Association Current Procedural Terminology procedure codes 99291-99292 and targeted case management services administered through the Department of Mental Health** and as specified under 13 CSR 70-91.010 Personal Care Program (4)(A)) the actual begin and end time taken to deliver the service (for example, 4:00-4:30 p.m.) must be documented;

7. The setting in which the service was rendered;

8. The plan of treatment, evaluation(s), test(s), findings, results, and prescription(s) as necessary. Where a hospital acts as an independent laboratory or independent radiology service for persons considered by the hospital as "nonhospital" patients, the hospital must have a written request or requisition slip ordering the tests or procedures;

9. The need for the service(s) in relationship to the MO HealthNet participant's treatment plan;

10. The MO HealthNet participant's progress toward the goals stated in the treatment plan (progress notes);

11. Long-term care facilities shall be exempt from the seventy-two (72)-hour documentation requirements rules applying to paragraphs (2)(A)9. and (2)(A)10. However, applicable documentation should be contained and available in the entirety of the medical record;

12. For applicable programs it is necessary to have adequate invoices, trip tickets/reports, activity log sheets, employee records (excluding health records), and training records of staff; and

13. For targeted case management *[programs and]* services administered *[by]* **through** the Department of Mental Health, documentation shall include:

A. First name, last name, and either middle initial or date of birth of the MO HealthNet participant;

B. An accurate, complete, and legible case note of each service provided;

C. Name of the case manager providing the service;

D. Date the service was provided (month/day/year);

E. Amount of time in minutes/hour(s) spent completing the activity;

F. Setting in which the service was rendered;

G. Individual treatment plan or person centered plan with regular updates;

H. Progress notes;

I. Discharge summaries when applicable; and

J. Other relevant documents referenced in the case note such as letters, forms, quarterly reports, and plans of care;

(3) Program Violations.

(A) Sanctions may be imposed by the MO HealthNet agency against a provider for any one (1) or more of the following reasons:

1. Presenting, or causing to be presented, for payment any false or fraudulent claim for services or merchandise in the course of busi-

ness related to MO HealthNet;

2. Submitting, or causing to be submitted, false information for the purpose of obtaining greater compensation than that to which the provider is entitled under applicable MO HealthNet program policies or rules, including, but not limited to, the billing or coding of services which results in payments in excess of the fee schedule for the service actually provided or billing or coding of services which results in payments in excess of the provider's charges to the general public for the same services or billing for higher level of service or increased number of units from those actually ordered or performed or both, or altering or falsifying medical records to obtain or verify a greater payment than authorized by a fee schedule or reimbursement plan;

3. Submitting, or causing to be submitted, false information for the purpose of meeting prior authorization requirements or for the purpose of obtaining payments in order to avoid the effect of those changes;

4. Failing to make available, and disclosing to the MO HealthNet agency or its authorized agents, all records relating to services provided to MO HealthNet participants or records relating to MO HealthNet payments, whether or not the records are commingled with non-Title XIX (Medicaid) records. All records must be kept a minimum of five (5) years from the date of service unless a more specific provider regulation applies. The minimum five (5)-year retention of records requirement continues to apply in the event of a change of ownership or discontinuing enrollment in MO HealthNet. Services billed to the MO HealthNet agency that are not adequately documented in the patient's medical records or for which there is no record that services were performed shall be considered a violation of this section. Copies of records must be provided upon request of the MO HealthNet agency or its authorized agents, regardless of the media in which they are kept. Failure to make these records available on a timely basis at the same site at which the services were rendered or at the provider's address of record with the MO HealthNet agency, or failure to provide copies as requested, or failure to keep and make available adequate records which adequately document the services and payments shall constitute a violation of this section and shall be a reason for sanction. Failure to send records, which have been requested via mail, within the specified time frame shall constitute a violation of this section and shall be a reason for sanction;

5. Failing to provide and maintain quality, necessary, and appropriate services, including adequate staffing for long-term care facility MO HealthNet participants, within accepted medical community standards as adjudged by a body of peers, as set forth in both federal and state statutes or regulations. Failure shall be documented by repeat discrepancies. The discrepancies may be determined by a peer review committee, medical review teams, independent professional review teams, utilization review committees or by Professional Standards Review Organizations (PSRO). The medical review may be conducted by qualified peers employed by the single state agency;

6. Engaging in conduct or performing an act deemed improper or abusive of the MO HealthNet program or continuing the conduct following notification that the conduct should cease. This will include inappropriate or improper actions relating to the management of participants' personal funds or other funds;

7. Breaching of the terms of the MO HealthNet provider agreement of any current written and published policies and procedures of the MO HealthNet program (Such policies and procedures are contained in provider manuals or bulletins which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website www.dss.mo.gov/mhd, *[October 1, 2007]* **September 15, 2009**. This rule does not incorporate any subsequent amendments or additions.) or failing to comply with the terms of the provider certification on the MO HealthNet claim form;

8. Utilizing or abusing the MO HealthNet program as evidenced

by a documented pattern of inducing, furnishing or otherwise causing a participant to receive services or merchandise not otherwise required or requested by the participant, attending physician, or appropriate utilization review team; a documented pattern of performing and billing tests, examinations, patient visits, surgeries, drugs, or merchandise that exceed limits or frequencies determined by the department for like practitioners for which there is no demonstrable need, or for which the provider has created the need through ineffective services or merchandise previously rendered;

9. Rebating or accepting a fee or portion of a fee or charge for a MO HealthNet patient referral; or collecting a portion of the service fee from the participant, except this shall not apply to [Title XIX] MO HealthNet services for which participants are responsible for payment of a copayment or coinsurance in accordance with 13 CSR 70-4.050 and 13 CSR 70-4.051 [and 13 CSR 70-55.010];

10. Violating any provision of the State Medical Assistance Act or any corresponding rule;

11. Submitting a false or fraudulent application for provider status which misrepresents material facts. This shall include concealment or misrepresentation of material facts required on any provider agreements or questionnaires submitted by affiliates when the provider knew or should have known the contents of the submitted documents;

12. Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions or regulated industries. In addition to all other laws which would commonly be understood to govern or regulate the conduct of occupations, professions, or regulated industries, this provision shall include any violations of the civil or criminal laws of the United States, of Missouri, or any other state or territory, where the violation is reasonably related to the provider's qualifications, functions, or duties in any licensed or regulated profession or where an element of the violation is fraud, dishonesty, moral turpitude, or an act of violence;

13. Failing to meet standards required by state or federal law for participation (for example, licensure);

14. Exclusion from the Medicare program or any other federal health care program;

15. Failing to accept MO HealthNet payment as payment in full for covered services or collecting additional payment from a participant or responsible person, except this shall not apply to [Title XIX] MO HealthNet services for which participants are responsible for payment of a copayment or coinsurance in accordance with 13 CSR 70-4.050 and 13 CSR 70-4.051 [and 13 CSR 70-55.010];

16. Refusing to execute a new provider agreement when requested to do so by the single state agency in order to preserve the single state agency's compliance with federal and state requirements; or failure to execute an agreement within twenty (20) days for compliance purposes;

17. Failing to correct deficiencies in provider operations within ten (10) days or date specified after receiving written notice of these deficiencies from the single state agency or within the time frame provided from any other agency having licensing or certification authority;

18. Being formally reprimanded or censured by a board of licensure or an association of the provider's peers for unethical, unlawful, or unprofessional conduct; any termination, removal, suspension, revocation, denial, probation, consented surrender, or other disqualification of all or part of any license, permit, certificate, or registration related to the provider's business or profession in Missouri or any other state or territory of the United States;

19. Being suspended or terminated from participation in another governmental medical program such as Workers' Compensation, Crippled Children's Services, Rehabilitation Services, Title XX Social Service Block Grant, or Medicare;

20. Using fraudulent billing practices arising from billings to third parties for costs of services or merchandise or for negligent

practice resulting in death or injury or substandard care to persons including, but not limited to, the provider's patients;

21. Failing to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments prior to the allowed forty-five (45) days which the provider has to refund the requested amount;

22. Billing the MO HealthNet program more than once for the same service when the billings were not caused by the single state agency or its agents;

23. Billing the state MO HealthNet program for services not provided prior to the date of billing (prebilling), except in the case of prepaid health plans or pharmacy claims submitted by point-of-service technology; whether or not the prebilling causes loss or harm to the MO HealthNet program;

24. Failing to reverse or credit back to the medical assistance program (MO HealthNet) within thirty (30) days any pharmacy claims submitted to the agency that represent products or services not received by the participant; for example, prescriptions that were returned to stock because they were not picked up;

25. Conducting any action resulting in a reduction or depletion of a long-term care facility MO HealthNet participant's personal funds or reserve account, unless specifically authorized in writing by the participant, relative, or responsible person;

26. Submitting claims for services not personally rendered by the individually enrolled provider, except for the provisions specified in the MO HealthNet dental, physician, or nurse midwife programs where such claims may be submitted only if the individually enrolled provider directly supervised the person who actually performed the service and the person was employed by the enrolled provider at the time the service was rendered. All claims for psychiatric, psychological counseling, speech therapy, physical therapy, and occupational therapy services may only be billed by the individually enrolled provider who actually performs the service, as supervision is non-covered for these services. Services performed by a nonenrolled person due to MO HealthNet sanction, whether or not the person was under supervision of the enrolled provider, is a noncovered service;

27. Making any payment to any person in return for referring an individual to the provider for the delivery of any goods or services for which payment may be made in whole or in part under MO HealthNet. Soliciting or receiving any payment from any person in return for referring an individual to another supplier of goods or services regardless of whether the supplier is a MO HealthNet provider for the delivery of any goods or services for which payment may be made in whole or in part under MO HealthNet is also prohibited. Payment includes, without limitation, any kickback, bribe, or rebate made, either directly or indirectly, in cash or in-kind;

28. Billing for services through an agent, which were upgraded from those actually ordered, performed; or billing or coding services, either directly or through an agent, in a manner that services are paid for as separate procedures when, in fact, the services were performed concurrently or sequentially and should have been billed or coded as integral components of a total service as prescribed in MO HealthNet policy for payment in a total payment less than the aggregate of the improperly separated services; or billing a higher level of service than is documented in the patient/client record; or unbundling procedure codes;

29. Conducting civil or criminal fraud against the MO HealthNet program or any other state Medicaid (medical assistance) program, or any criminal fraud related to the conduct of the provider's profession or business;

30. Having sanctions or any other adverse action invoked by another state Medicaid program;

31. Failing to take reasonable measures to review claims for payment for accuracy, duplication, or other errors caused or committed by employees when the failure allows material errors in billing to occur. This includes failure to review remittance advice statements provided which results in payments which do not correspond with the actual services rendered;

32. Submitting improper or false claims to the state or its fiscal agent by an agent or employee of the provider;

33. For providers other than long-term care facilities, failing to retain in legible form for at least five (5) years from the date of service, worksheets, financial records, appointment books, appointment calendars (for those providers who schedule patient/client appointments), adequate documentation of the service, and other documents and records verifying data transmitted to a billing intermediary, whether the intermediary is owned by the provider or not. For long-term care providers, failing to retain in legible form, for at least seven (7) years from the date of service, worksheets, financial records, adequate documentation for the service(s), and other documents and records verifying data transmitted to a billing intermediary, whether the intermediary is owned by the provider or not. The documentation must be maintained so as to protect it from damage or loss by fire, water, computer failure, theft, or any other cause;

34. Removing or coercing from the possession or control of a participant any item of durable medical equipment which has reached MO HealthNet-defined purchase price through MO HealthNet rental payments or otherwise become the property of the participant without paying fair market value to the participant;

35. Failing to timely submit civil rights compliance data or information or failure to timely take corrective action for civil rights compliance deficiencies within thirty (30) days after notification of these deficiencies or failure to cooperate or supply information required or requested by civil rights compliance officers of the single state agency;

36. Billing the MO HealthNet program for services rendered to a participant in a long-term care facility when the resident resided in a portion of the facility which was not MO HealthNet-certified or properly licensed or was placed in a nonlicensed or MO HealthNet-noncertified bed;

37. Failure to comply with the provisions of the Missouri Department of Social Services, MO HealthNet Division Title XIX Participation Agreement with the provider relating to health care services;

38. Failure to maintain documentation which is to be made contemporaneously to the date of service;

39. Failure to maintain records for services provided and all billing done under his/her provider number regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim or both;

40. Failure to submit proper diagnosis codes, procedure codes, billing codes regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim;

41. Failure to submit and document, as defined in subsection (2)(A) the length of time (begin and end clock time) actually spent providing a service, except for services as specified under 13 CSR 70-91.010(4)(A) Personal Care Program, regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim or both;

42. Billing for the same service as another provider when the service is performed or attended by more than one (1) enrolled provider. MO HealthNet will reimburse only one (1) provider for the exact same service;

43. Failing to make an annual attestation of compliance with the provisions of Section 6032 of the federal Deficit Reduction Act of 2005 by March 1 of each year, or failing to provide a requested copy of an attestation, or failing to provide written notification of having more than one (1) federal tax identification number by September 30 of each year, or failing to provide requested proof of a claimed exemption from the provisions of section 6032 of the federal Deficit Reduction Act of 2005; and

44. Failing to advise the single state agency, in writing, on enrollment forms specified by the single state agency, of any changes affecting the provider's enrollment records within ninety (90) days of

the change, with the exception of change of ownership or control of any provider which must be reported within thirty (30) days.

AUTHORITY: sections 208.153 and 208.201, RSMo Supp. [2007] 2008. This rule was previously filed as 13 CSR 40-81.160. Original rule filed Sept. 22, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation,
Reimbursement and Procedure of General Applicability**

PROPOSED AMENDMENT

13 CSR 70-3.100 Filing of Claims, MO HealthNet Program. The division is amending section (2).

PURPOSE: This amendment updates incorporated by reference material.

(2) Specific claims filing instructions are modified as necessary for efficient and effective administration of the program as required by federal or state law or regulation. Reference the appropriate MO HealthNet provider manual, provider bulletins, and claim filing instructions for specific claim filing instructions information, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, [September 2, 2008] **September 15, 2009**. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 208.153 and 208.201, RSMo Supp. [2007] 2008. This rule was previously filed as 13 CSR 40-81.070 and 13 CSR 40-81.071. Original rule filed June 2, 1976, effective Oct. 11, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the

Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization Is Required. The division is amending the purpose statement and section (2).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, and updates the division's website address and incorporated by reference material.

PURPOSE: This rule establishes a listing of non-excludable drugs and categories of drugs for which prior authorization is required in order for them to be reimbursable under the [Missouri Medicaid] MO HealthNet Pharmacy Program.

(2) List of drugs or categories of drugs which are restricted to require prior authorization for certain specified indications shall be made available through the Department of Social Services, [Division of Medical Services] MO HealthNet Division website at [www.dss.mo.gov/dms] www.dss.mo.gov/mhd, provider bulletins, and updates to the provider manual which are incorporated by reference and made a part of this rule as published by the Department of Social Services, [Division of Medical Services] MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website, [February 15, 2007] **September 15, 2009**. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to affect changes in prior authorization of non-excludable drugs by amending this rule.

