

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

responsible for the administrative operations of the commission and perform such other duties as may be delegated or assigned to him/her by law or by rule of the commission. The [administrative secretary] executive director shall employ staff and retain such contract services as s/he deems necessary, within the limits authorized by appropriations of the general assembly.

AUTHORITY: section 105.955.14(7), RSMo [Cum. Supp. 1996] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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 or opposition to this proposed amendment with Missouri Ethics Commission, Robert Connor, Executive Director, PO Box 1370, Jefferson City, MO 65102, or by facsimile to 573-526-4506. 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 1—OFFICE OF ADMINISTRATION Division 50—Missouri Ethics Commission Chapter 2—Hearing Procedures for Contested Cases

PROPOSED AMENDMENT

1 CSR 50-2.015 Initiation of Contested Case. The commission is amending subsections (1)(A) and (B), sections (2) and (3), and adding a new section (5).

PURPOSE: This amendment sets forth the manner in which a contested case is initiated to conform with existing law and practice.

(1) A contested case initiated pursuant to subsection 3 of section 105.961, RSMo, shall be commenced after the commission has received and reviewed a report from a special investigator made pursuant to subsection 1 of section 105.959, RSMo, or an audit conducted pursuant to section 105.959, RSMo, and the commission has concluded, based upon such report or upon such audit, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that a criminal prosecution is not appropriate. Upon such conclusion—

(A) [The commission shall request the attorney general to prepare a] A complaint, directed to the object(s) of the special investigator's report or audit, shall be prepared as provided by section 536.063, RSMo;

(B) Such complaint shall be filed with the commission [by the attorney general] and shall affirmatively request relief within the jurisdiction of the commission should the commission determine, after conducting a hearing, that probable cause exists to find the person named in violation of the provisions of law set forth in the complaint; and

(2) The [administrative secretary] executive director shall issue and serve in the name of the commission, a written notice, together with a copy of the complaint, requiring the person named in the complaint, hereafter referred to as "respondent," to answer the charges at a hearing before the commission, at a time and place as specified in the notice. **Such written notice shall be given at least ten (10)**

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 1—OFFICE OF ADMINISTRATION Division 50—Missouri Ethics Commission Chapter 1—Organization

PROPOSED AMENDMENT

1 CSR 50-1.010 General Organization. The commission is amending section (3) by replacing the words "administrative secretary" with "executive director."

PURPOSE: This amendment conforms the rule to reflect the existing law in Chapter 105 of the Missouri Revised Statutes concerning the organization of Missouri Ethics Commission.

(3) The commission shall appoint an [administrative secretary] executive director who shall serve subject to the supervision of and the pleasure of the commission, but in no event for more than six (6) years. The [administrative secretary] executive director shall be

days before a hearing unless otherwise consented to by the parties.

(3) The commission shall be a party to the action and shall be represented [by the attorney general or his/her designee] as provided in section 105.955.15(4), RSMo.

(5) Any period of time prescribed or allowed by these rules or by other order of the commission, which is not otherwise specifically provided for, shall be computed as provided by the Missouri Rules of Civil Procedure and Chapters 105 and 536, RSMo.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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 or opposition to this proposed amendment with Missouri Ethics Commission, Robert Connor, Executive Director, PO Box 1370, Jefferson City, MO 65102, or by facsimile to 573-526-4506. 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 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.020 Pleadings. The commission is amending section (3) and adding a new section (5).

PURPOSE: This amendment clarifies the form and procedures for filing of pleadings during the contested case hearing process.

(3) Each document shall bear on the first page the caption, descriptive title and number of the matter in which it is filed and shall identify the [part] party on whose behalf it is filed. Each document shall contain on the final page the name, address and telephone number and Missouri bar number of the attorney in active charge of the case, or name, address and telephone number of the party if appearing *pro se*.

(5) A responsive pleading shall be filed within the time limits specified for filing an answer under the Missouri Rules of Civil Procedure, unless the commission grants an extension of time for filing.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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**Title 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.060 Subpoenas and Subpoenas Duces Tecum. The commission is amending section (3).

PURPOSE: This amendment clarifies the procedure for the issuance of subpoenas and subpoenas duces tecum.

(3) Requests for the issuance of subpoenas and subpoenas duces tecum shall be directed to the commission[, or the presiding commissioner appointed for the case].

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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.

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**Title 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.070 Continuances. The commission is amending section (1).

PURPOSE: This amendment conforms the rule to reflect the existing law in Chapter 105 of the Missouri Revised Statutes concerning the organization of Missouri Ethics Commission.

(1) The commission may continue a hearing or prehearing conference upon a showing of good cause. Before a party requests a continuance, the requesting party shall contact the other parties to determine whether they object to the continuance and to determine mutually acceptable dates to which the hearing or conference may be rescheduled and the information shall be included in the party's motion for continuance. When a hearing is continued, the parties shall be notified in writing of the new hearing date in advance of the new hearing date. Any order granting a continuance shall be mailed to the parties by the [administrative secretary] executive director by regular first class mail, postage prepaid.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. (1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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.

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**Title 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.080 Conduct of the Hearing. The commission is amending section (5).

PURPOSE: This amendment describes the conduct of a contested case hearing to conform with existing law and practice before the commission.

(5) No person shall be allowed to be present during the hearing, except for members and personnel of the commission subject to subsection 15 of section 105.961, RSMo, [the attorney general or his/her designee] **the attorney** who shall present evidence in support of the complaint; [the attorney general or his/her designee who is] **any attorney or attorneys acting** as legal counsel to the commission; all respondents and their counsel; a court reporter; and any other with permission of all respondents to the proceeding. Witnesses shall remain outside of the hearing except during the time that s/he offers testimony or evidence.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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 or opposition to this proposed amendment with Missouri Ethics Commission, Robert Connor, Executive Director, PO Box 1370, Jefferson City, MO 65102, or by facsimile to 573-526-4506. 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 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.090 Evidence. The commission is amending subsection (5)(B).

PURPOSE: This amendment conforms the rule to reflect the existing law in Chapter 105 of the Missouri Revised Statutes concerning the organization of Missouri Ethics Commission as it describes the introduction of evidence at a public hearing.

(5) Interpreter.

(B) Upon receipt of the request, the [administrative secretary] **executive director** at the direction of the commission shall arrange for the services of an interpreter and shall notify the parties of the identity of the interpreter. The commission shall compensate the interpreter where necessary.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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 or opposition to this proposed amendment with Missouri Ethics Commission, Robert Connor, Executive Director, PO Box 1370, Jefferson City, MO 65102, or by facsimile to 573-526-4506. 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 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 2—Hearing Procedures for Contested Cases**

PROPOSED AMENDMENT

1 CSR 50-2.150 Certification of Record. The commission is amending this rule by replacing the words “administrative secretary” with “executive director.”

PURPOSE: This amendment stipulates who is authorized to certify commission documents to conform the rule to reflect the existing law in Chapter 105 of the Missouri Revised Statutes concerning the organization of Missouri Ethics Commission as it describes the introduction of evidence at a public hearing.

The chairperson, the [administrative secretary to the commission] **executive director**, or other person as may be designated by the commission is authorized and empowered to **certify and transmit** all documents or records which are part of the files and records of the commission.

AUTHORITY: section 105.955.14(7), RSMo [(Cum. Supp. 1996)] 2000. Original rule filed March 24, 1997, effective Sept. 30, 1997. Amended: Filed Sept. 4, 2007.

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 or opposition to this proposed amendment with Missouri Ethics Commission, Robert Connor, Executive Director, PO Box 1370, Jefferson City, MO 65102, or by facsimile to 573-526-4506. 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 2—DEPARTMENT OF AGRICULTURE
Division 110—Office of the Director
Chapter 2—Missouri Qualified Biodiesel Producer
Incentive Program**

PROPOSED AMENDMENT

2 CSR 110-2.010 Description of General Organization; Definitions; Requirements of Eligibility, Licensing, Application for Grants; Procedures for Grant Disbursements; Record Keeping Requirements, and Verification Procedures for the Missouri Qualified Biodiesel Producer Incentive Program. The department is amending sections (2), (3), (5), (6), and (7).

PURPOSE: This amendment eliminates the Missouri-produced feedstock requirement for biodiesel produced by a Missouri farmer-owned facility and adds specific deadlines that facilities must meet regarding registration, construction, and production of biodiesel.

(2) Definitions.

(B) Begun construction—a facility that has a duly executed and binding written construction contract, or has a duly executed and binding written construction loan commitment from a lender, or has placed an order for processing equipment and all financial obligations of the order have been met.

[(B)] (C) Biodiesel—Fuel that meets the American Society for Testing and Materials (ASTM) Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels.

[(C)] (D) Department—The Missouri Department of Agriculture.

[(D)] (E) Director—The director of the Missouri Department of Agriculture.

[(E)] (F) Feedstock—An agricultural, horticultural, viticultural, [or] vegetable, [product, grapes grown to be processed into wine, bees, honey, fish or other] aquacultural, [product, planting seed,] livestock, [or a livestock product, a] forestry, [product, poultry] or [a] poultry product, either in its natural [form] or processed [form, that has been produced, processed, or otherwise had value added to it in this] state[;].

[(F)] (G) Material participation—An agricultural producer shall materially participate only if the producer is involved in the agricultural production operation on a basis which is regular, continuous, and substantial.

*[(G)] (H) Missouri qualified biodiesel producer (MQBP)—A facility located in Missouri that [produces biodiesel] **has registered with the department by September 1, 2007, has begun construction of the facility before November 1, 2007, has begun production of biodiesel before March 1, 2009,** and is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, where:*

1. One hundred percent (100%) of the feedstock used by the facility originates in the United States; and

2. At least eighty percent (80%) of the feedstock used by the facility originates in the state of Missouri, or the value of the investment in the facility is at least fifty-one percent (51%) owned by agricultural producers who are residents of Missouri and who are actively engaged in agricultural production for commercial purposes.

[(H)] (I) Qualified biodiesel—Biodiesel produced by a MQBP.

(J) Registered—A facility that has filed a Missouri qualified

biodiesel producer license application that has been accepted by the department.

(3) Criteria for Classification as a Missouri Qualified Biodiesel Producer. To be classified as a MQBP by the department a biodiesel production facility must:

(E) Be registered with the department by September 1, 2007;

(F) Have begun construction of the facility before November 1, 2007;

(G) Have begun production of biodiesel before March 1, 2009;

[(E)] (H) Be licensed by the department to produce biodiesel; and

[(F) Make formal application for monthly grants from the Missouri Qualified Biodiesel Producer Incentive Fund; and]

[(G)] (I) Conform to all other requirements of this rule.

(5) Grant Application Procedures.

(D) The grant application must include the:

1. Complete name and address of the owner, or the complete names and addresses of the partners if the MQBP is a partnership, or the complete names and addresses of the principal officers if the MQBP is a corporation;

2. Address and location of all biodiesel plants owned by the MQBP. Each MQBP must include all Missouri plants as well as plants outside Missouri;

3. Production capacity of each biodiesel plant;

4. Estimated number of employees needed to reach the production capacity of each biodiesel plant;

5. Estimated production in the July 1–June 30 time period at each biodiesel plant;

6. Total number of employees and the number of Missouri citizens employed by the MQBP during the preceding month;

7. Number of bushel equivalents of Missouri *[agricultural products] feedstock and out-of-state feedstock* used by the MQBP in the production of biodiesel during the preceding month;

8. Gallons of biodiesel produced during the month for which the grant is applied;

9. Gallons of biodiesel produced from Missouri feedstock during the month for which the grant is applied;

10. Quantity of all feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

11. Quantity and source (i.e., name, address, phone number) of Missouri-produced feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

12. Quantity and source (i.e., name, address, phone number) of United States-produced feedstock used by the MQBP in the production of biodiesel during the month for which the grant is applied;

[13. If the feedstock used by the MQBP was purchased from an out-of-state source, either the MQBP must provide certification from Missouri agriculture producers as to the date and quantity of Missouri agricultural products delivered to the out-of-state source, or the out-of-state source must provide certification of:

A. The quantity of Missouri agricultural products purchased to produce the biodiesel feedstock; or

B. The volume of biodiesel feedstock produced from Missouri agricultural products;]

[14.] 13. Total amount of biodiesel produced by the MQBP during the current fiscal year (July 1 through June 30); and

[15.] 14. A copy of the most recent laboratory analyses verifying that the biodiesel conforms to ASTM Standard D-6751 specifications.

(6) Grant Disbursement Procedures.

(C) The amount of each monthly grant is calculated by first determining the number of gallons of qualified biodiesel produced from *[Missouri agricultural products] feedstock* in the preceding month of the fiscal year, as certified by the department. That number is then multiplied by the per gallon credit established in section

142.031, RSMo and this rule. Each MQBP shall be eligible for a total grant in any fiscal year equal to thirty cents (30¢) per gallon for the first fifteen (15) million gallons of qualified biodiesel produced from *[Missouri agricultural products] feedstock* in the fiscal year, plus ten cents (10¢) per gallon for the next fifteen (15) million gallons of qualified biodiesel produced from *[Missouri agricultural products] feedstock* in the fiscal year. All such qualified biodiesel produced by a MQBP in excess of thirty (30) million gallons in a fiscal year shall not be applied to the computation of a grant.

(7) Record Keeping Requirements and Verification Procedures.

(A) Each MQBP shall keep accurate purchase and production records and source documents for at least three (3) years. The records and source documents must be sufficient to verify the—

1. Actual monthly production, inventory, and disposition of biodiesel for each Missouri biodiesel plant;

[2. Actual monthly quantities of Missouri agricultural products purchased and used to produce biodiesel at each Missouri biodiesel plant;]

[3.] 2. Name, address, zip code, phone number, *[of]* and quantity purchased from every source of *[purchased Missouri agricultural products] feedstock* used to produce biodiesel.

[4.] 3. Laboratory analyses conducted to ensure the biodiesel complies with ASTM Standard D-6751 specifications;

(B) The department *[is authorized to]* may examine records, documents, books, premises, and products of the MQBP to determine the validity of all information and reports submitted by the MQBP.

(C) The department *[is authorized to]* may examine any other information it deems necessary to ensure that grants shall be made only to Missouri qualified biodiesel producers.

AUTHORITY: section 142.031, RSMo Supp. [2005] 2006 and (SS HCS HB 741 94th General Assembly, First Regular Session (2007)). Emergency rule filed July 20, 2006, effective Aug. 28, 2006, expired Feb. 23, 2007. Original rule filed July 20, 2006, effective Feb. 28, 2007. Amended: Filed Aug. 31, 2007.

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 Department of Agriculture, Attention: Robin Perso, 1616 Missouri Blvd., PO Box 630, Jefferson City, MO 65102 or via email to Robin.Perso@mda.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.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED AMENDMENT

4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers. The commission is amending sections (4) and (5).

PURPOSE: This proposed amendment codifies the incumbent local exchange carrier annual Universal Service Fund (USF) certification requirements.

(4) Annual **Certification** Filing Requirements *[for ETCs]*.

(A) *[All ETCs, including incumbent local exchange telecommunications carriers that receive federal high-cost support, shall, by] Requirements Applicable to All ETCs, Including Incumbent Local Exchange Carriers (ILECs).*

1. By August 15 of each year, all ETCs, including ILECs, shall submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred.

2. All ETCs, including ILECs, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.

3. All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or ILEC.

4. The commission or its staff may request additional information regarding the annual certification.

5. Questions regarding the appropriate documentation *[for ETCs]* should be directed to the commission's Telecommunications Department.

(B) Requirements Applicable to ETCs.

1. ETCs seeking certification by October 1 of each year shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department staff and the Office of the Public Counsel to review and discuss the ETC's proposal for the two (2)-year improvement plan. The meeting shall include a discussion of the proposed plan and any changes to the plan that would improve coverage, service quality or capacity in unserved or underserved areas in the Missouri service area in which ETC designation was granted.

[1.]A. A two (2)-year improvement plan shall include progress updates on any previously submitted plan. The two (2)-year improvement plan shall include, with specificity, proposed improvements or upgrades to the carrier's network on a wire center-by-wire center basis throughout its proposed designated service area and address all of the separate components addressed in the initial plan, set forth in (2)(A)2. above.

[2.]B. Reports on unfilled service requests and customer complaints for the previous year and how the two (2)-year improvement plan may address such requests and complaints.

[(C)]2. ETCs shall submit a demonstration that the receipt of high-cost support *[was] will be* used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

[1.]A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

[A.](I) Quality and rates—quality services should be available at just, reasonable, and affordable rates;

[B.](II) Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

[C.](III) Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

[(D)]3. ETC shall submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that

such support was used in addition to any expenses the ETC would normally incur.

4. ETCs shall submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

[(E)]5. ETCs shall submit an affidavit signed by an officer of the company certifying that the ETC continues to comply with the approved consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) and/or applicable service quality standards and consumer protection rules, certifying that the ETC continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas (if applicable), and continues to acknowledge that it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996.

[(F)]6. ETCs shall submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission in the previous twelve (12) months for which the company has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any. If the commission finds the ETC's resolution of complaints is not satisfactory or if a particular type of complaint is recurring without being satisfactorily addressed, then the commission may decline to certify the ETC during the annual certification process.

[(G)] An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

[(H)] All ETCs, including incumbent local exchange telecommunications carriers, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.

[(I)] All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or incumbent local exchange telecommunications carrier.

[(J)] Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

[(K)] All records required by this rule shall be preserved for at least two (2) years.]

[(L)]7. ETCs, or carrier requesting ETC designation, shall promptly furnish requested information, including financial information, related to its designation as an ETC to the commission, its staff or the Office of the Public Counsel.

(C) Requirements Applicable to ILECs.

1. ILECs seeking certification by October 1 of each year shall, no later than August 15 of each year:

A. Submit a narrative discussing the use of the high-cost support as follows:

(I) Provision: A general description of any construction plans with start and end dates, populations affected by construction plans and estimated budget amounts, if applicable;

(II) Upgrade: The geographic areas for any improvements, start and completion date for each improvement, estimated investment for each project that is supported by high-cost funding, estimated population that will be served as a result of the improvements, if applicable; and

(III) Maintenance: A general description of any ongoing maintenance that is supported by high-cost funding, if applicable.

2. Submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ILEC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

3. Submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I) Quality and rates—Quality services should be available at just, reasonable, and affordable rates;

(II) Access to advanced services—Access to advanced telecommunications and information services should be provided in all regions of the state; and

(III) Access in rural and high-cost areas—Consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(5) Additional Requirements.

[(F)] ETCs shall submit to the commission staff, by August 15, 2006, a statement of compliance with 4 CSR 240-3.570. All carriers with requests for ETC designation pending as of the effective date of this rule shall submit, within thirty (30) days of the effective date of the rule, any missing information required by 4 CSR 240-3.570 or a statement that all required information was previously submitted as part of the request for ETC designation.] An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

(G) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(H) All records required by this rule shall be preserved for at least two (2) years.

AUTHORITY: sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000. Original rule filed Oct. 31, 2005, effective June 30, 2006. Amended: Filed Aug. 28, 2007.

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 is estimated to cost private entities less than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before November 1, 2007, and should include a reference to Commission Case No. TX-2008-0007. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for November 1, 2007 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 110—Fees**

PROPOSED RULE

13 CSR 40-110.030 Annual Twenty-Five Dollar (\$25) Fee

PURPOSE: This rule defines how the Family Support Division will assess an annual twenty-five dollar (\$25) fee as required by section 454(6)(B)(ii) of Title IV-D of the Social Security Act as amended by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(1) Definitions. For the purposes of this rule, the following definitions are applicable:

- (A) Division means the Family Support Division;
- (B) Support means any financial support collected for the support or maintenance of a child or the custodian of a child or a spouse or ex-spouse;
- (C) Custodian means an individual to whom a duty of support is owed;
- (D) Obligor means an individual owing a duty of support;
- (E) IV-D means part IV-D of the Social Security Act;
- (F) Case means an official record comprised of a custodian and dependent child(ren), associated with a particular obligor;
- (G) IV-D, never-assistance case means a case in which the custodian is receiving services pursuant to section 454.400, RSMo, but has never received Aid to Families with Dependent Children or Temporary Assistance for Needy Families benefits on behalf of the child(ren) associated with the case;
- (H) Federal fiscal year means the period from October 1 to September 30.

