

Emergency Rule

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 73—Child Placing Agencies**

EMERGENCY AMENDMENT

13 CSR 35-73.010 Scope and Definitions. The division is amending the title of the rule, moving sections (1)-(44) into subsections under a new section (2), and is adding a new section (1).

PURPOSE: The emergency amendment to this rule establishes the general principles governing the implementation and interpretation of the regulations in this Chapter 73. The amendment to this rule also updates the definitions of words and phrases utilized in Chapter 73 and updates the title.

EMERGENCY STATEMENT: Section 210.493, RSMo, of 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, welfare, peace and safety. 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 licensed Child Placing Agencies and Residential Care Facilities in Missouri. This includes the requirements for conducting the required Background Checks required in §210.493 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 amendment 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 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 Child Placing Agencies 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) Unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481 and 210.1253 RSMo. and 13 CSR 35-71.010 and 13 CSR 35-71.015 shall apply to all regulations in this chapter (13 CSR 35-73). The singular includes the plural and the plural includes the singular. In addition, the following terms are defined as:

[(1)](A) “Adoption” means the act of receiving a child into one’s family by choice and acquiring a parent-child relationship by legal process.

[(2)](B) “Adoption agency” means a licensed public or private organization whose purpose or parts of its purpose is to provide adoption services to children, adoptees, adoptive applicants, and birth and/or adoptive parents.

[(3)](C) “Adoption services” means the provision of pre-placement or foster care services to birth and/or adoptive parents, the completion of birth parent, social and medical histories, the completion of adoptive family assessments, post-placement services to birth and/or adoptive parents, post-adoption services to birth and/or adoptive parents, or other related activities, including those requested by courts and other adoption agencies and organizations.

[(4)](D) “Adoptive applicant” means a prospective adoptive parent who has applied to adopt a child but who has not yet received a child for adoptive placement. It also includes an adoptive parent who has adopted one (1) or more children and who is requesting to adopt another child.

[(5)](E) “Adoptive parent” means a person with whom a child has been placed for adoption or who has adopted one (1) or more children.

[(6)](F) “Alternative care” means care provided a child in a foster home, a group home, residential treatment agency, child care institution, or any combination thereof.

(G) “Background Check” means the background check required by section 210.493 RSMo and 13 CSR 35-71.015.

[(7)](H) “Birth parent(s)” means the biological father and/or mother of a child.

[(8)](I) “Child” means any person under eighteen (18) years of age.

[(9)](J) “Child placing agency” means any person or organization, other than the parents, who places a child outside the home of the child’s parents or guardian, or advertises or holds him/herself forth as performing such services, but excluding the attorney, physician, or clergyman of the parents per section 453.014(4), RSMo.

Emergency Rule

[(10)](K) “Confidentiality” means **complying with all federal and state laws governing the confidentiality of [the act of holding in trust]** both identifying and non-identifying information about clients, **families and other individuals** receiving services from a licensed child placing agency.

[(11)](L) “Custody” means the right of care and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child. Temporary custody of a child may be granted for a limited time only, usually pending further action or review by the court.

[(12)](M) “Director” means the director of the Children’s Division.

[(13)](N) “Division” means the Children’s Division of the Department of Social Services.

[(14)](O) “Facility” is any building of a licensed agency in which children reside.

[(15)](P) “Family Assessment” means a formal evaluation of the capacity and readiness of foster parent or adoptive applicants to receive a child, which includes a written report and recommendation.

[(16)](Q) “Finalization” means the issuance of a court order by an appropriate court which declares the child to be the child of adoptive petitioners as though born to them with full rights of inheritance.

[(17)](R) “Foster care” see alternative care.

[(18)](S) “Foster Home” means a private residence of one (1) or more family members providing twenty-four (24) hour care to one (1) or more, but less than six (6) children who are unattended by parent or guardian and who are unrelated to either foster parent by blood, marriage, or adoption.

[(19)](T) “Foster parent” means a person of age twenty-one (21) or older who is licensed to provide twenty-four (24) hour care to one (1) or more, but less six (6), children who are unattended by parent or guardian, and who is unrelated to the child(ren) by blood, marriage, or adoption.

[(20)](U) “Governing body” means the legal entity with ultimate authority and responsibility for the agency’s overall operation.