AUTHORITY: sections 208.152, [RSMo Supp. 2006 and] 208.153, and 208.201, RSMo [2000] Supp. 2008. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expired May 29, 2001. Original rule filed June 29, 2000, effective Feb. 28, 2001. Emergency amendment filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Amended: Filed June 11, 2002, effective Jan. 30, 2003. Amended: Filed Jan. 16, 2007, effective July 30, 2007. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered,

comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 35—Dental Program

PROPOSED AMENDMENT

13 CSR 70-35.010 Dental Benefits and Limitations, [Medicaid] MO HealthNet Program. The division is amending the rule title, the purpose statement, and sections (1)–(7).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes program recipients to participants, and updates the division's website address and incorporated by reference material. This amendment provides for the following changes: section (3) was changed to clarify dental coverage for adults, section (5) was changed to provide the website address for the fee schedule, and section (7) was updated to clarify records retention.

PURPOSE: This rule describes the dental services for which the [Division of Medical Services] MO HealthNet Division shall pay when the service is provided to an eligible assistance [recipient,] participant; the service is provided by a licensed dentist, licensed dental hygienist, or licensed and certified dental specialist who has entered into an agreement for that purpose with the division; and the service is listed as a covered item in the [Medicaid] MO HealthNet Dental Manual sponsored by the division. The [Medicaid] MO HealthNet Dental Manual describes the dental services which shall be paid under limitations and those which shall not be paid under present conditions.

(1) Administration. The [Missouri Medicaid] MO HealthNet dental program shall be administered by the [Division of Medical Services] MO HealthNet Division, Department of Social Services. The dental services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the [Division of Medical Services] MO HealthNet Division and shall be included in the [Medicaid] MO HealthNet Dental Provider Manual, which is incorporated by reference and made part of this rule as published by the Department of Social Services, [Division of Medical Services] MO HealthNet Division, 615 Howerton Court, Jefferson City, MO [65102] **65109**, at its website at [www.dss.mo.gov/dms] www.dss.mo.gov/mhd, [July 15, 2005] **September 15, 2009**. This rule does not incorporate any subsequent amendments or additions. Dental services covered by the [Missouri Medicaid] MO HealthNet program shall include only those which are clearly shown to be medically necessary. The division reserves the right to effect changes in services, limitations, and fees with proper notification to [Medicaid] MO HealthNet dental providers.

(2) Provider Participation. A dentist shall be licensed by the dental board of the state in which s/he is practicing and shall have signed a participation agreement to provide dental services under the [Missouri Medicaid] MO HealthNet program. An oral surgeon or other dentist specialist shall be licensed in his/her specialty area by the dental board of the state in which s/he is practicing. In those states not having a specialty licensure requirement, the dentist specialist shall be a graduate of and hold a certificate from a graduate training program in that specialty in an accredited dental school. In either case, the dental specialist shall have signed a participation

agreement to provide dental services under the *[Missouri Medicaid]* MO HealthNet program. A dental hygienist shall be licensed by the dental board of the state for at least three (3) consecutive years and practicing in a public health setting to provide fluoride treatments, teeth cleaning, and sealants to *[Medicaid/MC+]* MO HealthNet/MO HealthNet for Kids eligible children ages zero (0) to twenty (20).

(3) *[Recipient] Participant* Eligibility. The *[Medicaid] MO HealthNet* dental provider shall ascertain the patient's *[Medicaid] MO HealthNet* status before any service is performed. The *[recipient's Medicaid/MC+]* participant's MO HealthNet/MO HealthNet for Kids eligibility is determined by the Family Support Division. The *[recipient's]* participant's eligibility shall be verified from a current *[Medicaid/MC+]* MO HealthNet/MO HealthNet for Kids identification card or a letter of new approval in the *[recipient's]* participant's possession. The patient must be a *[Medicaid] MO HealthNet* eligible *[recipient] participant* under the *[Missouri Medicaid/MC+]* MO HealthNet/MO HealthNet for Kids program on the date the service is performed. The *[Division of Medical Services] MO HealthNet Division* is not allowed to pay for any service to a patient who is not eligible under the *[Missouri Medicaid/MC+]* MO HealthNet/MO HealthNet for Kids program.

(A) *[Medicaid] MO HealthNet* reimbursement of dental services shall be limited to *[Medicaid] MO HealthNet* eligible *[needy]* children or persons receiving *[Medicaid] MO HealthNet* under a category of assistance for pregnant women or the blind.

(B) *[Medicaid recipients] MO HealthNet participants* living in a nursing facility will not experience dental service reductions. Nursing facility level of care must be indicated on the *[Medicaid] MO HealthNet* eligibility file. When providing dental services to a *[recipient] participant* who is living in a nursing facility providers should continue to submit claims to *[Missouri Medicaid] MO HealthNet*. *[Medicaid] MO HealthNet* eligible nursing facility residents will have payments for dental care adjudicated through the *[Medicaid] MO HealthNet* claims payment system.

(C) For all other eligibility categories of *[Medicaid] MO HealthNet* assistance dental services will only be reimbursed if the dental care is related to trauma of the mouth, jaw, teeth, or other contiguous sites as a result of injury or *[for treatment of a disease/medical condition without which the health of the individual would be adversely affected]* as related to a medical condition when a written referral from the participant's physician states the absence of dental treatment would adversely affect the stated pre-existing medical condition.

1. Reimbursement for dental care shall be limited to those procedure codes *[listed at]* identified in section (19) *[subsection (3)]* of the *[Medicaid] MO HealthNet Dental Provider Manual* which may be referenced at *[www.dss.mo.gov/dms]* www.dss.mo.gov/mhd; *[or]* and

2. *[Prior authorization by the Division of Medical Services is required for dental care related to trauma of the mouth, jaw, teeth, or other contiguous sites as a result of injury or for treatment of a disease/medical condition without which the health of the individual would be adversely affected if that care is not listed at section (19) subsection (3) of the Medicaid Dental Provider Manual]* Participants must have a written referral from their physician stating the absence of dental treatment would adversely affect the stated pre-existing medical condition. This referral must be maintained in the patient's record and made available to the MO HealthNet Division or its agent upon request.

(4) Prior Authorization. When prior authorization is required, the form provided by the *[Division of Medical Services] MO HealthNet Division* or its contracted agent shall be used. The dental service shall not be started until written approval has been received. Telephone approval shall not be given. Prior authorization

shall be effective for a period of one hundred twenty (120) days from the date of written approval. Prior authorization approves the medical necessity of the requested dental service. It shall not guarantee payment for that service as the patient must be a *[Medicaid] MO HealthNet* eligible *[recipient] participant* on the date the service is performed. The division reserves the right to request documentation regarding any specific request for prior authorization.

(5) Services, Covered and Noncovered. The *[Medicaid] MO HealthNet Dental Manual* shall provide the detailed listing of procedure codes *[and pricing information]* for services covered by the *[Missouri Medicaid] MO HealthNet Dental Program*. Pricing information can be obtained from the fee schedule posted at www.dss.mo.gov/mhd/providers/pages/cptagree.htm.

(6) General Regulations. General regulations of the *[Missouri Medicaid] MO HealthNet* program apply to the dental program.

(7) Records Retention. *[The enrolled Medicaid dental provider shall agree to keep any records necessary to disclose the extent of services the provider furnishes to recipients.] Sanctions may be imposed by the MO HealthNet agency against a provider for failing to make available, and disclosing to the MO HealthNet agency or its authorized agents, all records relating to services provided to MO HealthNet participants or records related to MO HealthNet payments, whether or not the records are comingled with non-MO HealthNet records in compliance with 13 CSR 70-3.030.* These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the *[Medicaid] MO HealthNet* agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for services billed to the *[Medicaid] MO HealthNet* program, as specified above, is a violation of this regulation.

AUTHORITY: sections 208.152, [RSMo Supp. 2004,] 208.153, and 208.201, RSMo [2000] Supp. 2008. This rule was previously filed as 13 CSR 40-81.040. Original rule filed Jan. 21, 1964, effective Jan. 31, 1964. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 40—Optical Program**

PROPOSED AMENDMENT

13 CSR 70-40.010 Optical [Care] Benefits and Limitations—[Medicaid] MO HealthNet Program. The division is amending the rule title, the purpose statement, and sections (1)–(9).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes program recipients to participants, updates the division's website address and incorporated by reference material, and updates the regulation to recognize changes in clinical procedures made to the optical program.

PURPOSE: This rule establishes the basis for administering the Optical Care program under the [Missouri Medicaid] MO HealthNet program, including the designation of professional persons who may perform optical care services; services which are covered, noncovered, and limitations within the program; and the method of reimbursement.

(1) Administration. The Optical [Care] program shall be administered by the Department of Social Services, [Division of Medical Services] MO HealthNet Division. The optical [care] services covered and not covered, the program limitations, and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, [Division of Medical Services] MO HealthNet Division and shall be included in the Optical provider manual and provider bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, [Division of Medical Services] MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at [www.dss.mo.gov/dms, June 15, 2006] www.dss.mo.gov/mhd, September 15, 2009. This rule does not incorporate any subsequent amendment or additions. Services covered shall include only those which are clearly shown to be medically necessary.

(2) Persons Eligible. Any person who is eligible for Title XIX benefits from the Family Support Division and who is found to be in need of optical [care] services as described in this regulation subject to the limitations set forth in subsections (7)(A)–[(Y)](W).

(3) Provider Participation. To be eligible for participation in the [Missouri Medicaid] MO HealthNet Optical [Care] Program, a provider must meet the criteria specified for his/her profession as follows:

(A) An optometrist must be a duly licensed Doctor of Optometry (OD) to participate in [Medicaid] the MO HealthNet program, must be licensed in accordance with the licensing provisions of the state in which s/he practices, and must have a current [Missouri Medicaid] MO HealthNet participation agreement and provider number;

(B) A physician must be a duly licensed Doctor of Medicine (MD) or Doctor of Osteopathy (DO) to participate in [Medicaid] the MO HealthNet program, must be licensed in accordance with the licensing provisions of the state in which s/he practices, and must have a current [Missouri Medicaid] MO HealthNet participation agreement and provider number;

(C) An optometric clinic can participate in the Optical [Care] program if it has a current [Medicaid] MO HealthNet program optometric clinic number. In addition to the clinic number, each of the performing optometrists must have an effective participation agreement and [Medicaid] MO HealthNet program provider number. Reimbursement can be made to the clinic for all covered services provided at the clinic; and

(D) An optician, optical dispenser, or manufacturer of artificial eyes must have a current [Missouri Medicaid] MO HealthNet participation agreement and provider number.

(4) Types of Service Reimbursed by [Medicaid] the MO HealthNet program for Each Profession.

(A) Optometrist or Optometric Clinic.

1. Eye examinations.

2. Refractions.

[2.]3. Eyeglasses.

[3.]4. Artificial eyes.

[4.]5. Special ophthalmological services.

(D) Physicians (MD or DO).

1. Eye examinations.

2. Refractions.

[2.]3. Eyeglasses.

[3.]4. Artificial eyes.

[4.]5. Special ophthalmological services.

(5) Reimbursement. [Medicaid] MO HealthNet reimbursement will be the lower of the provider's usual and customary charge to the general public or the [Medicaid] MO HealthNet allowable amount.

(6) Covered Services.

(A) Complete or limited eye examination with refraction.

(B) Eye refraction (Medicare-[Medicaid recipient] MO HealthNet participant only).

(L) Special frames [(prior authorization required)].

(M) Special lens [(medical necessity required)].

(N) Miscellaneous repairs [(medical necessity required)].

(S) Rose I and Rose II tints [(medical necessity required)].

(T) Photochromatic [(prior authorization required)].

(U) Orthoptic and/or pleoptic training, with continuing optometric direction and evaluation (visual therapy/training) [(prior authorization required)].

(V) Fitting of contact lens for treatment of disease, including supply of lens (therapeutic bandage lens) [(medical necessity required)].

(W) Visual field examination with optometric diagnostic evaluation; tangent screen, Autoplot, or equivalent [(prior authorization required)].

(X) Electro-oculography, with medical diagnostic evaluation [(prior authorization required)].

(Y) Visually evoked potential (response) study, with medical diagnostic evaluation [(prior authorization required)].

(Z) Quantitative perimetry, for example, several isopters on Goldmann perimeter or equivalent [(prior authorization required)].

(7) Program Limitations.

(A) One (1) comprehensive or one (1) limited eye examination is allowed per two (2) years (within a twenty-four (24)-month period of time) under the [Medicaid] MO HealthNet program. Eligible [needy] children, pregnant women, and blind persons are allowed one (1) comprehensive or one (1) limited eye examination per year (within a twelve (12)-month period of time) under the [Medicaid] MO HealthNet program. Payment for a comprehensive eye examination will be made only if six (6) or more of the following procedures have been performed:

1. Refraction far point and near point;

2. Case history;

3. Visual acuity testing;

4. External eye examination;

5. Pupillary reflexes;

6. Ophthalmoscopy;

7. Ocular motility testing;

8. Binocular coordination;

9. Vision fields;

10. Biomicroscopy (slit lamp);

11. Tonometry;

12. Color vision; and

13. Depth perception.

(C) Eligible *[needy]* children, pregnant women, and blind persons may be allowed additional eye examinations during the year (within a twelve (12)-month period of time) if medically necessary (that is, cataract examination, prescription change of 0.50 diopters or greater). *[A Medical Necessity Form must be completed for eye examinations in excess of one (1) per year.]*

(D) Eyeglasses are covered by *[Medicaid]* the **MO HealthNet program** for *[Medicaid]* **MO HealthNet** eligible individuals when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each eye.

(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for *[Medicaid]* **MO HealthNet** eligible individuals.

[(F) All claims for eyeglasses or lenses must contain the prescription and the name of the prescribing physician (MD or DO) or optometrist (OD).]

[(G)](F) The original eyeglass prescription and laboratory invoices listing costs for optical materials, lenses, and/or frames provided; and the charge for grinding, edging, or assembling of glasses must be kept on file by the provider for five (5) years and furnished to the *[Department of Social Services, (DOSS)]* **MO HealthNet Division** upon request.

[(H)](G) Special frames are covered under the *[Missouri Medicaid]* **MO HealthNet** program if they are required for medical reasons and are prior authorized by *[DOSS]* **MO HealthNet Division**. Special frames may be authorized if the patient requires special lenses (over 4.00 diopters for one (1) eye or over 4.00 diopters for each eye and are extra thick or heavy), the structure of the patient's face requires special frames (a very large face, wide-set eyes), or the patient needs glasses with pads because of nose surgery. *[The Prior Authorization Request Form must be completed and signed by the prescribing physician or optometrist.]*

[(I)](H) Special lenses are covered under the *[Missouri Medicaid]* **MO HealthNet** program if they are medically justified and the prescription is plus or minus 4.00 diopters for one (1) eye or 4.00 diopters for each eye, cataract lenses, or special bifocal lenses (for example, plastic Executive lenses). *[A Medical Necessity Form stating the reason special lenses are required must be completed and signed by the prescribing physician or optometrist and attached to the claim form.]*

[(J)](I) Plastic lenses may be dispensed under the *[Missouri Medicaid]* **MO HealthNet** program. Reimbursement will be at the same rate as comparable glass lenses. Additional payment will be allowed for plastic lenses that meet the definition of special lenses and are medically justified.

