

Emergency Rule

Title 13—DEPARTMENT OF SOCIAL SERVICES

Division 35—Children’s Division

Chapter 71—[Licensing] Rules for Residential Treatment Agencies for Children and Youth

EMERGENCY AMENDMENT

13 CSR 35-71.010 Definitions and Principles Generally Applicable to this Chapter. The division is amending the title of the rule, adding a new section (1) and (2), rescinding sections (2), (3), (4), (11), (16), (18), and (21), and is moving the remaining sections into subsections under the new section (2).

PURPOSE: The emergency amendment to this rule establishes the general principles that DSS will apply in implementing chapter 71. It also defines words and phrases used in the process that License-Exempt Residential Care Facilities must use to notify DSS of their operations in Missouri. Finally the emergency amendment defines words and phrases used in the rules for residential treatment agencies for children and youth in Chapter 71 and amends the title of the rule.

EMERGENCY STATEMENT: Section 210.493, RSMo., of House Bill (HB) 557 (2021) authorizes the Department of Social Services to promulgate regulations, including emergency regulations, to implement new requirements for background checks of officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of licensed residential care facilities (LRCF), License-Exempt Residential Care Facilities (LERCFs) and Licensed Child Placing Agencies (CPAs). The background checks are being conducted to help ensure that certain individuals who are associated with these facilities do not have a record of criminal conduct or substantiated incidents of child abuse or neglect which may pose a risk to the children served at these facilities. The background checks will include a finger-print based check of the individual’s criminal record, the sexual offender registry, the Family Care Safety Registry, the Central Registry and registries of other states where the individual resided. HB 557 included an emergency clause which declared HB 557 to be an emergency act within the meaning of the Missouri Constitution because immediate action is necessary to protect children, and it was necessary for the immediate preservation of the public health, safety, and welfare. The implementation of the background checks required in this regulation will immediately enable the Department to conduct background checks and to determine whether individuals are eligible for employment or presence at these institutions. This regulation is part of a series of regulations which establish the general principles governing the implantation of all of the regulations governing residential care facilities in Missouri. This includes the requirements for conducting the required Background Checks required in section 210.493 RSMo, and the requirement that LRCFs notify DSS of their operations within Missouri as required by sections 210.1250 through 210.1286 RSMo. The Department of Social Services has determined that promulgation of this regulation on an emergency basis is necessary to address the danger to public health, safety and/or welfare of children in Missouri identified by the Missouri General Assembly. The Department of Social Services therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Department of Social Services believes that this emergency amendment is fair to all interested persons and parties under the circumstances. The Department of Social Services published a draft of this emergency a on its website and solicited feedback from the public and stakeholders through e-mail and at public meeting held on August 5, 2021. This emergency amendment was filed September 17, 2021, becomes effective October 1, 2021, and

expires March 29, 2022.

(1) The following principles shall apply to all decisions made pursuant to this chapter:

(A) The safety and welfare of children is paramount;

(B) All providers of direct services to children and their families will be evaluated in a uniform, transparent, objective, and consistent basis;

(C) Services to children and their families which are provided by the division and licensed residential care facilities shall be provided in a timely manner to maximize the opportunity for successful outcomes, and such services shall be tracked and routinely evaluated through a quality assurance program;

(D) Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with federal and state standards;

(E) Resources and efforts of the division and licensed residential care facilities shall be committed to pursue the best possible opportunity for a successful outcome for each child. In the case of children and youth who are in the foster care system, successful outcomes may include preparing youth for a productive and successful life as an adult outside the foster care system, such as independent living. For those providers that work with children requiring intensive twenty-four-hour treatment services, successful outcomes shall be based on the least restrictive alternative possible based on the child’s needs as well as the quality of care received; and

(F) All licensed service providers shall prioritize methods of reducing or eliminating a child’s need for residential treatment through community-based services and supports.

(2) For the purpose of all regulations in 13 CSR chapter 71, unless otherwise specified or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481, 210.1253 RSMo, and 13 CSR 35-71.015 shall apply to all of the regulations in this chapter. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) “Agency” in the context of regulations governing licensed residential care facilities shall mean the same as licensed residential care facility or LRCF.

(B) “Background Check” means a background check which complies with the requirements of section 210.493, RSMo and 13 CSR 35-71.015

[(1)](C) “Chemical restraints” are drugs which are prescribed or administered to temporarily restrain a child who presents a likelihood of serious physical harm to him/herself or others.

[(2)] *Child is any individual under eighteen (18) years of age as defined in section 210.481(1), RSMo.*

(3) *Child abuse/neglect background check is, at a minimum, a search of the family care safety registry for residential treatment agencies for children and youth staff child abuse/neglect history pursuant to sections 210.903 through 210.936, RSMo.*

(4) *Criminal background check is, at a minimum, a search of the family care safety registry for residential treatment agencies for children and youth staff criminal history pursuant to sections 210.903 through 210.936, RSMo.*

[(5)](D) A “critical incident” is an incident involving a child in the care of the agency, in which the child or another person directly involved with the child is placed at significant risk of death, serious physical, mental, or sexual harm. A critical incident may involve

Emergency Rule

conduct of the child, other children, and/or acts or omissions of staff of the agency. Examples of critical incidents include, but are not limited to: injury of a child during physical restraint; serious physical or sexual aggression by or toward the child; significant physical injuries requiring medical attention; allegations of sexual abuse; criminal conduct involving the child; elopement; attempted suicide; fire setting; child death; and information which must be reported to the child abuse and neglect hotline pursuant to 210.115 RSMo. A "critical incident report" is a report documenting a critical incident.

