TITLE 13 — DEPARTMENT OF SOCIAL SERVICES
Division 35 — Children's Division
Chapter 38 — Adoption and Guardianship Subsidy

EMERGENCY AMENDMENT

13 CSR 35-38.010 Adoption and Guardianship Subsidy. The division is amending sections (1), (10), and (12).

PURPOSE: This emergency amendment complies with changes to the law and methods of administration governing the subsidized childcare program and changes on how residential treatment services are approved and administered.

EMERGENCY STATEMENT: Promulgation of this regulation is necessary to address a danger to public health, safety, and welfare of children and families who participate in Missouri's subsidy programs and because there is a compelling governmental interest in promulgating the regulation that requires an early effective date. The amendment is necessary to ensure that the criteria and procedures that Children's Division (CD) uses for deciding when subsidy children are eligible to receive treatment in residential treatment facilities are consistent with the requirements of federal and state Medicaid law and to ensure that decisions are made based on a consistent set of criteria. The regulations are designed to ensure that those children who require subsidized treatment in residential facilities will receive the residential treatment when it is necessary, while it also ensures that Missouri has legally enforceable rules to ensure that children who do not require expensive, subsidized treatment in residential facilities receive treatment in more appropriate settings.

The provisions of the regulation that amend the procedures for approving subsidized childcare are also necessary to address a compelling governmental interest. The Department of Social Services (DSS) no longer has statutory authority to promulgate regulations governing subsidized childcare, so the current regulations are ultra vires. Repeal of these provisions is necessary to eliminate confusion and any conflict in the law governing the subsidized childcare program. The Department of Elementary and Secondary Education (DESE) has promulgated regulations governing eligibility for the program that became effective on April 30, 2023, so there will no detrimental impact on participants in the program. There is also a compelling government interest in ensuring that children who receive the benefits of the subsidy program who require or who may require treatment in residential care facilities receive the appropriate case for the reasons discussed above.

The Department of Social Services has followed procedures best calculated to assure fairness to all interested persons and parties under the circumstances. This amendment was promulgated with input from impacted stakeholders. The Department of Social Services posted a public announcement of the proposed rule, solicited comments, questions, and suggestions from stakeholders and held a virtual public meeting on July 15, 2023, from 10 a.m. to 12 p.m. The Department of Social Services began implementing the use of the Show-Me Healthy Kids (SMHK) program and the MO HealthNet Division's (MHD's) contractor to make medical necessity determinations in January of 2023. The Department has not received any objections to these new procedures since they have been implemented. Finally, the transition of administration of the subsidized childcare program has been implemented and DSS and DESE have been coordinating their work to make a smooth transition.

The Children's Division is promulgating the regulation in compliance with the protections extended by the ***Missouri*** *and* ***United States Constitutions****. The Department of Social Services is promulgating this regulation following the procedures established in section 536.025, and is not aware of grounds for a constitutional challenge.*

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 Children's Division believes that this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency rule was filed May 7, 2024, becomes effective May 22, 2024, and expires November 17, 2024.*

(1) Definitions. For purposes of this section, the following terms shall mean:

[(K Registered Childcare Provider. A license-exempt childcare provider maintaining requirements of the Children's Division to provide subsidized childcare through a registration agreement;]

*[(L)]***(K)** Relative. A person related to another by blood, adoption, or affinity within the third degree (grandparent, brother, sister, half-brother, half-sister, stepparent, stepbrother, stepsister, uncle, aunt, or first cousin).

*[(M)]***(L)** Kinship. A person who is non-related by blood, marriage, or adoption who has a close relationship with the child or child's family (godparents, neighbors, teachers, close family friends, and fellow church members) or a person who has a close relationship with the child or child's family and is related to the child by blood or affinity beyond the third degree; and

*[(N)]***(M)** Licensed Foster Family. A private residence of one (1) or more family members providing twenty-four (24) hour care to one (1) or more but less than seven (7) children who are unattended by a parent or guardian and unrelated to either foster parent by blood, marriage, or adoption and licensed through the Children's Division.