[(K)](J) Photochromatic lenses are covered only if medically necessary *[and prior authorized by the DOSS medical consultant. The Prior Authorization Request Form must be completed and signed by the prescribing physician or optometrist.]*

[(L)](K) Tinted lenses (Rose I and Rose II) are covered if medically necessary. *[A Medical Necessity Form completed and signed by the prescribing physician or optometrist must be attached to the claim form for the glasses.]*

[(M)](L) Replacement of optical materials and repairs in excess of program limitations may be covered if medically necessary, or required for employment training, or educational purposes, as follows:

1. Replacement of complete eyeglasses (frames and lenses)/—*Prior authorization required*].

A. Lenses and frames broken (*[recipient]* participant must show provider the broken glasses or *[Medicaid]* the **MO HealthNet program** will not pay for the glasses).

B. Lost.

C. Destroyed.

D. Stolen.

E. Repair of existing glasses would exceed the *[Medicaid]* the **MO HealthNet** allowable amount for new frames and lenses;

2. Lenses—*[Medical Necessity Form required]* if medically necessary.

A. Scratched.

B. Broken.

C. Prescription change of at least 0.50 diopters or greater *[[old and new prescription must appear on the Medical Necessity and claim forms]]*; or

3. Frames—*[Prior authorization required.]* Temples, fronts, or both broken and repair would exceed the *[Medicaid]* **MO HealthNet** allowable amount for new frames.

[(N)](M) Repair of frames or replacement of parts of frames (temples) are covered as follows *[(Medical Necessity Form required)]*:

1. The cost of the repairs do not exceed the *[Missouri Medicaid]* **MO HealthNet** allowable amount for new frames; and

2. Repair would provide a serviceable frame for the *[recipient]* participant.

[(O)](N) Temples may never be billed in addition to complete new eyeglasses and new frames.

[(P) Prior authorization is required for all optical services for Missouri Medicaid recipients residing in a nursing home, boarding home or domiciliary home when the service is provided in the nursing home. The provider must submit a Prior Authorization Request Form to DOSS before the service is provided in order for Medicaid payment to be made.]

[(Q)](O) An eye refraction is included in the reimbursement for a comprehensive or limited eye examination. Because the eye refraction is not covered by Medicare but is covered by *[Medicaid]* **MO HealthNet**, providers may bill *[Medicaid]* **MO HealthNet** for an eye refraction when the patient has Medicare and *[Medicaid]* **MO HealthNet** coverage.

[(R)](P) Eyeglasses may be covered by *[Medicaid]* **MO HealthNet** for a prescription of less than 0.75 diopters if medically necessary. *[A Medical Necessity Form must be completed by the prescribing physician or optometrist and attached to the claim form.]* Eyeglasses less than 0.75 diopters will be approved for the following reasons:

1. Child *[under]* age *[eighteen (18)]* twenty (20) and under who requires glasses for school performances;

2. Visual acuity 20/40 or less; or

3. Protective eyewear for persons with sight in only one (1) eye.

[(S)](Q) Any warranties extended by optical companies for optical materials to private-pay patients must also apply to those same materials dispensed to *[Medicaid recipients]* **MO HealthNet participants**.

[(T)](R) *[Medicaid]* The **MO HealthNet program** allows one (1) artificial eye per eye (one (1) left and one (1) right) within a five (5)-year period. If the artificial eye is lost, destroyed, cracked, or deteriorated, payment will be allowed for replacement *[if a Medical Necessity Form is completed and attached to the claim]*.

[(U)](S) Optometrist may be reimbursed for visual therapy training when there is a prognosis for substantial improvement or correction of an ocular or vision condition. These conditions include amblyopia, eccentric (nonfoveal) monocular fixation, suppression, inadequate motor or sensory fusion, and strabismus (squint). Orthoptic and pleoptic training must be prior authorized by the *[DOSS]* **MO HealthNet Division** Optometric Consultant. The number of training sessions *[are]* is limited to one (1) per day, two (2) per week, and a maximum of twenty (20) sessions may be requested on the Prior Authorization Request Form. If the patient shows significant improvement after the initial twenty (20) sessions and the optometrist feels that further progress could be made, *[DOSS]* **MO HealthNet Division** may grant prior authorization for additional training sessions not to exceed a total of forty (40) sessions.

[(V)](T) Fitting of contact lens for treatment of disease, including supply of lens (therapeutic bandage lens) is covered if it is prescribed by a physician, (MD or DO), as a bandage to cover a diseased condition of the eye, such as a bandage over an abrasion of the skin. The lens must be plain with no corrective power. Diagnosis for which the

lens should be reimbursed are Bullous Keratopathy, Corneal Ulcers, Ocular Pemphigoid, and other corneal exposure problems. *[A Medical Necessity Form completed and signed by the prescribing physician must be attached to the claim form.]*

[(W)](U) Visual field examination with optometric diagnosis evaluation, tangent screen, Autoplot, or equivalent, *[, are]* is covered when performed by an optometrist and prior authorized by *[DOSS]* **MO HealthNet Division**. The following criteria will be considered in granting prior authorization:

1. Elevated intraocular pressure;
2. Best corrected visual acuity of 20/40 or less in either eye;
3. Headaches not attributed to refractive error; and
4. Reduction of confrontation fields.

[(X)](V) Quantitative perimetry, for example, several isopters on Goldmann perimeter, or equivalent is covered.

[(Y)](W) Serial tonometry with optometric diagnostic evaluation (separate procedure), one (1) or more sessions on the same day is covered when performed by an optometrist. Routine tonometry is included in the reimbursement for a comprehensive examination and cannot be billed separately.

(8) Noncovered Services.

(B) Optical services or materials provided to a *[recipient]* **participant** who was not eligible on the date the service was provided or the optical materials were delivered to the patient.

(C) Sales or use tax on optical materials (the *[recipient]* **participant** is not responsible for and may not be billed for such taxes).

[(E) Wire-rimmed frames.]

[(F) Ornamental, jeweled and trimmed frames.]

[(G)](E) Sunglasses.

[(H)](F) Lenses exceeding 65 mm in diameter of frames for such lenses.

[(I)](G) Temporary lenses for cataract lenses.

[(J)](H) Eyeglass cases.

[(K)](I) Monicals.

[(L)](J) Magnifiers.

[(M)](K) Eye medications.

[(N)](L) Repair of old frames if the repair exceeds the cost of new frames.

[(O)](M) Replacement of optical materials resulting from patient abuse.

[(P)](N) Optical materials which are not medically necessary.

[(Q)](O) Nose pads.

[(R)](P) Eyeglass adjustments.

[(S)](Q) Optical materials not meeting *[DOSS]* **MO HealthNet Division** standards.

[(T)](R) Lenses or frames supplied incorrectly to the provider by the supplier or manufacturer.

[(U)](S) Replacement of lenses, complete eyeglasses, frames, or artificial eyes supplied incorrectly to *[recipient]* **participant** by optical provider.

[(V)](T) Optical materials in excess of those authorized within the benefit period.

(9) General Regulations. This rule shall not encompass all of the general regulations of the *[Medicaid]* **MO HealthNet** program. These regulations, however, shall be in effect for the optical *[care]* section of the overall program.

AUTHORITY: sections 208.152, [RSMo Supp. 2005 and] 208.153, and 208.201, RSMo [2000] Supp. 2008. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 90—Home Health Program

PROPOSED AMENDMENT

13 CSR 70-90.010 Home Health-Care Services. The division is amending the purpose statement and sections (1)–(8).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes reference to program recipients to participants, and updates the division website and incorporated by reference material.

PURPOSE: This rule provides the regulatory basis for [Title XIX Medicaid vendor] payment for home health-care services provided to [Medicaid-eligible individuals] MO HealthNet-eligible participants.

(1) An otherwise eligible *[Medicaid recipient]* **MO HealthNet participant** is eligible for *[Medicaid]* **MO HealthNet** reimbursement on his/her behalf for home health services if all the conditions of subsections (1)(A)–(D) are met—

(A) The *[recipient]* **participant** requires—

1. Intermittent skilled nursing care which is reasonable and necessary for the treatment of an injury or illness; or

2. Physical, occupational, or speech therapy when the following conditions are met—

A. The *[recipient]* **participant** is *[a needy]* **an eligible** child, pregnant woman, or blind person; and

B. Physical, occupational, or speech therapy reasonable and necessary for restoration to an optimal level of functioning following an injury or illness, in accordance with limitations set forth in section (8) of this rule./;

(B) The *[recipient]* **participant** is confined to his/her home in accordance with section (3);

(D) The services are provided in the *[recipient's]* **participant's** place of residence by a qualified person in the employ of or under contract to a Medicare-certified home health agency which is also licensed by Missouri and enrolled with the *[Medicaid]* **MO HealthNet** program.

(2) To qualify as skilled nursing care or as physical, occupational, or speech therapy under paragraph (1)(A)1. or subparagraph (1)(A)2.B. and to be reimbursable under the *[Medicaid]* **MO HealthNet** Home Health Program, a service must meet the following criteria:

(C) The service must constitute active treatment for an illness or

injury and be reasonable and necessary. To be considered reasonable and necessary, services must be consistent with the nature and severity of the individual's illness or injury, his/her particular medical needs, and accepted standards of medical practice. Services directed solely to the prevention of illness or injury will neither meet the conditions of paragraph (1)(A)1. or subparagraph (1)(A)2.B. nor be reimbursed by the *[Medicaid]* MO HealthNet Home Health Program.

(3) A *[recipient]* participant will be considered to be confined to his/her home in accordance with subsection (1)(B), if s/he has a condition due to an injury or illness which restricts his/her ability to leave his/her place of residence except with the aid of supportive devices, the use of special transportation or the assistance of another person, or if s/he has a condition which is such that leaving his/her home or traveling to obtain the needed healthcare is medically contraindicated. A *[recipient]* participant will not need to be bedridden in order to meet this requirement. Further, a *[recipient]* participant may be considered homebound even if s/he occasionally leaves home for nonmedical purposes, as long as these absences are infrequent, or relatively short duration, and do not indicate that the *[recipient]* participant has the capacity to obtain the needed care on an outpatient basis in a physician's office, outpatient clinic, or other health-care facility. In addition, children at serious risk of early developmental delay due to low birth weight or lack of normal expected physiological development, for whom a vigilant and responsive family environment is critical for treatment, will be considered homebound when the skilled intervention of a nurse is required on-site to create and sustain this environment. This nursing care must otherwise meet the requirements of this rule and must not duplicate services which could effectively be provided in a physician's office or clinic.

(4) Services included in *[Medicaid]* MO HealthNet home health coverage are those set forth in paragraph (1)(A)1. or subparagraph (1)(A)2.B. and, in addition, the intermittent services of a home health aide and the provision of nonroutine supplies identified as specific and necessary to the delivery of a *[recipient's]* participant's nursing care and prescribed in the plan of care. These additional services are covered only if all the conditions of subsections (1)(A)-(D) are met. Necessary items of durable medical equipment prescribed by the physician as a part of the home health service are available to *[recipients]* participants of home health services through *[Medicaid]* MO HealthNet subject to the limitations of amount, duration, and scope where applicable. The home health agency must coordinate with the durable medical equipment provider to ensure the durable medical equipment provider has a copy of the home health plan of care for provision of the durable medical equipment prescribed.

(5) The services of a home health aide must be needed concurrently with skilled nursing or physical, occupational, or speech therapy services which meet the requirements in subsections (1)(A)-(D). The services of the aide must be reasonable and necessary to maintain the *[recipient]* participant at home and there must be no other person available who could and would perform the services. The duties of the aide shall include the performance of procedures such as, but not limited to, the extension of covered therapy services, personal care, ambulation, and exercise and certain household services essential to health care. The services of the aide must be supervised by a registered nurse or other appropriate professional staff member, whose visits will not be separately reimbursed unless a covered skilled nursing or therapy service as prescribed on the plan of care[,] is performed concurrently.

(6) The unit of service for both professional and home health aide services is a visit. A visit is a personal contact for a period of time, not to exceed three (3) continuous hours, in the patient's place of res-

idence, made for the purpose of providing one (1) or more covered home health services. The combined total of all skilled nurse and home health aide visits reimbursed on behalf of a *[Medicaid recipient]* MO HealthNet participant may not exceed one hundred (100) visits per calendar year.

(A) Where two (2) or more staff are visiting concurrently to provide a single type of service, or where one (1) staff provides more than one (1) type of service or where one (1) staff is present in the home only to supervise another, only one (1) visit is reimbursable by *[Missouri Medicaid]* MO HealthNet.

(B) Unless the plan of care documents a specific need for more than one (1) visit per day, *[Medicaid]* MO HealthNet will reimburse only one (1) visit per day for each of the following: skilled nurse, home health aide, physical therapist, occupational therapist, or speech therapist.

(C) When more than one (1) visit per day is medically required and documented by the plan of care, each single visit will be counted toward the combined total limit of one hundred (100). Documentation submitted with a claim supporting extended daily visits, multiple visits per day, or both does not override the one hundred (100) visit per calendar year limitation. For example: A patient requires a visit for a procedure that takes one (1) hour in the morning and requires another visit for a procedure that takes one (1) hour in the afternoon. Each visit may be reimbursed, but two (2) visits will be counted toward that *[recipient's]* participant's total home health visits for that year.

(7) To be reimbursed by *[Medicaid]* MO HealthNet, all home health services and supplies must be provided in accordance with a written plan of care authorized by the *[recipient's]* participant's physician. The criteria for the development of the written plan of care and changes to the written plan of care through interim order(s) are described in Sections 13.14C, 13.14D, 14.2, 14.3, 14.4, and 14.5 of the home health provider manual, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, *[Division of Medical Services]* MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, July 1, 2006] www.dss.mo.gov/mhd, September 15, 2009. This rule does not incorporate any subsequent amendments or additions. Paper copies of plans of care and interim orders must be submitted with paper claims. If the claim is submitted electronically the plan of care and interim order(s) must be submitted as an electronic attachment through the claim. Information from the plan of care and interim order(s) must be included in the appropriate data fields when the provider is submitting an electronic claim. Plans of care and interim order(s) are to be maintained in the client record.

(8) Skilled therapy services will be considered reasonable and necessary for treatment if the conditions of paragraphs (8)(A)1.-4. are met.

