

Emergency Rule

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71— Rules for Residential Treatment Agencies
for Children and Youth

EMERGENCY RULE

13 CSR 35-71.015 Background Checks for Personnel of Residential Care Facilities and Child Placing Agencies

PURPOSE: This emergency rule establishes the processes and procedures for conducting background checks for personnel of child placing agencies, licensed residential care facilities and residential care facilities subject to the notification requirements under sections 210.1250 to 210.1286 RSMo as provided and authorized by sections 210.493 RSMo.

*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 law further authorizes the Department to promulgate regulations to implement the requirement that the Department conduct background checks on any person who has unsupervised contact with children and any adult who resides at a LERCF. 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. 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 rule is fair to all interested persons and parties under the circumstances. The Department of Social Services published a draft of this emergency rule 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 rule was filed September 17, 2021, becomes effective October 1, 2021, and expires March 29, 2022.*

(1) Definitions. For the purpose of this regulation, unless otherwise specified in this subsection or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481 and 210.1253, RSMo shall apply to this regulation. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) “Applicant” means any individual who applies or is required to successfully complete the background check requirements for employment or presence at the Licensed Residential Care Facility (“LRCF”), License Exempt Residential Care Facility (“LERCF”) or Child Placing Agency (CPA) by section 210.493 RSMo. For the purposes of Background Checks conducted by the Missouri State Highway Patrol of the Missouri Department of Public Safety the term “applicant” is further defined as specified in section 43.539 RSMo.

1. Except as otherwise provided in this regulation, applicants for LRCFs, LERCFs and CPAs who are required to complete the background check process include: officers; managers; contractors with unsupervised access to children; volunteers with unsupervised access to children; employees; other support staff; owners of LRCFs and LERCFs that will have access to the facilities; and owners of LERCF, LRCF and CPA that will have access to children.

2. Except as otherwise provided in this regulation, applicants for LERCFs who are required to complete a background check also include any applicant as defined in section 43.539 RSMo who has unsupervised contact with a resident of the LERCF. The following individuals or classes of individuals who may have unsupervised contact with a child who is a resident of a LERCF are not deemed to be applicants and are not required to submit to background checks as provided in this subsection unless otherwise required by law or court order:

A. Legal parents, step-parents, grandparents, siblings, legal guardians and prospective adoptive parents who do not reside on or at the LERCF but who have contact or visits with a child who resides on the property of a LERCF;

B. Licensed or other lawfully qualified individuals who do not reside at or on the property of a LERCF; who are not employees, officers, volunteers, staff, support staff of the LERCF; and who provide occasional emergency professional services within the scope of their employment pertaining to a child who resides at or on the property of the LERCF such as: licensed physicians, licensed nurses, licensed emergency medical technicians, POST certified law enforcement officers, Juvenile Officers, division Employees, Prosecuting Attorneys, court appointed special advocates (CASA) assigned by a court to a child who resides at a LERCF, attorneys and court appointed guardians ad litem for children who reside at an LERCF.

C. Licensed or other lawfully qualified individuals who do not reside at or on the property of a LERCF; who are not employees, officers, volunteers, staff, support staff of the LERCF, and who provide reasonably necessary, professional services, maintenance in an emergency when it is necessary to protect the health and safety of individuals at the facility and background checks are not reasonably possible under the circumstances, or government inspections on the premises of a LERCF to ensure the health and safety of the residents such as fire, health and safety inspectors, and nationally recognized accrediting agencies, heating, construction, electrical and plumbing contractors.

(B) “Boarding School” includes any educational institution in which some or all of the children who attend the institution reside during their attendance at the institution. Boarding schools include facilities where the children lodge in dorms, in private homes whose owners are contracted with, associated or affiliated with the institution, or in homes owned or operated by the institution regardless of whether or not the child’s residence is located on or off the institution’s campus.

(C) The “Department” or the “division” shall refer to the Children’s Division of the Missouri Department of Social Services.