(2) Annual Twenty-Five Dollar (\$25) Fee. In a IV-D, never-assistance case in which the division has disbursed to the custodian at least five hundred dollars (\$500) of support in the federal fiscal year,

the division shall assess an annual fee of twenty-five dollars (\$25). The fee shall be assessed to the obligor.

(A) If an obligor is associated to more than one IV-D, never-assistance case, the division shall assess the fee on each case in which at least five hundred dollars (\$500) of support has been disbursed to the custodian in the federal fiscal year.

(B) The division shall assess the fee in each federal fiscal year after the first five hundred dollars (\$500) of support has been disbursed to the custodian.

(C) After the fee is assessed, the division shall provide notice of the fee to the obligor. The notice shall provide instructions to the obligor for satisfying the fee.

(D) If the obligor does not satisfy the fee by the end of the federal fiscal year in which it is assessed, the balance remains due.

(E) The division shall not assess a fee in cases excluded by federal law or regulation.

AUTHORITY: section 454.400.2(5), RSMo, 2000. Original rule filed Aug. 20, 2007.

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 is estimated to cost private entities \$2,197,125 per federal fiscal year.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Family Support Division, Janel R. Luck, Director, 615 Howerton Court, PO Box 2320, Jefferson City, MO 65102. 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.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 40-110.030 Annual Twenty-Five Dollar (\$25) Fee
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
87,885	Obligors	\$2,197,125

III. WORKSHEET

Projected eligible cases per year	Fee per eligible case	Projected annual fee collections
87,885	\$25	\$2,197,125

IV. ASSUMPTIONS

1. Fees are collected at the case level.
2. Estimate in the aggregate is presented as the annual total for all affected obligors. The life of the rule is without end.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
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 Services. The division is amending sections (1)–(6).

PURPOSE: This amendment changes the name of the state's medical assistance program to MO HealthNet; revises the name of the program's administering agency to MO HealthNet Division; changes the agency website address to coincide with the name change; and updates the incorporated by reference material for provider manuals to October 1, 2007.

(1) Administration. The Missouri *[Medicaid]* **MO HealthNet** program shall be administered by the Department of Social Services, *[Division of Medical 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 *[Medicaid]* **MO HealthNet** provider manuals, 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 *[www.dss.mo.gov/dms May 1, 2007]* www.dss.mo.gov/mhd, **October 1, 2007**. 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 *[Medicaid recipient]* **MO HealthNet participant**;

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

3. Name, title, and signature of the *[Missouri Medicaid]* **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 *[Missouri Medicaid]* **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 *[Missouri Medicaid]* **MO HealthNet**. Services provided by an individual under the direction or supervision are not reimbursed by *[Missouri Medicaid]* **MO HealthNet**. Services provided by a person not enrolled with *[Missouri Medicaid]* **MO HealthNet** are not reimbursed by *[Missouri Medicaid]* **MO HealthNet**;

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

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

6. For those *[Medicaid]* **MO HealthNet** programs and services that are reimbursed according to the amount of time spent in deliv-

ering or rendering a service(s) (except for services 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 *[Medicaid recipient's]* **MO HealthNet participant's** treatment plan;

10. The *[Medicaid recipient's]* **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 the Department of Mental Health, documentation shall include:

A. First name, last name, and either middle initial or date of birth of the *[Medicaid recipient]* **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;

(C) Closed-end provider agreement means an agreement that is for a specified period of time, not to exceed twelve (12) months, and that must be renewed in order for the provider to continue to participate in the *[Medicaid]* **MO HealthNet** program;

(F) Fiscal agent means an organization under contract to the state *[Medicaid]* **MO HealthNet** agency for providing any services in the administration of the *[Medicaid]* **MO HealthNet** program;

(G) *[Medicaid]* **MO HealthNet** agency or the agency means the single state agency administering or supervising the administration of a state Medicaid plan;

(I) Participation means the ability and authority to provide services or merchandise to eligible *[Medicaid recipients]* **MO HealthNet participants** and to receive payment from the *[Medicaid]* **MO HealthNet** program for those services or merchandise;

(K) Provider means an individual, firm, corporation, pharmacy, hospital, long-term care facility, association or institution which has a provider agreement to provide services to a *[recipient]* **participant** pursuant to Chapter 208, RSMo;

(L) Record means any books, papers, journals, charts, treatment histories, medical histories, tests and laboratory results, photographs, X rays and any other recordings of data or information made by or caused to be made by a provider relating in any way to services provided to *[Medicaid recipients]* **MO HealthNet participants** and payments charged or received. *[Medicaid]* **MO HealthNet** claim for payment information, appointment books, financial ledgers, financial journals or any other kind of patient

charge without corresponding adequate medical records do not constitute adequate documentation;

(M) Supervision means to direct an employee of the provider in the performance of a covered and allowable service such as under the *[Missouri Medicaid] MO HealthNet* dental and nurse midwife programs or a covered and allowable nonpsychiatric service under the *[Missouri Medicaid] MO HealthNet* physician program. In order to direct the performance of such service, the provider must be in the office where the service is being provided and must be immediately available to give directions in person to the employee actually rendering the service and the adequately documented service must be cosigned by the enrolled billing provider;

(P) Termination from participation means the ending of participation in the *[Medicaid] MO HealthNet* program; and

(3) Program Violations.

(A) Sanctions may be imposed by the *[Medicaid] 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 business related to *[Medicaid] 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 *[Medicaid] 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 *[Medicaid] MO HealthNet* agency or its authorized agents, all records relating to services provided to *[Medicaid recipients] MO HealthNet participants* or records relating to *[Medicaid] 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 *[Medicaid] MO HealthNet*. Services billed to the *[Medicaid] 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 *[Medicaid] 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 *[Medicaid] 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 *[Medicaid recipients] 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 *[Medicaid] 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 *[recipients'] participants'* personal funds or other funds;

7. Breaching of the terms of the *[Medicaid] MO HealthNet* provider agreement of any current written and published policies and procedures of the *[Medicaid] 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, *[Division of Medical Services] MO HealthNet Division*, 615 Howerton Court, Jefferson City, MO *[65102] 65109*, at its website *[www.dss.mo.gov/dms May 1, 2007] www.dss.mo.gov/mhd, October 1, 2007*. This rule does not incorporate any subsequent amendments or additions.) or failing to comply with the terms of the provider certification on the *[Medicaid] MO HealthNet* claim form;

8. Utilizing or abusing the *[Medicaid] MO HealthNet* program as evidenced by a documented pattern of inducing, furnishing or otherwise causing a *[recipient] participant* to receive services or merchandise not otherwise required or requested by the *[recipient] 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 *[Medicaid] MO HealthNet* patient referral; or collecting a portion of the service fee from the *[recipient] participant*, except this shall not apply to Title XIX services for which *[recipients] participants* are responsible for payment of a copayment or coinsurance in accordance with 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 *[Medicaid] MO HealthNet* payment as payment in full for covered services or collecting additional payment from a *[recipient] participant* or responsible person, except this shall not apply to Title XIX services for which *[recipients] participants* are responsible for payment of a copayment or coinsurance in accordance with 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 *[Medicaid]* 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 *[Medicaid]* 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 *[Medicaid]* MO HealthNet program;

24. Failing to reverse or credit back to the medical assistance program (*[Medicaid]*) (MO HealthNet) within thirty (30) days any pharmacy claims submitted to the agency that represent products or services not received by the *[recipient]* 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 *[Medicaid recipient's]* MO HealthNet participant's personal funds or reserve account, unless specifically authorized in writing by the *[recipient]* 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 *[Missouri Medicaid]* 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 noncovered for these services. Services performed by a nonenrolled person due to *[Medicaid]* 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 *[Medicaid]* 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

[Medicaid] MO HealthNet provider for the delivery of any goods or services for which payment may be made in whole or in part under *[Medicaid]* 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 *[Medicaid]* 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 *[Missouri Medicaid]* 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 *[recipient]* participant any item of durable medical equipment which has reached *[Medicaid]* MO HealthNet-defined purchase price through *[Medicaid]* MO HealthNet rental payments or otherwise become the property of the *[recipient]* participant without paying fair market value to the *[recipient]* 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 *[Medicaid]* MO HealthNet program for services rendered to a *[recipient]* participant in a long-term care facility when the resident resided in a portion of the facility which was not *[Medicaid]* MO HealthNet-certified or properly licensed or was placed in a nonlicensed or *[Medicaid]* MO HealthNet-noncertified bed;

37. Failure to comply with the provisions of the Missouri Department of Social Services, *[Division of Medical 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 *[Medicaid] 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 *[Medicaid] 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 *[Medicaid] 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. *[Missouri Medicaid] 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.

(4) Any one (1) or more of the following sanctions may be invoked against providers for any one (1) or more of the program violations specified in section (3) of this rule:

(B) Termination from participation in the *[Medicaid] MO HealthNet* program for a period of not less than sixty (60) days nor more than ten (10) years;

(C) Suspension of participation in the *[Medicaid] MO HealthNet* program for a specified period of time;

(5) Imposition of a Sanction.

(A) The decision as to the sanction to be imposed shall be at the discretion of the *[Medicaid] MO HealthNet* agency. The following factors shall be considered in determining the sanction(s) to be imposed:

1. Seriousness of the offense(s)—The state agency shall consider the seriousness of the offense(s) including, but not limited to, whether or not an overpayment (that is, financial harm) occurred to the program, whether substandard services were rendered to *[Medicaid recipients] MO HealthNet participants*, or circumstances were such that the provider's behavior could have caused or contributed to inadequate or dangerous medical care for any patient(s), or a combination of these. Violation of pharmacy laws or rules, practices potentially dangerous to patients and fraud are to be considered particularly serious;

2. Extent of violations—The state *[Medicaid] MO HealthNet* agency shall consider the extent of the violations as measured by, but not limited to, the number of patients involved, the number of *[Medicaid] MO HealthNet* claims involved, the number of dollars identified in any overpayment and the length of time over which the violations occurred. The *[Medicaid] MO HealthNet* agency may calculate an overpayment or impose sanctions under this rule by reviewing records pertaining to all or part of a provider's *[Medicaid] MO HealthNet* claims. When records are examined pertaining to part of a provider's *[Medicaid] MO HealthNet* claims, no random

selection process in choosing the claims for review as set forth in 13 CSR 70-3.130 need be utilized by the *[Medicaid] MO HealthNet* agency. But, if the random selection process is not used, the *[Medicaid] MO HealthNet* agency may not construe violations found in the partial review to be an indication that the extent of the violations in any unreviewed claims would exist to the same or greater extent;

3. History of prior violations—The state agency shall consider whether or not the provider has been given notice of prior violations of this rule or other program policies. If the provider has received notice and has failed to correct the deficiencies or has resumed the deficient performance, a history shall be given substantial weight supporting the agency's decision to invoke sanctions. If the history includes a prior imposition of sanction, the agency should not apply a lesser sanction in the second case, even if the subsequent violations are of a different nature;

4. Prior imposition of sanctions—The *[Medicaid] MO HealthNet* agency shall consider more severe sanctions in cases where a provider has been subject to sanctions by the *[Missouri Medicaid] MO HealthNet* program, any other governmental medical program, Medicare or exclusion by any private medical insurance carriers for misconduct in billing or professional practice. Restricted or limited participation in compromise after being notified or a more severe sanction should be considered as a prior imposition of a sanction for the purpose of this subsection;

5. Prior provision of provider education—In cases where sanctions are being considered for billing deficiencies only, the *[Medicaid] MO HealthNet* agency may mitigate its sanction if it determines that prior provider education was not provided. In cases where sanctions are being considered for billing deficiencies only and prior provider education has been given, prior provider education followed by a repetition of the same billing deficiencies shall weigh heavily in support of the medical agency's decision to invoke severe sanctions; and

6. Actions taken or recommended by peer review groups, licensing boards or Professional Review Organizations (PRO) or utilization review committees—Actions or recommendations by a provider's peers shall be considered as serious if they involve a determination that the provider has kept or allowed to be kept, substandard medical records, negligently or carelessly performed treatment or services, or, in the case of licensing boards, placed the provider under restrictions or on probation.

(B) Where a provider has been convicted of defrauding any Medicaid program, has been previously sanctioned due to program abuse, has been terminated from the Medicare program, the *[Medicaid] MO HealthNet* agency shall terminate the provider from participation in the *[Medicaid] MO HealthNet* program.

(C) When a sanction involving the collection, recoupment or withholding of *[Medicaid] MO HealthNet* payments from a provider is imposed on a provider, it shall become effective ten (10) days from the date the provider receives notice established by a signed receipt of delivery of the imposition of the sanction. When any other sanction is imposed on a provider it shall become effective thirty (30) days from the date the provider receives notice established by a signed receipt of delivery of the imposition of the sanction. If, in the judgment of the single state agency, the surrounding facts and circumstances clearly show that serious abuse or harm may result from delaying the imposition of a sanction, any sanction may be made effective immediately upon receipt of notice by the provider.

(E) Suspension or termination of any provider shall preclude the provider from participation in the *[Medicaid] MO HealthNet* program, either personally or through claims submitted by any clinic, group, corporation or other association to the single state agency or its fiscal agents for any services or supplies provided under the *[Medicaid] MO HealthNet* program except for those services or supplies provided prior to the suspension or termination.

(F) No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the single

state agency or its fiscal agents for any services or supplies provided by, or under the supervision of, a person within the organization who has been suspended or terminated from participation in the *[Medicaid] MO HealthNet* program except for those services or supplies provided prior to the suspension or termination.

(I) Where a provider's participation in the *[Medicaid] MO HealthNet* program has been suspended or terminated, the single state agency shall notify the county offices of the suspensions or terminations.

(J) Except where termination has been imposed, a provider who has been sanctioned may be required to participate in a provider education program as a condition of continued participation. Provider education programs may include:

1. Telephone and written instructions;
2. Provider manuals and workshops;
3. Instruction in claim form completion;
4. Instruction on the use and format of provider manuals;
5. Instruction on the use of procedure codes;
6. Key provisions of the *[Medicaid] MO HealthNet* program;
7. Instruction on reimbursement rates; and
8. Instruction on how to inquire about coding or billing problems.

(K) Providers that have been suspended from the *[Missouri Medicaid] MO HealthNet* program under subsections (4)(B) and (C) may be reenrolled in the *[Medicaid] MO HealthNet* program upon expiration of the period of suspension from the program after making satisfactory assurances of future compliance. Providers that have been terminated from the *[Missouri Medicaid] MO HealthNet* program under subsection (4)(B) may be reenrolled in the program at the sole discretion of the single state agency and only after providing satisfactory evidence that the past cause for termination has ceased and that future participation is warranted.

(6) Amounts Due the Department of Social Services From a Provider.

(A) If there exists an amount due the Department of Social Services from a provider, the single state agency shall notify the provider or the provider's representative of the amount of the overpayment. The notice shall be mailed to the address on the provider's enrollment record. If the amount due is not sooner paid to the Department of Social Services by or on behalf of the provider, the single state agency, forty-five (45) days from the date the provider receives the notice, established by a signed receipt of delivery or receipt of undelivered mail from the United States Post Office using the address on the provider's enrollment record, may take appropriate action to collect the overpayment. The single state agency may recover the overpayment by withholding from current *[Medicaid] MO HealthNet* reimbursement. The withholding may be taken from one (1) or more payments until the funds withheld in the aggregate equal the amount due as stated in the notice.

(B) When a provider receives notice, established by a signed receipt of delivery, or receipt of undelivered mail from the United States Post Office using the address on the provider's enrollment record, of an overpayment and the amount due is in excess of one thousand dollars (\$1,000), the provider, within ten (10) days of the notice, may submit to the single state agency a plan for repayment of forty percent (40%) of the overpayment amount and request that the plan be adopted and adhered to by the single state agency in collecting the overpayment. No repayment plans will be considered for the first sixty percent (60%) of the overpayment amount. If this repayment plan is timely received from a provider, the single state agency shall consider the proposal, together with all the facts and circumstances of the case and reject, accept or offer to accept a modified version of the provider's plan for repayment. The single state agency shall notify the provider of its decision within ten (10) days after the proposal is received. If no plan for repayment is agreed upon within thirty (30) days after the provider receives notice of the overpayment,

the *[Medicaid] MO HealthNet* agency may take appropriate action to collect the balance of the amount due.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. 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. 31, 2007.

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 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 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 6—Emergency Ambulance Program

PROPOSED AMENDMENT

13 CSR 70-6.010 Emergency Ambulance Program. The division is amending sections (1)–(11).

PURPOSE: This amendment clarifies the use of an emergency ambulance for children under the age of twenty-one (21) through the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program, also known as the Healthy Children and Youth (HCY) program. The amendment also changes the name of the state's medical assistance program to MO HealthNet; revises the name of the program's administering agency to MO HealthNet Division; and changes the agency website address to coincide with the name change.

*PURPOSE: This rule establishes the regulatory basis for the administration of the emergency ambulance program. This rule provides for such methods and procedures relating to the utilization of, and the payment for, care and services available under the *[Medicaid] MO HealthNet* program as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Specific details of provider participation, criteria and methodology for provider reimbursement, [recipient] participant eligibility, and amount, duration and scope of services covered are included in the ambulance program manual, which is incorporated by reference in this rule and available at the website.*

(1) Administration. The *[Missouri Medicaid] MO HealthNet* ambulance program shall be administered by the Department of Social Services, *[Division of Medical Services] MO HealthNet Division*. The ambulance program 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 ambulance program provider manual, which is incorporated by reference in this rule 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 65109, at its website at *[www.dss.mo.gov/dms September 1, 2006] www.dss.mo.gov/mhd, October 1, 2007*. This rule does not incorporate any subsequent amendments or additions.

(2) Eligible Providers. To be eligible for participation in *[Missouri Medicaid] MO HealthNet*, the following requirements shall be met:

(A) Ground Ambulance.

1. The provider must be licensed by the Missouri Department of Health and Senior Services if located in Missouri or licensed by the state regulating authority if located outside the state of Missouri.

2. The provider must be certified to participate in the Title XVIII Medicare program and have a signed and accepted Participation Agreement in effect with the Missouri Department of Social Services, *[Division of Medical Services] MO HealthNet Division*; and

(B) Air Ambulance. Air ambulance is defined as any privately or publicly owned conventional air service, rotary wing or fixed-wing specially designed, constructed or modified, maintained or equipped with the intent to be used for the transportation of patients as defined in Federal Aviation Regulations, Part 135.

1. The air ambulance provider must have a current valid air ambulance license, be licensed by the state regulating authority if located outside of Missouri, have submitted a copy of the current Federal Aviation Regulations, Part 135, (FFA) Air Carrier Certificate issued by the United States Department of Transportation.

2. The air ambulance provider must have a signed and accepted Participation Agreement for the air ambulance program in effect with the Missouri Department of Social Services, *[Division of Medical Services] MO HealthNet Division*.

(3) *[Recipient] Participant* Eligibility. The ambulance provider must ascertain the patient's *[Medicaid] MO HealthNet* status before billing for services. The *[recipient's Medicaid] participant's MO HealthNet/MC+* eligibility is determined by the Family Support Division. The *[recipient] participant* must be eligible for *[Medicaid] MO HealthNet* on the date that a service is provided in order for a provider to receive *[Medicaid] MO HealthNet* reimbursement. It is the provider's responsibility to determine the coverage benefits for a *[recipient] participant* based on their type of assistance as outlined in the ambulance program manual. The *[recipient's] participant's* eligibility shall be verified in accordance with methodology outlined in the ambulance program manual.