(10) Childcare.

[(A) A subsidy agreement may include childcare services as a part of the basic subsidy package for children up to age thirteen (13) when both adoptive parent(s) or guardian(s) are working or going to school. Adoptive parent(s) or guardian(s) are required to utilize a licensed and contracted or registered childcare provider. In unusual cases where the medical, behavioral, or developmental needs of the child are such that it is medically, behaviorally, or developmentally necessary for the child to receive childcare beyond age thirteen (13), the division may grant an exception and authorize payment for childcare through the adoption or guardianship subsidy agreement for children over age thirteen (13). The determination of medical, behavioral, or developmental necessity shall not be made before the child reaches the age of twelve (12) years. These requests will be considered on a case-by-case basis. The adoptive parent(s) or guardian(s) shall submit a written request to the division for continued childcare. In the request, the adoptive parent(s) or guardian(s) shall describe the medical needs and/or behaviors of the child which the parent(s) or guardian(s) believe qualifies the child for the continued childcare. The adoptive parent(s) or guardian(s) shall provide any and all information and documentation the Children's Division may determine is necessary and convenient to process the request, including, but not limited to—

1. A statement from a physician or mental health professional explaining why childcare is medically, behaviorally, or developmentally necessary;

2. A statement regarding the adoptive parent's(s') or guardian's(s') inability to locate community programs to assist with supervision of the child;

3. A statement including the hours of care needed per day or week, and anticipated duration of care shall be included in these requests;

4. The names and full contact information for all medical care providers for the child for all relevant times, including all physicians, hospitals, and clinics which have provided care, diagnosis, and treatment for the child;

5. The names and full contact information for all mental and behavioral health care providers for the child for all relevant times, including all therapists, licensed clinical social workers, psychologists, hospitals, and clinics which have provided care, diagnosis, and treatment for the child;

6. The names, addresses, and full contact information for all schools and educational institutions which provided educational services and/or assessments for the child; and

7. The names, addresses, and full contact information for any other person who may have information necessary to assess the medical, behavioral, and/or developmental needs of the child.

(B) The adoptive parent(s) or guardian(s) shall provide the Children's Division with any written authorizations to release information which the Children's Division determines is necessary and convenient to process the request.]

(A) Eligibility for subsidized childcare shall be determined by DESE and governed by the regulations of DESE.

(B) The division or child placing agency may provide referrals to the DESE or DESE's authorized representatives to apply for subsidized childcare.

(12) Additional Services – An adoption or guardianship subsidy agreement may include provisions for the Children's Division to provide the following:

(A) **The Division may offer available** Intensive In-Home Services (IIS) *[may be offered]* **or other services** to the adoptive parent(s) or guardian(s) **for the family** who is in need of intervention that may reduce the risk of the child entering out-of-home care;

(B) *[Residential Care Services]* **For all existing adoption and guardianship subsidy agreements amended on or after May 22, 2024, and for all adoption and guardianship subsidy agreements executed or amended on or after May 22, 2024, payment for care and treatment of a child in a residential setting (hereinafter referred to in this regulation as "residential treatment")** (All Levels) may be included in a subsidy agreement or added to the subsidy agreement through an amendment*[, but only if residential care is the least restrictive treatment setting and program appropriate to meet the child's needs]* **only as provided in this subsection**. The amendment must be **approved and** signed by the director of the Children's Division **or the Director's designee** before *[residential services may begin and]* payment for such services is made.

1. The Division may approve payment, in whole or in part, for residential treatment of a child in a subsidy agreement only if all of the following criteria and conditions are met:

A. The Division has determined that care and treatment of the child out of the home in a residential setting is the least restrictive setting and the program is necessary and appropriate to meet the child's needs. The Division may require that the child and family exhaust all reasonably available, less restrictive treatment modalities for the child before entering into an agreement to pay residential treatment.