(A) The services—

1. Must be consistent with the nature and severity of the illness or injury[,] and the *[recipient's]* participant's particular medical needs;
2. Must be considered, under accepted standards of medical practice, to be specific and effective treatment for the patient's condition;
3. Must be provided with the expectation of good potential for rehabilitation, based on assessment made by the *[recipient's]* participant's physician; and
4. Are necessary for the establishment of a safe and effective maintenance program, or for teaching and training a caregiver.

(B) Therapy services may be delivered for one (1) certification period (up to sixty-two (62) days), if services are initiated within sixty (60) days of onset of the condition or within sixty (60) days from date of discharge from the hospital, if the *[recipient]* participant was hospitalized for the condition. Prior authorization to continue therapy services beyond the initial certification period may be

requested by the home health provider. Prior authorization requests will be reviewed by the [Division of Medical Services] MO HealthNet Division, and approval or denial of the continuation of services will be based on the following criteria[.]:

1. The service must be consistent with the nature and severity of the illness or injury and the [recipient's] participant's particular medical needs;

2. The services are considered, under accepted standards of medical practice, to be specific and effective treatment for the patient's condition;

3. The services must be provided with the expectation, based on the assessment made by the attending physician of the [recipient's] participant's condition will improve materially in a reasonable and generally predictable period of time, or are necessary to the establishment of a safe and effective maintenance program; and

4. The [recipient] participant continues to be medically homebound as defined in section (3) of this rule.

AUTHORITY: sections 208.152, [RSMo Supp. 2005 and] 208.153, and 208.201, RSMo [2000] Supp. 2008. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 90—Home Health Program

PROPOSED AMENDMENT

13 CSR 70-90.020 Home Health-Care Services Reimbursement. The division is amending the purpose statement and section (1).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, updates the agency responsible for determining the maximum allowable fee for service, and adds the website address for the fee schedule.

PURPOSE: This rule establishes the methodology where a [Medicaid] MO HealthNet maximum allowable fee for service is determined on an annual basis by the [Division of Family Services] MO HealthNet Division.

(1) Reimbursement. [Title XIX Medicaid] MO HealthNet reimbursement for covered home health services provided to eligible individuals shall be made at the lower of—

(C) The [Medicaid] MO HealthNet maximum allowable fee for service. **The fee schedule is available at [**viders/index.htm.**](http://www.dss.mo.gov/mhd/pro-</p>
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AUTHORITY: sections 207.020, RSMo [Supp. 1993,] 2000 and sections 208.152, [RSMo Supp. 1992,] 208.153, [RSMo Supp. 1991] and 208.201, RSMo Supp. [1987] 2008. This rule was previously filed as 13 CSR 40-81.057. Original rule filed May 11, 1984, effective Aug. 11, 1984. Amended: Filed Dec. 18, 1991, effective Aug. 6, 1992. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 95—Private Duty Nursing Care Under the
Healthy Children and Youth Program

PROPOSED AMENDMENT

13 CSR 70-95.010 Private Duty Nursing. The division is amending section (10).

PURPOSE: This amendment updates incorporated by reference material.

(10) MO HealthNet Private Duty Nursing Provider Manual. A private duty nursing provider manual shall be produced by the MO HealthNet Division and shall be distributed to all private duty nursing providers participating in the Missouri MO HealthNet Program at its website at www.dss.mo.gov/mhd. The MO HealthNet Private Duty Nursing Provider Manual and bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, [January 16, 2008] **September 15, 2009**, shall contain information about MO HealthNet eligibility, third party liability, procedures for requesting prior authorization, claim filing instructions, instructions for filing adjustments, reimbursement methodology and current MO HealthNet maximum rates of reimbursement for services, benefits and limitations of services, and other applicable information about the program. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. [2007] 2008. Original rule filed Sept. 2, 1993, effective April 9, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 17, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2150—State Board of Registration for the
Healing Arts
Chapter 5—General Rules**

PROPOSED AMENDMENT

20 CSR 2150-5.020 Nonpharmacy Dispensing. The board is proposing to amend section (2).

PURPOSE: This amendment clarifies the level of supervision required for personnel employed to assist with the dispensing of drugs and devices and removes the current violation for a physician to allow dispensing of medication while he/she is not present.

(2) Physicians must provide appropriate[, *direct*] supervision to personnel employed to assist in the dispensing of drugs and devices from the physician's office. *[It]*

(A) When the dispensing personnel is either a licensed physician assistant acting within the scope of a supervision agreement or licensed nurse acting within the scope of a collaborative practice arrangement, the physician is not required to be present.

(B) In all other instances, it shall be a violation of this rule for any physician to permit the dispensing of medication from his/her clinic or office when that physician is not present unless another physician duly licensed under the provisions of Chapter 334, RSMo, is present.

AUTHORITY: section 334.125, RSMo [1986] 2000. This rule originally filed as 4 CSR 150-5.020. Original rule filed May 11, 1984, effective Sept. 14, 1984. Moved to 20 CSR 2150-5.020, effective Aug. 28, 2006. Amended: Filed Aug. 14, 2009.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by faxing comments to (573) 751-3166, or by emailing comments to healingarts@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-7.440 is amended.

This amendment establishes hunting seasons and limits and is excepted by section 536.021, RSMo Supp. 2008, from the requirement of filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.440 by establishing seasons and limits for hunting migratory waterfowl during the 2009–2010 seasons.

3 CSR 10-7.440 Migratory Game Birds and Waterfowl: Seasons, Limits

PURPOSE: The Department of Conservation is authorized to select waterfowl hunting season dates and bag limits within frameworks established by the U.S. Fish and Wildlife Service. The seasons and limits selected are intended to provide optimum hunting opportunity consistent with the welfare of the species.

(3) Seasons and limits are as follows:

(F) Ducks and coots may be taken from one-half (1/2) hour before

sunrise to sunset from October 31, 2009, through December 29, 2009, in the North Zone (that portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to Interstate Hwy. 70; west on Interstate Hwy. 70 to the Kansas border); from November 26, 2009, through January 24, 2010, in the South Zone (that portion of the state south of a line running west from the Illinois border on Mo. Hwy. 34 to Interstate Hwy. 55; south on Interstate Hwy. 55 to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to the Kansas border); and from November 7, 2009, through January 5, 2010, in the Middle Zone (remainder of Missouri). Ducks and coots may be taken by youth hunters fifteen (15) years of age or younger from one-half (1/2) hour before sunrise to sunset from October 24, 2009, through October 25, 2009, in the North Zone, from October 31, 2009, through November 1, 2009, in the Middle Zone and from November 21, 2009, through November 22, 2009, in the South Zone. Any person fifteen (15) years of age or younger may participate in the youth waterfowl hunting days without permit provided they are in the immediate presence of an adult eighteen (18) years of age or older. If the youth hunter does not possess a hunter education certificate card, the adult must be properly licensed (i.e., must meet any permit requirements that allows small game hunting) and have in his/her possession a valid hunter education certificate card unless they were born before January 1, 1967. The adult may not hunt ducks but may participate in other seasons that are open on the special youth days. Limits are as follows:

1. Coots—Fifteen (15) daily; thirty (30) in possession.

2. Ducks—The daily bag limit of ducks is six (6) and may include no more than four (4) mallards (no more than two (2) of which may be female), two (2) scaup, three (3) wood ducks, one (1) mottled duck, one (1) canvasback, one (1) black duck, two (2) redheads, two (2) hooded mergansers, and one (1) pintail. The possession limit is twelve (12), including no more than eight (8) mallards (no more than four (4) of which may be female), four (4) scaup, six (6) wood ducks, two (2) mottled ducks, two (2) canvasbacks, two (2) black ducks, four (4) redheads, four (4) hooded mergansers, and two (2) pintails.

(G) Geese may be taken from one-half (1/2) hour before sunrise to sunset as follows:

1. Blue, snow, and Ross's geese may be taken from October 31, 2009, through January 31, 2010, statewide.

2. White-fronted geese may be taken from November 26, 2009, through January 31, 2010, statewide.

3. Canada geese and brant may be taken from September 26, 2009, through October 7, 2009, and November 26, 2009, through January 31, 2010, statewide.

4. The daily bag limit is twenty (20) blue, snow, or Ross's geese, one (1) brant, and two (2) white-fronted geese, statewide. The possession limit for brant is two (2) and for white-fronted geese is four (4), and there is no possession limit for blue, snow, and Ross's geese.

5. The daily bag limit is three (3) Canada geese from September 26, 2009, through October 7, 2009, and two (2) Canada geese thereafter. The possession limit is six (6) Canada geese from September 26, 2009, through October 7, 2009, and four (4) Canada geese thereafter.

6. Geese and brant may be taken by youth hunters in the North Zone from October 24, 2009, through October 25, 2009, in the Middle Zone from October 31, 2009, through November 1, 2009, and in the South Zone from November 21, 2009, through November 22, 2009. Any person fifteen (15) years of age or younger may participate in the youth waterfowl hunting days without permit provided

they are in the immediate presence of an adult eighteen (18) years of age or older. If the youth hunter does not possess a hunter education certificate card, the adult must be properly licensed (i.e., must meet any permit requirements that allows small game hunting) and have in his/her possession a valid hunter education certificate card unless they were born before January 1, 1967. The adult may not hunt ducks but may participate in other seasons that are open on the special youth days. The daily bag limit is twenty (20) blue, snow, and Ross's geese, two (2) white-fronted geese, one (1) brant, and two (2) Canada geese. The possession limit for brant is two (2), for white-fronted geese is four (4), and for Canada geese is four (4), and there is no possession limit for blue, snow, and Ross's geese.

7. Zones: The North Zone shall be that portion of the state north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to Interstate Hwy. 70; west on Interstate Hwy. 70 to the Kansas border. The South Zone shall be that portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 34 to Interstate Hwy. 55; south on Interstate Hwy. 55 to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to the Kansas border. The Middle Zone shall be the remainder of Missouri.

(I) The hunting season for blue, snow, and Ross's geese closes on January 31, 2010, in order to implement a light goose Conservation Order.

1. Persons who possess a valid Conservation Order permit may chase, pursue, and take blue, snow, and Ross's geese between the hours of one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset from February 1, 2010, through April 30, 2010. Any other regulation notwithstanding, methods for the taking of blue, snow, and Ross's geese include using shotguns capable of holding more than three (3) shells, and with the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. An exception to the above permit requirement includes any person fifteen (15) years of age or younger, provided either 1) s/he is in the immediate presence of a properly licensed adult (must possess a Conservation Order Permit) who is eighteen (18) years of age or older and has in his/her possession a valid hunter education certificate card, or was born before January 1, 1967, or 2) s/he possesses a valid hunter education certificate card. A daily bag limit will not be in effect February 1, 2010, through April 30, 2010.

SUMMARY OF PUBLIC COMMENT: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed August 14, 2009, effective **September 1, 2009**.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife:
Privileges, Permits, Standards

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-9.442 is amended.

This amendment establishes hunting seasons and limits and is excepted by section 536.021, RSMo Supp. 2008, from the requirement of

filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-9.442 by establishing seasons and limits for hunting migratory waterfowl during the 2009–2010 seasons.

3 CSR 10-9.442 Falconry

PURPOSE: This rule establishes provisions for hunting with birds of prey.

(2) Only designated types and numbers of birds of prey may be possessed, and all these birds shall bear a numbered, non-reusable marker provided by the department. Birds held under a falconry permit may be used, without further permit, to pursue and take wildlife within the following seasons and bag limits:

(E) Ducks, mergansers, and coots may be taken from sunrise to sunset from September 12, 2009, through September 27, 2009, statewide, and from one-half (1/2) hour before sunrise to sunset as follows: in the North Zone, October 24, 2009, through October 25, 2009, October 31, 2009, through December 29, 2009, and February 10, 2010, through March 10, 2010; in the Middle Zone, October 31, 2009, through November 1, 2009, November 7, 2009, through January 5, 2010, and February 10, 2010, through March 10, 2010; and, in the South Zone, November 21, 2009, through November 22, 2009, November 26, 2009, through January 24, 2010, and February 10, 2010, through March 10, 2010. Daily limit: three (3) birds singly or in the aggregate, including doves; possession limit: six (6) birds singly or in the aggregate, including doves.

SUMMARY OF PUBLIC COMMENT: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed August 14, 2009, effective **September 1, 2009**.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 4—General Administration

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 160.405 and 161.092, RSMo Supp. 2008, and sections 165.121, 167.201, and 178.430, RSMo 2000, the board rescinds a rule as follows:

5 CSR 30-4.030 Audit Policy and Requirements is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2009 (34 MoReg 1177–1178). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 4—General Administration

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 160.405 and 161.092, RSMo Supp. 2008 and sections 165.121, 167.201, and 178.430, RSMo 2000, the board adopts a rule as follows:

5 CSR 30-4.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 15, 2009 (34 MoReg 1178-1181). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The State Board of Education received comments from one (1) superintendent, one (1) chief financial officer, and one (1) department employee on the proposed rule.

COMMENT #1: One (1) comment was received regarding component units. If the issue is that districts are supposed to be reporting something that is already required, it should be enforced. There should not be a new rule for something that already exists.

RESPONSE: The State Board of Education has considered this comment and has decided to make no change to the rule as a result of this comment.

COMMENT #2: One (1) comment was received regarding additional cost of audits. There was discussion last year with the school audit committee when the Department of Elementary and Secondary Education (DESE) decided to make some significant changes to the schedule of selected statistics. Some of the firms indicated the more time they are required to spend on the schedule, the more the audit will cost. Therefore, after reviewing the proposed change, I would suggest adding a one and one-half to two (1.5-2)-year lead time requirement for any changes to the schedule of selected statistics, so auditors can include any perceived additional cost in their proposals. This proposed audit rule seems to give DESE more authority to compel additional audit work "at will" just by changing the schedule of selected statistics.

RESPONSE: The State Board of Education has considered this comment and has decided to make no change to the rule as a result of this comment.

COMMENT #3: After an internal review, it was determined that needed language was inadvertently left out of section (4) regarding single entity reports for charter school audits.

RESPONSE AND EXPLANATION OF CHANGE: The State Board of Education has considered this comment and the language pertaining to charter school audits has been included in paragraph (4)(A)3.

5 CSR 30-4.030 Audit Policy and Requirements

(4) The board's responsibilities are as follows:

(A) Each board is responsible for defining an appropriate scope of the audit.