(D) “Employee” is any individual who works in the service of a LERCF, LRCF or Child Placing Agency under an express or implied contract for hire, whether written or unwritten, full time or part time, under which the LERCF, LRCF or Child Placing Agency has the right to control the details of work performance in whole or in part. Staff can be employees and employees can be staff.

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(E) “Licensed Residential Care Facility” or “LRCF” means a facility providing twenty-four-hour care in a group setting to children who are unrelated to the person operating the facility and who are unattended by a parent or guardian, and which is required to have a license to operate as a Residential Care Facility under section 210.516 RSMo. LRCFs do not include licensed foster family homes or unlicensed kinship placements made pursuant to a juvenile or family court order.

(F) “License-Exempt Residential Care Facility” or “LERCF” means any place, facility, or home operated by any person who receives children who are not related to the operator and whose parent or guardian is not a resident of the same facility and that provides such children with supervision, care, lodging and maintenance for twenty-four hours a day, with or without transfer of custody; and that is not required to be licensed under section 210.516 RSMo. Unless exempted as provided below, LERCFs include, but are not limited to, boarding schools, juvenile detention facilities, license-exempt foster homes as defined in section 210.516, RSMo, and other congregate care facilities. LERCFs do not include:

1. Hospitals, sanitariums and clinics operated to provide medical care and treatment and operating pursuant to a valid license issued by the Missouri Department of Health and Senior Services (DHSS), the Missouri Department of Mental Health (DMH), the United States (such as Veterans’ Administration Hospitals and hospitals administered by the armed forces of the United States);

2. Boarding schools operated by the Missouri Department of Elementary and Secondary Education (DESE), provided that DESE requires background checks equivalent or more stringent than the requirements of section 210.493 RSMo.

3. Foster homes and congregate care facilities or homes licensed or certified by the DMH, provided that DMH requires background checks equivalent or more stringent than the requirements of section 210.493 RSMo.

4. Juvenile corrections programs operated by the Department of Social Services, Division of Youth Services or juvenile detention facilities operated by Juvenile Officers or juvenile courts which are subject to the Prison Rape Elimination Act (PREA) standards and auditing;

5. Facilities operated by the Missouri Department of Corrections and county or local jails;

6. Any individual (but not a corporation, partnership, organization or association) who receives on a voluntary basis, the child of close, personal friends or relatives as an occasional and personal guest in their personal home or the home of the child’s parent, guardian or legal custodian, who is otherwise unaffiliated with a LRCF or LERCF and who receives custody of or provides care of no other child unrelated by consanguinity, adoption or affinity;

7. Any individual (but not a corporation, partnership, organization or association) who is otherwise unaffiliated with a LRCF or LERCF who receives legal custody or guardianship of a child or sibling group pursuant to a judgment or order of a court of competent jurisdiction in cases where a state or local government is not a party; and, in cases where the judgment or order is entered by a court outside the state of Missouri, all of the requirements of the Uniform Child Custody and Jurisdiction Act, the Interstate Compact for the Placement of Children (ICPC) or the Interstate Compact for the Placement of Juveniles (ICJ) have been fully satisfied; and

8. Any camp which is not a Boarding School; which is operated solely during certain months of the year, not to exceed four months; which is conducted in good faith primarily to provide recreation or religious instruction for children; in which the children do not spend more than thirty consecutive overnight periods during any twelve month period; and not for ongoing residential or treatment purposes.

(G) “Manager” is any individual who administers or supervises the affairs of the LERCF, LRCF or Child Placing Agency, including, but not limited to: any individual who supervises any employees,

staff or volunteers of the LERCF, LRCF or Child Placing Agency.

(H) “Missouri State Highway Patrol” or “MSHP” shall mean the Missouri State Highway Patrol of the Missouri Department of Public Safety.