B. The Division has determined that it is necessary for the child to receive treatment at a particular level of care in a residential setting.

C. The child has been accepted for treatment by a residential facility that is licensed by the state to provide the treatment, and the facility is either: an enrolled MO HealthNet provider, is an enrolled provider of the Medicaid program in the state in which the child is located, or the facility enters into a contract with the State of Missouri for payment for the services.

D. Except as provided in subsection G below, the child has received an approved prior authorization for treatment in the identified residential treatment facility. The approved prior authorization must be in writing and include a determination that the child requires residential treatment at a particular level of care to a reasonable degree of professional certainty according to the eligibility standards specified in this regulation.

(I) For children covered by a subsidy agreement, who are residents of the State of Missouri, and are participants in the MO HealthNet program, the prior authorization must be provided by the MO HealthNet Division or the provider contracted with the MO HealthNet Division to make those determinations.

(II) For children covered by a subsidy agreement who are not residents of the state of Missouri, but who are participants in the MO HealthNet program, then the prior authorization must be provided by the MO HealthNet Division or the managed care provider contracted with the MO HealthNet Division to make those determinations.

(III) For children who are not residents of the State of Missouri, who are not current participants in the MO HealthNet program, and are participants in another state's Medicaid program, prior authorization shall be provided by the Medicaid program from the other state.

(IV) For children who are not residents of the state of Missouri, who are not current participants in the MO HealthNet program, and are either not participants in another state's Medicaid program or the other state's Medicaid program does not pay for residential treatment then the Children's Division, will use the exception procedure in (12)(B) 1.G below to determine eligibility for subsidized residential treatment.

E. Every child receiving payment for residential treatment through a subsidy agreement shall have a current written plan of care.

F. The Children's Division will only enter into a subsidy agreement to pay for residential treatment if the facility is the closest available facility to the child's home that provides the array of services that the Division determines are necessary for the child at a contract price for those services agreeable to the Division.

G. In exceptional, extraordinary, and unusual circumstances, the Division may, in its discretion, waive the requirement in subsection (12)(B)1.D of this regulation that the child has received prior authorization for payment through a subsidy agreement residential treatment, but only if all of the following criteria are met:

(I) All of the other criteria for eligibility for payment for treatment in a residential care facility have been met;

(II) Either the adoptive parent or guardian has filed an appeal of the denial of prior authorization, or the child is a resident of a state whose Medicaid program does not include payment for the necessary residential treatment;

(III) The child's treating or examining, psychiatrist, psychologist, physician, advanced practice psychiatric

nurse, marital and family therapist, nurse practitioner, licensed professional counselor, or licensed clinical social worker certifies to a reasonable degree of medical certainty, in writing that treatment in a residential facility at the indicated level of care is necessary. The Children's Division may at any time, in its discretion, require the child to be examined and the certification and child's records reviewed by other licensed medical professionals for an independent assessment of the medical necessity for residential treatment. The Division will determine what weight shall be given to conflicting opinions of medical experts;

(IV) The Division determines that funds are available to pay for the treatment in a residential facility;

(V) The duration of the waiver shall be determined as follows:

(a) In the case where the waiver was triggered by a request for administrative review of the denial of a request to approve residential treatment the waiver shall extend until the appeal has been decided on administrative review. The Division may extend the waiver period if there is a request for judicial review of the administrative decision; or

(b) In the case where the waiver was necessary because the child is a resident of a state whose Medicaid program does not include payment for the necessary residential treatment, the waiver shall be subject to the continuing care reviews as provided in this regulation; or

(c) The Division determines that treatment in a residential facility is no longer necessary, such as where the child is discharged from residential treatment; and

(VI) The Division determines that the child may be a danger to self or others.