1. At a minimum, the audit must include the school's:

A. General, Special Revenue, Debt Service, and Capital Projects funds;

B. Fiduciary funds;

C. Proprietary funds; and

D. Component units (unless a component unit issues its own audited financial statements).

2. A Single Audit of federal funds expended by the school may be required. State law provides for the acceptance of federal acts and funds and for their necessary administration and supervision. Audit requirements are a part of federal acts and the implementing regulations adopted by the administering federal agencies. The requirements of the Single Audit Act, as amended by *The Single Audit Act Amendments of 1996*, 62 Fed. Reg. 35278-35319 (1997), Office of

Management and Budget (OMB) Circular A-133, which is incorporated by reference and made a part of this rule as published by the Office of the Federal Register, Office of Administration and is available by contacting the Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, and *Government Auditing Standards*, July 2007 Revision, issued by the Comptroller General of the United States, which is incorporated by reference and made a part of this rule as published by the U.S. Government Accountability Office, 441 G St. NW, Washington, DC 20548, are included in this audit policy. This rule does not incorporate any subsequent amendments or additions. Specific application of these requirements shall be as follows:

A. All schools that expend a total amount of federal awards equal to or in excess of the amount specified in OMB Circular A-133 as the Single Audit threshold or such other amount specified by the federal director of the OMB in any fiscal year shall either have a single audit or a program-specific audit made for such fiscal year in accordance with the requirements of *The Single Audit Act Amendments of 1996*, OMB Circular A-133 and the *Government Auditing Standards*; or

B. All schools that expend a total amount of federal awards of less than the amount specified in OMB Circular A-133 as the Single Audit threshold or such other amount specified by the director of the OMB in any fiscal year shall be exempt for such fiscal year from compliance with *The Single Audit Act Amendments of 1996*. However, these schools shall be required to have an audit performed in accordance with *Government Auditing Standards*.

3. All charter school audits shall be single entity reports completed on a July 1 to June 30 basis.

4. Schools that cease operations are not exempt from the audit requirements. A final audit of the school's activities through the date it ceases operations must be performed and submitted to DESE as otherwise described in this rule;

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 20—Clean Water Commission Chapter 6—Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, the commission amends a rule as follows:

10 CSR 20-6.200 Storm Water Regulations is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 2, 2009 (34 MoReg 377-379). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held May 6, 2009, and the public comment period ended May 13, 2009. At the hearing, the Water Protection Branch presented the proposed amendment, and several comments were made by Boone County.

COMMENT #1: Boone County (Karen Miller, District I Commissioner) commented that because Boone County is a non-charter county, they only have authority that is specifically granted by the legislature, and this rule amendment may prohibit Boone County from adopting a county-wide storm water management program.

RESPONSE: Section 64.241, RSMo, provides broad authority to non-charter first class counties to prepare and adopt regulations governing the subdivision of land in unincorporated areas to provide for

proper street grading and paving, drainage or utility easements, and other utilities that are necessary to protect public health and the general welfare of the citizens. It is the department's understanding that nothing in the proposed amendment prohibits Boone County from exercising this broad authority. The Missouri Department of Natural Resources' Water Protection Branch is in the process of developing a site-specific permit to Boone County which will provide Boone County with an option to be applicable on a county-wide basis. No changes have been made to the proposed amendment as a result of this comment.

COMMENT #2: Boone County commented that the use of federally defined Urbanized Areas (UAs) are ill suited for the purpose of defining a Municipal Separate Storm Sewer System (MS4). The UA is a statistical subdivision and has no relation to storm water management environmental concerns. In Boone County, the UA excludes large undeveloped areas, but the county has over fifty (50) square miles of land, outside of the Columbia and Centralia UAs that are zoned for urban density development. Under the proposed amendment, Boone County would not be able to implement its storm water management plan until they are populated to the point that they are included in the UA by the Census Bureau.

RESPONSE: The proposed amendment mirrors the federal language that mandates an MS4 for all Urbanized Areas. This is the minimum requirement, and counties may choose to request an extension of coverage to areas outside the UA. Under the federal regulation (40 CFR 122.26(f)(4)), any person may petition the permitting authority for the designation of an MS4. Subparagraph (1)(C)24.B. of the rule is Missouri's provision for this petition. Subparagraph (1)(C)24.B. requires a determination by the department that discharges from the proposed MS4 area have caused or have the potential to cause adverse water quality impacts. In addition to the fact that there are impaired waters that may be impacted by ongoing development in Boone County (outside the UA), the arguments about the potential water quality impacts from future development presented by Boone County would easily justify a request by Boone County to extend coverage of the MS4 to perhaps the entire county. The department would encourage all counties to examine the appropriate comprehensive approach to storm water management that may address areas outside the federal minimum. No changes were made to the proposed amendment as a result of this comment.

COMMENT #3: Boone County commented that there are a number of problems associated with using a minimum population density factor to define an MS4. It is estimated that two hundred eleven (211) census blocks within Boone County are outside the UA, but have population densities that exceed one thousand (1,000) people per square mile. In addition, Boone County estimates that there are twenty-seven (27) subdivisions that may exceed this density as well. As proposed, the regulation would apply to these "pockets" and there would likely be situations where a regulated area adjoins a non-regulated area, both of which drain to the same watershed. Also, the proposed language does not make it clear at what level the density criteria will be enforced. At this point, data from the 2000 census is old. Would each MS4 be required to complete a "block-level" census count to determine if the area falls under the regulation? If applied at the census block level, Boone County will have two hundred thirty-eight (238) individual areas where storm water regulations will apply. This is a fractured and unworkable approach and may promote urban sprawl.

RESPONSE: The proposed regulation mirrors the federal regulatory language. The department would evaluate areas and densities based on the most recent census. Boone County makes a reasoned case to regulate storm water on a basis that has a broader geography than the census block level. A mechanism for extending MS4 coverage currently exists in subparagraph (1)(C)24.B. of the rule. No changes were made to the proposed amendment as a result of this comment.

COMMENT #4: The federal and state permit requires the MS4 to develop a funding source. In the case of Boone County, this will require a vote of the county taxpayers. It will be difficult to market the need for a storm water utility to rural residents, and there will be no support if the utility only covers the small portion of the county that would be regulated under the proposed amendment.

RESPONSE: This appears to be another reason to regulate storm water over a broader geography and why we would encourage MS4 permit holders to evaluate the option of preparing a petition to extend coverage. No changes were made to the proposed amendment as a result of this comment.

COMMENT #5: Boone County commented that both Hinkson Creek and Grindstone Creek are listed as impaired and have Total Maximum Daily Limits (TMDLs). A watershed approach would be an effective way to deal with these impairments. How can the county prevent additional impacts to these waters if the future development is outside an MS4 jurisdiction? Boone County has proposed ordinances that set stringent requirements in these impaired watersheds to prevent further degradation. The county may be restricted from applying these ordinances if the state definition is amended as proposed.

RESPONSE: A county-wide or watershed approach may be a good mechanism for extending protections to these impaired waters. Part of the TMDL development process is to establish load allocations for non-point sources like storm water. In many cases, the load allocation goals are planned to be met by voluntary means. For counties, such as Boone County, that believe a county-wide or watershed storm water management program will help address specific impaired waters, subparagraph (1)(C)24.B. of this rule provides a mechanism for counties to request broader geographic coverage. No changes were made to the proposed amendment as a result of this comment.

COMMENT #6: Population densities change, and under the proposed amendment, the boundaries of the MS4 could change with time. The Clean Water Commission is vested with the authority to define these boundaries, and this would create a non-delegation problem.

RESPONSE: The most recent census would be used to establish the MS4 boundaries. The Clean Water Commission has the authority to adopt rules, such as this proposed amendment, which would align the state regulation with the federal rules. No changes were made to the proposed amendment as a result of this comment.

COMMENT #7: The Department of Natural Resources often cites the principle of anti-backsliding in its administration of the small MS4 program. The proposed amendment is a relaxation of the regulations. A letter from former Director Childers (June 20, 2006) stated that the rule applied to the whole of Boone County, while the amendment would reduce the applicability to only portions of the county.

RESPONSE: The original rulemaking neglected to include the population density outside of urbanized areas as stated in the federal rules. As a matter of practice, the department administered the storm water regulations based on the federal requirements. The intent of the amendment is to correct the rule and to align it with the federal requirements. No changes were made to the proposed amendment as a result of this comment.

COMMENT #8: Boone County understands that the purpose of the proposed amendment is to reduce the number of small, rural counties that are required to develop storm water management programs. Boone County recommends that the definition of regulated MS4 be changed by simply raising the applicable population from ten thousand (10,000) people to a higher figure. One option would be to make the regulation apply only to all first class counties that serve a population of more than thirty thousand (30,000) people. This would allow Boone County to maintain their existing programs and still

relieve smaller counties from this requirement. This would be clear and unambiguous.

RESPONSE: The primary purpose of the amendment is to align the state rule with the federal regulations and to introduce a different population threshold would make the regulation very different from the federal requirements. There are other ways to capture Boone County's needed areas of regulation without retaining this error in the definition. Even then, it is common for regulated MS4s to apply their local regulations jurisdiction wide in order to address the dynamic boundary changes. No changes were made to the proposed amendment as a result of this comment.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 7—Water Quality**

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under section 644.026.1, RSMo 2000, the commission amends a rule as follows:

10 CSR 20-7.031 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 2, 2009 (34 MoReg 379-526). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received fifty-two (52) comments from the following fourteen (14) sources: Missouri Public Utility Alliance (MPUA); City of Independence, Missouri; U.S. Environmental Protection Agency-Region 7 (EPA); MEC Water Resources, Inc., (MEC); Missouri Coalition for the Environment (MCE); St. Louis Metropolitan Sewer District (MSD); Grace Hill Settlement House; River des Peres Watershed Coalition (RDPWC); City of Blue Springs, Missouri; Citizens Legal Environmental Action Network (CLEAN); Missouri Department of Conservation (MDC), Farmland Foods; City of Milan, Missouri; and Tom Herrmann, Advisor to the Clean Water Commission. Ten (10) of the comments resulted in further changes to the proposed amendment.

Table A—Revised Criteria for Copper and Zinc

COMMENT #1: MPUA, City of Independence—The MPUA and City of Independence support the proposed revision of the copper and zinc criteria.

RESPONSE: The Department of Natural Resources (the department) appreciates and acknowledges the support. No changes in the proposed revisions were made in response to these comments.

COMMENT #2: EPA—The proposed revisions to the copper and zinc criteria are consistent with EPA's 304(a) criteria recommendations.

RESPONSE: No changes in the proposed revisions were made in response to this comment.

COMMENT #3: MEC, MPUA—The department should propose to include the use of the "Biotic Ligand Model" (BLM) as an additional method of calculating copper criteria. Suggested rule language was provided in these comments. This procedure-based criteria would allow the department to apply the BLM in deriving site-specific criteria without the need for rulemaking.

RESPONSE: 10 CSR 20-7.031(4) allows for alternative site-specific criteria for the protection of designated uses and, in particular, aquatic life use. The derivation of a site-specific criterion must be based on defensible scientific procedures, including but not limited to,

those procedures described in the U.S. Environmental Protection Agency's *Water Quality Standards Handbook*, Second Edition, August 1994. In particular, subsection (4)(R) of the rule describes the requirements to petition for site-specific criteria without limiting the petitioner to employing a particular procedure or model such as Species Recalculation, Water Effect Ratio, or BLM.

Paragraph (4)(B)2. of the rule encourages petitioners for site-specific criteria to coordinate with the department early in the process. Therefore, a new provision for the use of BLM to develop site-specific criteria for copper is not necessary for the department to accept a petition. Therefore, it would not seem necessary for the department to include a new provision at this stage in the rulemaking. However, the department is willing to explore the advantages of a new provision during the next triennial review of the water quality standards in order to expedite future requests for site-specific criteria. No changes in the proposed revisions were made in response to this comment.

Table A—Bacteria Criteria

COMMENT #4: MCE—Missouri's criteria for pathogens (bacteria) should include a single sample maximum.

RESPONSE: The department recognizes that many states include a single sample maximum (SSM) in their water quality standards and that EPA in the 2004 Beach Act rule has provided states with non-coastal recreational waters flexibility in the use of the SSM in the administration of their Clean Water Act program. In their August 2006 fact sheet entitled, "Using Single Sample Maximum Values in State Water Quality Standards," EPA clarified their position on the use of SSM. EPA indicates, "it expected that the single sample maximum values would be used for making beach notification and closure decisions. EPA recognized, however, that states and territories also use criteria in their water quality standards for other purposes under the Clean Water Act in order to protect and improve water quality. Other than in the beach notification and closure decision context, the geometric mean is the more relevant value for ensuring that appropriate actions are taken to protect and improve water quality. The geometric mean is generally more relevant because it is usually a more reliable measure of long-term water quality, being less subject to random variation, and more directly linked to the underlying studies upon which the 1986 bacteria criteria were based. States, however, retain the discretion to determine whether and how to use the SSM in other Clean Water Act programs." The department believes the use of the recreational season geometric mean for *E. coli* is the most reliable tool to assess water quality as it relates to attainment of its designated beneficial use.

The department would also like to acknowledge that EPA is currently developing a new indicator bacteria criteria and is scheduled to have that work completed by 2012. The department intends to monitor and evaluate this criteria development and intends to have further discussion with the public on adoption of any new indicator bacteria and criteria in its triennial review also scheduled for 2012.

COMMENT #5: MCE—Missouri's criteria for pathogens (bacteria) should include a numeric threshold to protect year-round recreation uses.

RESPONSE: The department recognizes that many states have pathogen criteria to protect year-round recreation use. The year-round criteria may provide significant health protection where water contact occurs and the potential risk for increased exposure to pathogens may be significant between late fall and early spring provided that whole body contact recreation (WBCR) is occurring in the water body during those time periods. The use of year-round criteria has merit in providing a better set of standards upon which to achieve a more comprehensive assessment of a water body's capability to attain safe recreation use; however, it would require a change to the definition of the recreational season in 10 CSR 20-7.031(4)(C). The department currently has no evidence that WBCR

is occurring in Missouri's waters before April 1 or after October 31. The department intends to have further discussion with the public regarding whether year-round pathogen criteria is needed, and if so, how to implement the criteria effectively. This issue will be discussed in the next triennial review of the water quality standards due for completion in 2012. No changes in the proposed revisions were made in response to this comment.

COMMENT #6: MCE—Missouri's criteria for pathogens (bacteria) does not sufficiently recognize existing uses that would benefit from protection under the Category A WBCR (WBCR-A) use designation and criteria. The criteria should include only one (1) numeric threshold (126 cfu/100mL) for WBCR-A which would dismiss the need for making a distinction between existing and attainable uses.

RESPONSE: EPA guidance recognizes the different pathogen exposure levels and the different levels of health risk resulting from differing levels of water contact. The guidance sets forth a series of numeric thresholds that would be fully protective of public health based on the level of contact experienced while engaging in different types of water recreation, i.e. swimming, boating, or wading. The department uses the distinction between existing and attainable uses to define the levels of water contact and the potential pathogen exposure in various streams. The purpose of the distinction is to promote more accurate descriptions of recreation use and the varying levels of pathogen exposure associated with each. These distinctions and tiered use designations promote a more precise application of the EPA guidance. No changes in the proposed revisions were made in response to this comment.