(4) Prior Authorization. Emergency ambulance services do not require prior authorization. All non-emergency, *[Medicaid] MO HealthNet* covered services that are to be performed or furnished out-of-state for eligible *[Missouri Medicaid recipients] MO HealthNet participants* and for which *[Missouri Medicaid] MO HealthNet* is to be billed, must be prior authorized before the out-of-state services are provided. A prior authorization is not required for out-of-state emergency services.

(5) Services Covered and Service Limitations. The *[Medicaid] MO HealthNet* ambulance manual shall provide the detailed listing of procedure codes and pricing information covered by the *[Missouri Medicaid] MO HealthNet* ambulance program.

(B) Emergency services are services required when there is a sudden or unforeseen situation or occurrence or a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Nearest appropriate hospital is the hospital that is equipped and staffed to provide the needed care for the illness or injury involved. *[Medicaid] MO HealthNet* does not allow transportation to a more distant hospital solely to avail a patient of the services of a specific physician or family or personal preference when considering the nearest appropriate facility.

(C) Exceptions to Emergency Services.

1. *[Missouri Medicaid] MO HealthNet* covers medically necessary ambulance services for *[recipients] participants* under twenty-one (21) years of age through the Healthy Children and Youth (EPSDT/HCY) program. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) expanded medically necessary services for children under the age of twenty-one (21) through the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program, also known as the Healthy Children and Youth (HCY) program. *[Transport by ambulance is covered if it is medically necessary and any other method of transportation would endanger the child's health.] This allows for non-emergency transportation of children by ambulance for health care when other modes of travel are not medically appropriate and may endanger the child's health. When other modes of transportation are available that would allow for safe transport of the child, these options must be utilized.*

2. Transportation to and from one hospital to another and return for specialized testing and/or treatment is covered.

3. *[Medicaid] MO HealthNet* covers transportation from the point of pickup to two (2) different hospitals made on the same day by the same ambulance provider when it is medically necessary.

4. Ground ambulance transfers of patients from one hospital to another hospital to receive medically necessary inpatient services not available at the first facility shall be covered by *[Missouri Medicaid] MO HealthNet*. Hospital transfers shall be covered when the patient has been stabilized at the first hospital, but needs a higher level of care available only at the second hospital.

(D) *[Missouri Medicaid] MO HealthNet* covers emergency rotary wing air ambulance only when:

1. Transportation by ground ambulance is contraindicated; or
2. The patient's medical condition is such that immediate and rapid ambulance transportation is essential and cannot be provided by ground ambulance; or
3. Great distances or other obstacles are involved in getting the patient to the nearest hospital with appropriate facilities; or
4. The patient's medical condition is such that the time needed to transport by land, or the instability of transportation by land poses a threat to the patient's survival or seriously endangers the patient's health; or
5. The point of pickup is inaccessible by land vehicle; and
6. All other *[Medicaid] MO HealthNet* requirements for coverage are met.

(E) *[Missouri Medicaid] MO HealthNet* covers emergency fixed-wing air ambulance only when:

1. The weather situation at the time of transport prohibits the use of a rotary wing ambulance; and
2. Transportation by ground ambulance is contraindicated; or
3. The patient's medical condition is such that immediate and rapid ambulance transportation is essential and cannot be provided by ground ambulance; or
4. Great distances or other obstacles are involved in getting the patient to the nearest hospital with appropriate facilities; or
5. The patient's medical condition is such that the time needed to transport by land, or the instability of transportation by land poses a threat to the patient's survival or seriously endangers the patient's health; or
6. The point of pickup is inaccessible by land vehicle; and
7. All other *[Medicaid] MO HealthNet* requirements for coverage are met.

(6) Services Not Covered.

(A) Ground Ambulance. The following services are not covered under the ground ambulance program:

1. Ambulance transportation to a physician's office, a dentist's office, a nursing home, or a patient's home except for *[recipients] participants* under twenty-one (21) (except ME codes 76-79) through the EPSDT/HCY program;
2. Ambulance services to a hospital for the first stage of labor;
3. Non-emergency ambulance trips are not covered with the exceptions of those services listed above;
4. If a *[recipient] participant* is pronounced dead before the ambulance is called, no *[Medicaid] MO HealthNet* payment is made; or
5. Ancillary services and supplies are not covered when the patient is not transported.

(B) Air Ambulance. The following services are not covered under the air ambulance program:

1. Air ambulance trip for the patient's personal preference;
2. Patient not transported to the nearest hospital with appropriate facilities;
3. Transports by fixed-wing aircraft unless the weather at the time of transport prohibits the use of a rotary wing air ambulance in situations where all other air ambulance criteria have been met;
4. Ambulance trips ordered by the Veteran's Administration Hospital;
5. Transport of medical team (or other medical professionals) to meet a patient;
6. Ground mileage;
7. Transport to a facility that is not an acute care hospital, such as a nursing facility or physician's office;
8. If a *[recipient] participant* is pronounced dead before the air ambulance is called; or
9. Ancillary services and supplies are not covered when the patient is not transported.

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

(8) Reimbursement. Payment will be made in accordance with the fee per unit of service as defined and determined by the *[Division of Medical Services] MO HealthNet Division*. Providers must bill their usual and customary charge for ambulance services. Reimbursement will not exceed the lesser of the maximum allowed or the provider's billed charges. Ambulance program services are only payable to the enrolled, eligible, participating provider. The *[Medicaid] MO HealthNet* program cannot reimburse for services performed by non-enrolled providers.

(9) Other Source Payment. The *[Medicaid] MO HealthNet* payment for ambulance services cannot duplicate or replace benefits available to the *[recipient] participant* from any other source, public or private. A settlement received from private insurance or litigation as the result of an accident must be used toward payment of the ambulance bill. *[Medicaid] MO HealthNet* shall be the last source of payment on any claim. Any payment received from a private insurance carrier or other acceptable source shall be listed on the claim form. If the settlement received is equal to or exceeds the fee that could be allowed by *[Medicaid] MO HealthNet*, no payment shall be made by *[Medicaid] MO HealthNet*.

(11) Records Retention. The enrolled *[Medicaid] MO HealthNet* ambulance provider shall agree to keep any records necessary to disclose the extent of services the provider furnishes to *[recipients] participants*. 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 rep-

resentative 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. [2005] 2006 and 208.201, RSMo 2000. Original rule filed Feb. 10, 2006, effective Sept. 30, 2006. Amended: Filed Aug. 1, 2006, effective Feb. 28, 2007. Amended: Filed Aug. 23, 2007.

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 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 MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.010 Definitions

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule provides definitions of terms in addition to those found in section 589.660, RSMo for the administration of the program.

(1) Address—A residential street address, school address, or work address of a person, as specified on the person's application to be a Safe at Home Program participant.

(2) Authorization card/letter—Card or letter issued by the secretary of state to a Safe at Home Program participant upon certification to the Safe at Home Program, which includes the Safe at Home Program participant's name, authorization code, voter code, designated address, signature and certification expiration date.

(3) Authorization code—A number assigned to a Safe at Home Program participant upon acceptance into the Safe at Home Program.

(4) Application—Standard application form provided by the secretary of state which must be completed by an applicant to the Safe at Home Program with approval of an application assistant as defined by section 589.663, RSMo.

(5) Application assistant—An employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter, or other specialized service to victims of domestic violence, rape, sexual assault, or stalking and who has been designated by the respective agency or program, and who has been trained and registered by

the secretary of state to assist individuals in the completion of Safe at Home Program participation applications.

(6) Certification—The process by which an applicant is determined eligible to participate in the Safe at Home Program.

(7) Designated address—The address assigned to a Safe at Home Program participant by the secretary.

(8) Mailing address—An address that is recognized for delivery by the United States Postal Service.

(9) Program—The Safe at Home: Address Confidentiality Program established in section 589.663, RSMo.

(10) Program manager—Employee of the Office of the Secretary of State designated by the secretary to administer the Safe at Home Program pursuant to sections 589.660–589.681, RSMo.

(11) Program participant—A person certified by the secretary of state as eligible to participate in the Safe at Home Program.

(12) Qualified agency—A state or local agency or nonprofit program that provides counseling referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking.

(13) Secretary—The secretary of state. This may also include the secretary of state's office and the secretary's designee.

(14) Voter code—A number assigned to a Safe at Home Program participant upon acceptance into the Safe at Home Program which is to be used for identification purposes when registering to vote or when voting.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.020 Application Assistant Training, Registration and Renewal

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for application

and registration to the program by application assistants.

(1) All application assistants shall be trained and registered by the secretary in order to participate in the program.

(2) The application assistant may only be registered when the prospective application assistant:

(A) Is a service provider or works with a qualified agency and can demonstrate to the secretary relevant qualifications to work with victims of domestic abuse, rape, sexual assault or stalking;

(B) Successfully completes a program orientation and training session sponsored by the secretary;

(C) Completes an application for prospective application assistants on a form provided by the secretary, which includes, but is not limited to, the applicant's name, service provider or agency, address of service provider or agency, telephone number of service provider or agency, supervisor's name and relevant qualifications. The application assistant application form, incorporated herein by reference, is published by the Missouri Secretary of State, PO Box 1767, Jefferson City, MO 65102-1767. This form does not include any amendments or additions. The form is available at the secretary of state's office or may be obtained by email to safeathome@sos.mo.gov or by mailing a written request to Safe at Home, PO Box 1409, Jefferson City, MO 65102-1409.;

(D) Agrees to adhere to the policies, procedures and directions provided by the program manager for rendering assistance to program applicants;

(E) Agrees to adhere to the instructions and terms provided in the application assistant agreement including the obligation to notify the secretary of any change of employment; and

(F) Registers with the secretary as a voter registration solicitor on a form provided by the secretary.

(3) Application assistant registration shall be valid for two (2) years, unless terminated sooner as provided in these rules.

(4) The application assistant shall agree not to discriminate against any client, or potential program participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.

(5) The application assistant performing under this contract is not deemed to be an employee of the secretary or an agent of the secretary in any manner whatsoever. The application assistant will not hold herself/himself out as, nor claim to be an officer or employee of the secretary or of the state of Missouri simply because she/he is a program application assistant and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the secretary or of the state of Missouri.

(6) An application assistant's registration may be terminated by the secretary for failing to abide by any requirement in this rule or for failing to act in accordance with requirements of the program.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of

the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.030 Program Participant Application and Certification Process

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for application and certification to the program by prospective participants.

(1) A program applicant shall complete and sign the standard application form provided by the secretary and provide all the information required under section 589.663, RSMo and these rules. The standard application form shall include, but not be limited to, the application preparation date; the applicant's signature; and the signature, and registration number of the application assistant who assisted the applicant in applying to become a program participant, as provided in section 589.663, RSMo; a designation of the secretary as agent for purposes of service of process and for receipt of first-class mail, legal documents and certified mail; a sworn statement by the applicant that she/he has good reason to believe that she/he is a victim of domestic violence, rape, sexual assault or stalking and that she/he fears further violent acts from his or her assailant; the mailing address where the applicant may be contacted by the secretary and the telephone number or numbers where the applicant may be called by the secretary; and any address that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household. The applicant may attach any relevant supporting documentation such as police reports or court documents. The program participant application form, incorporated herein by reference, is published by the Missouri Secretary of State, PO Box 1767, Jefferson City, MO 65102-1767. This form does not include any amendments or additions. The form is available at the secretary of state's office or may be obtained by email to safeathome@sos.mo.gov or by mailing a written request to Safe at Home, PO Box 1409, Jefferson City, MO 65102-1409.

(2) The application assistant who assists the applicant shall provide the applicant with the opportunity to register to vote or to change the name or address on the applicant's voter registration record on forms provided by the secretary. The completed voter registration application shall not contain the applicant's address. The completed voter registration application shall be transmitted to the secretary with the applicant's completed program application.

(3) The application assistant who assists the applicant shall forward by first-class mail or by facsimile transmission (FAX) the completed application to the program manager of the secretary within twenty-four (24) hours of completion. If the application is forwarded by FAX the application assistant shall also mail the original application to the secretary. The application assistant shall not make or keep a copy of the application. The secretary shall provide return envelopes and a FAX number to application assistants to expedite return of the program applications.

(4) A properly completed application shall be effective on the day that it is certified by the program manager. The program manager shall, within five (5) days of receipt of a completed application, either certify the applicant for participation in the program or notify the applicant of the reason(s) why the applicant was not certified.

(5) An individual who is certified as a program participant shall be issued an authorization card/letter which includes her/his name, authorization code, designated address, voter code, signature and certification expiration date immediately upon certification by the program manager.

(6) The term of a program participant's certification shall be four (4) years following the effective date of her/his application unless the certification is withdrawn or cancelled before that date pursuant to section 589.666, RSMo or these rules. The program manager shall send a program participant notification of lapsing certification and a reapplication form not later than four (4) weeks prior to the expiration of the program participant's certification.

(7) If there is a change in the program participant's name, mailing address or other address from the one listed on the application, the program participant shall notify the program manager of such change within ten (10) days of the change on a form prescribed by the secretary.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.040 Cancellation of Program Certification

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for cancellation of certification to the program.

(1) Program certification shall be canceled if any of the following occur:

(A) The program participant fails to notify the program manager in writing signed by the participant of a change in the program participant's name or mailing address within ten (10) business days of the change; or

(B) Any one of the cancellation conditions provided for by section 589.666, RSMo.

(2) Upon notification of cancellation of her/his program certification, the program participant shall immediately destroy their authorization card/letter by cutting it into at least two (2) pieces and returning the pieces to the program manager.

(3) If certification for the program is canceled based on one (1) of the conditions set forth in section 589.666, RSMo or this rule, the program manager shall notify the program participant of the cancellation and the reasons for the cancellation by mail addressed to the participant's last known mailing address not less than two (2) weeks before the date that the cancellation will be effective.

(4) A program participant whose certification was canceled for failure to inform the program manager of a change of name or mailing address may reapply for certification.

(5) The secretary shall not make a former program participant's address available for inspection or copying except as provided for by sections 589.672 and 589.675, RSMo.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality
Program**

PROPOSED RULE

15 CSR 30-70.050 Exercise of Program Participant's Privileges

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process of exercise of program participant privileges.

(1) A program participant shall request that a court or state or local agency use the designated address assigned by the secretary as her/his address at the time of creation of any new record.

(2) A program participant shall show her or his authorization card/letter to the court or state or local agency official creating a new record and request address confidentiality through use of the designated address in lieu of her/his address. The designated address shall appear on the program participant's authorization card/letter.

(3) Authorized court or state or local agency personnel may make a file photocopy of the authorization card/letter and shall immediately return the authorization card/letter to the program participant.

(4) A court or state or local agency shall accept the designated address unless the agency has received a written record disclosure determination from the secretary under section 589.669 or 589.672, RSMo and these rules.

(5) A court or state or local agency shall not question the program participant about the details or circumstances of her/his inclusion in the program. Rather, the court or agency shall accept the determination made by the secretary that she/he is a certified program participant.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality
Program**

PROPOSED RULE

15 CSR 30-70.060 Service of Process

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for service of process.

(1) The secretary shall be an agent of the program participant upon whom any summons, writ, notice, demand, or process may be served.

(2) Service on the secretary of any such summons, writ, demand, notice, or process shall be made by mailing to the designated address or by delivering to the secretary at her/his office, located at 600 West Main Street, Jefferson City, Missouri, two (2) copies of the summons, writ, notice, demand, or process.

(3) If a summons, writ, notice, demand, or process is served on the secretary, the secretary shall immediately forward a copy to the program participant at the participant's current mailing address as shown on the records of the program by certified mail.

(4) The secretary shall maintain, in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the secretary for that participant. The secretary shall include in the file the date of such service and the secretary's action upon receipt of service.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General

Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.070 Program Participant Renewal

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for program participant certification renewal.

(1) A program participant may renew her/his program participation by filing a properly completed renewal form with the program manager. The renewal form shall be sent to the participant with the notification of lapsing certification required by section 589.663, RSMo and these rules at least four (4) weeks before the expiration of the participant's current certification.

(2) The program manager shall certify a program participant, who has filed a properly completed certification renewal form, to participate in the program for an additional four (4)-year term unless the certification is withdrawn or cancelled before that date.

(3) Upon receipt of a properly completed renewal form, the program manager shall issue to the program participant a new authorization card/letter which includes the program participant's name, authorization code, voter code, designated address, signature and new certification expiration date. Upon receipt of the new authorization card/letter, the participant shall destroy her/his expired card.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer,

Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.080 Agency Disclosure Request

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for agency disclosure requests.

(1) An agency requesting disclosure of a program participant's address or of a category of participants or records under sections 589.669 and 589.672, RSMo, must provide in writing to the secretary:

(A) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the address and mailing address of an individual or individuals;

(B) Identification and description of the specific record or record series for which disclosure is requested;

(C) Identification of the individuals who will have access to the record or records; and

(D) An explanation of why the agency cannot meet its statutory or administrative obligations by changing its procedures or rules.

(2) The secretary shall accept and review an agency's request for disclosure.

(3) During the review and evaluation or reconsideration of an agency's disclosure request, the agency shall accept the use of a program participant's designated address.

(4) The secretary's determination to grant or deny a disclosure request shall be based on, but not limited to, an evaluation of the information provided under this rule in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's address and mailing address.

(5) If the secretary determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's address and mailing address information and that the address and mailing address information will be used only for those statutory and administrative purposes, the secretary may issue a written disclosure order for the agency. When granting disclosure, the secretary may include:

(A) Any obligations for the agency to maintain the confidentiality of a program participant's address information;

(B) Any limitations on use and access to that address information;

(C) Any term during which the disclosure is authorized for the agency;

(D) Any designation of the record format on which the address information may be maintained;

(E) Any designation of an address information disposition date after which the agency may no longer maintain a record of the address information. The agency shall notify the secretary in writing of the disposition; and

(F) Any other provisions and qualifications determined appropriate by the secretary.

(6) When a program participant requests use of the designated address in a record, and the agency has received a disclosure order for that record:

(A) The agency shall immediately provide a copy of the written order to the requesting program participant; and

(B) The agency shall notify the program manager of the occurrence and denial of the program participant's request.

(7) The secretary's denial of an agency disclosure request shall be made in writing and include a statement of the specific reasons therefore.

(8) An agency may seek reconsideration of the denial of its request by resubmitting its written request within sixty (60) days of the issuance of a denial. The request shall be accompanied by additional information and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary's denial determination. Final administrative determination shall be made by the secretary.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary, PO Box 1767, Jefferson City, MO 65102. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 70—Safe at Home: Address Confidentiality Program

PROPOSED RULE

15 CSR 30-70.090 Disclosure to Law Enforcement

PURPOSE: This rule facilitates the administration of the Safe at Home Program in accordance with sections 589.660–589.681, RSMo. This rule describes the manner and process for disclosure to law enforcement.

(1) A law enforcement officer requesting a program participant's address or mailing address under section 589.672, RSMo, must provide the request to the secretary. The secretary may accept a verbal request upon the secretary's determination that an emergency exists that requires immediate disclosure or may require a request to be in writing. The request must contain:

(A) The reason the address is required by that law enforcement officer or agency;

(B) Identification and description of the specific record or record series for which the exemption is requested;

(C) Identification of the individuals who will have access to the record;

(D) An explanation of why the law enforcement agency cannot

meet its obligations by changing its procedures or rules;

(E) Identification of the requesting individual's direct supervisor and contact information for that supervisor; and

(F) In the case of a verbal request, the circumstances justifying a determination that an emergency exists.