2. Responsibilities of the adoptive parent or guardian. The implementation of a subsidy agreement to subsidize payment for residential treatment does not and shall not absolve the adoptive parent or guardian of any and all of the duties and responsibilities that they may have toward the child under law. The fact that the Children's Division has entered into a subsidy agreement for payment for residential treatment does not mean that the child is or has been placed in the legal or physical custody of the Children's Division.

A. The adoptive parent or guardian shall be responsible for researching and exhausting all reasonably available, less restrictive, community based care and treatment modalities before the Division will approve subsidized residential treatment. The Children's Division may provide referrals and information to support the adoptive parent or guardian in that effort.

B. The adoptive parent or guardian shall remain responsible for the support of the child throughout the child's residential treatment, and making arrangements for the physical care, custody, and placement of the child when treatment in a residential care facility is no longer necessary. This duty of support shall include both financial support and exercising all duties of a parent or guardian, including, but not limited to: making decisions for the child, visiting the child, actively participating with the provider in all aspects of the management of the child's care and treatment, and engaging in active efforts to enable the child to return home.

C. If the adoptive parent or guardian is unable or unwilling to exercise these efforts or does not actively demonstrate a desire for the child to be returned to their home, then the Division may take one or more of the following actions:

(I) Decline to authorize payment for residential treatment under a subsidy agreement;

(II) Institute any available remedy for the modification or termination of the adoption or guardianship subsidy agreement, in whole or in part;

(III) Take any other action authorized by law, including a referral to the juvenile officer or the child welfare authorities of another state for investigation, assessment or other appropriate action.

D. The adoptive parent or guardian shall provide all information and documentation that the Department of Social Services (State Medicaid Agency), the State Medicaid Agency's contractor, and the Division determines necessary for determining eligibility, and continuing eligibility, for payment for residential treatment under a subsidy agreement. This includes, but is not limited to, executing Health Insurance Portability and Accountability Act (HIPAA) and Family Education Rights and Privacy Act (FERPA) compliant consents to authorize the release of all information and records that the Division and the state Medicaid Agency and the state Medicaid Agency's contractor may deem necessary.

3. Residential treatment that is eligible for payment under a subsidy agreement.

A. The subsidy agreement may include payment on behalf of a child who is the subject of a subsidy agreement in a residential treatment facility for:

(I) The reasonable and necessary cost for room and board for the child at the rate specified in the contract between the Division and the provider of residential treatment;

(II) If the Division has granted a waiver as provided in (12)(B)1.G then the Division will pay the provider the agreed upon amount for necessary residential treatment specified in the contract between the Division and the provider of residential treatment; or

(III) Discharge planning. The Division may, but is not required, to pay for residential treatment for a limited period of time specified in the subsidy agreement to allow the family to establish and implement the necessary, in-home or community based treatment for the child; provided that the parent and guardian exercise diligent and active efforts to implement and complete the discharge plan within the time specified in the subsidy agreement. Discharge planning extensions shall be reviewed monthly or more frequently as necessary.

B. The subsidy agreement shall not include, and the Division is not required to pay through a subsidy agreement, for any one or more of the following:

(I) Residential treatment and other services that are covered by MO HealthNet or the Medicaid program of any other state;

(II) Residential treatment that is covered by any policy of insurance that provides coverage for the child;

(III) Residential treatment that is not necessary;

(IV) Residential treatment that is beyond the scope of the participant's plan of care or discharge plan;

(V) Residential treatment that is available to the child through other government or privately funded programs, including, but not limited to: schools and school districts, community based services, and services provided by not-for-profit and religious organizations;

(VI) Residential treatment provided after the approved length of stay or after the child is discharged from the facility;

(VII) Residential treatment on behalf of a child to a provider who does not have a contract to provide the service with the state of Missouri; or

(VIII) Residential treatment and other services that are provided by a provider who is not qualified and licensed to provide the treatment in the location where the treatment is provided.