COMMENT #7: City of Independence—The City of Independence supports the revision of the WBCR-B criteria to two hundred six (206) Colony Forming Units (cfu)/100 mL and requests the addition of the following footnote to Table A: "The Clean Water Commission (the commission) has determined that an illness rate of one and four-tenths percent (1.4%) is appropriate protection for Category B WBCR (WBCR-B) waters, but the commission is unable to determine what bacteria concentration would correlate with a one and four-tenths percent (1.4%) risk level." The comment further states that addition of the footnote would help explain why the state is lowering water quality standards in the event that national studies demonstrate that a higher number is protective at the one and four-tenths percent (1.4%) level, and the commission chooses to adopt the higher number.

RESPONSE: The suggested language appropriately reflects the intentions of the department to continue making recommendations to the commission that adhere closely to the federal guidance. With or without the suggested footnote, the department will continue to recommend revisions necessary to ensure the state's criteria remain effectively equivalent to the guidance. However, the department cannot predict what the federal guidance will state in the coming years and some possibility exists that the language in the footnote would conflict with future guidance. Therefore, while the department agrees that the suggested language reflects current policy, it does not recommend the addition of the language on the basis that it is not needed to ensure proper application of the present pathogen standard and may hinder future actions to remain in conformance with federal guidance. No changes in the proposed revisions were made in response to this comment.

Table B2 and B3—Ammonia Criteria

COMMENT #8: EPA—EPA is evaluating recent data on the effects of ammonia on aquatic life, particularly mussels (Grubbs, 2004). Preliminary results of this national consultation indicate a likely revision to the 1999 guidance. Consequently, EPA encourages states to await the conclusion of this process in order to avoid needless expenditure of state resources on multiple revisions of their standards.

RESPONSE AND EXPLANATION OF CHANGE: The department

agrees with this comment and has withdrawn the proposed revisions to the ammonia criteria. The department intends to reopen the rule for appropriate revisions following the conclusion of the consultation process and the reissuance of national guidance.

Tables G, H, and I—Identification of Classified and/or Reference Waters

COMMENT #9: MCE—All waters of the state must be classified and designated for Protection of Aquatic Life and WBCR until such uses are demonstrated to be unattainable by a valid use attainability analysis. This comment provided a statutory analysis of the Clean Water Act, a summary of past discussions with the department on this topic, and information documenting the existence of uses within unclassified waters.

RESPONSE: The department is currently discussing the expansion of classifications to all waters of the state. An ongoing workgroup of stakeholders is assisting the department in developing recommended revisions to the standards regarding this issue. The department encourages anyone interested in this issue to remain in those discussions so that the department can finalize an appropriate recommendation during the next triennial review of the water quality standards due to be effective in 2012. No changes in the proposed revisions were made in response to this comment.

Table H—Changes to the Designation of Whole Body Contact Recreation and Secondary Contact Recreation as a Result of Use Attainability Analyses

COMMENT #10: EPA—EPA provides two (2) listings of waters; the first (Table 2) shows waters for which the department proposes to remove whole body contact recreation (WBCR) use designations, and the second (Table 3) shows waters for which the department proposes to designate a use less stringent than the use recommended by EPA after their analysis of a proposed rule in 2005.

RESPONSE: The department appreciates EPA's review and comments regarding the proposed recreational designated use changes proposed in the draft rule amendment. No changes in the proposed revisions were made in response to this comment.

COMMENT #11: EPA—The department did not consider the *average* depth data from the 2005 and 2006 use attainability analyses. EPA suggests three (3) reasons why *not* using these data may be justifiable; 1) the department instead used data gathered through a more scientifically defensible method, 2) the 2005 and 2006 data may be subject to variable methods of data collection because of the lack of standard methods to guide individual surveyors, and 3) the average depth data is not directly comparable to the revised median depth criterion.

RESPONSE: The department appreciates and agrees with EPA's assessment that average depth data from previous Use Attainability Analyses (UAA) may not be representative of the conditions and, therefore, are not reliable. Consequently, these older data should not be used to formulate recommendations for designated use changes. No changes in the proposed revisions were made in response to this comment.

COMMENT #12: EPA—The department did not consider the maximum depth data gathered during the 2005 and 2006 UAAs. EPA encourages the department to consider these data and to revise the proposed rule accordingly. EPA provides a list (Table 4) of waters in which the 2005 and 2006 data show maximum depths being met and where the proposed rule does not propose a WBCR use.

RESPONSE AND EXPLANATION OF CHANGE: Lack of standard methods for data collection, uncertainty of the methods used, and hydrologic conditions occurring at the time of the 2005 and 2006 UAAs were deciding factors why maximum depth data from these UAAs were not considered. However, upon receiving EPA's comments, the department revisited the 2005 and 2006 UAA data to

determine if changes were appropriate for waters contained in Table 4. If the department was able to verify the method used to collect the maximum depth measurement (i.e. measured, not visual observation) and the data were collected during appropriate conditions (i.e. during base flow and not in a location containing a hydrologic temporal anomaly), the department’s recommendations were modified accordingly.

As a result of the department’s review of the 2005 and 2006 UAAs for waters listed in Table 4, the following were determined to have depths sufficient to attain the maximum depth criterion required for WBCR (1.0 meter):

Water Body ID	Water Body Name	Class	County
3147	Blue Ditch	C	Scott
0993	Blythes Creek	P	Moniteau & Miller
1301	Bones Branch	C	Bates
0859	Brushy Creek	P	Pettis
0320	Dicks Creek	C	Platte
3094	Ditch #8	C	New Madrid & Stoddard
2980	Lick Creek Ditch	C	Stoddard
1709	Maline Creek	C	St. Louis City & St. Louis
1010	North Fork Grindstone Creek	C	Boone
1648	Quick Creek	C	Montgomery
0860	Sewer Branch	C	Pettis
1687	Trib. to Busch Creek	C	Franklin
2985	Turkey Creek	C	Stoddard

Water body segments determined not to attain the maximum depth criterion for WBCR, and supporting rationale, are as follows:

Birkhead Branch (Water Body ID: 0034): Depth measurements collected in the 2005 UAA appear to be estimated (half or whole foot increments). In addition, no photos were available of the pool where the maximum depth measurement was acquired. Therefore, the department determined that overall depth was not sufficient to warrant the WBCR designation. The department believes the structured, scientific recreational UAA conducted in May 2007 to be representative of baseflow conditions in Birkhead Branch and supports the recommendation to remove WBCR.

Callahan Creek (Water Body ID: 1028): Photographs submitted with the 2006 UAA showed muddy water, flattened water willow in the channel, and mud on still-standing water willow, indicating that the water level in the creek had recently been up and may not yet have returned to base flow levels. Rainfall data from the week preceding the UAA documented 1.91 inches of rainfall in the area. In addition, photos also show downed trees and brush jams in the creek which may or may not have resulted in measurements reflecting existing hydrologic temporal anomalies, which should be avoided. As a result, the 2006 depth results were discounted. The department believes the structured, scientific UAAs conducted in 2007 are representative of conditions in Callahan Creek and support the recommendation to remove WBCR.

Coon Creek (Water Body ID: 0187): Both the 2006 and 2007 UAAs for Coon Creek had substantial amounts of precipitation within the watershed—three and nine-tenths inches (3.9") in five (5) days and three and one-tenths inches (3.1") in six (6) days, respectively. Photographs submitted with these UAAs seem to indicate Coon Creek was not at baseflow conditions when the surveys were conducted. Because the department did not believe the data were representative of baseflow conditions, WBCR was not recommended to be

restored to this water body. A follow-up UAA was subsequently conducted for this segment to collect data during baseflow conditions. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to the new UAA will be reflected in the state’s 2012 triennial review of the water quality standards.

COMMENT #13: EPA—EPA encourages the department to propose Secondary Contact Recreation (SCR) where the waters meet the maximum depth criterion (0.5 meter) for determining attainability of this use.

RESPONSE: The department agrees that the current UAA protocol specifies SCR is attainable where the depth of 0.5 meter exists during baseflow conditions. However, applying that use designation based strictly on depth would pose the following issues:

1) The secondary contact use would apply only where UAAs have been conducted exacerbating an inconsistency in SCR use designations favoring the designations only where UAAs are performed.

2) The department is exploring how to address recreation use attainability on unclassified waters. Changing the policy on use designation now may require the department to later “back track” on a significant number of decisions involving use designations on streams.

3) The decision to apply SCR uses now in response to comments does not allow for public participation on that decision. Rather than making a decision now, the department will continue with the policy of designating SCR uses where the use is existing, and evaluate options for expanding the use designations with the commission and stakeholders during the next triennial review of the water quality standards which is due for completion in 2012. No changes in the proposed revisions were made in response to this comment.

COMMENT #14: EPA—The drought status should be provided for all waters listed in Tables 2 and 3 (see Comment #10).

RESPONSE: The department has reviewed the water body segments listed in Tables 2 and 3 and herein presents drought status for those waters where the information has not already been included in the UAA. The recreational UAAs for these water body segments listed the drought status at the time of the survey as “Unknown.” The information below was obtained from the U.S. Drought Monitor archives available online at <http://www.drought.unl.edu/dm/archive.html>. The department hopes this additional information completes the administrative record for these waters. No changes in the proposed revisions were made in response to this comment.

Water Body ID	Water Body Name	Class	Drought Conditions	UAA Date	Drought Map Date
0167	Brushy Creek	C	No drought	5/7/2007	5/8/2007
0113	North Fork Salt River	C	No drought	5/21/2007	5/22/2007
0034	Birkhead Branch	C	No drought	5/7/2007	5/8/2007
1028	Callahan Creek	C	D0 – abnormally dry	10/30/2007	10/30/2007
0187	Coon Creek	C	No drought	5/8/2007	5/8/2007
0083	North River	C	No drought	5/18/2007	5/22/2007
1648	Quick Creek	C	D1 – moderate	10/29/2007	10/30/2007

COMMENT #15: EPA—EPA provides a list of waters (Table 5) for which the presumption of 101(a)(2) uses have not been rebutted and recommends that the department propose designation of the 101(a)(2) uses until a satisfactory rebuttal is made.

RESPONSE AND EXPLANATION OF CHANGE: The department has reviewed the water body segments listed in Table 5 and herein presents information pertaining to those waters.

Lick Creek Ditch (Water Body ID: 2980): Lick Creek Ditch was also

listed in Table 4 of EPA's comments as a water body that met the maximum depth criterion in the 2005 and/or 2006 field survey. After review of the 2005 and 2006 UAA data, department staff determined this water body attained depth sufficient to meet the maximum depth criterion required for WBCR (1.0 meter). Therefore, the WBCR designated use will be restored. A follow-up recreational UAA has been conducted for this segment. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to the new UAA will be reflected in the state's 2012 triennial review of the water quality standards.

Maline Creek (Water Body ID: 1709): Maline Creek was also listed in Table 4 of EPA's comments as a water body that met the maximum depth criterion in the 2005 and/or 2006 field survey. After review of the 2005 and 2006 UAA data, department staff determined this water body attained depths sufficient to meet the maximum depth criterion required for WBCR (1.0 meter). However, due to evidence of hydrologic modification of the water body, the maximum depth criterion was not met over the entire segment length. The department is therefore proposing to sub segment Maline Creek at the low water dam referenced in MSD's Comment #19 below. Maline Creek upstream of the low water dam will be designated for WBCR and SCR, while downstream of the low water dam Maline Creek will only be designated for SCR.

Pleasant Valley Creek (Water Body ID: 2058): Pleasant Valley Creek was also listed in Table 4 of EPA's comments as a water body that met the maximum depth criterion in the 2005 and/or 2006 field survey. After review of the 2005 and 2006 UAA data, department staff determined this water body attained depth sufficient to meet the maximum depth criterion required for WBCR (1.0 meter). Therefore, the WBCR designated use will be restored. A follow-up recreational UAA has been conducted for this segment. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to the new UAA will be reflected in the state's 2012 triennial review of the water quality standards.

Rattlesnake Creek (Water Body ID: 0520): Because the department has not presented information sufficient to rebut the presumption of WBCR for this water body, the WBCR designation will be retained. A follow-up recreational UAA has been conducted for this segment. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to the new UAA will be reflected in the state's 2012 triennial review of the water quality standards.

Sewer Branch (Water Body ID: 0860): Sewer Branch was also listed in Table 4 of EPA's comments as a water body that met the maximum depth criterion in the 2005 and/or 2006 field survey. After review of the 2005 and 2006 UAA data, department staff determined this water body attained depth sufficient to meet the maximum depth criterion required for WBCR (1.0 meter). Therefore, the WBCR designated use will be restored.

COMMENT #16: EPA—EPA provides a list of waters (Table 6) for which clarification is needed to ensure that an adequate UAA was completed. The response below identifies the waters for which clarification was requested.

RESPONSE AND EXPLANATION OF CHANGE: The department has reviewed the water body segments listed in Table 6 and herein presents information pertaining to those waters.

Brushy Creek (Water Body ID: 0167): All sites are located on the upper portion of the segment above the confluence with Reid Creek due to access restrictions on the lower segment. At the time of the review committee recommendation, staff believed the survey sites were representative of the entire segment. However, additional UAAs have been conducted on waters of similar size and geology in Pike

and Lincoln counties that have depth sufficient to attain WBCR. After reviewing these data, department staff no longer believe the sites are representative of the entire segment. Because the department has not presented information sufficient to rebut the presumption of WBCR for this water body, the WBCR designation will be retained.

Dudley Main Ditch (Water Body ID: 2978): All sites are located on the upper portion of the five-tenths (0.5) mile segment due to access restrictions on the lower segment. Due to the uniform geometry and morphology of southeast Missouri drainage ditches, staff believe the sites collected during the May 2007 UAA are representative of the water body segment as a whole. Additionally, due to the use of drainage ditches as the primary hydrologic system in the area, it is highly unlikely that the unnamed tributary contributes sufficient discharge during baseflow conditions to elevate Dudley Main Ditch to depths sufficient to attain the WBCR criteria. Due to these reasons, the department is recommending the WBCR designated use be removed.

North Fork Salt River (Water Body ID: 0113): Department staff have revisited the May 2007 UAA and can confirm that Site 6, Cross Sections 2 and 3, have depths greater than one (1) meter. These data indicate North Fork Salt River has sufficient depth to attain the WBCR designated use. Therefore, the department is recommending the WBCR designated use be retained.

Sweet Spring Creek (Water Body ID: 0685): Department staff have revisited the October 2007 UAA and accompanying photographs. Upon closer examination, the photographs appear to substantiate the water body is at or near baseflow conditions at the time of the survey. Therefore, the pool at Site 7, Cross Section 9, has sufficient depth to attain the WBCR designated use. Therefore, the department is recommending the WBCR designated use be retained. Further examination of the UAA also revealed the comment concerning secondary contact activities at the creek (i.e. rock collecting). Therefore, the department is recommending the SCR designated use be assigned.

Tributary to North Moreau Creek (Water Body ID: 0950): All sites are located on the upper portion of the segment above the confluence with the unnamed tributary due to access restrictions on the lower segment. It is highly unlikely the unnamed tributary contributes sufficient discharge during baseflow conditions to elevate the Tributary to North Moreau Creek to depths sufficient to attain the WBCR criteria. Analysis of UAA data from nearby classified water body segments with more extensive drainage networks appear to support this assertion. Due to these reasons, the department is recommending the WBCR designated use be removed.