(2) The secretary shall review the request.

(3) The secretary's determination to grant or deny a disclosure request shall be based on, but not limited to, an evaluation of the information provided under this rule.

(4) If the secretary determines that a law enforcement officer or agency has a bona fide requirement for the use of a participant's address or mailing address information and that the address or mailing address information will be used only for the purpose of satisfying that requirement, the secretary may issue a written or verbal disclosure order for the law enforcement agency. A written record shall be maintained of the facts relating to a verbal order. When granting the request, the secretary may include:

(A) Any obligation for the law enforcement agency to maintain the confidentiality of a program participant's address information;

(B) Any limitations on use and access to that address information;

(C) Any term during which the disclosure is authorized for the law enforcement agency;

(D) Any designation of the record format on which the address information may be maintained;

(E) Any designation of an address information disposition date after which the law enforcement agency may no longer maintain a record of the address information. The law enforcement agency shall notify the secretary in writing of the disposition; and

(F) Any other provisions and qualifications determined appropriate by the secretary.

(5) When a program participant requests use of the designated address in a record, and the law enforcement officer or agency has received a written disclosure order for that record:

(A) The law enforcement officer or agency shall immediately provide a copy of the written order to the requesting program participant; and

(B) The law enforcement officer or agency shall notify the program manager of the occurrence and denial of the program participant's request.

(6) The secretary's denial of a law enforcement agency's disclosure request shall be made in writing and include a statement of the specific reasons therefore.

(7) A law enforcement agency may seek reconsideration of the denial of its request by resubmitting its request within sixty (60) days of the issuance of a denial. The request shall be accompanied by additional information and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary's denial determination. Final administrative determination shall be made by the secretary.

AUTHORITY: section 589.681, (SS SCS HCS HB 583, 94th General Assembly, First Regular Session (2007)). Emergency rule filed Aug. 17, 2007, effective Aug. 28, 2007, expires Feb. 28, 2008. Original rule filed Aug. 17, 2007.

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 Office of the Secretary of State, Business Services Division, Carol Fischer, Deputy Secretary of State, PO Box 1767, Jefferson City, MO 65102. 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2045—Athlete Agents
Chapter 1—General Rules**

PROPOSED AMENDMENT

20 CSR 2045-1.010 Fees. The board is proposing to amend section (1).

PURPOSE: The Division of Professional Registration sets the amount of the fees at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter. Therefore, this amendment establishes fees necessary to administer sections 436.215–436.272, RSMo.

(1) The following is a schedule of fees for initial licensure and renewal:

[(1)](A) Application Fee	[\$500] \$40
(B) Renewal Fee before June 30, 2009	\$ 0
(C) Renewal Fee effective June 30, 2009	\$40
[(2)](D) Fingerprinting Fee (As determined by the Highway Patrol)	

AUTHORITY: sections 436.218, 436.227 and 436.239, RSMo Supp. [2004] 2006. This rule originally filed as 4 CSR 45-1.010. Emergency rule filed Aug. 30, 2004, effective Sept. 9, 2004, expired March 7, 2005. Original rule filed Aug. 18, 2004, effective Feb. 28, 2005. Moved to 20 CSR 2045-1.010, effective Aug. 28, 2006. Amended: Filed Aug. 30, 2007.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately five thousand five hundred sixty dollars (\$5,560) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will save private entities approximately five thousand five hundred sixty dollars (\$5,560) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone one may file a statement in support of or in opposition to this proposed amendment with the Division of Professional Registration, Attn: Tim Lueckenhoff, PO Box 1335, Jefferson City, MO 65102. 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.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration

Division 2045 - Athlete Agents

Chapter 1 - General Rules

Proposed Amendment - 20 CSR 2045-1.010 Fees

Prepared July 11, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue	
Missouri Office of Athlete Agents	\$5,560.00	
	Total Loss of Revenue Biennially for the Life of the Rule	\$5,560.00

III. WORKSHEET

The division is statutorily obligated to enforce and administer the provisions of sections 324.520-324.526, RSMo. Pursuant to Section 324.522, RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 324.520-324.526, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.520-324.526, RSMo. The board estimates the projections calculated in the Private Entity Fiscal Notes will be total loss of revenue for the board.

PRIVATE ENTITY FISCAL NOTE**I. RULE NUMBER****Title 20 -Department of Insurance, Financial Institutions and Professional Registration****Division 2045 - Athlete Agents****Chapter 1 - General Rules****Proposed Amendment - 20 CSR 2045-1.010 Fees**

Prepared July 11, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
16	Application Fee (application fee - \$460 decrease)	-\$7,360
37	Renewal Fee before June 30, 2009 (\$0)	\$0
45	Renewal Fee effective June 30, 2009 (\$40)	\$1,800
	Estimated Biennial Cost Savings for the Life of the Rule	\$5,560

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The figures reported above are based on FY06 actuals and FY 08 projections.
2. It is anticipated that the total saving will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The division is statutorily obligated to enforce and administer the provisions of sections 324.520-324.526, RSMo. Pursuant to Section 324.522, RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 324.520-324.526, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.520-324.526, RSMo.

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

**Division 2110—Missouri Dental Board
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2110-2.130 Dental Hygienists. The board is proposing to amend sections (5) and (7).

PURPOSE: This amendment clarifies that dental hygienists can apply fluoride varnishes unsupervised by a dentist.

(5) A hygienist may perform the following procedures under direct supervision:

(B) Expanded functions in [4 CSR 110-2.120] **20 CSR 2110-2.120** with proof of competency, with the exception of periodontal procedures as outlined in section (3) of this rule, made available to the board upon request. Neither a Missouri basic skills test nor certification in dental assisting is required for a dental hygienist to take expanded functions courses.

(7) A hygienist may provide oral hygiene instructions, [or] conduct oral screenings, **and apply fluoride** without a dentist being present. The hygienist shall refer the individual screened to a dentist for diagnosis.

AUTHORITY: sections 332.031 and 332.091, RSMo 2000 and 332.071 and 332.311, RSMo Supp. [2003] **2006**. This rule originally filed as 4 CSR 110-2.130. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 30, 2007.

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 Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102, by faxing (573) 751-8216 or via email at dental@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.

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

**Division 2110—Missouri Dental Board
Chapter 2—General Rules**

PROPOSED RESCISSION

20 CSR 2110-2.161 Post-Board Order Hearing Procedures. This rule defined the procedures to be used in contested case hearings to determine whether a disciplinary order or agreement imposed under section 332.321, RSMo has been violated.

PURPOSE: This rule is being rescinded as the language in section 620.153, RSMo makes this rule obsolete.

AUTHORITY: section 332.031, RSMo 1986. This rule originally filed as 4 CSR 110-2.161. Original rule filed April 16, 1985, effective

Aug. 26, 1985. Moved to 20 CSR 2110-2.161, effective Aug. 28, 2006. Rescinded: Filed Aug. 30, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102, by faxing (573) 751-8216 or via email at dental@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.

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

**Division 2110—Missouri Dental Board
Chapter 2—General Rules**

PROPOSED RESCISSION

20 CSR 2110-2.162 Impaired Practitioner Procedures. This rule established the procedures to be followed in implementing section 332.321.2(20), RSMo.

PURPOSE: This rule is being rescinded as section 332.327, RSMo passed by the General Assembly in 1999, supersedes this rule as well as all of Chapter 3 of 20 CSR 2110.

AUTHORITY: section 332.031, RSMo 1986. This rule originally filed as 4 CSR 110-2.162. Original rule filed April 16, 1985, effective Aug. 26, 1985. Amended: Filed Sept. 3, 1991, effective Jan. 13, 1992. Moved to 20 CSR 2110-2.162, effective Aug. 28, 2006. Rescinded: Filed Aug. 30, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102, by faxing (573) 751-8216 or via email at dental@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.

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

**Division 2197—Board of Therapeutic Massage
Chapter 1—General Rules**

PROPOSED AMENDMENT

20 CSR 2197-1.040 Fees. The board is proposing to amend sections (1) and (3).

PURPOSE: The Board of Therapeutic Massage is statutorily obligated to enforce and administer the provisions of sections 324.240–324.275, RSMo. Pursuant to section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by section 324.245, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240–324.275, RSMo. This amendment also implements a change of address fee.

(1) All fees shall be paid by cashier's check, personal check, business check, money order, or other method approved by the division and *[must]* **shall** be made payable to the Board of Therapeutic Massage.

(3) The fees are established as follows:

(A) Business License Fee	<i>[\$ 100.00]</i> \$50
1. Change of Address Fee	\$25
(B) Business License Renewal Fee	<i>[\$ 100.00]</i> \$50
1. Late Renewal Fee	\$50
(E) Massage Therapist Application Fee	<i>[\$ 200.00]</i> \$100
(F) Massage Therapist Renewal Fee	<i>[\$ 200.00]</i> \$50
1. Late Renewal Fee 1–30 days	\$50
2. License Reinstatement Fee 31 days–2 years	\$100
3. Late Continuing Education Fee	\$50

AUTHORITY: sections 324.245, 324.247, and 324.265, RSMo Supp. [2003] 2006, 324.250, 324.252 and 324.267, RSMo 2000. This rule originally filed as 4 CSR 197-1.040. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-1.040, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

PUBLIC COST: This proposed amendment will reduce the Massage Therapy Fund by approximately four hundred ninety-four thousand, nine hundred and seventy-five dollars (\$494,975) biennially for the life of the rule. It is anticipated that the total reduction will recur biennially for the life of the rule, may vary with inflation, and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will save private entities approximately four hundred ninety-four thousand, nine hundred and seventy-five dollars (\$494,975) biennially for the life of the rule. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions, and Professional Registration

Division 2197 - Board of Therapeutic Massage

Chapter 1 - General Rules

Proposed Rule - 20 CSR 2197-1.040 Fees

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue
Board of Therapeutic Massage	\$494,975.00
Total Loss of Revenue Biennially for the Life of the Rule	\$494,975.00

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. The division is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions, and Professional Registration

Division 2197 - Board of Therapeutic Massage

Chapter 1 - General Rules

Proposed Amendment - 20 CSR 2197-1.040 Fees

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
100	Business License Fees (License Fee - \$50 decrease)	\$5,000
1	Change of Address Fees - \$25.00	(\$25)
700	Business License Renewal Fee (\$50 decrease)	\$35,000
200	Massage Therapy Application Fees (Application Fee - \$100 decrease)	\$20,000
2,900	Massage Therapist Renewal Fee (\$150 decrease)	\$435,000
Estimated Biennial Cost Savings for the Life of the Rule		\$494,975

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The figures reported above are based on FY06 actuals and FY08 projections.
2. It is anticipated that the total saving will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The division is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements

PROPOSED AMENDMENT

20 CSR 2197-2.010 Application for Licensure. The board is proposing to amend sections (1)–(4).

PURPOSE: This amendment requires applicants to submit fingerprints for the board to conduct criminal background checks. Additionally, this amendment modifies educational requirements.

(1) A person who has completed massage therapy studies consisting of at least five hundred (500) clock hours of supervised instruction in a Coordinating Board of Higher Education (CBHE) certified school, Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education or an equivalent approving body for out-of-state applicants, shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

(B) Two (2) sets of fingerprints *[and the criminal background check fee]* for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and Federal Bureau of Investigation (FBI). The applicant shall provide proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Proof shall consist of any documentation acceptable to the board. Any fees due for a fingerprint background check shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor(s);

(C) An official final transcript showing successful completion of the program to be submitted directly to the board office from the massage therapy program which includes:

1. The applicant's name;
2. Date of enrollment;
3. Date of completion; and

4. Documentation that the massage therapy program consisted of at least five hundred (500) clock hours of supervised instruction which consisted of:

A. *[Three hundred (300) clock hours dedicated to massage theory and practice techniques provided by an instructor(s) who has practiced professionally for at least two (2) years and who is licensed or meets the qualifications for licensure as a massage therapist in the state of Missouri]* At least three hundred (300) clock hours dedicated to massage theory and practice techniques. An instructor for massage theory and practice techniques shall document at least two (2) years of massage therapy practice and either be licensed as a massage therapist in this state or be licensure eligible, based upon board review of the instructor's credentials. An instructor of kinesiology within the massage theory and practice technique curriculum shall submit verification of education and/or experience in kinesiology instruction and licensure as a massage therapist or licensure eligibility shall not be required;

B. One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by *[an instructor(s) who holds a bachelor's degree/minor in a healthcare related field including but not limited to the fields of physical therapy, chiropractic, osteopathy, medical doctor, physician assistant, nursing, etc. or a bachelor's degree/minor in a field related to anatomy and physiology including but not limited to biology, chemistry, health, microbiology, medicine, etc.]* one of the following:

(I) An instructor with an associate, bachelor, or advanced degree in a science related field that includes a course of study in anatomy and physiology. Such degrees include but are not limited to physical therapy, chiropractic, osteopathy, medicine, nursing, chemistry, or biology and shall be from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education;

(II) An instructor with fifteen (15) semester hours or twenty-five (25) quarter hours in science or science related courses from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education. All course work must have a passing grade and at least eight (8) semester hours or fifteen (15) quarter hours of the course of study shall be in anatomy and physiology. For the purpose of this regulation a semester hour is equivalent to fifteen (15) clock hours and a quarter hour is equivalent to ten (10) clock hours;

C. Fifty (50) clock hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri provided by an instructor who demonstrates *[documentable]* documented experience/education in a related field; and

D. Fifty (50) clock hours dedicated to ancillary therapies provided by an instructor(s) who demonstrates documented experience/education in a related field. The fifty (50) clock hours shall include but not be limited to cardiopulmonary resuscitation (CPR) and first aid which shall be provided by an instructor who holds the respective instructor certification; and

(D) Evidence of passing an examination from one of the following:

1. The National Certification Board of Therapeutic Massage and Bodywork (NCBTMB); *[or]*

2. The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); *[or]*

3. The American Medical Massage Association National Board Certification Examination (AMMA NBCE) administered as of 2006; or

[3.]4. An examination deemed appropriate by the board; *[and]*

(E) An applicant completing a massage therapy program consisting of less than five hundred (500) hours of supervised instruction from a Missouri Coordinating Board of Higher Education (CBHE) approved school, Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education or an equivalent approving agency for out-of-state schools, or who has completed a massage therapy program deficient in clock hours according to *[4 CSR 197-2.010(1)(C)4.A.–D.] 20 CSR 2197-2.010(1)(C)4.A.–D.* may complete deficiencies at either a Missouri CBHE approved school, DESE approved vocational program, mentorship approved by the board, or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education, or an out-of-state school approved by an agency equivalent to CBHE.; and

(F) For the purpose of 20 CSR 2197-2.010, the course of instruction meeting the educational requirements for licensure shall not be provided via correspondence course, audiotape, videotape, or the Internet unless approved by the board. The course of instruction shall be face-to-face, visually and verbally interactive, between an instructor and the student(s).

(2) A person who has completed five hundred (500) clock hours in an apprenticeship with a certified mentor and has successfully passed an examination approved by the board shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

(B) Two (2) sets of fingerprints *[and the criminal background*

check fee] for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and FBI. The applicant shall provide proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background check shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor(s);

(C) Official evidence of completing five hundred (500) clock hours of massage therapy training in an apprenticeship with a certified mentor which includes:

1. The applicant name;
2. Date of enrollment;
3. Date of completion;

4. Documentation that the mentorship program consisted of at least five hundred (500) clock hours of supervised instruction which consisted of:

A. Three hundred (300) clock hours dedicated to massage theory and practice techniques provided directly by the certified mentor;

B. *[One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by an instructor(s) who holds a bachelor's degree/minor in a healthcare related field including but not limited to the fields of physical therapy, chiropractic, osteopathy, medical doctor, physician assistant, nursing, etc. or a bachelor's degree/minor in a field related to anatomy and physiology including but not limited to biology, chemistry, health, microbiology, medicine, etc.]* One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by one (1) of the following:

(I) The board approved mentor with an associate, bachelor, or advanced degree in a science related field from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education that includes a course of study in anatomy and physiology. Such degrees include but are not limited to physical therapy, chiropractic, osteopathy, medicine, nursing, chemistry, or biology;

(II) A school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education, a massage therapy program approved by the Missouri CBHE, or an out-of-state school approved by an agency equivalent to the Missouri CBHE; or

(III) The board approved mentor with fifteen (15) semester hours or twenty-five (25) quarter hours in science or science related courses from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education. All course work must have a passing grade and at least eight (8) semester hours in fifteen (15) quarter hours of the course of study shall be in anatomy and physiology. For the purpose of this regulation a semester hour is equivalent to fifteen (15) clock hours and a quarter hour is equivalent to ten (10) clock hours;

C. Fifty (50) clock hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri. *[provided by an instructor(s) who demonstrates documented experience/education in a related field]* The mentor shall document education and/or experience to provide a course of instruction for this area; and

D. Fifty (50) clock hours dedicated to ancillary therapies. *[provided by an instructor(s) who demonstrates documented experience/education in a related field.]* The mentor shall document education and/or experience to provide a course of instruction for this area. The fifty (50) clock hours shall include but not be limited to cardiopulmonary resuscitation (CPR) and first

aid which shall be provided by an instructor who holds the respective instructor certification; *[and]*

(D) Evidence of passing a statistically valid examination from one of the following:

1. NCBTMB; *[or]*
2. NCCAOM; *[or]*

3. AMMA NBCE administered as of 2006; or

[3.] 4. An examination deemed appropriate by the board~~./.~~; and

(E) For the purpose of 20 CSR 2197-2.010, the course of instruction meeting the educational requirements for licensure shall not be provided via correspondence course, audiotape, videotape, or the Internet unless approved by the board. The course of instruction shall be face-to-face, visually and verbally interactive, between an instructor and the student(s).

(3) Grandfathering Provisions.

(A) A person who has passed a statistically valid examination on therapeutic massage and bodywork prior to August 28, 1999 and applies for such license prior to December 31, 2000 shall be at least eighteen (18) years of age and shall submit~~[-]~~ :

1. A completed notarized application and the accompanying application fee;

2. Two (2) sets of fingerprints *[and the criminal background check fee]* for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and FBI. The applicant shall provide proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Proof shall consist of any documentation acceptable to the board. Any fees due for a fingerprint background check shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor(s); and

3. Evidence of passing a statistically valid examination from one of the following:

- A. NCBTMB; or
- B. NCCAOM.

(B) A person who has been in the practice of massage therapy for at least ten (10) years prior to August 28, 1999 and applies for such license prior to December 31, 2000 shall submit or cause to be submitted:

1. A completed notarized application and the accompanying application fee;

2. Two (2) sets of fingerprints and the criminal background check fee;

3. Evidence documenting at least ten (10) years of massage therapy practice (minimum of one hundred fifty (150) massage hours per year practiced between August 28, 1984 to August 28, 1999) which may include but not be limited to a combination of the following:

- A. Income tax forms;
- B. Professional massage therapy association membership(s);
- C. Certificates of continuing education in massage therapy;
- D. Business license(s);
- E. Office rent or lease agreement(s);
- F. Yellow page advertisements with dates;
- G. Printed advertisements with dates;
- H. Professional insurance;

I. Cancelled checks related to the massage therapy practice which shall include but not be limited to payment for rent, services rendered and/or massage therapy supplies;

J. Verifiable letter(s) from employer(s);

K. Verifiable letter(s) of referral for massage therapy services from a licensed healthcare professional;

L. Verifiable letters of confirmation from clients of massage therapy experience;

M. Work log or client records consisting of client's name, address and/or telephone number, appointment date, and time period worked on client.

(4) [Temporary Two (2)-Year License.] A massage therapist license shall not be issued until the results of the criminal background check have been reviewed by the board. The results of the criminal background check shall be valid for two (2) years from receipt of the criminal background check in the board office.