4. Payments for residential treatment shall be made directly to the provider of the residential treatment pursuant to a contract between the State of Missouri and the provider. The adoptive parent or guardian and child shall not be a party or be a third party beneficiary of the contract between the State of Missouri and the provider. No payments shall be made to a provider that is not currently licensed in good standing to provide the care and treatment. No payments shall be made directly to the adoptive parent or guardian. No payments shall be made to a provider who is either not an enrolled Medicaid provider or who does not have a contract with the State of Missouri to provide the service. The laws and regulations governing contracting with the State of Missouri shall govern all contracts for services under this regulation.

5. For the Children's Division to determine that residential treatment at a specific level of care is necessary all of the criteria in subparagraphs A through H must be met, subject to the definition of "medical condition" specified in subparagraph I:

A. The child's medical condition must satisfy all of the eligibility requirements of 13 CSR 35-38.010(12)(B);

B. The child must have one (1) or more, current diagnosed medical condition(s), injury or illness. The diagnosis may be final or provisional;

C. The diagnosis must have been made by a medical professional who is licensed and qualified by law to make that diagnosis;

D. Care and treatment in a residential facility for the child's diagnosis meets the generally accepted standard for care and treatment for the child's diagnosed condition;

E. Care and treatment in a residential setting is not experimental and is not mainly prescribed for the convenience of the child, or the child's parents or guardian;

F. Care and treatment in a residential setting is reasonably necessary to protect the life, safety, and health of the child; and

G. The care and treatment is not optional or for purely cosmetic purposes; and

H. Treatment at home or in a lower level of care for the medical condition has been ruled out by a medical professional who is licensed and qualified to determine whether the treatment is medically inappropriate.

I. In this regulation the phrase "medical condition" includes a diagnosed physical, psychiatric, psychological and/or developmental condition.

6. The following documentation shall be submitted to complete both the medical necessity and prior authorization determination process:

A. A report of a full assessment by a licensed and qualified health care professional using the most recent version of the Daily Living Activities (DLA-20) assessment process and tool. If a DLS-20 assessment process and tool is not available, the Division may, in its discretion, accept an assessment using an equivalent, current assessment tool, provided that the assessment and tool is evidence based, objective, generally accepted and actually used in the medical community as a tool used for assessments for care and treatment in residential facilities. The assessment must be completed by a clinician licensed in the state in which the tool is administered who is trained and qualified to use the tool. The assessment and tool must be the most recent version of the tool as of the date of the assessment. Other tools that may be used when a DLA-20 assessment is not available may include: the Level of Care Utilization System (LOCUS) for youth over age eighteen (18), the Child and Adolescent Level of Care/Service Intensity Utilization System (CALOCUS-CASII) for children aged six to eighteen (6-18), and the Early Childhood Service Intensity Instrument (ESCII) for children aged zero to five (0-5); and

B. Any relevant child/youth psychiatric/behavioral health diagnoses; and

C. The most recent psychiatric evaluation completed by a psychiatrist, psychologist, or advanced practice nurse, if one is available; and

D. A statement detailing the rationale for residential treatment at the requested level of care; and

E. Documentation of previous treatment history and outcome of treatment, if applicable and available; and

F. Documentation of the name, address, telephone number, e-mail address, and all other contact information for the adoptive parent or legal guardian of the child; and

G. A discharge plan when available. Discharge planning shall start at admission and shall be continuously developed and evaluated throughout the child's stay in residential; and

H. The child's parent or guardian shall complete and submit a CS-9 form to the best of their ability in cooperation with the assigned subsidy worker. The adoptive parent or guardian shall sign the form and certify that the information that they have provided is true, complete, and accurate to the best of their personal knowledge, information, and belief.

7. The adoptive parent or guardian shall have the burden of proof to establish by a preponderance of the evidence that the child is eligible for both initial and continuing treatment in a residential care facility at a particular level of care.