Tributary to Perche Creek (Water Body ID: 1006): Department staff have revisited the May 2007 UAA and can confirm Site 3 is at the Katy Trail access point of the Tributary to Perche Creek. Due to lack of sufficient depth at this location to attain WBCR and no public comments indicating an existing use, the department is recommending the WBCR designated use be removed. However, due to opportunities for SCR at this location, the department is recommending the SCR designated use be assigned.

Goose Creek (Water Body ID: 2201): This water body segment was incorrectly listed as Wolf Creek (Water Body ID: 2228) in EPA's comment letter. The downstream site on Goose Creek (Site 3) is upstream of the Jackson Wastewater Treatment Plant's main outfall (Permit MO-0022853, outfall #001). Stream morphology data are not available for locations downstream of outfall #001. Even so, it is not anticipated discharge from Jackson's Wastewater Treatment Plant (actual flow equals 3.1 cubic feet per second) will elevate Goose Creek to depths sufficient to attain the WBCR criteria during baseflow conditions. Due to these reasons, the department is recommending the WBCR designated use be removed.

COMMENT #17: MCE—River des Peres supports recreation, including Whole Body Contact Recreation (WBCR), throughout its entire classified length. Accordingly, the WBCR use should be designated on the entire classified length.

RESPONSE: For the current rulemaking, the department revisited the 2005 UAA submitted by the St. Louis Metropolitan Sewer District (MSD) for River des Peres and any comments received pertaining to recreational uses on River des Peres from its mouth to the confluence with Deer Creek in Land Survey 2037, Township 45 North, Range 6 East. This stretch of River des Peres previously encompassed two (2) classified segments (Water Body ID: 1710—Class P and Water Body ID: 1711—Class C) and an unclassified segment. Due to reclassification of the unclassified and Class C segments of River des Peres as Class P, this stretch of River des Peres is now Class P for the entire length and composed of two (2) water body segments as found in the proposed rule and the table below:

Water Body ID	Water Body Name	From	To	Length (miles)
1710	River des Peres	Mouth	Sur 1359,44N,6E	2.6
3827 (new)	River des Peres	Sur 1359,44N,6E	Sur 2037,45N,6E	3.7

Regarding the lower classified segment of River des Peres (Water Body ID: 1710), the department agrees with EPA’s assessment contained in its October 31, 2006, letter that “none of the data show depths sufficient for WBCR” and that “no new or revised water quality standards are needed for this water body segment.” The 2005 MSD UAA contains equidistant sites along this segment of River des Peres from its mouth to Survey 1359, Township 44 North, Range 6 East and was conducted during baseflow conditions. In its review of the transect data from this segment, the department determined the sites collected are representative of the water body segment as a whole due to the uniform geometry and morphology of the engineered channel. Because the 2005 MSD UAA encompassed a structured, scientific assessment of the lower classified segment of River des Peres, the department concluded the UAA contains sufficient quantitative and scientifically-based information to demonstrate that the lower classified segment of River des Peres (Water Body ID: 1710) does not contain depth sufficient to attain WBCR during baseflow conditions.

The department also reviewed all comments pertaining to recreational uses on the lower classified segment of River des Peres (Water Body ID: 1710). In addition to numerous comments indicating SCR (i.e., boating, fishing) as an existing use, two (2) comments were received by the department in 2005 indicating WBCR as a potential existing use along this segment. The department contacted the individuals that submitted the 2005 WBCR comments to determine the location and veracity of the reports. One (1) individual clarified that any WBCR they had observed took place at least thirty to forty (30–40) years ago and that they have not seen any WBCR activity since. The individual further commented that they would not characterize River des Peres as a recreational use water body. Uncertainty of whether the WBCR occurred after November 28, 1975, led the department to not consider this report of WBCR. Follow-up conversations with the other individuals revealed that within the past ten to fifteen (10–15) years, they observed people jumping off a railroad trestle and swimming in River des Peres “whenever the water comes up” with a frequency of “a couple of times” and “every once in awhile.” The department determined this infrequent, historical WBCR use during high-flow conditions does not represent an existing WBCR use that has been attained. Therefore, due to the above reviews, the department affirms its recommendation already in rule that WBCR is not an existing or attainable use on the lower classified segment of River des Peres (Water Body ID: 1710). The department also affirms its recommendation already in rule that SCR is an existing use on the lower classified segment of River des Peres (Water Body ID: 1710).

Regarding the upper classified segment of River des Peres (Water Body ID: 3827), the 2005 MSD UAA contains equidistant sites along the majority of this segment from Survey 1359, Township 44 North, Range 6 East to Survey 2037, Township 45 North, Range 6 East. As with the lower classified segment of River des Peres, the department determined the sites collected are representative of the water body segment as a whole due to the uniform geometry and morphology of the engineered channel. The department concluded the UAA contains sufficient quantitative and scientifically-based information to demonstrate that the upper classified segment of River des Peres (Water Body ID: 3827) does not contain depth sufficient to attain WBCR during baseflow conditions.

The department also reviewed all comments pertaining to recreational uses on the upper classified segment of River des Peres (Water Body ID: 3827). In addition to numerous comments indicating SCR (i.e., boating, fishing) as an existing use, one (1) comment was received by the department in 2005 indicating WBCR as a potential existing use along this segment. The department made reasonable efforts to contact the individual that reported WBCR at the confluence of Deer Creek and River des Peres but was unable to confirm the location or veracity of the report at the time of this response. More importantly, the department was not able to confirm the hydrologic conditions under which the reported WBCR occurred. All other comments pertaining to WBCR on River des Peres indicated infrequent, limited use during high-flow conditions. Given the depth measurements that occur during baseflow conditions, significant flows would be needed to elevate upper River des Peres to depths sufficient to attain the WBCR use. Therefore, in the absence of confirmation of the location, frequency, and flow conditions for this comment, the department was not able to use the comment to establish an existing use. Due to the above review, the department affirms its recommendation in the proposed rule that WBCR is not an existing or attainable use on the upper classified segment of River des Peres (Water Body ID: 3827). The department also affirms its recommendation in the proposed rule that SCR is an existing use on the upper classified segment of River des Peres (Water Body ID: 3827). No changes in the proposed revisions were made in response to this comment.

COMMENT #18: MSD—MSD supports the designation of SCR to the lower River des Peres and provides a summary of the information that documents the inability of River des Peres to attain a higher recreation use.

RESPONSE: Based on comments received, the department agrees SCR is an existing use on the lower classified portion of River des Peres (Water Body ID: 1710). Accordingly, the department is recommending the SCR designated use remain designated to this segment. The department also received comments that indicate SCR is an existing use of the upper classified portion of River des Peres (Water Body ID: 3827). Therefore, the department is recommending the SCR designated use remain designated to this segment. No changes in the proposed revisions were made in response to this comment.

COMMENT #19: MSD—Maline Creek should be re-segmented to reflect the differences of attainable recreational uses created by a low water dam located approximately one-half (½) mile upstream from the mouth. Upstream of the low-water dam is deep enough for WBCR and this potential use should be added to the proposed water quality standards. Downstream of the low-water dam is not deep enough for WBCR and should retain the proposed use of SCR.

RESPONSE AND EXPLANATION OF CHANGE: After review of the 2005 and 2006 UAA data, the department agrees the low water dam located on Maline Creek hydrologically modifies the water body in such a way that depths are sufficient to attain WBCR above the dam but not below it. The department is therefore proposing to sub segment Maline Creek at the low water dam referenced in MSD’s comment above. Maline Creek upstream of the low water dam will

be designated for WBCR-B and SCR, while downstream of the low water dam Maline Creek will only be designated for SCR.

COMMENT #20: Grace Hill Settlement House—The UAA performed on Maline Creek fails to scientifically rebut the presumption that WBCR is attainable for the creek. Specifically—

- Site four meets the depth criterion for WBCR.
- Site three likely meets the depth criterion.
- The UAA was conducted during an unusually dry period.
- EPA's measurements indicate depths sufficient for WBCR.
- Maline Creek does not meet any of the six (6) factors allowable under 131.10(g).
- EPA and the department have already concluded that the UAA was insufficient to remove the WBCR use.
- The UAA failed to follow the 2004 UAA protocol.
- The protocols have been updated since the UAA was performed, i.e., the new (2007) protocol makes the UAA performed in 2005 obsolete.

RESPONSE AND EXPLANATION OF CHANGE: Due to comments received from multiple sources, the department revisited the 2005 and 2006 UAAs for Maline Creek. After review of the 2005 and 2006 UAA data, the department determined the water body attained depths sufficient to meet the maximum depth criterion required for WBCR (1.0 meter). However, due to evidence of hydrologic modification of the water body, the maximum depth criterion was not met over the entire segment length. The department is therefore proposing to sub segment Maline Creek at the low water dam referenced in MSD's Comment #19 above. Maline Creek upstream of the low water dam will be designated for WBCR-B and SCR, while downstream of the low water dam Maline Creek will only be designated for SCR.

COMMENT #21: EPA—EPA recommends the department clearly indicate how evidence of or potential for recreation by children was considered in attainment decisions.

RESPONSE: The department acknowledges the Recreational UAA protocol does not clearly indicate how recreation by children will be considered in making use attainment decisions. In reviewing Recreational UAA data and public comments, evidence of actual or potential recreation by children was not discerned differently than for adults. That is, regardless of the age of the person, actual or potential existing uses for WBCR and SCR were recommended to be designated as observed. In short, existing recreational uses were recommended for designation regardless of the person recreating or the measured depth of the water body.

However, the department recognizes that children tend to engage in activities that allow for total immersion and exposure of sensitive body organs at a higher frequency than older populations. The department intends to investigate those waters where recreation by children has been documented and determine whether WBCR, if not already designated, is a more appropriate recreational use. This investigation will include all waters with existing UAAs and those where recreation by children may be the most prevalent and frequent during the recreational season (e.g., urban and suburban areas).

The department believes the current bacteria criteria found in rule are sufficiently protective of all populations that participate in WBCR. However, the department will review and incorporate any new criteria or information developed by the EPA under Section 304(a) of the Clean Water Act to protect recreational uses by all users, including children. Any new criteria developed, as well as language clarifying how children are protected during recreational activities, will be investigated for inclusion in the state's 2012 triennial review of the water quality standards.

COMMENT #22: MCE—MCE supports the proposed classification of Black Creek, Deer Creek, and River des Peres as Class P.

RESPONSE: The department appreciates MCE's support of changes to the water quality standards to classify Black Creek, Deer Creek, and the upper River des Peres as Class P waters. No changes in the proposed revisions were made in response to this comment.

COMMENT #23: MCE—MCE supports the proposed designation of WBCR-B use to Black Creek and Deer Creek. The WBCR-B designation should be extended to the River des Peres as the UAA conducted on this stream is not adequate to support the removal of the WBCR-B use designation. The UAA was inadequate in that it did not survey the majority of the unclassified portion of River des Peres, the survey points were not evenly spaced within the effected segment, and the UAA did not follow the latest (2007) protocol. Furthermore, the department concluded that the UAA was inconclusive in its review of the UAA and the decision to accept the UAA was not available for public review. In addition, EPA found that the UAA did not support a lack of recreation uses.

RESPONSE: The department appreciates MCE's support of changes to the water quality standards to designate the default WBCR use to Black Creek (Water Body ID: 3825) and Deer Creek (Water Body ID: 3826). Recreational UAAs have been conducted for both of these water body segments. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to the new UAAs will be reflected in the state's 2012 triennial review of the water quality standards.

Regarding designation of the default WBCR use to upper River des Peres (Water Body ID: 3827), the department concluded the 2005 UAA submitted by MSD contained sufficient quantitative and scientifically-based information to demonstrate the upper classified segment of River des Peres does not contain depth sufficient to attain WBCR during baseflow conditions. However, due to numerous comments indicating SCR along this segment, the department affirmed its recommendation in the proposed rule that SCR is an existing use on the upper classified segment of River des Peres (WBID: 3827). For additional details and information, please reference Comment #17 above. No changes in the proposed revisions were made in response to this comment.

COMMENT #24: RDPWC—Deer Creek should be classified with the appropriate recreational and aquatic life uses. This comment provides information (flow and aquatic life data) supporting at least a Class C designation beginning at Creve Coeur and a Class P beginning in Ladue and down to the confluence with River des Peres.

RESPONSE AND EXPLANATION OF CHANGE: The department is proposing Deer Creek (Water Body ID: 3826) be classified as a Class P water body from its confluence with River des Peres to Survey 1930, Township 45 North, Range 6 East. This newly classified segment will receive both the WBCR-B and SCR designated uses. The department appreciates the additional information for Deer Creek above the segment currently proposed for classification. Because there is not sufficient time for department review and public comment during this rulemaking, any changes or modifications due to this new information will be reflected in the state's 2012 triennial review of the water quality standards.

In addition to changes reflected in the comments above, the department will revise recreational use designations for Raccoon Creek (Water Body ID: 0586) and Wolf Creek (Water Body ID: 2228) due to individual public comments received during public notice of the draft rule. A summary of all department recommendations following public comment are contained in the table below.

Table H—Changes to the Designation of Whole Body and Secondary Contact Recreation as a Result of Stream Classification of Black Creek, Deer Creek, and River Des Peres

WBID	Water Body Name	Class	County	Recommendation
3147	Blue Ditch	C	Scott	Add WBCR
0993	Blythes Creek	P	Moniteau & Miller	Add WBCR
1301	Bones Branch	C	Bates	Add WBCR
0167	Brushy Creek	C	Lincoln	Retain WBCR
0859	Brushy Creek	P	Pettis	Add WBCR
0320	Dicks Creek	C	Platte	Add WBCR
3094	Ditch #8	C	New Madrid & Stoddard	Add WBCR
2978	Dudley Main Ditch	C	Stoddard	Remove WBCR
2980	Lick Creek Ditch	C	Stoddard	Add WBCR
1709	Maline Creek	C	St. Louis City & St. Louis	Add WBCR/SCR, Add SCR
1010	N. Fk Grindstone Cr.	C	Boone	Add WBCR
0113	N. Fk. Salt River	C	Adair	Retain WBCR
2058	Pleasant Valley Cr.	C	Crawford	Add WBCR
1648	Quick Creek	C	Montgomery	Add WBCR
0586	Raccoon Creek	C	Grundy	Add WBCR, Add SCR
0520	Rattlesnake Creek	C	Livingston	Retain WBCR
0860	Sewer Branch	C	Pettis	Add WBCR
0685	Sweet Spring Creek	C	Randolph	Retain WBCR, Add SCR
1687	Trib. to Busch Creek	C	Franklin	Add WBCR
0950	Trib. to N. Moreau Cr.	C	Moniteau	Remove WBCR
1006	Trib. to Perche Creek	C	Boone	Remove WBCR, Add SCR
2985	Turkey Creek	C	Stoddard	Add WBCR
2228	Wolf Creek	C	Cape Girardeau	Retain WBCR, Add SCR

New Table K—Addition of Site-Specific Criteria for Dissolved Oxygen on East Fork Locust Creek and Little East Fork Locust Creek in Sullivan County, and West Fork Sni-a-Bar and Sni-a-Bar Creeks in Jackson County

COMMENT #25: City of Blue Springs—The City of Blue Springs revised their petition for site-specific dissolved oxygen (DO) criteria and requested the following changes in the proposed rule:

- Revise the proposed daily minimum from 3.0 mg/L to 4.0 mg/L.
- Establish an effective period for the alternative criteria of five (5) years from the effective date of the rule.
- Revise the start of the effective “summer” period of the proposed criteria from July 1 to June 1.
- Provide clarification in the proposed rule that the alternative criteria are underpinned by predictions from a verified water quality model during design flow conditions.
- Revise the effective location for the criteria to an approximate five (5)-mile segment beginning at the point the City of Blue Spring’s wastewater effluent enters Sni-a-Bar Creek down to the creek’s confluence with Horseshoe Creek.