(I) “Officer” is any individual who holds an executive position with the LERCF, LRCF or Child Placing Agency, including, but not limited to: Chairperson of the Board, President, Director, Vice President, Secretary, General Counsel, Headmaster, Principal, Head Teacher, Treasurer or any other individual listed as an officer of the LERCF, LRCF or Child Placing Agency.

(J) “Owner” of a LERCF, LRCF or Child Placing Agency is any individual who holds an equity interest in the LERCF, LRCF or Child Placing Agency.

(K) “Sponsoring Organization” shall mean the entity that sponsors the LERCF, LRCF or Child Placing agency, including, but not limited to the sponsoring church or religious organization.

(L) “Support Staff” or “Staff” of a LERCF, LRCF or Child Placing Agency include any individual who works for or performs services, including professional services, for the LERCF, LRCF or Child Placing Agency, whether compensated or not. Staff can be employees and employees can be staff.

(M) “Volunteer” of a LERCF, LRCF or Child Placing Agency is any individual who performs a service for or on behalf of the LERCF, LRCF or Child Placing Agency of their own free will without obligation, or without any expectation of reward or compensation.

(2) The Background Checks conducted pursuant to this regulation shall consist of the following:

(A) A Fingerprint Based Background Check of Open and Closed criminal history conducted in conjunction with the MSHP pursuant to subsection (3) of this regulation; and

(B) A search of the a national offender registry conducted by the division; and

(C) A search of the following registries, repositories, or databases in Missouri, the state where the applicant resides, and each state where the applicant resided during the preceding five years conducted by the division:

1. The state sex offender registry or repository (in Missouri this is a search of the MSHP Sex Offender Registry); and

2. The state family care safety registry (in Missouri this is a search of the Family Care Safety Registry); and

3. The state-based child abuse and neglect registry and database (in Missouri this is a search of the Central Registry of the division).

(3) All of the Fingerprint Based Background Checks of closed criminal history conducted under this regulation shall be performed in conjunction with the MSHP solely through the authority of the Missouri Volunteer and Employee Criminal History Service (VECHS) and the National Child Protection Act, Public Law 103-209, as amended. No fingerprint based, criminal background checks of federal records or closed criminal history shall be conducted under this regulation on clients, patients and students of the LERCF or LRCF unless the Fingerprint Based Background Check of closed criminal history is authorized by federal and state law and that individual is also an employee, staff or volunteer of the LERCF or LRCF. The Background Checks conducted in conjunction with the MSHP will be conducted pursuant to the law, statutes, regulations and policies governing the MSHP and will include a Fingerprint Background Check and a State Open Records Check as provided in this subsection.

(A) Fingerprint Background Check – A state and FBI background check is required for any person who is: actively employed by or seeks employment with; actively licensed or seeks licensure with; actively volunteers or seeks to volunteer with; actively contracted with or seeks to contract with; an owner or operator of a Licensed Residential Care Facility, a License-Exempt Residential Care Facility,

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ty, or a Child Placing Agency, prior to having access to children.

1. The fingerprint background check will be conducted through the Missouri VECHS Program, pursuant to the National Child Protection Act, as amended.

2. Criminal history record information will consist of complete Missouri criminal history (open and closed) records, and criminal history from the Federal Bureau of Investigation. Criminal history will include convictions, arrests within 30 days, pending charges and suspended imposition of sentence (SIS) during probation, not guilty findings, charges nolle prossed, or dismissed cases, SIS cases after probation is completed, and arrests after thirty (30) days where no charges have yet been filed or reported by the prosecuting attorney, and will include a search of the state sex offender registry.

(B) State Open Records Check – required for any person that is not an employee, volunteer, contractor, owner/operator, who is eighteen years of age or older, who resides at or on the property, who has or may have unsupervised access to children for whom a Licensed-Exempt Residential Care Facility provides care. A state open record check consists of convictions, arrests within thirty (30) days, pending charges, suspended imposition of sentence (SIS) during probation, and will include a search of the state sex offender registry.