8. Except as otherwise provided elsewhere in these regulations, the Division shall not approve payment for residential treatment in a residential care facility in a subsidy agreement for more than six (6) consecutive months. The Children's Division may enter into subsequent, amended subsidy agreements that include payment for treatment in a residential setting following the continuing stay review procedures.

9. Continuing stay reviews. All subsidy agreements that include payment for a child in residential treatment shall be subject to continuing stay reviews.

A. The date for the first continued stay review will be included in the child's plan of care and dates for subsequent continuation in care reviews shall be included in all subsequent plans of care. The date for the first continuing stay review shall be no later than ninety (90) days from the date of the placement of the child in the facility.

B. The purpose of the continuing stay review is to determine whether ongoing treatment of the child in a residential facility is necessary and whether the child's treatment needs can be met at a lower level of care. The same procedures, standards, and criteria for initial approval for payment for residential treatment services shall apply to continuing stay reviews.

C. Documentation. The child's adoptive parent or guardian shall be responsible for ensuring that all of the documentation necessary to establish that continuing in

a residential treatment setting at a specified level of care is necessary. The documentation and review shall include:

(I) The child's plan of care since the last review;

(II) The treatment team member's progress notes;

(III) The progress notes of the child's treating psychiatrist, psychologist, physician, and/or therapists;

(IV) Family therapy progress notes since the last review period, or detailed documentation to establish whether family therapy sessions are not occurring or have been excused;

(V) The medications that the child has been prescribed and taking, including any updates;

(VI) The child's discharge plan, including any details currently available and including any established outpatient providers, appointment dates and times, recommended level of care;

(VII) The efforts that the adoptive family or guardian have engaged in to participate in the child's care and treatment;

(VIII) At the request of the provider, the payer of coverage for residential treatment, the parent(s), guardian(s), or the Children's Division, completion of a new DLA-20 or equivalent assessment of medical necessity by a clinician trained and qualified to perform the assessment; and

(IX) A written certification to a reasonable degree of medical probability that continuing treatment in a residential care facility is necessary.

*[1.]***11.** Residential Referral Process. **The procedures in this subsection shall govern all requests for payment for services, care, and treatment in a residential setting through an adoption or guardianship subsidy agreement.**

A. At any time, the adoptive parent*[(s)]* or guardian*[(s)]* may request residential services. The division may refer the case to an IIS provider. If the *[d]***D**ivision determines that IIS is appropriate, the *[d]***D**ivision may provide IIS rather than residential services.

B. Community resources are to be researched by the adoptive parent*[(s)]* or guardian*[(s)]*, with the assistance of their division caseworker**, the child's care manager (if applicable)**, and efforts documented, prior to making a residential treatment referral.

C. In the event that IIS is ineffective in remedying the situation and other community resources have not produced the necessary change in the family unit and/or adoptive parent*[(s)]* or guardian*[(s)]* are *[unwilling]* **reasonably unable** to *[utilize]* **access** alternative resources to prevent placement in residential care, the adoptive parent*[(s)]* or guardian*[(s)]* must provide information necessary to evaluate the needs of the child to determine eligibility for placement in residential care.

D. The adoptive parent*[(s)]* or guardian*[(s)]* shall obtain the necessary documentation regarding the child's condition from appropriate professionals (psychological, psychiatric, etc.).

E. *[Efforts shall be made]* **The adoptive parent or guardian shall make diligent efforts** to place the child in close proximity to their home to allow involvement by the adoptive parent*[(s)]* or guardian*[(s)]* in the child's treatment.

F. The adoptive parent*[(s)]* or guardian*[(s)]* are responsible for making arrangements for actual placement into the residential facility.

[G. Once a child has been approved for residential treatment, the adoptive parent(s) or guardian(s) shall be referred to the out-of home care program. A Family Centered Services (FCS) case may be opened to provide services to work towards reintegration.