RESPONSE AND EXPLANATION OF CHANGE: The department accepts the suggested revisions to the proposed criteria and is showing these changes in the order of rulemaking. In addition, although not specifically mentioned in the comment, the department recommends deleting the proposed site-specific criteria on West Fork Sni-a-Bar Creek, as this segment is above the point where the discharge from the City of Blue Springs Wastewater Treatment Plant enters Sni-a-Bar Creek.

COMMENT #26: CLEAN—The proposed site-specific criteria do not reflect best attainable conditions in East Fork Locust Creek. Specifically—

- The reference streams do not represent the least impacted waters in the region with respect to impacts from row-crop agriculture.
- The reference streams do not represent the least impacted waters in the region with respect to livestock impacts.
- Because anthropogenic impacts to the reference streams can be reduced, the criteria do not define best attainable conditions.

RESPONSE: The department understands the potential for organic constituents in runoff from pastures and cropland to affect the DO level within streams. Reference streams that receive runoff from these land use practices may undergo physio-chemical changes. However, it is not required that numeric water quality criteria be designed to prohibit these effects if these physio-chemical changes would not adversely affect the existing and attainable uses within the stream.

The establishment of numeric criteria does not usually target the achievement of conditions completely unaffected anthropogenically. For example, the criteria for the protection of recreational uses do not prohibit the existence of pathogens of human origin. Rather, the use-based criteria is written to limit (i.e., not prohibit) the pollutant amounts. And the limitation is generally quantified as that threshold at which the use attainment can be assured. Therefore, the target is not to eliminate any or all pollutants, but to minimize the pollutants to ensure the achievement of the use. What is critical in this discussion is whether or not substantial and important improvements in the aquatic life abundance and diversity would be seen if the criteria were more stringent. Or, put in broader terms used by the Clean Water Act (CWA)—would the “biological integrity” of the stream be lost if the proposed criteria were implemented?

The comment may be trying to simultaneously address several different elements of the water quality standards. While the overall goal of the CWA is to eliminate pollution, the specific objective of the numeric criteria in Table A is to protect beneficial uses. Eliminating pollution is achieved through several other elements of the standards, such as the antidegradation policy (e.g., the required search for non-discharging alternatives) and the technology-based standards on effluent quality (e.g., the “no discharge” Effluent Limitation Guidelines for Concentrated Animal Feeding Operations). Further protection can also be gained through special use designations (such as designating outstanding resource waters or recognizing special scientific or aesthetic values) and setting the criteria accordingly to ensure the highest attainable level of water quality. Before implementing these other elements of the standards, one should consider whether or not East Fork Locust Creek is a good candidate for these higher levels of use and, therefore, protection. Another approach, although not practicable nor envisioned by the CWA, is to designate all waters of the state as outstanding state resource waters and require all dischargers to perform UAAs before being allowed to lower the water quality.

The state’s designated “biocriteria reference streams” throughout the state were selected using the same process used by the petitioner for East Fork Locust Creek. It would stand to reason then, that biological reference streams, in which aquatic life uses are fully attained, are proof that the selection process is successful in finding streams with suitable conditions to support a full use. The same rationale was used by EPA in their development of nutrient criteria benchmarks through reference stream data. Consequently, the department remains confident that the data are representative of conditions suitable for full aquatic life normally found in small intermittent streams in Missouri’s northern prairie region. No changes in the proposed revisions were made in response to this comment.

The department is open to further discussion on how to ensure the most effective DO criteria for protecting the beneficial uses in East Fork Locust Creek. Should these discussions occur, the department suggests that the following points be explored:

- 1) At what point along the “biological condition gradient” does

East Fork Locust Creek lie? This question would help describe the conditions attainable for the streams of the type and location represented by East Fork Locust Creek.

2) What reasons exist to push that level further up the Biological Condition Gradient? This question would help define any influential socio-economic factors in determining the water quality goals for East Fork Locust Creek.

3) In what way could the numeric criteria be improved to ensure effective management of water quality and full attainment of the designated use? This question would help ensure that the criteria chosen adequately capture the appropriate *magnitude, duration, and frequency* of the diurnal nature of DO.

COMMENT #27: MDC—The proposed criteria for East Fork Locust Creek and Little East Fork Locust Creek are not protective of aquatic life. The selection of reference streams from which data were used to derive the criteria are significantly influenced by anthropogenic activities, specifically row cropping and pasture. Therefore, these streams do not reflect a natural background condition which is a requirement for reference stream selection.

RESPONSE: This comment is very similar to the previous comment. Therefore, the department defers the reader to its response to Comment #25. In addition, the department offers the following regarding the selection and use of reference streams.

Guidance for reference stream selection is presented in a publication by Regulatory Technical Advisory Group (RTAG), which is supported by EPA. RTAG's guidance was referenced and was closely followed in the petition for site-specific criteria on East Fork Locust Creek/Little East Fork Locust Creek.

The selection of reference streams representing *natural background conditions* is essential for the development of criteria that are aimed at protecting water quality *at or near* the pollutant levels seen in natural background conditions. This concept is specifically mentioned in an EPA memorandum dated November 5, 1997, signed by Tudor T. Davis, Director, Office of Science and Technology, where it connects the use of reference streams for "setting criteria *equal to* natural background" (emphasis added).

The petition for site-specific DO criteria explores both concepts (i.e., natural conditions and highest attainable uses) in its approach to establishing criteria. The department accepts the petition with the understanding that the petitioner is not trying to preserve natural conditions but rather trying to establish a criteria protective of the aquatic life use. In waters not subject to Tier 3 protection of the anti-degradation policy (i.e., no lowering of water quality allowed), some pollutant loading or water quality degradation is accepted so long as the degradation does not impair the beneficial uses of the stream. Therefore, the goal of the petition is accepted as not an effort to create criteria protective of natural background, but instead, criteria protective of the warm-water aquatic life use in East Fork Locust Creek/Little East Fork Locust Creek.

The petition could have further explored how the anthropogenic activities within the reference stream watersheds affect the DO levels in those streams and could have further explored the possible effects of a reduction in DO, if any, on the abundance and diversity of aquatic life in the reference streams. Further demonstration of this type may be illuminating on the cause and effect of oxygen demanding pollutants but is not essential in supporting a confident conclusion that the measured oxygen levels in the reference streams are sufficient to support a full assemblage of warm-water aquatic life. No evidence suggests that the aquatic communities in the selected reference streams are significantly less than what would be expected naturally in intermittent prairie streams. Conversely, significant data exists indicating that the DO regime characterized by the reference streams and the proposed criteria is prevalent in the summer in smaller streams in a prairie region and is not a limiting factor on the abundance and diversity of aquatic life that naturally inhabit these streams. Therefore, it stands to reason that ensuring DO levels at the same level in East Fork Locust Creek/Little East Fork Locust Creek

would be protective of aquatic life in these streams as well. No changes in the proposed revisions were made in response to this comment.

COMMENT #28: MPUA, Farmland Foods, and City of Milan support the proposed site-specific criteria on East Fork Locust Creek.

RESPONSE: The department acknowledges the support for the proposed criteria. No changes in the proposed revisions were made in response to this comment.

COMMENT #29: Herrmann—The statement by the Missouri Department of Conservation that eighteen (18) species of fish inhabit the reference stream for East Fork Locust Creek belies their statement that DO is having a detrimental effect on aquatic life.

RESPONSE: As stated in the two (2) previous responses, the reference stream data indicate that the streams are attaining their designated aquatic life use under DO conditions described by the criteria. In addition to this direct observation, the site-specific DO criteria petition establishes, through a structured scientific analysis, that the selected reference streams are appropriate locations for the collection of DO data and that the data are acceptable for use in deriving site-specific criteria for East Fork Locust Creek. No changes in the proposed revisions were made in response to this comment.

New Tables L, M, and N—Nutrient Criteria for Lakes

COMMENT #30: EPA—EPA supports the proposed tenth percentile reference value for the site-specific criteria in Table L, the site-specific criteria for certain lakes in Table M, and the tributary-specific criteria in Table N for major reservoirs.

RESPONSE: The department appreciates and acknowledges EPA's support for these portions of the criteria. No changes in the proposed revisions were made in response to this comment.

COMMENT #31: EPA—EPA requests that the department explain why the draft criteria values incrementally increased during the stakeholder discussions.

RESPONSE: During the process of developing nutrient criteria, Missouri's stakeholders examined many different approaches. Each change in the approach used to calculate criteria resulted in shifts in the values being generated. These modifications were made in an effort to improve the approach in terms of its scientific soundness. The continual upward movement of the recommended numbers reflects the overall conservative beginnings in the approaches examined.

Modifications that occurred included the separation of the Ozark Border Region from the Plains Region and the decision to use the 10th and 75th percentiles of the range of reference Phosphorus values as opposed to trying to calculate 10th and 75th percentiles from a small sample size (n=7 in the Plains and Border regions). Another modification made during this time was a shift away from trying to back-calculate Nitrogen and Chlorophyll values from target Phosphorus concentrations to the use of ratios based on Phosphorus concentrations.

This accounts specifically for the shift in the reference values for Total Phosphorus. Final reference values for Total Nitrogen and Chlorophyll were then reached following the establishment of their relations to Total Phosphorus. The following presents the chronology of specific decisions affecting the criteria development:

[June 19, 2007] The figures for the Plains Region for this date are actually Total Phosphorus—52, Total Nitrogen—860, Chlorophyll (not Chlorophyll-a)—18. The figures for the Ozark Border Region were mistakenly attributed to the Plains Region in the comment letter. Total Phosphorus was calculated as the 75th percentile of individual reference reservoirs. The Ozark ecoregion was divided into Border and Highlands. Total Nitrogen and Chlorophyll were calculated as response variables in regressions against Total Phosphorus

data for individual reservoirs. These criteria were then determined from Total Phosphorus criteria points on the regression line.

[December 13, 2007] As a result of the above stated correction, the only change for the Plains Region from the previous date listed in the table is a decrease for Total Nitrogen from 860 to 785. This was on account of a recalculation of the regression.

[December 20, 2007] Total Phosphorus was recalculated as 75th percentile of the range of values for reference reservoirs. Total Nitrogen and Chlorophyll were also calculated as 75th percentile of the range of values for reference reservoirs.

[January 17, 2008] Total Nitrogen was calculated as 20:1 ratio to Total Phosphorus. Reference value for Chlorophyll was calculated based on statewide average Chlorophyll to Total Phosphorus ratio of 0.36.

[May 2009] Chlorophyll was recalculated by region based on average Chlorophyll to Total Phosphorus ratio for each region plus 1 standard deviation.

No changes in the proposed revisions were made in response to this comment.

COMMENT #32: EPA—To what percentile of the total population does the Total Phosphorus criteria derived using the 75th percentile of the reference population correlate?

RESPONSE: The correlation between the 25th percentile of population values and the 75th percentile of reference values is dependent on the group of reservoirs that have been monitored and the definition of reference conditions. The reference criteria for the Plains, Ozark Border, and Ozark Highlands correlate to approximately the 65th, 55th, and 79th percentiles, respectively, of the general population. No changes in the proposed revisions were made in response to this comment.

COMMENT #33: EPA—Did the department evaluate the trisection method (mean values from the lowest third of the dataset for each parameter)?

RESPONSE: The trisection method was not evaluated as a substitute for the reference approach when determining an upper horizontal line in the decision matrix. It does not account for reservoirs that have higher than average nutrient concentrations relating to reservoir design (low volume, large watershed, short residence time). Therefore, the trisection method would not be useful in delineating the upper range of normal Phosphorus concentrations in reservoirs with nominal impacts. No changes in the proposed revisions were made in response to this comment.

COMMENT #34: EPA—The paper by Obrecht, D.V., 2008, Rationale for Missouri's Proposed Nutrient Criteria Rule, that was presented with the proposed rule, does not discuss why the 75th percentile was chosen as opposed to the 25th percentile (population) or ecoregion values. The department should provide their rationale for selecting the 75th percentile approach over the others.

RESPONSE: The Missouri approach uses the reference value (75th percentile line) as a way of gauging the upper portion of the range of Phosphorus concentrations that could be expected in reservoirs that have nominal human activity within their watersheds. All of the reservoirs from which data were collected to determine a reference value meet the criteria of reference waters. Accordingly, all are suitable locations to compile data representing conditions fully supporting the beneficial uses for which the criteria are designed to protect. Understanding the lack of parallelism between the 25th percentile of the population data and the 75th percentile of the reference data is not critical to developing criteria protective of warm-water aquatic life. Seeking a lower percentile may only be justified when identifying sensitive uses requiring water quality at the highest level. For the reservoirs supporting sensitive uses, the department would likely recommend use of the 10th percentile of the regional reference data.

Furthermore, selecting any percentile of the population data would appear to be more arbitrary and difficult to defend because of the

variability in the data across the entire population of reservoirs. The same could be said for the population approach at the ecoregional level, especially since those figures would be based on relatively small data sets. These attributes of the population data indicate a lack of comparability and representativeness that compromises an approach using a percentile of the data. No changes in the proposed revisions were made in response to this comment.

COMMENT #35: EPA—In order to fully evaluate the scientific validity of the prediction equation approach, the department should explore the use of predictive equations that uses the same dataset (75th percentile) that was used in deriving the reference values (as opposed to the total dataset).

RESPONSE: The department compared the results using different data sets. The Total Phosphorus prediction model that is based solely on reference reservoirs in the Plains is fairly similar to those models generated using all available regional reservoir data (see Figure 1). The use of only reference reservoir data to generate the model for both Ozark regions results in a lower y-intercept and a steeper slope compared to the model based on all data (Figure 2). The similarity of the reference and population models for the Plains Region reflects the greater influence hydrology has on Phosphorus concentrations in these reservoirs. No changes in the proposed revisions were made in response to this comment.