(4) Application of this Regulation. This regulation applies to CPAs, LRCFs and LERCFs which are subject to the notification requirements of sections 210.1250 to 210.1286, RSMo.

(A) Phase in Period. Every LRCF, LERCF, and Child Placing Agency operating on the date that section 210.493 and this regulation become effective shall have until December 31, 2021, for all applicants complete Background Checks. The division may extend this deadline for any individual LRCF, LERCF and Child Placing Agency, due to unusual, compelling and extenuating circumstances beyond the control of the LRCF, LERCF or Child Placing Agency. The request for an extension shall be in writing and shall explain the reasons for the request for an extension. Any applicant who does not complete the background check process as specified in this regulation by the deadline shall be ineligible for employment or service with an LRCF, LERCF or Child Placing Agency until the background check process has been successfully completed.

(B) Any applicant who begins employment or service after the effective date of this regulation shall complete the background check process before beginning employment or service with a LRCF, LERCF or Child Placing Agency.

(5) Designation of Authority. The Department of Social Services hereby designates the Children's Division of the Department of Social Services to be the division within the Department of Social Services to administer background checks as required by section 210.493, RSMo. The Department of Social Services hereby designates the Administrative Hearings Unit within the Division of Legal Services of the Department of Social Services to process and decide all appeals of applicants as provided in this regulation.

(6) Application Process.

(A) The applicant shall apply for background screening through the division's on-line portal on forms promulgated by the division. The application forms and instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65101, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>. October 1, 2021. This rule does not incorporate any subsequent amendments or additions. The applicant shall submit the completed application form and upload any supporting or supplemental forms and documentation through the division's online portal. The application must be signed by the applicant (e-signature is acceptable).

1. The applicant may apply to the division for permission to file the application and supporting documentation by mail or private delivery service rather than through the on-line portal when there are unusual, compelling and extenuating circumstances which make filing the application through the on-line portal impossible. The applicant shall apply for permission to file the application form, supporting or supplemental materials with the division in writing, and shall explain the circumstances why the applicant cannot submit the application through the on-line portal. A copy of the application forms for use in submitting application by mail is incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65101, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>. October 1, 2021. This rule does not incorporate any subsequent amendments or additions. Applicants may download a copy of the forms. The applicant shall attach all documentation that may be necessary to complete the required application. If the division grants permission under this subsection, the applicant may submit the form with supporting materials by mail, by private delivery service, or in person to the offices of the division at Children's Division, Attn: Attn: Background Screening Team, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65101; or by e-mail at CDScreen@dss.mo.gov.

(B) The application shall contain all of the following information:

1. The applicant's current, full legal name, residence address, mailing address, business address, telephone number and e-mail address. The applicant's mailing address and e-mail addresses shall be the applicant's address of record for purposes of this regulation;

2. The applicant's Date of Birth and full social security number;

3. Any other names or aliases that the applicant has used or been known by during the five-year period preceding the application;

4. Any other residence address, mailing address, county and state of residence, business address, telephone number and e-mail address that the applicant has had during the five-year period preceding the application;

5. Whether the applicant is registered, or is required to be registered, on a state sex offender registry or repository or in the National Sex Offender Registry. If the applicant is so registered or required to be registered, the applicant shall provide the following additional information:

A. The national, federal, state or local jurisdiction in which the applicant is registered or required to be registered;

B. The specific crime or offense for which the applicant is registered or required to be registered including:

(I) The date or approximate date that the crime or offense was committed;

(II) The statute or section number of the crime or offense;

(III) The name and address of the Court where the case was adjudicated;

(IV) The case number; and

(V) The date of the plea, finding, judgment, or sentence.