[(6)](E) "Director" is the director of the Children's Division.

[(7)](F) "Division" is the Children's Division of the Department of Social Services of Missouri as defined in section 210.481(3), RSMo.

(G) "Elopement"-When a child leaves a facility or designated area off the campus of a LRCF without permission and places the child out of sight and sound of direct supervision.

[(8)](J) "Family [c]Care [s]Safety [r]Registry" [pursuant to sections 210.903 through 210.936, RSMo, is established to protect children, the elderly, and disabled individuals in the state and to promote community safety by providing information concerning family caregivers as established within the Department of Health and Senior Services. The registry contains information on child-care workers' and personal-care workers' background and child-care, elder-care, and personal-care providers as specified in section 210.903.2(1)-(8), RSMo] means the family care safety registry administered by the Department of Health and Senior Services.

[(9)](K) "Good standing" refers to a licensed residential treatment agency for children and youth in substantial compliance with Chapter 71 of the Children's Division residential treatment agencies for children and youth rules and is not under involuntary intake suspension, license denial, license suspension, and/or license revocation.

[(10)](L) "Intensive residential treatment" for children and youth is provided in a living unit of an agency for gravely, emotionally dysregulated youth that has the capability of providing a highly structured and secure environment to prevent runaway behavior, address the likelihood of rage and physical aggression, and minimize the likelihood of youth injuring themselves or others. Intensive residential treatment for children and youth may be achieved through a combination of staffing patterns, architectural design of the operating site, electronic monitoring of the operating site and its exits, or other means necessary to assure safety.

[(11)] License is the legal document issued to an agency by the division for a period not to exceed two (2) years which authorizes the agency to provide twenty-four- (24-) hour care for children, subject to compliance with sections 210.481 - 210.536, RSMo, and the applicable rules promulgated by the division (section 210.481(6), RSMo).

[(12)](M) "Mechanical restraints" are any device, instrument, or physical object used to confine or limit a child's freedom of movement, except when necessary for orthopedic, surgical, and other medical purposes, or when necessary, to transport a child that may abscond or cause injury during transportation. Support devices used in normal situations to achieve proper body position and balance are not mechanical restraints.

[(13)](N) "Medical examination" is a thorough physical examination conducted by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician. It may include a variety of tests, depending on the age, sex, and health of the person being examined, that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis, when recommended by a licensed physician. It should also include a statement of the patient's mental state as determined by a licensed physician.

[(14)](O) "Operating site" is any building or campus of a licensed agency in which children [reside] receive care.

[(15)](P) "Physical restraint" is physical holding involving restriction of a child's voluntary movement to temporarily restrain an agitated, violent, or aggressive child who presents a likelihood of serious physical harm to him/herself or others.

[(16)](Q) [Residential treatment agency for children and youth is an agency providing twenty-four-(24-) hour care and treatment to children who are unrelated to the person operating the agency and who are unattended by a parent or guardian (as defined in section 210.481(10), RSMo, as residential care facility).] "Professional staff" of residential care facility are staff or contractors of the residential care facility who are qualified and required by law to be licensed in good standing to provide services for children to provide the services which they are providing. Examples of professional staff include, but are not limited to: physicians, nurses, physician assistants, teachers, licensed professional counselors, physical therapists, and occupational therapists.

[(17)](R) "Social services" are planned psycho-social interventions that are intended to lead to increased individual and family self-sufficiency, and empowerment, and will support the child's transition from the placement into the family or community. Social services shall include, but shall not necessarily be limited to, individual, family, or group therapy, provided in conjunction with other age and developmentally appropriate expressive, experiential, and adjunct activities.

[(18) Staff are persons employed by an agency.]

[(19)](S) "Transitional living services" are services provided to older adolescents that combine life skills training with opportunities to practice same. The goal of such services is to prepare the youth for successful adult living in the community upon their discharge from residential treatment for children and youth.

[(20)](T) "Variance" is a minor, time limited, deviation from a rule that may be requested by a licensed residential treatment for children and youth agency on a form prescribed by the division and approved or denied by the division. Approval may be granted by the division when a variance does not negatively impact child health and safety and is not under the purview of another regulatory entity. Examples include, but are not limited to, time limited deviations in licensed capacity and age range.

[(21) Volunteer is any person who provides direct services to children within an agency, either on or off the premises, without financial compensation.]

[(22)](U) "Well-known religious order, church, and religious organization" are defined as follows:

[(A)]1. A church, synagogue, or mosque;

[(B)]2. An entity that would qualify for federal tax exempt status as a not-for-profit religious organization under section 501(c) of the Internal Revenue Code of 1954; or

[(C)]3. An entity where the real property on which the residential treatment for children and youth operating site is located is exempt from local taxation because it is used for religious purposes.

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo [2000] 2016, and sections 210.493, 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.010. Original rule filed May 9, 1956, effective May 19, 1956. Refined March 12, 1976. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. An emergency amendment and proposed amendment covering this same material will be published in the Nov. 1, 2021, issue of the Missouri Register.

Emergency Rule

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

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.