[(21)](V) “Home study” see family assessment.

[(22)](W) “ICAMA” means the Interstate Compact on Adoption and Medical Assistance (ICAMA). A contract enacted into law among twenty-eight (28) states (as of May 1994) whereby medical assistance (Medicaid) may be granted to an adopted child in the state where the child lives, based upon certain criteria, one (1) of which is the provision of adoption subsidy through an agreement between an agency and the adoptive parents.

[(23)](X) “ICPC” means the Interstate Compact on the Placement of Children (ICPC). A contract enacted into law among the fifty (50) states, the District of Columbia, and the Virgin Islands whereby approval must be obtained from the receiving state ICPC office prior to the placement of a child across state lines for the purpose of adoption or certain other types of placement.

[(24)](Y) “ICWA” means the Indian Child Welfare Act (ICWA).

[(25)](Z) “Immediate family” means a person related within the third degree of blood, marriage or adoption; parent, grandparent, brother, sister, half brothers, half sisters, stepparent, stepbrothers, step-sisters, uncle, aunt or first cousin.

[(26)](AA) “Independent adoption” means the placement of a child with a prospective adoptive parent by a birth parent or some other person, acting as allowed by state law, as an intermediary. Also referred to as a private, identified or designated adoption.

[(27)](BB) “International adoption” means the adoption of a child from a country other than the United States or of a child who is not a United States citizen by birth or naturalization.

[(28)](CC) “Legal father” is the husband of a natural mother at the time the child was conceived.

[(29)](DD) [“License” means the document issued by the division in accordance with the applicable provisions of sections 210.481 to 210.536, RSMo (Supp. 1995) to a foster

home, residential care facility, or child placing agency which authorizes the foster home, residential care facility, or child placing agency to operate its program in accordance with the applicable provisions of sections 210.481 to 210.536, RSMo (Supp. 1995) and rules issued pursuant thereto. (30)] “MEPA” means Multi-Ethnic Placement Act (MEPA), Public Law 103-382 (1994) as amended.

[(31)](EE) “Office” means the place where business is transacted and where the functions of an agency are performed.

[(32)](FF) “Operating capital” means sufficient assets on hand to cover the initial start-up expenses for the initial period of licensure.

[(33)](GG) “Permanency plan” means moving children to permanent homes, birth or adoptive, in a purposeful and timely manner.

[(34)](HH) “Placement services” means any and all services offered to prospective adoptive children and families, ranging from selection of a particular family for a particular child through the physical arrival of the child in the adoptive home.

[(35)](II) “Post-legal adoption services” means any and all services offered to any party involved in an adoption after the adoption is granted or finalized by the appropriate court.

[(36)](JJ) “Post-placement services” means any and all services offered to any member of an adoptive family from the placement of the child to finalization of the adoption.

[(37)](KK) “Power of attorney” means an instrument authorizing another to act as one’s agent or attorney.

[(38)](LL) “Pre-placement services” means any and all services offered to birth parent(s) and child(ren) to evaluate and prepare them for an adoptive placement.

[(39)](MM) “Private adoption” see independent adoption.

[(40)](NN) “Private agency adoption” means the services offered by a licensed agency in placing a child for adoption.

[(41)](OO) “Public agency adoption” means the services offered by a state public child welfare agency in placing a child for adoption.

[(42)](PP) “Social worker” means a professional person who possesses the qualifications and appropriate licensure to work directly with children, adoptees, birth and/or adoptive parents and other relevant individuals. If the person is a contracted person of a licensed child placing agency, such person must possess a valid license from the Division of Professional Registration and must, at a minimum, possess either a Bachelor’s Degree or a Master’s Degree in Social Work from an accredited institution.

[(43)](QQ) “Subsidy/adoption assistance” means the provision of financial assistance to adoptive families who are adopting a child with special needs as defined in state and federal law.

[(44)](RR) “Termination of parental rights” (TPR) means a legal action which severs the parent-child relationship and allows the child to be adopted.

AUTHORITY sections 207.020, 210.506, and 660.017, RSMo 2016 and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.010. Original rule filed Sept. 18, 1956, effective Sept. 28, 1956. 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 a proposed amendment covering this same material will be published in the Nov. 1, 2021, issue of the Missouri Register.

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.