6. Whether the applicant is listed as a perpetrator of child abuse or neglect under sections 210.109 to 210.183 RSMo., or any other finding of child abuse or neglect based on any other state's registry or database. In states where the official registry of substantiated findings of child abuse or neglect are made or kept by a county, this information must also be disclosed. If the applicant is listed, the applicant shall also provide:

A. The state or county registry or database in which the applicant is listed;

B. The specific finding(s) of the state or county agency and the conduct for which the applicant is listed, including:

(I) The date(s) of the conduct;

(II) The date the applicant was listed;

(III) The name and address of the state or local government

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entity that maintains the list.

7. Whether the applicant has ever been found guilty of or pled guilty or nolo contendere to any crime or offense listed in section 210.493.3(5) RSMo. If the applicant has ever been found guilty of or pled guilty or nolo contendere to any such crime or offense, the applicant shall also provide:

A. The national, federal, state or local jurisdiction where the applicant was found guilty of or pled guilty or nolo contendere;

B. The specific crime or offense for which the applicant is registered or required to be registered, including:

(I) The date or approximate date that the crime or offense was committed;

(II) The statute or section number of the crime or offense;

(III) The name and address of the Court where the case was adjudicated;

(IV) The case number; and

(V) The date of the plea, finding, judgment or sentence.

8. Whether the applicant consents to the division notifying the LRCF, LERCF or Child Placing Agency of its decision on eligibility or ineligibility and/or sending a copy of its eligibility or ineligibility finding to the LRCF, LERCF or Child Placing Agency.

9. Whether the person is requesting a response and notice of final decision by first class mail or by e-mail;

10. The name and address of any LRCF, LERCF or Child Placing Agency that the applicant wishes the division to send a finding of eligibility or ineligibility to upon the completion of the background check process. The applicant shall further provide the name and address of the Sponsoring Organization, when applicable.

11. A fully completed and signed MOVECHS Waiver Agreement and Statement (SHP-981G) form. The completed and signed Waiver form must be submitted with the application.

12. Acknowledgment and certification by the applicant, under penalty of perjury that: all submitted information is true, accurate and complete to the best of the applicant's knowledge; and the applicant understands that a knowing violation of section 210.493, RSMo. may constitute a criminal offense and knowingly making a materially false statement in connection with a background check shall render the applicant ineligible

13. Any other information and documents that the applicant wishes the division to consider in making its decision about eligibility.

14. An explanation of why the applicant is unable to provide any of the information that must be provided to support the application.

(C) The applicant shall register with the Family Care Safety Registry and execute any documents necessary for the division to access the applicant's results in the Family Care Safety Registry.

(D) The applicant shall execute any authorizations necessary to obtain information from state, local, and federal registries.

(E) The applicant shall submit fingerprint cards and any required fees to the Missouri State Highway Patrol's central repository and follow all of the Missouri State Highway Patrol's procedures for requesting a fingerprint based, criminal background check. The applicant shall further execute any documents and consents necessary for the Missouri State Highway Patrol to complete the fingerprint based criminal background check and to notify the division of any criminal history record, or lack of criminal history record information, discovered on the applicant as required by law.

(F) The applicant must submit a completed MOVECHS Waiver Agreement and Statement (SHP-981G) to the division with the application form to the division before reporting to be fingerprinted.

(G) The application will not be complete until the division receives a fully completed application form, MOVECHS Waiver Agreement and Statement (SHP-981G), form and the results of the fingerprint based criminal background check from the Missouri State Highway Patrol and the applicant is registered for the Family Care Safety Registry and executed any authorizations necessary to obtain information

from any registries.

(H) Upon receipt of a complete application, and MOVECHS Waiver Agreement and Statement (SHP-981G) and consideration of the application, the division will notify the applicant of eligibility or ineligibility based on the background check by mailing a Notice to the applicant's address of record, and send a copy to the LRCF, LERCF or Child Placing Agency as indicated on the application.

1. The Notice will indicate whether the applicant is eligible or ineligible for employment or presence at the LRCF, LERCF or Child Placing Agency.