[(A) A person who has practiced less than three (3) years prior to August 28, 1999 and has at least one hundred (100) clock hours of training prior to December 31, 2000 and applies for a temporary two (2)-year license prior to December 31, 2000 shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

1. A completed notarized application and the accompanying application fee;

2. Two (2) sets of fingerprints and the criminal background check fee;

3. Evidence documenting at least seventy-five (75) massage hours over a minimum of a six (6)-month period with no less than eight (8) hours in each single month of massage therapy practice prior to August 28, 1999 which may include but not be limited to a combination of the following:

A. Income tax forms;

B. Professional massage therapy association membership(s);

C. Certificates of continuing education in massage therapy;

D. Business license(s);

E. Office rent or lease agreement(s);

F. Yellow page advertisements with dates;

G. Printed advertisements with dates;

H. Professional insurance;

I. Cancelled checks related to the massage therapy practice which shall include but not be limited to payment for rent, services rendered and/or massage therapy supplies;

J. Verifiable letter(s) from employer(s);

K. Verifiable letter(s) of referral for massage therapy services from a licensed healthcare professional;

L. Verifiable letters of confirmation from clients of massage therapy experience; or

M. Work log or client records consisting of client's name, address and/or telephone number, appointment date, and time period worked on client.

4. Evidence of at least one hundred (100) clock hours of formal massage therapy training approved by the board which shall include any combination of the following:

A. Classroom and directly supervised student clinical massage therapy practice hours;

B. Continuing education credits in massage therapy;

C. Massage therapy seminar and/or workshop attendance.

(B) A person who has practiced at least three (3) years prior to August 28, 1999 and has less than one hundred (100) clock hours of training prior to December 31, 2000 and applies for a temporary two (2)-year license prior to December 31, 2000 shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

1. A completed notarized application and the accompanying application fee;

2. Two (2) sets of fingerprints and the criminal background check fee;

3. Evidence documenting at least three (3) years massage therapy practice (minimum of one hundred fifty (150) massage hours per year practiced between August 28, 1994 to August 28, 1999) which may include but not be limited to a combination of the following:

A. Income tax forms;

B. Professional massage therapy association membership(s);

C. Certificates of continuing education in massage therapy;

D. Business license(s);

E. Office rent or lease agreement(s);

F. Yellow page advertisements with dates;

G. Printed advertisements with dates;

H. Professional insurance;

I. Cancelled checks related to the massage therapy practice which shall include but not be limited to payment for rent, services rendered and/or massage therapy supplies;

J. Verifiable letter(s) from employer(s);

K. Verifiable letter(s) of referral for massage therapy services from a licensed healthcare professional;

L. Verifiable letters of confirmation from clients of massage therapy experience; or

M. Work log or client records consisting of client's name, address and/or telephone number, appointment date, and time period worked on client; and

4. Evidence of at least twenty-five (25) clock hours of formal massage therapy training approved by the board which shall include any combination of the following:

A. Classroom and directly supervised student clinical massage therapy practice hours;

B. Continuing education credits in massage therapy;

C. Massage therapy seminar and/or workshop attendance.

(C) During the temporary two (2)-year license period the licensee shall complete at least one hundred (100) additional clock hours of formal training approved by the board and shall:

1. Cause an official final transcript to be submitted directly to the board office from the approved massage therapy school, Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, mentorship approved by the board, or school, college, university, or other institution of higher learning in the United States which, at the time the applicant was enrolled, was accredited by a regional accrediting commission recognized by the United States Department of Education which includes:

A. The applicant's name;

B. Date of enrollment;

C. Date of completion; and

D. Evidence that one hundred (100) clock hours of formal training included at least twenty-five (25) clock hours in anatomy and physiology.

(D) The temporary two (2)-year license shall not be renewable.

(E) A temporary license holder who fails to complete the required one hundred (100) clock hours of formal training approved by the board within the two (2)-year license period shall not be eligible for licensure pursuant to this provision and will have to reapply for licensure pursuant to the licensure requirements in effect at that time.]

AUTHORITY: sections 324.240 and 324.267, RSMo 2000 and 324.243, 324.245, 324.265 and 324.270, RSMo Supp. [2003] 2006. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-2.010, effective Aug. 28, 2007. Amended: Filed Aug. 21, 2007.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately eleven thousand six hundred fifty-five dollars (\$11,655) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with

inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities two hundred seventy-five dollars (\$275) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER**Title 20 - Department of Insurance, Financial Institutions and Professional Registration****Division 2197 - Board of Therapeutic Massage****Chapter 2 - Massage Therapist Licensure Requirements****Proposed Amendment - 20 CSR 2197-2.010 Application for Licensure**

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
400	Applicants for Permanent Licensure Fingerprinting Fees @ \$12.95 increase	\$5,180
400	Applicants for Provisional Licensure Fingerprinting Fees @ \$12.95 increase	\$5,180
100	Applicants for Business Licensure Fingerprinting Fees @ \$12.95 increase	\$1,295
	Estimated Annual Cost of Compliance for the Life of the Rule	\$11,655

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on FY 06 actuals and FY 07 projections, the board estimates that 900 applicants will be affected by this proposed amendment and the fingerprinting will increase by \$12.95 per person.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage
Chapter 2 - Massage Therapist Licensure Requirements
Proposed Amendment - 20 CSR 2197-2.010 Application for Licensure
 Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
1	Applicants/Passed the American Medical Massage Assn. National Board Certification Exam @ \$275 exam fee.	\$275
Estimated Annual Cost of Compliance for the Life of the Rule		\$275

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based upon actual figures since 2001, the board estimates it will receive at least one applicant per year that has passed the American Medical Massage Association National Board Certification Examination (AMMA NBCE) administered as of 2006. There are two exams available, level one and level two. Each exam costs \$275.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PROPOSED AMENDMENT

20 CSR 2197-2.020 Reciprocity. The board is proposing to amend sections (1)–(3).

PURPOSE: This amendment requires applicants for reciprocity to submit fingerprints for the board to conduct criminal background checks.

(1) A person applying for licensure by reciprocity whose state, territory, or commonwealth of the District of Columbia has requirements which substantially conform to those in the state of Missouri shall submit or cause to be submitted the following:

(B) Two (2) sets of fingerprints *[and the criminal background check fee]* for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and Federal Bureau of Investigation (FBI). The applicant shall provide proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background check shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor(s);

(D) *[A]* When requested by the board a copy of the other state, territory, commonwealth, or the District of Columbia's statutes and rules and regulations pertaining to massage therapy; and

(2) A person applying for licensure by reciprocity whose state, territory, commonwealth, or the District of Columbia has *[less stringent laws than those in force in the state of]* licensure requirements that are not substantially the same as Missouri shall be required to meet the requirements of section 324.265, RSMo and *[board rule 4 CSR 197-2.010]* **20 CSR 2197-2.010.**

(3) A massage therapist license shall not be issued until the results of the criminal background check have been reviewed by the board. The results of the criminal background check shall be valid for two (2) years from receipt of the criminal background check in the board office.

AUTHORITY: sections 324.245 and 324.265, RSMo Supp. [1999] 2006. This rule originally filed as 4 CSR 197-2.020. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2197-2.020, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 cost private entities approximately sixty-five dollars (\$65) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@pr.mo.gov. To be considered, comments must be

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage
Chapter 2 - Massage Therapist Licensure Requirements
Proposed Amendment - 20 CSR 2197-2.020 Reciprocity
 Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
5	Applicants for Permanent Licensure Fingerprinting Fees @ \$12.95 increase	\$65
Estimated Annual Cost of Compliance for the Life of the Rule		\$65

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on FY 06 actuals and FY 07 projections, the board estimates that 5 applicants for licensure will incur an increase of \$12.95 per person for fingerprinting.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2197-2.030 Provisional License. This rule outlined the requirements to obtain a provisional license.

PURPOSE: This rule is being rescinded and readopted to clarify the requirements to obtain a provisional license or an extension of the license.

AUTHORITY: sections 324.245, RSMo Supp. 2003 and 324.265, RSMo 2000. This rule originally filed as 4 CSR 197-2.030. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-2.030, effective Aug. 28, 2006. Rescinded: Filed Aug. 21, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED RULE

20 CSR 2197-2.030 Provisional License

PURPOSE: This rule outlines the requirements to obtain a provisional license.

(1) A person shall request an application for provisional licensure from the Missouri Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO, 65102-1335 by calling (573) 522-6277 or sending an email to massagether@pr.mo.gov. The TDD number is (800) 735-2996. An application for provisional licensure shall include the following information:

(A) An official transcript from the massage therapy program, school, or board approved mentor documenting completion of a massage therapy program pursuant to 20 CSR 2197-2.010(1) or (2). For the purpose of this regulation, the massage therapy program shall not be provided via correspondence course, audiotape, videotape, or the Internet unless approved by the board. The course of instruction shall be face-to-face, visually and verbally interactive, between an instructor and the student(s). The board may accept transcripts issued to the applicant and placed in a sealed envelope that carries the massage therapy program, school, or mentor's seal or stamp;

(B) Written verification from the massage therapy school, pro-

gram, mentor, or testing entity that the applicant has applied or is scheduled to take an examination pursuant to 20 CSR 2197-2.010(1)(D)1.-3.;

(C) Fingerprints for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and Federal Bureau of Investigation (FBI). The applicant shall provide proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor; and

(D) Any applicable fees.

(2) A provisional license is valid for up to ninety (90) days from the date of issuance. A provisional license shall expire upon passing the examination as defined in 20 CSR 2197-2.010(1)(D) or 20 CSR 2197-2.010(2)(D) or conclusion of the ninety (90)-day licensure provisional period whichever comes first. Upon expiration of a provisional license the licensee shall no longer engage in the practice of massage therapy. To resume practicing massage therapy a person must either apply to renew the provisional license, pursuant to 20 CSR 2197-2.030(3), if he/she has not passed the national examination, or obtain a license as a massage therapist pursuant to 20 CSR 2197-2.010(1) or (2).

(3) A provisional license may be renewed for an additional ninety (90) days from the date of expiration at the discretion of the board. To renew a provisional license the applicant must complete an application, submit written verification from the massage therapy school, program, mentor or testing entity that the person has applied or is scheduled to take an examination pursuant to 20 CSR 2197-2.010(1)(D) or 20 CSR 2197-2.010(2)(D), and pay the required fee.

(4) A provisional licensee is subject to all statutes and regulations relating to the licensing and regulation of licensed massage therapists and licensed massage therapy businesses.

(5) A provisional license shall not be issued until the results of the criminal background check have been reviewed by the board. The results of the criminal background check shall be valid for two (2) years from receipt of the criminal background check in the board office.

AUTHORITY: sections 324.245 and 324.265, RSMo Supp. 2006. This rule originally filed as 4 CSR 197-2.030. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-2.030, effective Aug. 28, 2006. Rescinded and readopted: Filed Aug. 21, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately four hundred forty-five dollars (\$445) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately twenty-three thousand seven hundred and fifty dollars (\$23,750) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573)

*751-0735, or by emailing comments to massagether@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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

**Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage**

**Chapter 2 - Massage Therapist Licensure Requirements
Proposed Rule - 20 CSR 2197-2.030 Provisional License**

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance
Missouri Board for Therapeutic Massage	\$444.84
Compliance for the Life of the Rule	\$444.84

III. WORKSHEET

Licensure Technician II will update licensure system and verify documentation received in order to issue a provisional license. The executive director reviews criminal history reports of multiple offenses.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURL Y SALARY	COST PER MINUT E	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Executive Director	\$62,275	\$92,721.55	\$44.58	\$0.74	1 minute	\$0.74	\$74.30
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	2 minute	\$0.58	\$216.79
Total Personal Service Costs							\$291.09

Expense and Equipment Dollars for Initial Licensure

License Postage	\$0.41
Total Expense and Equipment Cost Per Provisional License	\$0.41
Total Expense and Equipment Cost	\$153.75

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.89% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
2. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage
Chapter 2 - Massage Therapist Licensure Requirements
Proposed Rule - 20 CSR 2197-2.030 Provisional License
 Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
375	Massage Therapist Provisional License Fee - \$50	\$18,750
100	Massage Therapist Provisional License Renewal Fee - \$50	\$5,000
Estimated Annual Cost of Compliance for the Life of the Rule		\$23,750

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The number of provisional license fees and provisional license renewal fees is based on FY 06 actuals and FY 08 projections.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2197-2.040 Students/Student License. This rule outlined the requirements to obtain a student license.

PURPOSE: This rule is being rescinded and readopted to clarify the requirements to obtain a student license.

AUTHORITY: sections 324.245 and 324.265, RSMo Supp. 1999. This rule originally filed as 4 CSR 197-2.040. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2197-2.040, effective Aug. 28, 2006. Rescinded: Filed Aug. 21, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED RULE

20 CSR 2197-2.040 Students/Student License

PURPOSE: This rule outlines the requirements to obtain a student license.

(1) Upon enrollment the school or the certified mentor shall submit to the board a completed application for student licensure. The application shall include the following information:

(A) Verification by the instructor or certified mentor that the student has demonstrated substantial progress and competency, as approved within the course of instruction, with a grade of "C" or better in the following:

1. Basic hygiene;
2. Universal precautions;
3. Contraindications; and
4. Basic massage theory and basic massage hands-on practice;

(B) Verification that the student has submitted a set of fingerprints for the purpose of conducting a criminal background check by the Missouri State Highway Patrol and Federal Bureau of Investigation (FBI). The student shall submit two (2) sets of fingerprints to the Missouri State Highway Patrol's approved vendor(s) for both a Missouri State Highway Patrol and FBI criminal background check. Any fees due for fingerprint background checks shall be paid by the student directly to the Missouri State Highway Patrol or its approved

vendor(s); and
(C) Any applicable fees.

(2) A student license shall not be issued until the results of the criminal background check have been reviewed by the board. The results of the criminal background check shall be valid for two (2) years from receipt of the criminal background check in the board office.

(3) As a part of the course of study, any student may practice massage therapy on fellow students and family members.

(4) Student licenses shall be displayed in a conspicuous place with a photograph that has been taken within the last two (2) years or retained by the school in a folder or file that is easily accessible for inspection by the board or a board representative.

(5) The holder of a student license may practice massage therapy on members of the public while under the direct supervision of a massage therapy instructor or certified mentor.

(6) Students shall not receive compensation from the school or client for any massage therapy services.

(7) When the student is no longer enrolled or has graduated, the school shall return the student license within thirty (30) days to the board office.

(8) No massage therapy instructor shall have more than five (5) students under his/her direct supervision at one (1) time during massage therapy clinical practice.

AUTHORITY: sections 324.245 and 324.265, RSMo Supp. 2006. This rule originally filed as 4 CSR 197-2.040. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2197-2.040, effective Aug. 28, 2006. Rescinded and readopted: Filed Aug. 21, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three hundred seven dollars (\$307) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately six thousand four hundred seventy-five dollars (\$6,475) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

**Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage**

Chapter 2 - Massage Therapist Licensure Requirements

Proposed Amendment - 20 CSR 2197-2.040 Students/Student License

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
Missouri Board for Therapeutic Massage	\$307.03
Compliance for the Life of the Rule	\$307.03

III. WORKSHEET

The Licensure Technician I will enter fingerprint information into the licensure system and send correspondence to school and/or applicant when information is entered into the licensure system and sends correspondence to school and/or applicant when information is missing. The Licensure Technician II will verify receipt of criminal background report and schedule applications for review that have significant criminal history.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Licensure Tech I	\$22,830	\$33,991.59	\$16.34	\$0.27	1 minute	\$0.27	\$135.00
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	1 minute	\$0.29	\$147.03
Total Personal Service Costs							\$282.03

The board estimates that 1% of the student applications will have rejected or incomplete fingerprint cards regarding follow-up and resulting correspondence. With 500 applications received annually the corresponding rejected fingerprints is 50. Postage is 50 cents to return cards and letter regarding rejected fingerprints.

Expense and Equipment Dollars for Initial Licensure

Fingerprint Rejections	\$0.50
Total Expense and Equipment Cost Per Fingerprint Rejection	\$0.50
Total Expense and Equipment Cost	\$25.00

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.89% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
2. Based on FY 06 actuals and FY 07 projections, the board estimates that 1% of the student applications will have rejected or incomplete fingerprint cards requiring follow-up. Based on 500 applications being received annually, the board estimates approximately 50 fingerprinting cards will be rejected.
3. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2197 - Board of Therapeutic Massage
Chapter 2 - Massage Therapist Licensure Requirements
Proposed Amendment - 20 CSR 2197-2.040 Students/Student License
Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
500	Student Applicants' Fingerprinting Fees @ \$12.95 increase	\$6,475
	Estimated Annual Cost of Compliance for the Life of the Rule	\$6,475

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on FY 06 actuals and FY 07 projections, the board estimates that 500 students' applications will incur an increase by \$12.95 for fingerprinting.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED AMENDMENT

20 CSR 2197-2.050 License Renewal. The board is proposing to amend sections (1), (5), (6) and (7).

PURPOSE: This amendment removes a couple specific areas of study required under the current continuing education requirements.

(1) Each licensee who holds a license pursuant to sections 324.240 to 324.275, RSMo shall complete, during the two (2)-year license period prior to renewal, as a condition of the license renewal, twelve (12) clock hours of continuing education relevant to the practice of massage therapy *[which shall include universal precautions/infection control and cardiopulmonary resuscitation (CPR) certification]*.

(A) Continuing education credits earned after the expiration date of a license may apply to the previous renewal cycle if the licensee pays the continuing education late fee as defined in *[4 CSR 197-1.040(3)(F)3.] 20 CSR 2197-1.040(3)(F)3.* and documents completion of the continuing education as required by *[4 CSR 197-2.050(1)] 20 CSR 2197-2.050(1)*. Payment of the continuing education late fee will entitle a licensee to earn continuing education credits for the previous year. Such hours shall be completed no later than thirty (30) days from the expiration date of the license.

(5) The license of a massage therapist that is not renewed by the expiration date shall lapse and become not current. A person may renew the lapsed license by completing the renewal form and paying the required renewal and late fees as defined in *[4 CSR 197-1.040(3)(F)] 20 CSR 2197-1.040(3)(F)* and (3)(F)1. within thirty (30) days of the expiration date. The lapsed licensee shall not provide massage therapy until filing the renewal form and paying the required fees.

(6) A licensed massage therapist may request reinstatement of a license up to two (2) years from the expiration date by completing the required reinstatement application, paying the required fees as defined in *[4 CSR 197-1.040(3)(F) and (3)(F)2.] 20 CSR 2197-1.040(3)(F) and 20 CSR 2197-1.040(3)(F)2.* and document completion of the continuing education as required by *[4 CSR 197-2.050(1)] 20 CSR 2197-2.050(1)*. If the massage therapist fails to reinstate a license within two (2) years of the expiration date, the former licensee must submit an application for licensure, pay the required fee, and comply with the current requirements for licensure.

(7) A massage therapist with a lapsed license, as provided in this rule, may be reinstated at the sole discretion of the board upon **completion of the required continuing education**, payment of the required fee, and submitting the required application.

AUTHORITY: sections 324.245, 324.262 [RSMo 2000] and 324.265, RSMo Supp. [2003] 2006. This rule originally filed as 4 CSR 197-2.050. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-2.050, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 3—Standards of Practice**

PROPOSED RULE

20 CSR 2197-3.005 Definitions

PURPOSE: This regulation defines certain terms used throughout Chapter 3.

(1) Client or patient—(Hereinafter referred to as client) Any person that is the recipient of massage therapy.

(2) Licensee—A massage therapy student licensed pursuant to section 324.265.5, RSMo, a provisional licensed massage therapist licensed pursuant to section 324.265.4, RSMo, or a massage therapist licensed pursuant to section 324.265.1(1)–(5), RSMo.