H. If the adoptive parent(s) or guardian(s) is unwilling to be a part of this process and has no desire for the child to be returned to their home, residential treatment may not be authorized through subsidy, and other permanency options shall be discussed with the family. If the child enters the custody of the Children's Division, the division will pursue child support from the adoptive parent(s) or guardian(s).]

2. The division will not pay for residential services at a more intensive treatment level and at a higher rate unless the director of the Children's Division agrees in writing to pay for the more intensive treatment level. To request approval to pay at a higher rate for a more intensive treatment level in the residential setting—

A. The adoptive parent(s) or guardian(s) shall submit a written request and state in detail the reasons that it is necessary for the child to be placed at a more intensive treatment level. The adoptive parent(s) or guardian(s) shall provide any and all documentation that the division may require to ascertain whether the more intensive treatment level is necessary; and

B. The documentation submitted must include current records and reports which must be no more than ninety (90) days old and include an estimated discharge date and prognosis, monthly treatment summary, why a continued need for residential treatment exists, and a description of parental involvement with the facility's treatment plan;]

12. Any adoptive parent(s) or guardian(s) who believes that they are aggrieved by an adverse decision regarding medical necessity or prior authorization that is made by the MO Health Division, the managed care provider contracted with the MO HealthNet Division to make that decision, or the Medicaid program of another state shall first exhaust his or her administrative and judicial remedies under that program.

(C) The provisions of this subsection (C) shall apply to all adoption and guardianship subsidy agreements executed prior to May 22, 2024.

1. Residential Care Services (All Levels) may be included in a subsidy agreement or added to the subsidy agreement through an amendment, but only if residential care is the least restrictive treatment setting and program appropriate to meet the child's needs. The amendment must be signed by the director of the Children's Division before payment for such services may begin. All amendments and proposed amendments covering residential care and treatment services to adoption and guardianship subsidy agreements existing prior to May 22, 2024, are governed by (B), above, and not this subsection (C).

2. Residential Referral Process.

A. At any time, the adoptive parent or guardian may request residential services. The division may refer the case to an IIS provider. If the Division determines that IIS is appropriate, the Division may provide IIS rather than residential services.

B. Community resources are to be researched by the adoptive parent or guardian, with the assistance of their division caseworker, and efforts documented, prior to making a residential treatment referral.

C. In the event that IIS is ineffective in remedying the situation and other community resources have not produced the necessary change in the family unit or the adoptive parent or guardian is unwilling to utilize alternative resources to prevent placement in residential care, the adoptive parent or guardian must provide information necessary to evaluate the needs of the child to determine eligibility for placement in residential care.

D. The adoptive parent or guardian shall obtain the

necessary documentation regarding the child's condition from appropriate professionals (for example, psychological or psychiatric).

E. Efforts shall be made to place the child in close proximity to their home to allow involvement by the adoptive parent or guardian in the child's treatment.

F. The adoptive parent or guardian are responsible for making arrangements for actual placement into the residential facility.

G. Once a child has been approved for residential treatment, the adoptive parent or guardian shall be referred to the out-of-home care program. A Family Centered Services (FCS) case may be opened to provide services to work towards reintegration.

H. If the adoptive parent or guardian is unwilling to be a part of this process and has no desire for the child to be returned to their home, residential treatment may not be authorized through subsidy, and other permanency options shall be discussed with the family. If the child enters the custody of the Children's Division, the division will pursue child support from the adoptive parent or guardian.

3. The Children's Division will not pay for residential services at a more intensive treatment level and at a higher rate unless the director of the Children's Division agrees in writing to pay for the more intensive treatment level. To request approval to pay at a higher rate for a more intensive treatment level in the residential setting:

A. The adoptive parent(s) or guardian(s) shall submit a written request and state in detail the reasons that it is necessary for the child to be placed at a more intensive treatment level. The adoptive parent(s) or guardian(s) shall provide any and all documentation that the division may require to ascertain whether the more intensive treatment level is necessary; and

B. The documentation submitted must include current records and reports which must be no more than ninety (90) days old and include an estimated discharge date and prognosis, monthly treatment summary, why a continued need for residential treatment exists, and a description of parental involvement with the facility's treatment plan.