2. The Notice will advise the applicant of the applicant's right to request administrative review and appeal the decision and the process for requesting administrative review or appeal.

3. The Notice will advise the applicant of the applicant's responsibility to notify the division, LRCF, LERCF or Child Placing Agency of any event which would impact the applicant's eligibility as provided in section 210.493 and this regulation.

4. The Notice will advise the applicant that the finding of eligibility or ineligibility was based on a background check of records through the date of the notice and for the particular LRCF, LERCF or Child Placing Agency for which the background check was requested.

(I) If the division finds the applicant eligible, the division shall forward a copy of the finding to any LRCF, LERCF or Child Placing Agency indicated by the applicant. If the division finds the applicant ineligible, the division shall not send a copy of the notice to any indicated LRCF, LERCF or Child Placing Agency, until the division determines the applicant has exhausted the applicant's administrative remedies and the division has received a written consent from the applicant authorizing the division to disclose such information.

(7) Fees and Costs. The applicant, LRCF, LERCF or Child Placing Agency shall be responsible for the payment of any and all required fees for processing the application, including any fees for the fingerprint-based background check and the Family Care Safety Registry.

(8) Notice and Communications. The division will send all communications and notices pertaining to an application and Request for Administrative Review or Appeal by first class mail unless the applicant or entity requesting Administrative Review or Appeal affirmatively notifies the division, in writing, that the applicant or person would like to receive communications by e-mail and provides the division with the e-mail address. It is the responsibility of the applicant or person to notify the division of any change in the applicant's or person's contact information. All notices shall be sent to the address or e-mail address of record, and all correspondence sent to that address shall be deemed received and sufficient service for all purposes.

(9) The division shall not reveal any information pertaining to any disqualifying crime, offense, or other related information regarding the applicant to the LRCF, LERCF or Child Placing Agency except as may be otherwise required by law.

(10) Continuing Obligation to Notify and Expiration of Determination.

(A) The division's decision of eligibility or ineligibility shall be based upon the information that the division receives through the background check process, and any additional information that may be made available to the division during administrative review and appeal.

(B) The division's finding is only valid through the date of the decision and only for the LRCF, LERCF or Child Placing Agency indicated by the applicant on the application. The applicant may designate more than one LRCF, LERCF or Child Placing Agency on a single application.

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(C) The applicant shall be responsible for notifying the division of any change in circumstance which may render the applicant ineligible and shall submit a new application based upon the subsequent information.

(D) The applicant's fingerprint-based background check is valid for five (5) years from the date the fingerprints were taken, or until there is any change in the circumstances of the applicant which would render the applicant ineligible under the statute, whichever occurs first. It is the responsibility of the applicant to track the expiration date of the fingerprints and submit an application for a new background check.

(E) The division's finding automatically expires thirty (30) days from the date of the division's decision. It is the responsibility of the applicant to submit a new application for a new determination and fingerprint based criminal background check following the procedures specified in this regulation.

(11) In making a decision whether an applicant is eligible or ineligible under section 210.493 and this regulation, the division shall not consider the manner, content or the religious curriculum of the program, or ministry of a school or of a facility sponsored by a church or religious organization.

(12) Administrative Review and Appeal Procedure.

(A) The decision of the division shall be final unless the applicant or person who is aggrieved by a decision of the division under this regulation files a request for Administrative Review of the decision within fourteen (14) days of the mailing of the decision. Any request for Administrative Review that the division receives after the deadline is untimely and will not be subject to further administrative review or appeal.

(B) Administrative Review.