(3) Massage therapy, massage therapy service(s), or services—The provision of massage therapy as defined in section 324.240(7), RSMo.

AUTHORITY: sections 324.245 and 324.262, RSMo Supp. 2006. Original rule filed Aug. 21, 2007.

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 Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 3—Standards of Practice**

PROPOSED RESCISSION

20 CSR 2197-3.010 Standards of Practice. This rule established standards of practice for licensed massage therapists including those licensed massage therapists performing chair and on-site (outcall) massages and provisionally licensed massage therapists.

PURPOSE: This rule is being rescinded and readopted to clarify standards of practice.

AUTHORITY: sections 324.245, RSMo Supp. 2003 and 324.262, RSMo 2000. This rule originally filed as 4 CSR 197-3.010. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-3.010, effective Aug. 28, 2006. Rescinded: Filed Aug. 21, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

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

**Division 2197—Board of Therapeutic Massage
Chapter 3—Standards of Practice**

PROPOSED RULE

20 CSR 2197-3.010 Standards of Practice

PURPOSE: This regulation establishes standards of practice for massage therapists including massage therapists performing chair or on-site (outcall) massage therapy.

(1) A licensee shall practice within the scope of their education and training and shall not misrepresent professional qualifications relating to licensure, education, experience or areas of competence. Records regarding the licensee's education and training shall be maintained by the licensee.

(2) A licensee shall recommend or refer a client to another licensed health care professional when appropriate and shall not delegate professional responsibilities to a person that is not qualified.

(3) A licensee shall acknowledge the limitations and contraindications of massage therapy and shall not provide unjustified services.

(4) A licensee shall conduct business with honesty and integrity to include the following:

(A) Maintain professional liability insurance;

(B) Advertise massage therapy services or instruction that is accurate and free of deception, sexual suggestiveness, or explicit sexuality. When providing massage therapy the licensee shall not dress or behave in a provocative manner;

(C) Prior to treatment, disclose the fee schedule. When offering gratuitous services or discounts in connection with massage therapy services, clearly and conspicuously disclose whether additional charges may be incurred for related services and the cost of such related services;

(D) Post the license with a current photograph at the licensee's place of business and/or employment;

(E) Maintain accurate client records for at least three (3) years

from the last date of service and in a manner that secures client confidentiality. Client records for massage therapy not provided at a licensed massage therapy business shall be maintained and stored securely by the licensee;

(F) Shall not engage in any verbally or physically abusive behavior with a client;

(H) Shall not engage in sexual conduct with a client(s) during a massage session;

(I) Shall not exercise influence within a licensee-client relationship for the purpose of engaging a client in sexual activity during a massage session;

(J) Shall not take unfair advantage of the client for financial gain;

(K) Shall not massage the genitals;

(L) Shall not massage the breast unless ordered by a physician prescription or by documented clinical indication. Such documentation shall be included in the client's record and the massage shall be performed by a licensee that is certified or has advanced training in techniques related to therapeutic treatment of mammary tissue;

(M) Notify the board of any violation of the Standards of Practice of which the licensee has information and knowledge; and

(N) Within the limits of the law, shall cooperate with any investigative proceeding.

(5) Prior to providing massage therapy, a licensee shall document or update client information to include:

(A) Purpose for visit to include presence of pain;

(B) Allergies, preexisting conditions, recent surgeries, and current medication;

(C) If the client is currently under the care of any health or mental healthcare professional;

(D) Date, type, and length of massage therapy service(s);

(E) Outcome assessment (may not apply to on-site/chair massage);

(F) Consent for treatment that is signed and dated by client; and

(G) Licensee's signature and date.

(6) When providing massage therapy a licensee shall:

(A) Provide privacy for the client while the client is dressing, undressing, and during the massage;

(B) Provide appropriate draping during treatment which includes draping at the gluteal cleft and genitals on males and females and the breasts on females;

(C) Modify or terminate treatment at the client's request regardless of prior consent;

(D) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause;

(E) Utilize universal precautions at all times as defined in 20 CSR 2197-1.010(4). This includes hand washing with an antibacterial agent before and after each client and not knowingly exposing clients to contagious diseases;

(F) Provide adequate space around massage chair/table to allow for proper body mechanics and to minimize the spread of infection between tables/chairs; and

(G) Maintain all equipment used to perform massage therapy services in a safe and sanitary condition, which shall include but not be limited to:

1. Covering any massage or steam equipment with a single service material that does not have an impervious barrier;

2. Repairing all cuts and nicks in upholstery;

3. Cleansing all equipment coming in contact with a client with an antibacterial agent between each client usage. Such equipment shall include hydrotherapy equipment, combs, brushes, shower caps, showers, tubs, and basins;

4. Checking all equipment for the presence of any liquid, oil and/or body fluid and clean with an antibacterial agent prior to and between each client usage;

5. Cleaning all face cradles, arm rests on all massage chairs and tables with an antibacterial agent between each client regardless of whether or not a single service material was used;

6. Using ice cubes only once and then disposing of properly;
7. Cleaning after each use and maintain all cold and hot pack equipment;
8. Storing and dispensing massage therapy lubricants from suitable containers that are sanitized to preserve the integrity of the lubricant and to prevent contamination. Lubricants or products used during a massage shall be stored separately from cleaning supplies and include but not be limited to oils, soaps, alcohol, powders, lotions, shampoos and salts;
9. Keeping multiple use containers such as pump bottles and tubes free of debris, cleaning with a antibacterial agent between each client use, and refill containers in a sanitary manner;
10. Storing all single service materials and linens in closed or covered shelves, containers, cabinets or closets;
11. Using clean single service materials such as sheets, towels, gowns, and pillowcases for each client;
12. Professionally laundering or washing all soiled, single service materials and drapes on a hot water setting with detergent and at least one (1) cup of bleach or an antibacterial agent used in accordance with product label instructions in a clothes washing machine and dried on a high heat setting in a dryer; and
13. Storing all dirty or soiled, single service materials, trash, or refuse in a closed container, closed shelves, cabinets, or closets and separate from clean, single service materials.

AUTHORITY: sections 324.245 and 324.262, RSMo Supp. 2006. This rule originally filed as 4 CSR 197-3.010. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-3.010, effective Aug. 28, 2006. Rescinded and readopted: Filed Aug. 21, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately fourteen thousand nine hundred six dollars (\$14,906) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

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 Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2197 - Board of Therapeutic Massage

Chapter 3 - Standards of Practice

Proposed Rule - 20 CSR 2197-3.010 Standards of Practice

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political	Estimated Cost of Compliance
Missouri Board for Therapeutic Massage	\$14,906.21
Compliance for the Life of the Rule	\$14,906.21

III. WORKSHEET

Licensure Technician II is responsible for entering data into the licensure system pertaining to the inspections and preparing correspondence. The executive director reviews inspection violation letters and refers to CIU if warranted.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	NUMBER OF LICENSES	COST PER APPLICATION	TOTAL COST
Executive Director	\$62,275	\$92,721.55	\$44.58	\$0.74	5 minute	94 Violation Letters	\$3.71	\$349.19
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	1 minute	250 New Business Entries	\$0.29	\$73.51
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	1 minute	250 Inspection Results	\$0.29	\$73.51
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	1 minute	225 Biennial Inspections	\$0.29	\$66.16
Licensure Tech II	\$24,648	\$36,698.41	\$17.64	\$0.29	2 minute	94 Violation Letters	\$0.59	\$55.28
Investigator II							\$30/Inspection	\$14,250.00
Total Personal Service Costs								\$14,867.67

Postage will be used to send out approximately 94 violation letters.

Expense and Equipment Dollars for Initial Licensure

License Postage	\$0.41
Total Expense and Equipment Cost Per Provisional License	\$0.41
Total Expense and Equipment Cost	\$38.54

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.89% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute.
2. It is anticipated that the total cost will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 4—Apprenticeship**

PROPOSED AMENDMENT

20 CSR 2197-4.010 Certified Mentor. The board is proposing to amend sections (1)–(6).

PURPOSE: This amendment clarifies the requirements for licensure as a certified mentor.

(1) A certified mentor shall:

(A) Be [a] licensed as a massage therapist;

(B) Complete [a notarized request for certification] an application to be certified by the board as a mentor and pay the appropriate fee;

(D) Submit documentation that the mentorship program consists of at least five hundred (500) clock hours of supervised instruction as follows:

1. Three hundred (300) clock hours dedicated to massage theory and practice techniques [provided directly] taught by the certified mentor;

2. [One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by an instructor(s) who holds a bachelor's degree/minor in a healthcare related field including but not limited to the fields of physical therapy, chiropractic, osteopathy, medical doctor, physician assistant, nursing, etc. or a bachelor's degree/minor in a field related to anatomy and physiology including but not limited to biology, chemistry, health, microbiology, medicine, etc.] One hundred (100) clock hours dedicated to the study of anatomy and physiology taught by one (1) of the following:

A. The board-approved mentor with an associate, bachelor, or advanced degree in a science related field from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education that includes a course of study in anatomy and physiology. Such degrees include but are not limited to physical therapy, chiropractic, osteopathy, medicine, nursing, chemistry, or biology;

B. A school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education, a massage therapy program approved by the Missouri Coordinating Board for Higher Education (CBHE), or an out-of-state school approved by an agency equivalent to the Missouri CBHE; or

C. The board-approved mentor with fifteen (15) semester hours or twenty-five (25) quarter hours in science or science related courses from a college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the U.S. Department of Education. All course work must have a passing grade and at least eight (8) semester hours or fifteen (15) quarter hours of the course of study shall be in anatomy and physiology. For the purpose of this regulation a semester hour is equivalent to fifteen (15) clock hours and a quarter hour is equivalent to ten (10) clock hours;

3. Fifty (50) clock hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri [provided] taught by [an instructor who demonstrates documentable] the board-certified mentor with documented experience in a related field; and

4. Fifty (50) clock hours dedicated to ancillary therapies [provided] taught by [an instructor who demonstrates docu-

mentable] the board-certified mentor with documented experience in a related field. The fifty (50) clock hours shall include but not be limited to cardiopulmonary resuscitation (CPR) and first aid which shall be provided by an instructor who holds the respective certification; and

(E) Submit verification of instructor credentials and the course of study with proposed time line. [; and]

[[F]] (2) The certified mentor must provide the board with any change(s) in the course of study [, instructor(s),] or time line at least sixty (60) days prior to implementing the change, for board approval. If the board determines that the change(s) is substantive in nature, the board may require the certified mentor to reapply for approval as a certified mentor in accordance with this rule and pay the appropriate fee.

(3) The certified mentor shall provide massage therapy education and direct supervision for no more than four (4) students enrolled at any given time and no more than eight (8) students per calendar year.

(4) When providing massage to the general public, the certified mentor shall conduct such training at a massage therapy business licensed by the board.

(5) The mentorship shall be at least five (5) months in duration and shall be completed within twenty-four (24) months of commencement.

(6) For the purpose of this regulation, the course of instruction meeting the educational requirements for licensure shall not be provided via correspondence course, audiotape, videotape, or the Internet unless approved by the board. The course of instruction shall be face-to-face, visually and verbally interactive, between an instructor and the student(s).

AUTHORITY: sections 324.240, RSMo 2000 and 324.245, RSMo Supp. [1999] 2006. This rule originally filed as 4 CSR 197-4.010. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2197-4.010, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 cost private entities approximately four thousand eight hundred forty-four dollars (\$4,844) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

PRIVATE ENTITY FISCAL NOTE**I. RULE NUMBER****Title 20 - Department of Insurance, Financial Institutions and Professional Registration****Division 2197 - Board of Therapeutic Massage****Chapter 4 - Apprenticeship****Proposed Amendment - 20 CSR 2197-4.010 Certified Mentor**

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
4	Massage Therapy Students 7 hours of coursework @ \$173 per hour	\$4,844
	Estimated Annual Cost of Compliance for the Life of the Rule	\$4,844

III. WORKSHEET

See Table Above

VI. ASSUMPTION

1. Based on FY 01 to FY 06 actuals, the board estimates 4 people will elect to take classes through a university and incur additional costs for additional coursework. The board estimates each additional hour will cost approximately \$173.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 4—Apprenticeship**

PROPOSED RESCISSION

20 CSR 2197-4.020 Certified Mentor—Apprenticeship Program. This rule outlined the requirements of the certified mentor-apprenticeship program.

PURPOSE: This rule is being rescinded with information and changes incorporated into 20 CSR 2197-4.010.

AUTHORITY: sections 324.240, 324.245, 324.247, 324.250 and 324.265, RSMo Supp. 1999. This rule originally filed as 4 CSR 197-4.020. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2197-4.010, effective Aug. 28, 2006. Rescinded: Filed Aug. 21, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission with the Missouri Board for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

20 CSR 2197-5.010 Massage Therapy Business—Survey Inspections. The board is proposing to amend sections (1) and (8).

PURPOSE: This amendment clarifies the requirements for massage therapy businesses.

(1) *[Each]* A massage therapy business *[owner or manager]* shall:

(A) Employ or permit to practice on the premises only licensed or provisionally licensed massage therapists (**hereinafter referred to as licensee or licensees**) to perform massage therapy as defined in section 324.240(7), RSMo;

(B) Ensure that no massage therapist *[in his/her employ or practicing on his/her premises perform]* practices beyond their scope *[of practice]* and expertise nor shall a massage therapy business, *[owner]* direct or require a *[massage therapist]* licensee to *[perform]* practice beyond their scope *[of practice]* and expertise;

(C) Maintain *[in the records a copy of the massage therapist's license, any certifications or advanced training, individual]* a copy of the professional liability insurance *[and subsequent renewed licenses by documentation]* as required in 20 CSR 2197-3.020(4)(A);

(E) Display in a conspicuous place the massage therapy business

license and *[each]* massage therapist license with a photograph *[which has been]* of the massage therapist taken within the last two (2) years;

(8) No animals shall be permitted in a massage therapy treatment area at any time except service animals whose whole purpose is to provide assistance to a *[customer]* client.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and 324.260, RSMo 2000 and 324.245, 324.247 and 324.257, RSMo Supp. [2003] 2006. This rule originally filed as 4 CSR 197-5.010. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.010, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

20 CSR 2197-5.020 Issuance of an Original Business License. The board is proposing to amend section (11).

PURPOSE: This amendment deletes the time frame for sending an inspection deficiency letter to a massage therapy business. This language is not needed within the regulation as it is defined by statute.

(11) A copy of the survey report and the list of deficiencies found shall be sent to the massage therapy business *[within fifteen (15) days following the survey inspection]*. The list of deficiencies shall specifically state the statute or rule which the massage therapy business is alleged to have violated.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and 324.260, RSMo 2000 and 324.245, 324.247, 324.257, RSMo Supp. [2003] 2006. This rule originally filed as 4 CSR 197-5.020. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.020, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

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

**Division 2197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

20 CSR 2197-5.030 Massage Therapy Business—Change of Name, Ownership or Location. The board is proposing to amend sections (1)–(6).

PURPOSE: This amendment reduces the time frame to notify the board of a business name change from thirty (30) days to fifteen (15) days, clarifies the requirements to file a change of location, and requires the posting of a temporary business license.

(1) At least *[thirty (30)]* **fifteen (15)** days prior to a proposed name change, the massage therapy business owner shall notify the board of the proposed name change in writing prior to changing the business name or before revising any printing materials or advertisements.

(2) *[The massage therapy business owner shall submit a new application, fee and a new license will be obtained for a new location.]* **When a massage therapy business changes location, an application for a location change must be submitted to the board along with the required fee. The business shall submit to a survey inspection by the board at the new location.**

(3) When a massage therapy business is sold, or ownership or management is transferred, or the corporate legal organization status is substantially changed, the massage therapy business *[owner]* shall apply for a license by submitting an application, *[and]* paying the required application fee, **and submitting to an inspection.** *[The previous license shall be void.]*

(4) *[The board may issue a temporary operating permit to continue the operation of the massage therapy business for a period of up to ninety (90) days pending the survey inspection and the final disposition of the application. The temporary operating permit must be displayed in a conspicuous place on the premises of the massage therapy business.]* **Pursuant to section 324.252, RSMo a business must post a temporary operation permit in a conspicuous place on the premises of the massage therapy business.**

(5) Refusal to permit a survey inspection*[, if required by the board,]* shall constitute valid grounds for discipline or denial.

(6) A *[massage therapist]* licensee shall not practice massage therapy at a site, location, or place that is not licensed as a massage therapy business, except at the residence, or location provided by the client, health fair, sports event, trade show or healthcare facility. For the purpose of this rule a healthcare facility shall be defined pursuant to section 197.366, RSMo.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and

324.260, RSMo 2000 and 324.245, 324.247, 324.257 and 324.262, RSMo Supp. [2003] 2006. This rule originally filed as 4 CSR 197-5.030. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.030, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

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

**Division 2197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

20 CSR 2197-5.040 Massage Therapy Business License Renewal. The board is proposing to amend section (5).

PURPOSE: This amendment eliminates the term “reinspection” and inserts the term “inspection” to clarify requirements for massage therapy businesses.

(5) If a license is not renewed within thirty (30) days of the expiration date, the lapsed licensee shall submit an application, required fee, and submit to *[a reinspection]* **an inspection** before a license will be reinstated.

AUTHORITY: sections 324.245, 324.257 and 324.262, RSMo Supp. [2003] 2006 and 324.250, 324.255 and 324.260, RSMo 2000. This rule originally filed as 4 CSR 197-5.040. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.040, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007.

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 for Therapeutic Massage, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735, or by emailing comments to massagether@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules**

PROPOSED AMENDMENT

20 CSR 2200-4.010 Fees. The board is proposing to amend subsection (1)(J).

PURPOSE: This amendment lowers the LPN renewal fee for a period of one (1) year to lower the fund balance.

(1) The following fees are established by the State Board of Nursing:

(J) Biennial Renewal Fee—

- 1. RN—Effective January 1, 2003 \$ 80[.00]
- 2. LPN—Effective January 1, 2003 \$ 72[.00]
- A. **January 1, 2008 to December 31, 2008** \$ 37
- B. **Effective January 1, 2009** \$ 72

3. License renewal for a professional nurse shall be biennial; occurring on odd-numbered years and the license shall expire on April 30 of each odd-numbered year. License renewal for a practical nurse shall be biennial; occurring on even-numbered years and the license shall expire on May 31 of each even-numbered year. Renewal shall be for a twenty-four (24)-month period except in instances when renewal for a greater or lesser number of months is caused by acts or policies of the Missouri State Board of Nursing. Renewal applications (see [4] 20 CSR 2200-4.020) shall be mailed every even-numbered year by the Missouri State Board of Nursing to all LPNs currently licensed and every odd-numbered year to all RNs currently licensed;

4. Renewal fees for each biennial renewal period as outlined in this subparagraph shall be accepted by the Missouri State Board of Nursing only if accompanied by an appropriately completed renewal application:

A. RNs (odd-numbered years):

(I) Effective January 1, 2003

[, eighty dollars (I) \$80[.].]

B. LPNs (even-numbered years):

(I) Effective January 1, 2003

[, seventy-two dollars (I) \$72[.].]

(II) **January 1, 2008 through December**

31, 2008 \$37

(III) **Effective January 1, 2009** \$72

5. All fees established for licensure or licensure renewal of nurses incorporate an educational surcharge in the amount of one dollar (\$1) per year for practical nurses and five dollars (\$5) per year for professional nurses. These funds are deposited in the professional and practical nursing student loan and nurse repayment fund;

AUTHORITY: sections 335.036 and 335.046, RSMo 2000. This rule originally filed as 4 CSR 200-4.010. Emergency rule filed Aug. 13, 1981, effective Aug. 23, 1981, expired Dec. 11, 1981. Original rule filed Aug. 13, 1981, effective Nov. 12, 1981. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 21, 2007.

