
EMERGENCY RULE

TITLE 13 – DEPARTMENT OF SOCIAL SERVICES Division 35 – Children’s Division Chapter 60 – Licensing of Foster Family Homes

EMERGENCY AMENDMENT

13 CSR 35-60.040 Physical and Environmental Standards. The division is amending subsections (1)(D),(N),(O),(Q),(S), and (T).

PURPOSE: This emergency amendment conforms Rule 13 CSR 35-60.040 with Amendment 3 passed by Missouri voters on November 8, 2022, which, among other things, amended Article XIV of the Missouri Constitution to legalize the purchase, possession, and use of specified amounts of marijuana for adults over the age of 21. This emergency amendment further conforms Rule 13 CSR 35-60.040 with the rescission by the Department of Health and Senior Services (DHSS) on July 30, 2023 of the regulations formerly published in chapter 95 of Division 30 (Medical Marijuana) and the promulgation by DHSS on July 30, 2023 of the regulations found in chapter 1 of Division 100 (Marijuana).

*EMERGENCY STATEMENT: This emergency amendment is necessary to fulfill the compelling governmental interest of having the Division’s regulations conform to the Missouri Constitutional and DHSS’s new marijuana regulations. The Division’s regulations are made available to the public on the Division’s website. Rule 13 CSR 35-60.040 presently provides that foster parents shall not use or possess marijuana or marijuana-infused products. Amendment 3, passed by Missouri voters on November 8, 2022, amended the Missouri Constitution to provide that Missouri residents over the age of 21 have a constitutional right to use or possess marijuana in specified quantities. In addition, Rule 13 CSR 35-60.040 cites to Department of Health and Senior Services (“DHSS”) regulations that were rescinded on July 30, 2023 – 19 CSR 30-95.010, .030, and .110. A regulation that conflicts with the **Missouri Constitution** is invalid. See 536.014 (“No department, agency, commission or board rule shall be valid in the event that . . . [t]he rule is in conflict with state law.”). The Division’s regulations also cite to DHSS regulations that no longer exist. The Division has a compelling governmental interest in making sure that the public is not confused by published regulations that are not valid or that incorporate regulations that have been rescinded. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed on August 14, 2023, becomes effective August 28, 2023, and will expire February 23, 2024.*

(1) General Requirements.

(D) All flammable liquids, matches, cleaning supplies, poisonous materials, medication, marijuana [(as defined in 19 CSR 30-95.010(20) or], marijuana-infused products [(as defined in 19 CSR 30-95.010(21)) for medical use (as defined in 19 CSR 30-95.010(27)),] alcohol, or other hazardous items shall be stored so as to be inaccessible to the children, taking into consideration the age and mental capacities of the children.

(N) For the purposes of this regulation, the terms “marijuana,” “marijuana-infused products,” and “medical use,” shall mean the terms as they are defined in 19 CSR [30-95.010.] **100-1.010**.

(O) All foster parents, household members, and guests shall not use or possess illegal substances, [marijuana, marijuana-infused products.] or use tobacco or marijuana products that emit smoke or vapor, such as cigarettes, cigars, pipes, or electronic smoking devices that include, but are not limited to, e-cigarettes, vape pens, or vaporizers in:

1. The foster home when a child in division custody is placed in the home;
 2. A vehicle when transporting a child in division custody;
- or
3. The presence of a child in division custody.

(Q) Foster parents and household members who seek to use or cultivate marijuana for medical use must follow all rules and procedures as set forth by the Department of Health and Senior Services in 19 CSR [30-95.010] **100-1.010** through 19 CSR [30-95.110] **19 CSR 100-1.050**.

(S) Foster parents and household members who are qualifying patients[, as defined in 19 CSR 30-95.010(36),] for medical marijuana use must [obtain a new physician certification annually and] obtain identification cards from the Department of Health and Senior Services [in accordance with 19 CSR 30-95.030 in order to use and/or cultivate marijuana for medical use]. All foster parents and household members shall, upon request, provide the division with a copy of [the physician certification and] identification card(s) [as defined in 19 CSR 30-95.010(17)], as applicable.

(T) All [cultivation by the qualifying patient shall take place in an enclosed, locked facility as defined in 19 CSR 30-95.010(12) with the plant specifications set forth in 19 CSR 30-95.030(4)] **All consumer personal cultivation, qualifying patient cultivation, and primary caregiver cultivation shall take place in an enclosed, locked facility, as defined in 19 CSR 100-1.010(28) and with the plant specifications set forth in 19 CSR 100-1.040(5).**

*AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo 2016. Original rule filed July 18, 2006, effective Jan. 30, 2007. Amended: Filed Sept. 15, 2015, effective March 30, 2016. Amended: Filed June 22, 2020, effective Jan. 30, 2021. Emergency amendment filed Aug. 14, 2023, effective Aug. 28, 2023, and expires Feb. 23, 2024. An emergency amendment covering the same material will be published in the Sept. 15, 2023, issue of the **Missouri Register**.*

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