1. A request for Administrative Review shall be made in writing, either on a form provided by the division or by letter. The division will publish a form on its website. The request for Administrative Review shall:

A. Include the name, address, telephone number and e-mail address of the person requesting administrative review;

B. State whether the division should provide the response and notice of final decision by first class mail or by e-mail;

C. Identify the decision the requestor wishes to be reviewed, the specific reasons the requestor believes the division's decision is erroneous and why the requestor is aggrieved by the decision;

D. Include copies of any relevant documents, materials or information that the requestor wishes to submit in support of the administrative review request; and

E. State whether the person requests that the review be considered on the basis of the materials submitted, or whether the person requests an in-person review conference. If the person requests a review conference, then the person shall also provide dates and times within the next thirty (30) days when the person may be available and the reasons why the administrative review cannot be processed on the basis of the materials presented.

1. The request for administrative review shall be submitted to the division by certified first class mail through the United States Postal Service return receipt requested to the address specified on the Notice of Ineligibility or submitted electronically by e-mail to the division to the e-mail address specified in the Notice of Ineligibility.

2. The Administrative Review shall be conducted and decided based upon the written materials submitted to the division and any information and materials presented at a review conference. The division will provide an in-person conference upon written request.

3. The review conference may take place by telephone conference call, video conference or in-person meeting.

4. The Administrative Review process shall be informal. The rules of evidence shall not apply. There is no right to conduct discov-

ery. There shall be no right to compel the production of witnesses or evidence by subpoena or otherwise.

5. The Administrative Review shall be conducted by an individual designated by the Director of the Department or the division, who may be an employee of the division or the Department. However, the individual shall not have been involved in making the decision which is subject to review.

6. The individual conducting the Administrative Review shall conduct the administrative review and render a written decision no later than thirty (30) days from the date that the division received the request for administrative review.

7. The decision upon Administrative Review shall be the final decision of the Department as to any person that is not an applicant.

(C) Appeal.

1. Any applicant who is aggrieved by a decision upon Administrative Review shall have the right to appeal the decision to the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The applicant shall submit a Notice of Appeal to the division, within fourteen (14) days of the date of the Administrative Review decision, by certified first class mail through the United States Postal Service return receipt requested to the address specified on the Notice of Ineligibility or submitted electronically by e-mail to the division to the e-mail address specified in the Notice of Decision Upon Administrative Review. The division must receive the Notice of Appeal within fourteen (14) days of the date of the decision. Any Notice of Appeal that is received after the deadline is untimely and the appeal will be dismissed. Completion of the Administrative Review process is a condition precedent to the applicant's right to appeal.

2. The parties to the appeal shall be the division and the applicant.

3. All appeals shall be processed and decided by a Hearing Officer from the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The decision of the Hearing Officer shall be the final decision of the Department.

4. The following evidence shall be admitted and considered by the Hearing Officer on appeal as provided in this subsection without further foundation:

A. A copy of the application form and all supporting documentation;

B. A copy of the record of the Court establishing that the applicant pled guilty or nolo contendere or has been found guilty of a crime or offense listed in 210.493 RSMo;

C. A copy of a letter or official communication from the applicable state, county or local government agency stating that the applicant is listed as a perpetrator of child abuse or neglect in the state, county or local government agency's registry or database of perpetrators of child abuse or neglect;

D. A copy of the report of the fingerprint based background check conducted pursuant to subsection (3) of this regulation; and

E. A copy of a letter, official communication, or a print out of the applicable page of the National Sex Offender Registry or state sex offender registry.

5. The applicant or division may object to the Hearing Officer considering the information outlined in this regulation. The burden shall be on the objecting party to establish that the items of evidence shall not be considered by the Hearing Officer.

6. The hearings held under this subsection shall be informal, but they shall be held on the record and testimony will be adduced under oath. The rules of evidence do not apply. The applicant may be represented by an attorney.

7. Upon written request the division will provide the applicant with a copy of the fingerprint-based state and FBI background check.

8. The hearing is and shall not be an opportunity to collaterally attack or re-litigate the validity of the underlying plea of guilt, plea of nolo contendere, or the underlying finding of child abuse,

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neglect or maltreatment by the applicable state or local agency, or the accuracy of information in the federal, state or local registry or repository.