PUBLIC COST: This proposed amendment will reduce the Board of Nursing Fund by approximately six hundred sixty-five thousand dollars (\$665,000) for calendar year 2008 and revenue will increase to \$1,395,360 biennially thereafter. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will save private entities approximately six hundred sixty-five thousand dollars (\$665,000) for

calendar year 2008 and cost \$1,395,360 biennially thereafter. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075 or via email at nursing@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.

PUBLIC ENTITY FISCAL NOTE**I. RULE NUMBER****Title 20 -Department of Insurance, Financial Institutions, and Professional Registration****Division 2200 - Missouri State Board of Nursing****Chapter 4 - General Rules****Proposed Amendment - 20 CSR 2200-4.010 - Fees**

Prepared July 9, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT**2008**

Affected Agency or Political Subdivision	Estimated Revenue	
State Board of Nursing	-\$665,000.00	
	Total Revenue Loss for Calendar Years 2008	-\$665,000.00

2009 and Biennially Thereafter

Affected Agency or Political Subdivision	Estimated Revenue	
State Board of Nursing	\$1,395,360.00	
	Total Revenue Biennially for the Life of the Rule	\$1,395,360.00

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. The division is statutorily obligated to enforce and administer the provisions of sections 335.011-335.257, RSMo. Pursuant to Section 335.036.2 RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 335.011-335.257, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 335.011-335.257, RSMo.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions, and Professional Registration
Division 2200 - Missouri State Board of Nursing
Chapter 4 - General Rules
Proposed Amendment - 20 CSR 2200-4.010 - Fees
 Prepared July 9, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

2008

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
19,000	LPN Renewal Fee (renewal fee - \$35 decrease)	\$665,000
	Estimated Savings for Calendar Year 2008	\$665,000

Biennially Thereafter

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated costs for compliance with the amendment by affected entities:
19,380	LPN Renewal Fee (renewal fee - \$72)	\$1,395,360
	Effective January 1, 2010 Estimated Biennial Cost for the Life of the Rule	\$1,395,360

IV. ASSUMPTION

1. The figures reported above are based on FY08 projections.
2. It is anticipated that the total saving will occur during the 2008 calendar year and the renewal fee will increase during the 2009 fiscal year and remain constant for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The division is statutorily obligated to enforce and administer the provisions of sections 335.011-335.257, RSMo. Pursuant to Section 335.036.2 RSMo, the division shall by rule and regulation set the amount of fees authorized by sections 335.011-335.257, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 335.011-335.257, RSMo.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2235—State Committee of Psychologists
Chapter 1—General Rules**

PROPOSED AMENDMENT

20 CSR 2235-1.015 Definitions. The board is proposing to add sections (11) and (12).

PURPOSE: This amendment clarifies who, what, where, and when certain psychological tests can be given by a qualified individual.

(11) Psychological Testing. The use of one (1) or more standardized measurements, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning by an individual who has received formal academic training at the graduate level in statistics, test construction, sampling theory, tests and measurements, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes requires formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also requires a formal supervised practice experience. Services which are described as “psychological testing” shall be administered and interpreted by licensed psychologists or persons who are otherwise exempt by statute. Individuals licensed by this committee, as well as other licensed professionals, may also use tests of language, education and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in section (12) of this rule, the use of these other tests is not exclusively within the scope of this regulation.

(12) Psychological Test and Inventories.

(A) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

1. The Wechsler series;
2. The Stanford-Binet; and
3. The Kaufman series.

(B) Individual, objective and projective tests and inventories of personality and emotional states and traits, examples of which are:

1. Objective tests and inventories:
 - A. The Minnesota Multiphasic Personality Inventories;
 - B. The Millon Inventories;
2. Projective tests and techniques including:
 - A. Rorschach; and
 - B. Holtzman;
3. Apperception techniques, examples of which are:
 - A. TAT (Thematic Apperception Test);
 - B. CAT (Children’s Apperception Test);
 - C. PFT (Pain Frustration Test); and
 - D. Tactual Apperception Test (Twitchell-Allen); and
4. Drawing techniques, examples of which are:
 - A. DAP (Draw A Person);
 - B. HTP (House Tree Person); and
 - C. Action Family Drawing.

(C) Individual tests of neuropsychological functioning, examples of which are:

1. The Halstead-Reitan Battery;
2. The Luria-Nebraska Battery; and
3. The NEPSY.

AUTHORITY: sections 337.030.3, RSMo Supp. 2006 and 337.050.9, RSMo 2000. This rule originally filed as 4 CSR 235-1.015. Original rule filed July 30, 1991, effective Feb. 6, 1992. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 30, 2007.

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 Missouri State Committee of Psychologists, Pam Groose, Executive Director, PO Box 1335, Jefferson City, MO 65102-0613, by facsimile at (573) 526-0661 or via email to scop@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.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2235—State Committee of Psychologists
Chapter 2—Licensure Requirements**

PROPOSED AMENDMENT

20 CSR 2235-2.040 Supervised Professional Experience, Section 337.025, RSMo, for the Delivery of Psychological Health Services. The board is proposing to amend paragraph (1)(E)1. and add paragraph (1)(E)7.

PURPOSE: This amendment adds requirements for a supervisor to be licensed for at least one (1) year prior to supervising and clarifies what a supervisor must do upon termination of supervision.

(1) Postdoctoral experience for those applicants who have completed a program in one or more of the American Psychological Association designated health service provider delivery areas, as defined in 20 CSR 2235-1.015(10), and who intend to seek health service provider certification, or who intend to principally engage in the delivery of psychological health services shall be governed by the following:

(E) Supervisor Requirements.

1. The primary supervisor must be a licensed psychologist for at least one (1) year prior to start date of supervision and must also be a health service provider or one who otherwise meets the requirements for health service provider certification.
2. The secondary supervisor(s) if not a licensed psychologist, must be eligible for or otherwise meet the requirements for licensure as a psychologist in the state wherein the supervision occurred.
3. No supervisor, whether primary or secondary, may be a relative of the applicant, such as a spouse, parent, child, sibling of the whole- or half-blood, grandparent, grandchild, aunt, uncle, stepparent, stepchild, father-in-law, mother-in-law, brother-in-law or sister-in-law.
4. No supervisor, whether primary or secondary, may be under discipline by any licensing board or jurisdiction at any time during the period of supervised professional experience.

5. No supervisor, whether primary or secondary, shall have more than four (4) persons obtaining post-degree supervised professional experience for licensure under supervision at any one (1) time. Any supervisor wishing to petition the committee for additional supervisees may do so through a written request.

6. Must certify to the committee at the completion of the applicant's postdoctoral supervised professional experience that the supervisee has complied with the requirements for supervised professional experience through the use of the attestation forms provided by the committee;

7. **Supervisor shall notify the committee in writing within five (5) business days if supervision should cease for any reason prior to established postdoctoral supervised professional experience end date. The supervisor shall complete an attestation form provided by the committee for the period of supervised experience and forward it to the committee within two (2) weeks of the cessation of supervision.**

AUTHORITY: sections 337.025 and 337.050.9, RSMo 2000. This rule originally filed as 4 CSR 235-2.040. Original rule filed Feb. 4, 1992, effective Dec. 3, 1992. Amended: Filed July 26, 1999, effective Feb. 29, 2000. Moved to 20 CSR 2235-2.040, effective Aug. 28, 2006. Amended: Filed March 27, 2007, effective Sept. 30, 2007. Amended: Filed Aug. 30, 2007.

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 Missouri State Committee of Psychologists, Pam Groose, Executive Director, PO Box 1335, Jefferson City, MO 65102-0613, by facsimile at (573) 526-0661 or via email to scop@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.*

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 1—Fees**

PROPOSED AMENDMENT

20 CSR 2270-1.021 Fees. The board is proposing to amend paragraphs (1)(A)6. and 7.

PURPOSE: Pursuant to section 340.214.2, RSMo, the board shall set the amount of the fees which this chapter authorizes and requires by rules and regulations. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter. Therefore, the board is amending section (1).

(1) The following fees are established by the Missouri Veterinary Medical Board:

(A) Veterinarians—	
1. Registration Fee	\$ 50
2. State Board Examination Fee	\$100
3. Reciprocity Fee	\$150
4. Grade Transfer Fee	\$150
5. Faculty License Fee	\$200

6. Temporary or Provisional License Fee	[\$ 100] \$25
A. Temporary <i>[or Provisional]</i> License Extension	[\$ 50] \$10
7. Annual Renewal Fee—	
A. Active	[\$ 80] \$50
B. Inactive	[\$ 50] \$25
C. Faculty	[\$ 80] \$50
8. Late Renewal Penalty Fee	\$100
9. Name Change Fee	\$ 15
10. Wall Hanging Replacement Fee	\$ 15

*AUTHORITY: sections 340.210 and 340.232, RSMo 2000. This rule originally filed as 4 CSR 270-1.021. Original rule filed Nov. 4, 1992, effective July 8, 1993. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 21, 2007.*

PUBLIC COST: This proposed amendment will reduce the Missouri Veterinary Medical Board Fund by approximately ninety thousand one hundred sixty dollars (\$90,160) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities approximately ninety thousand one hundred sixty dollars (\$90,160) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Attention: Dana Hoelscher, PO Box 633, Jefferson City, MO 65102, via fax at (573) 526-3856 or via email at vets@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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions, and Professional Registration

Division 2270 - Missouri Veterinary Medical Board

Chapter 1 - Fees

Proposed Rule - 20 CSR 2270-1.021-Fees

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue	
Missouri Veterinary Medical Board	\$90,160.00	
	Total Loss of Revenue Annually for the Life of the Rule	\$90,160.00

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. Pursuant to section 340.214.2, RSMo, the board shall set the amount of the fees which this chapter authorizes and requires by rules and regulations. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter. Therefore, the board is amending section (1).

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2270 - Missouri Veterinary Medical Board

Chapter 1 - Fees

Proposed Amendment - 20 CSR 2270-1.021 Fees

Prepared July 2, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
53	Temporary or Provisional License Fee (\$75 decrease)	\$3,975
1	Temporary License Extension (\$40 decrease)	\$40
2,518	Annual Renewal Fee - Active License (\$30 decrease)	\$75,540
405	Annual Renewal Fee - Inactive License (\$25 decrease)	\$10,125
16	Annual Renewal Fee - Faculty License (\$30 decrease)	\$480
	Estimated Annual Cost Savings for the Life of the Rule	\$90,160

III. WORKSHEET

See table above.

IV. ASSUMPTION

- 1 The figures reported above are based on FY 07 actuals.
- 2 It is anticipated that the total saving will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

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 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 8—Direct Deposit of Payroll Requirements**

ORDER OF RULEMAKING

By the authority vested in the Office of Administration under section 33.155, RSMo 2000, the commissioner amends a rule as follows:

**1 CSR 10-8.010 Direct Deposit of Payroll Requirements
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 970-971). 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: The Office of Administration received one (1) comment on the proposed amendment.

COMMENT: Micki Knudsen with the Missouri Department of Transportation supports amending this rule.

RESPONSE: Thank you for your response.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 5—Elevators**

ORDER OF RULEMAKING

By the authority vested in the Department of Public Safety under section 701.355, RSMo 2000, the department amends a rule as follows:

11 CSR 40-5.110 Fees and Penalties is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2007 (32 MoReg 841-842). No changes have been made to 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: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153, 208.159 and 208.201, RSMo 2000, the division amends a rule as follows:

13 CSR 70-10.015 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2007 (32 MoReg 700-715). 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 Division of Medical Services (division) received four (4) letters with comments on the proposed amendment.

COMMENT #1: A comment was received indicating that paragraph (7)(F)2. eliminates the allowable interest on borrowing costs for loans for "operation" or "maintenance" of a provider's facility thereby creating a disincentive for providers to maintain their facilities on an on-going basis. They also believe this is not a clarification of the regulation as stated in the "Purpose" clause at the beginning of the proposed amendment but a change.

RESPONSE: Paragraph (7)(F)2. relates to interest on capital asset debt which is reimbursed under the capital cost component using the fair rental value system. The allowable interest must be for capital asset debt which relates to capital assets as set forth in (4)(J) and (7)(C). Expenditures of a facility that should be capitalized, such as a major improvement or renovation, would be considered capital assets. Expenditures of a facility that should not be capitalized, such as normal, recurring maintenance expenses, are not considered capital assets. Normal, recurring maintenance costs are expensed on a facility's books and are reimbursed under that cost component. This amendment clarifies the difference. The division has been calculating interest in this manner since the inception of this regulation so it will not result in any changes in reimbursement. Therefore, this amendment is a clarification of the regulation as opposed to a change. No changes have been made to the rule as a result of this comment.

COMMENT #2: A comment was received on subparagraph (7)(G)2.A. indicating that it appears to provide for a new restriction on existing leases and, as such, may violate Article I, section 13 of the *Missouri Constitution* as an impairment of existing contracts. They also believe it does not constitute a “clarification.” It was suggested that language be added that this provision only affects leases entered into on or after the effective date of the change in regulation.

RESPONSE: This amendment clarifies the existing procedures of the division regarding leases and the treatment of pass-through expenses in the fair rental value (FRV) calculation by specifying when property insurance, real estate taxes and personal property taxes are allowable in the FRV calculation and the documentation needed. Currently, the division requests this information from the provider and the provider must provide it, as set forth in paragraph (10)(A)8. The amendment does not include any additional requirements or restrictions for the lessor or lessee. Therefore, no language needs to be added that the amendment only affects leases entered into on or after the effective date of the change in regulation. No changes have been made to the rule as a result of this comment.

COMMENT #3: A comment was received indicating that paragraph (10)(A)10. requires out-of-state providers and hospital based providers providing less than one thousand (1,000) patient days for Missouri Title XIX residents to request a waiver for filing a cost report rather than automatically exempting them. They also indicated that it does not specify the criteria or standards by which the qualifying provider can determine whether it would be likely that the waiver request would be granted which is inherently unconstitutional in violation of Article I section 10 of the *Missouri Constitution*, as denying due process of law, as being inherently arbitrary, capricious or unreasonable.

RESPONSE: This section was amended to clarify that the division will consistently apply the existing criteria of the division regarding waivers of cost reports by specifying the documentation needed to verify a provider qualifies for the exemption. Currently, the division requests hospital based providers to submit a letter attesting that they do not have more than one thousand (1,000) Missouri Medicaid patient days and are exempt from filing a cost report. The division reviews the provider’s records to verify they qualify for an exemption. The criteria the division will use to grant the waiver are specified in subparagraphs (10)(A)10.A. and B. This amendment will not result in any additional cost reports being required that are not currently required. No changes have been made to the rule as a result of this comment.

COMMENT #4: A comment was received indicating that subsection (4)(KK) and subsections (11)(C) and (D) contravene the purpose of the minimum utilization which is to assure the state is not paying for empty beds below the designated percentage of eighty-five percent (85%). Furthermore, they believe it should only penalize providers whose occupancy falls below eighty-five percent (85%) and that the changes will penalize facilities that meet or exceed the occupancy percentage of eighty-five percent (85%) by applying the minimum utilization percentage in determining the administration median and ceiling. They feel this is arbitrary, capricious or unreasonable thus subjecting the regulation to legal challenge.

RESPONSE: This section was amended to clarify the existing procedures of the division regarding the calculation of the administration cost component median and ceiling. The division establishes reimbursement policies and these changes do not contradict the purpose of the minimum utilization adjustment or the ceilings as set by the division. The division agrees the purpose of the minimum utilization is to assure the state is not paying for empty beds, but it is not applied in isolation but in conjunction with the remaining provisions and purposes of the reimbursement plan, including the cost component ceilings. The purpose of the cost component ceiling is to provide an upper limit for which a facility will be reimbursed for its allowable costs for the cost component. The calculation of the median and ceil-

ing are based on allowable cost. The minimum utilization adjustment is an allowable cost adjustment, as set forth in (7)(O), and therefore, should be included in the calculation of the median and the ceiling, as are all the other allowable costs set forth in section (7). The division has been calculating the administration median and ceiling in this manner since the inception of this regulation without benefit of the specific calculation being detailed in the regulation. This amendment reflects the division’s long-standing policy to ensure the entire nursing facility industry’s rates are calculated consistently. The amendment will only result in changes to the reimbursement for nursing facilities whose rates were set subsequent to an Administrative Hearing Commission decision that ruled the calculation was not detailed in the regulation. No changes have been made to the rule as a result of this comment.

COMMENT #5: A comment was received indicating that subsection (7)(O) for the setting of the minimum utilization percentage at eighty-five percent (85%) is arbitrary, capricious or unreasonable because it is related to no rational finding by the department and should be the average occupancy percentage of facilities licensed in Missouri as was done in previous rebases.

RESPONSE: The division believes the eighty-five percent (85%) minimum occupancy included in the proposed amendment is reasonable. The minimum occupancy adjustment has been used in Missouri’s nursing facility reimbursement plan for many years to encourage efficiencies in nursing facility operations by maintaining a reasonable occupancy level and to avoid costing taxpayers the burden of paying for empty nursing facility beds. The division has determined that an eighty-five percent (85%) occupancy is reasonable and has been using the eighty-five percent (85%) minimum occupancy standard since the inception of this regulation which was effective January 1, 1995, except for dates of service beginning July 1, 2004 through March 31, 2005. No changes have been made to the rule as a result of this comment.

COMMENT #6: A comment was received indicating paragraphs (13)(B)6. and 7. provide for rate adjustments for replacement or additional beds but subsection (21)(H) and paragraph (20)(A)9., which eliminate the rate adjustments, are self-defeating because it creates a marketplace incentive to build new facilities rather than renovate older facilities by merely adding or replacing beds. They also felt it was the department’s reaction to the recent decision of the Missouri Court of Appeals in the *Shirkey Leisure Acres* case.

RESPONSE: In this proposed amendment, the only amendments to paragraphs (13)(B)6. and 7. were to change the references to the “Division of Aging” to the current agency name, “Department of Health and Senior Services.” Therefore, the comments regarding these sections have no bearing on the changes made in this proposed amendment. Also, there were no changes to (20)(A)9. and (21)(H) in this proposed amendment. These sections were added to the regulation in 2004 and 2005, respectively, and could not have been a reaction to the Missouri Court of Appeals decision in the *Shirkey Leisure Acres* case because it was not handed down until 2007. No changes have been made to the rule as a result of this comment.

COMMENT #7: A comment was received indicating that the changes in subsection (11)(D) appear to be a clarification but wanted the department to recognize that under Article I section 13 of the *Missouri Constitution* the department can not retrospectively apply changes in the fair rental value system to existing providers.

RESPONSE: The amendments in this section were only to clarify the existing procedures of the division regarding the calculation of the capital cost component using the fair rental value system. The division has been calculating the capital cost component per diem in this manner since the inception of this regulation so it will not result in any changes in reimbursement. No changes have been made to the rule as a result of this comment.

COMMENT #8: A comment was received indicating paragraph (7)(F)1. needs to clarify that the allowable interest for “outstanding

capital asset debt from the rate setting cost report . . .” includes loans which refinance an existing debt.

RESPONSE: The division does not believe a change to the proposed language is necessary. The language clearly states interest will be reimbursed for necessary loans for outstanding capital asset debt. Therefore, if there is an outstanding loan on the rate setting cost report that was to refinance debt for capital assets as defined in (4)(J) then the interest relating to the outstanding debt would be taken into consideration in the fair rental value calculation. No changes have been made to the rule as a result of this comment.