*[(C)]***(D)** Youth with Elevated Needs Level B--A child *[shall]* **may** be placed in a Youth with Elevated Needs Level B Home if this service is determined necessary for the child by the Children's Division in conformity with the procedures and eligibility criteria set forth in 13 CSR 35-60.070 and a Level B home is available and has accepted the child for placement. The Elevated Needs Level B Home is for the purpose of treating a child's behavioral issues so they may be successfully reintegrated into the adoptive or guardianship home.

1. The adoptive parent(s) or guardian(s) are to be referred to the out-of-home care program, a voluntary case is to be opened, and services are to be offered in order to work towards reintegration into the adoptive or guardianship home.

2. Youth with Elevated Needs Level B placements may be authorized for only six (6) months at a time. Upon the sixth month, the need for placement and level of care must be reviewed in a Family Support Team (FST) meeting.

3. An amendment requesting funding for Youth with Elevated Needs Level B placements shall be submitted to the division for approval. The amendment must be signed by the director of the Children's Division before Youth with Elevated Needs Level B services may begin and payment for such services made.

4. With regard to agency liability of an adopted or guardianship child voluntarily placed in a Youth with Elevated Needs Level B placement, any legally recognized parent (biological or adoptive parent(s) or guardian(s)) is liable for the actions of his/her child as long as that adoptive parent(s) or guardian(s) have not been relieved of legal custody. If the division does not have legal custody of a child, the division is not liable for the child;

*[(D)]***(E)** Respite: Adoptive parent(s) or guardian(s) may receive respite as a special service on a case-by-case basis through subsidy when a documented need exists to age eighteen (18). Respite care shall be provided according to any regulations promulgated by the division governing respite care.

1. The adoptive parent(s) or guardian(s) shall provide a letter requesting this service describing in detail the child's need for respite.

2. All paid receipts submitted for reimbursement must be submitted within one hundred eighty (180) days of the service being provided.

3. Respite shall be approved in accordance with maintenance approval; if a child receives traditional maintenance to age eighteen (18), respite may be approved to age eighteen (18) as well. If a child receives medical or Youth with Elevated Needs Level A maintenance to age eighteen (18) due to their condition being such that they are not expected to improve, respite may also be approved to age eighteen (18). However, if medical or Youth with Elevated Needs Level A maintenance is only approved for a two (2)-year time period, respite should only be approved for two (2) years; and

*[(E)]***(F)** If the child has a disabling condition as defined by the Americans with Disabilities Act, the Children's Division within its discretion may include in an adoption or guardianship subsidy agreement a provision to pay for minor modifications of the residence of the child or vehicle used to transport the child under the following conditions:

1. It must be necessary for the child to effectively function in the home or vehicle;

2. The adoptive parent(s) or guardian(s) must be unable to acquire these services independent of the subsidy and have exhausted all available private and public community resources;

3. All expenses, modifications, and services shall be approved for payment pursuant to procurement laws and regulations including, but not limited to, 1 CSR 40-1.010 through 1 CSR 40-1.090; and

4. The division will pay for the least expensive, appropriate alternative to meet the needs of the child.

*AUTHORITY: section**s 207.020, 210.506,** 453.073, [RSMo Supp. 2009, sections 210.506 and] 453.074, **536.010, and 660.017,** RSMo [2000] **2016**, and Young v. Children's Division, State of Missouri Department of Social Services, 284 S.W.3d 553 (Mo. 2009). Original rule filed March 1, 2010, effective Oct. 30, 2010. Emergency amendment filed May 7, 2024, effective May 22, 2024, expires Nov. 17, 2024. An emergency amendment and a proposed amendment covering this same material will be published in the June 17, 2024, 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.