9. The hearing shall be based upon the written submissions of the parties unless the applicant or the division request a hearing by video or teleconference. The Hearing Officer may hold an in-person hearing only upon a showing that an in person hearing is necessary to accommodate a special need of an applicant or the division.

10. The Hearing Officer shall issue a decision in writing, which will be sent by first class mail (or by e-mail at the election of the applicant) to the applicant at the applicant's address of record. If the applicant is represented by an attorney the decision will be sent to the applicant's attorney. The written decision of the Hearing Officer shall be the final decision of the Department.

(D) Judicial Review

1. Any applicant aggrieved by the final decision of the Department after appeal may seek judicial review as provided in section 536.150 RSMo.

2. Any person who is not an applicant who is aggrieved by the final decision of the Department after Administrative Review may seek judicial review as provided in section 536.150, RSMo.

*AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493, 210.1286, RSMo Supp. 2021. Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. An emergency rule and a proposed rule covering this same material will be published in the Nov. 1, 2021, issue of the **Missouri Register**.*

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions an estimated three hundred one thousand, seventy-eight dollars (\$301,078.00) in the time the emergency is effective.

PRIVATE COST: This emergency rule will cost private entities an estimated one hundred forty-one thousand, one hundred thirty-two dollars (\$141,132.00) in the time the emergency is effective.

Emergency Rule

FISCAL NOTE PUBLIC COST

- I. Department Title:** Title 13–Social Services
Division Title: Division 35–Children’s Division
Chapter Title: Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

| | |
|------------------------------|--|
| Rule Number and Name: | 13 CSR 35-71.015 Background Check Regulation |
| Type of Rulemaking: | Emergency Rule |

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Department of Social Services- Children’s Division | The cost is estimated to be \$301,078 for the first six months. |

III. WORKSHEET

There are seven FTE needed to complete the background checks.

- 5 Administrative Support Assistants
- 1 Administrative Support Professional
- 1 Social Services Unit Supervisor

Cost breakout

| | |
|---|------------------|
| Salaries | \$127,213 |
| Fringe | \$ 91,301 |
| Equipment and Expense (including initial cube set-up) | <u>\$ 82,564</u> |

TOTAL **\$301,078**

IV. ASSUMPTIONS

In the original fiscal note, the Department requested Children’s Service Workers to complete these tasks. On further discussion, the classification of the people needed are Administrative Support Assistants, and an Administrative Support Professional. These positions cost less than the original estimate in the fiscal note, resulting in less cost than originally estimated.

Emergency Rule

FISCAL NOTE PRIVATE COST

- I. Department Title:** Title 13–Social Services
Division Title: Division 35–Children’s Division
Chapter Title: Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

| | |
|------------------------------|--|
| Rule Number and Name: | 13 CSR 35-71.015 Background Check Regulation |
| Type of Rulemaking: | Emergency Rule |

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the 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: |
|---|--|--|
| 114 | Licensed Residential Treatment Facilities | \$228,000 / 2 = \$114,000 for six months |
| 69 | Child Placing Agencies | \$14,250 / 2 = \$7,125 for six months |
| 20 | License Exempt Residential Treatment Facilities | \$40,014 / 2 = \$20,007 for six months |

III. WORKSHEET

| Classification | Estimate number of employees | Background cost \$41.75 fingerprints \$15.25 FCSR \$57.00 Total |
|---|------------------------------|---|
| Licensed Residential Treatment Facilities | 4000 | \$228,000 / 2 = \$114,000 for six months |
| Child Placing Agencies | 250 | \$14,250 / 2 = \$7,125 for six months |
| License Exempt Residential Treatment Facilities | 702 | \$40,014 / 2 = \$20,007 for six months |
| | | \$141,132 (Total estimate for six months) |

IV. ASSUMPTIONS

The estimated cost of compliance is based on the need to complete the full process of a background screening process, including the onetime registration fees for the Family Care Safety Registry.