COMMENT #9: Comments were received indicating the proposed amendments to sections (20) and (21) change the historical rate setting process of reimbursing a facility its full allowable costs less appropriate adjustments which does not constitute a clarification of the regulation. They believe newly certified facilities do not need to have their rates “recalculated” as set forth in 208.225, RSMo because they do not have initial rates. They should have the initial rates calculated as was done historically by receiving their full allowable costs but using the new ceilings determined under 208.225, RSMo. Also, they believe using the interim rate as the comparison rate to determine the total difference and the one-third increase that is then added to the interim rate denies a facility reimbursement of its full allowable costs. The interim rate is based upon percentages of the cost component ceilings or medians, all of which are less than the maximum a facility could receive except for the patient care component and does not include incentives. The interim rate also does not reflect the actual operating cost of each new facility which is in conflict with section 208.225, RSMo that states each facility’s rate is to be based on its costs. Based on these arguments, they believe the amendments are in conflict with 208.225, RSMo the rebasing statute, and section 208.152, RSMo which requires the division to reimburse providers their reasonable costs. They feel it also violates Article I section 2 of the *Missouri Constitution* by denying those providers without a prospective rate established on June 30, 2004 equal protection under the law merely because of the date it enters the Medicaid program.

RESPONSE AND EXPLANATION OF CHANGE: The division did not make any changes relative to the comments that the division is changing the historical rate setting process for new facilities. Historically, the division has calculated the prospective rate in accordance with the regulations in effect for the applicable date of service. The division is calculating the prospective rate for new facilities based on the allowable costs from the rate setting cost report, subject to all provisions and limitations of the regulation, including the one-third increase mandated in section 208.225, RSMo. The one-third increase is just another limitation like the cost component ceilings. The statute does not specify that new facilities are to be treated differently in this regard from the rest of the nursing facility industry. The comments support the application of the portions of section 208.225, RSMo that are favorable to them, such as the new cost component ceilings, but do not support the portions of section 208.225, RSMo that are not favorable to them, namely the one-third increase.

The division considered the comments about using the interim rate in determining a new facility’s prospective rate if they did not have a prospective rate on June 30, 2004 and amended sections (20) and (21) to use a computed rate for June 30, 2004 based on the facility’s rate setting cost report as opposed to the interim rate. The division determined using a computed rate for June 30, 2004 based on the rate setting cost report is consistent with the division’s historical rate setting process for new facilities.

COMMENT #10: Division staff reviewed the SFY 2008 budget bill signed by the governor on June 27, 2007 and, as a result, have added this comment. The budget bill authorized the continuation of the three dollar (\$3) per diem increase previously granted in the supplemental bill effective for dates of service beginning February 1, 2007 and an additional six dollar (\$6) increase to nursing facility per diem rates effective for dates of service beginning July 1, 2007.

RESPONSE AND EXPLANATION OF CHANGE: The division amended paragraph (13)(A)11. to remove the end date of June 30, 2007 and added paragraph (13)(A)8. to implement the six dollar (\$6) increase effective July 1, 2007.

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services

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

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

1. FY-96 negotiated trend factor—

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

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

2. FY-97 negotiated trend factor—

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

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

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

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

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

6. FY-98 negotiated trend factor—

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

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

7. FY-99 negotiated trend factor—

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

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

8. FY-2000 negotiated trend factor—

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

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

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

11. FY-2007 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007 of three dollars and zero cents (\$3.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007 and is effective for dates of service beginning February 1, 2007 for payment dates after March 1, 2007.

12. FY-2008 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007 of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007 and is effective for dates of service beginning July 1, 2007.

(20) Rebasing of Nursing Facility Rates.

(E) Prospective Rate Determination for Newly Medicaid Certified Nursing Facilities. As set forth in subsection (12)(F), a nursing facility never previously certified for participation in the Medicaid program shall receive an interim rate upon entering the Medicaid pro-

gram and have its prospective rate set on its second full twelve (12)-month cost report following the facility's initial date of certification. The prospective rate shall be calculated in accordance with the provisions of the regulation in effect from the beginning of the facility's rate setting period through the date the prospective rate is determined, as detailed below. If industry-wide rate changes were implemented during this period the provision of the regulation relating to the effective date of the rate change shall be the governing regulation for those dates of service. For example, for a rate setting period of January 1, 2004 through December 31, 2004, the facility's initial prospective rate effective January 1, 2004 shall be set in accordance with the regulations in effect at that time and rate changes that occurred after January 1, 2004 shall be calculated in accordance with the regulation applicable to each rate change throughout the period, as follows: the facility's initial prospective rate effective January 1, 2004 shall be set in accordance with the regulations in effect at that time (sections (1)–(19)); nursing facility rates were rebased effective July 1, 2004 per section (20); the rebase provisions were modified effective April 1, 2005 under subsection (20)(D); the per diem rate calculation effective for dates of service beginning July 1, 2005 are detailed in section (21); a quality improvement adjustment of three dollars and seventeen cents (\$3.17) per day was granted effective July 1, 2006 in paragraph (13)(A)10.; etc.

1. A nursing facility that did not have a prospective rate established when rates were rebased on July 1, 2004, shall have its prospective rate for dates of service beginning on or after July 1, 2004 through June 30, 2005 established on the rate setting cost report in accordance with section (20), consistent with the rest of the nursing facility industry.

2. As set forth in (20)(B)1. and 2., a preliminary rate shall be calculated and compared to the facility's rate as of June 30, 2004, less the reduction in the nursing facility operations adjustment of fifty-four cents (54c) effective July 1, 2004 as set forth in (13)(A)9., to determine the total increase. The NFRA shall not be included in the preliminary rate or the June 30, 2004 rate for comparison purposes in determining the total increase.

A. If the facility will have a prospective rate established on June 30, 2004 once the prospective rate setting process is complete, the prospective rate shall be the rate for comparison purposes in determining the total increase.

B. If the facility will not have a prospective rate established on June 30, 2004 once the prospective rate setting process is complete, the division will calculate a June 30, 2004 computed rate which will be used as the rate for comparison purposes in determining the total increase as follows:

(I) The rate setting cost report as determined in subsection (12)(F) shall be used.

(II) The allowable costs from the rate setting cost report will be negatively trended back to June 30, 2004 using the indices from the most recent publication of the Health-Care Cost Review available to the division using the "CMS Nursing Home without Capital Market Basket" table. The allowable costs shall be negatively trended using the second quarter indices for each year, beginning with the index for the year relative to the end of the rate setting period back to and including the index for 2005. For example, a rate setting cost report for the period July 1, 2006 through June 30, 2007, shall have a 2007 rate setting year. The allowable costs shall be negatively trended by the 2007 second quarter index, the 2006 second quarter index and the 2005 second quarter index. The resulting allowable costs shall be used to determine the June 30, 2004 computed rate.

(III) The computed rate shall be calculated in accordance with sections (1)–(19) of this regulation, prior to the rebase, using the regulations applicable to calculating a June 30, 2004 rate including the cost component ceilings, interest, rate of return, etc. in effect on June 30, 2004.

3. If the preliminary rate is greater than the June 30, 2004 rate, the facility shall receive one-third of the total increase of the preliminary rate over the June 30, 2004 rate, less the reduction in the nursing facility operations adjustment of fifty-four cents (54c) effective

July 1, 2004 as set forth in paragraph (13)(A)9. The one-third increase shall be added to the June 30, 2004 rate, less the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9. The NFRA in effect shall be added to that total to determine the prospective rate.

4. If the preliminary rate is less than the June 30, 2004 rate, the facility's June 30, 2004 rate plus the NFRA in effect shall become the prospective rate.

(21) Per Diem Rate Calculation Effective for Dates of Service Beginning July 1, 2005. Effective for dates of service beginning July 1, 2005, the rebase provisions set forth in section (20) shall not apply. Effective for dates of service beginning July 1, 2005, the per diem rates shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, except that the data indicated in this section (21) shall be used.

(L) Prospective Rate Determination for Nursing Facilities Newly Medicaid Certified after June 30, 2004. As set forth in subsection (12)(F), a nursing facility never previously certified for participation in the Medicaid program shall receive an interim rate upon entering the Medicaid program and have its prospective rate set on its second full twelve (12)-month cost report following the facility's initial date of certification. The prospective rate shall be calculated in accordance with the provisions of the regulation in effect from the beginning of the facility's rate setting period through the date the prospective rate is determined, as detailed below. If industry-wide rate changes were implemented during this period the provision of the regulation relating to the effective date of the rate change shall be the governing regulation for those dates of service. For example, for a rate setting period of January 1, 2006 through December 30, 2006, the facility's initial prospective rate effective January 1, 2006 shall be set in accordance with the regulations in effect at that time and rate changes that occurred after January 1, 2006 shall be calculated in accordance with the regulation applicable to each rate change throughout the period, as follows: the facility's initial prospective rate effective January 1, 2006 shall be set in accordance with the regulations in effect at that time, section (21) (i.e., the per diem rate calculation effective for dates of service beginning July 1, 2005 are detailed in section (21)); a quality improvement adjustment of three dollars and seventeen cents (\$3.17) per day was granted effective July 1, 2006 in paragraph (13)(A)10.; etc.

1. A nursing facility never previously certified for participation in the Medicaid program that originally enters the Medicaid program after June 30, 2004 shall have its prospective rate for dates of service beginning on or after July 1, 2005 calculated in accordance with the provisions of section (21), consistent with the rest of the nursing facility industry. The following items shall be updated annually and shall be used in determining the prospective rate, as follows:

A. Asset value. The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be adjusted annually based upon the RS Means Building Construction Cost Data published each year using the "Historical Cost Indexes" table. The asset value for the year relative to the end of the rate setting period shall be used.

B. Age of beds. The age of the beds shall be calculated by subtracting the year the beds were originally licensed from the year relative to the end of the rate setting period.

C. Interest rate. The interest rate used in determining the capital cost component and working capital allowance, as set forth in subsections (7)(F), (11)(D), and (11)(E), shall be updated annually using the prime rate reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June of each year plus two percent (2%). The interest rate in effect at the end of the rate setting period shall be used.

2. A preliminary rate at the beginning of the rate setting period shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation and the updated items detailed in section (21).

3. The preliminary rate at the beginning of the rate setting period shall be compared to a June 30, 2004 computed rate as detailed

below to determine the total increase. The NFRA shall not be included in the preliminary rate or the June 30, 2004 computed rate for comparison purposes in determining the total increase.

A. The June 30, 2004 computed rate for comparison purposes shall be calculated as follows:

(I) The rate setting cost report as determined in subsection (12)(F) shall be used.

(II) The allowable costs from the rate setting cost report will be negatively trended back to June 30, 2004 using the indices from the most recent publication of the Health-Care Cost Review available to the division using the "CMS Nursing Home without Capital Market Basket" table. The allowable costs shall be negatively trended using the second quarter indices for each year, beginning with the index for the year relative to the end of the rate setting period back to and including the index for 2005. For example, a rate setting cost report for the period July 1, 2006 through June 30, 2007, shall have a 2007 rate setting year. The allowable costs shall be negatively trended by the 2007 second quarter index, the 2006 second quarter index and the 2005 second quarter index. The resulting allowable costs shall be used to determine the June 30, 2004 computed rate.

(III) The computed rate shall be calculated in accordance with sections (1)–(19) of this regulation, prior to the rebase, using the regulations applicable to calculating a June 30, 2004 rate including the cost component ceilings, interest, rate of return, etc. in effect on June 30, 2004.

B. If the preliminary rate at the beginning of the rate setting period is greater than the June 30, 2004 computed rate, the facility shall receive one-third of the total increase of the preliminary rate over the June 30, 2004 computed rate. The one-third increase shall be added to the facility's June 30, 2004 computed rate. The NFRA in effect shall be added to the total and shall be the facility's prospective rate effective the beginning of the rate setting period.

C. If the preliminary rate at the beginning of the rate setting period is less than the June 30, 2004 computed rate, the facility's June 30, 2004 computed rate plus the NFRA in effect shall become the prospective rate effective the beginning of the rate setting period.

(M) Prospective Rate Determination for Previously Medicaid Certified Nursing Facilities Reentering the Medicaid Program. As set forth in subsection (12)(G), a nursing facility that was previously certified for participation in the Medicaid Program and either voluntarily or involuntarily terminated from the Medicaid Program which then reenters the Medicaid Program shall have its prospective rate established as the rate in effect on the day prior to the date of termination from participation in the program plus rate adjustments which may have been granted subsequent to the termination date but prior to reentry into the program. The prospective rate for nursing facilities that reentered the Medicaid Program after nursing facility rates were rebased July 1, 2004 shall be calculated as follows:

1. If there is a 2001 cost report for the nursing facility, regardless of the owner/operator who completed the 2001 cost report, the prospective rate shall be based on the 2001 cost report in accordance with section (21).

2. If there is not a 2001 cost report for the nursing facility, the prospective rate in effect when the facility terminated from the program shall be adjusted to reflect the rate changes granted through June 30, 2004 and shall be the June 30, 2004 rate to be compared to the preliminary rebased interim rate to determine the total increase, the one-third increase and the rebased prospective rate, in accordance with section (21), consistent with the rest of the nursing facility industry.

REVISED PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately \$10,994,127 for SFY 2007 and \$80,669,500 for SFY 2008 versus the estimate of \$10,994,127 for SFY 2007, which was submitted with the original proposal.

REVISED FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS/DMS	Estimated cost: SFY 2007 = \$10,994,127 SFY 2008 = \$80,669,500

III. WORKSHEET

SFY 2007:

Estimated Paid Days Impacted: SFY 2007	3,664,709
x Rate Increase effective Feb. 1, 2007	\$3.00
Total Estimated Impact: SFY 2007	<u>\$10,994,127</u>
State Share	\$4,221,745
Federal Share (61.60%)	\$6,772,382

SFY 2008:

Estimated Paid Days: SFY 2008	8,800,000
Continuation of \$3.00 increase effective Feb. 1, 2007	\$3.00
Additional Increase effective July 1, 2007	<u>\$6.00</u>
Total	<u>\$9.00</u>
Total Estimated Impact: SFY 2008	<u>\$79,200,000</u>

New Facilities:

Estimated Days Impacted: SFY 2008	85,000
x Weighted Avg Rate Increase	\$6.70
Total Estimated Impact: SFY 2008	<u>\$569,500</u>
State Share	\$30,476,937
Federal Share (62.22%)	\$50,192,563

IV. ASSUMPTIONS

Estimated Paid Days:

The estimated paid days for SFY 2007 and SFY 2008 are based on the actual Medicaid days paid for nursing facility services during SFY 2006, increased by 0.5% for 2007 and an additional 0.5% for 2008. The estimated paid days for SFY 2007 are prorated for the dates of service beginning February 1, 2007 through June 30, 2007.

SFY 2007:

Total Estimated Annual Paid Days: SFY 2007	8,800,000
Less HIV Estimated Annual Paid Days: SFY 2007	<u>4,700</u>
NF Estimated Annual Paid Days: SFY 2007	8,795,300
Divided by 12 months	<u>12</u>
Estimated Monthly Paid Days: SFY 2007	732,942
Multiplied by Months Remaining in SFY 2007	<u>5</u>
Estimated Paid Days Impacted: SFY 2007	3,664,709

SFY 2008:

Rate Increase:

Total Estimated Annual Paid Days: SFY 2008	8,800,000
Less HIV Estimated Annual Paid Days: SFY 2008	<u>4,750</u>
Estimated Paid Days Impacted: SFY 2008	8,895,250

New Facilities:

There are five 2005 rate setting cost reports that will be finalized in SFY 2008. The estimated days are based on the actual Medicaid days paid for nursing facility services from the beginning of their rate setting period to the current.

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

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, the division amends a rule as follows:

13 CSR 70-10.080 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2007 (32 MoReg 716-717). Some changes have been made in the text of the proposed amendment, so 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: One (1) comment was received.

COMMENT: Division staff reviewed the SFY 2008 budget bill signed by the governor on June 27, 2007 and as a result have added this comment. The budget bill authorized the continuation of the three dollar (\$3) per diem increase previously granted in the supplemental bill effective for dates of service beginning February 1, 2007 and a six dollar (\$6) increase to nursing facility per diem rates effective for dates of service beginning July 1, 2007.

RESPONSE AND EXPLANATION OF CHANGE: The division has amended paragraph (13)(A)7. to remove the end date of June 30, 2007 and added paragraph (13)(A)8. to implement the six dollar (\$6) increase effective July 1, 2007.

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services

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

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

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

2. FY-98 negotiated trend factor.

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

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

3. FY-99 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in

paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustment detailed in paragraph (13)(A)1.; or

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

4. FY-2000 negotiated trend factor.

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

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

5. FY-2004 nursing facility operations adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

6. FY-2007 quality improvement adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

7. FY-2007 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007 of three dollars and zero cents (\$3.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007 and is effective for dates of service beginning February 1, 2007 for payment dates after March 1, 2007.

8. FY-2008 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007 of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007 and is effective for dates of service beginning July 1, 2007.

REVISED PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately five thousand eight hundred ninety-five dollars (\$5,895) for SFY 2007 and forty-two thousand seven hundred fifty dollars (\$42,750) for SFY 2008 versus the estimate of five thousand eight hundred ninety-five dollars (\$5,895) for SFY 2007, which was submitted with the original proposal.

REVISED FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS/DMS	Estimated cost: SFY 2007 = \$5,895 SFY 2008 = \$42,750

III. WORKSHEET

SFY 2007:

Estimated Paid Days Impacted: SFY 2007	1,965
x Rate Increase	<u>\$3.00</u>
Total Estimated Impact: SFY 2007	<u>\$ 5,895</u>
State Share	\$2,264
Federal Share (61.60%)	\$3,631

SFY 2008:

Estimated Paid Days: SFY 2008	4,750
Continuation of \$3.00 increase effective Feb. 1, 2007	\$3.00
Additional increase effective July 1, 2007	<u>\$6.00</u>
Total	<u>\$ 9.00</u>
Total Estimated Impact: SFY 2008	<u>\$42,750</u>
State Share	\$16,151
Federal Share (62.22%)	\$26,599

IV. ASSUMPTIONS

Estimated Paid Days:

The estimated paid days for SFY 2007 and SFY 2008 are based on the actual Medicaid days paid for nursing facility services during SFY 2006, increased by 0.5% for 2007 and an additional 0.5% for 2008. The estimated paid days for SFY 2007 are prorated for the dates of service beginning February 1, 2007 through June 30, 2007.

SFY 2007:

Estimated Annual Paid Days: SFY 2007	4,716
Divided by 12 months	<u>12</u>
Estimated Monthly Paid Days: SFY 2007	393
Multiplied by Months Remaining in SFY 2007	<u>5</u>
Estimated Paid Days Impacted: SFY 2007	<u>1,965</u>

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031, RSMo 2000, the board amends a rule as follows:

20 CSR 2110-2.190 Shade Verification is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 988). No changes have been made to 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: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031, RSMo 2000, the board amends a rule as follows:

20 CSR 2110-2.210 Notice of Injury or Death is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 988). No changes have been made to 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: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Nursing under sections 335.036(2) and (7), 335.046 and 335.051, RSMo 2000, the board amends a rule as follows:

20 CSR 2200-4.020 Requirements for Licensure is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 988-991). No changes have been made to 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: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 2—Licensure Requirements for Veterinarians**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.200 and 340.246, RSMo Supp 2006 and 340.210, RSMo 2000, the board amends a rule as follows:

20 CSR 2270-2.021 Internship or Veterinary Candidacy Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 992). No changes have been made to 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: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 2—Licensure Requirements for Veterinarians**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, RSMo 2000 and 340.234, RSMo Supp. 2006, the board amends a rule as follows:

20 CSR 2270-2.031 Examinations is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 992). No changes have been made to 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: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, 340.224, and 340.264, RSMo 2000, the board amends a rule as follows:

20 CSR 2270-4.011 Minimum Standards for Veterinary Facilities is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2007 (32 MoReg 992-993). No changes have been made to 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: No comments were received.