

# Emergency Rule

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

**EMERGENCY AMENDMENT**

**13 CSR 35-71.030 Hearings and Judicial Review.** The division is amending sections (1), (2), and (3).

*PURPOSE:* This amendment is necessary to update the regulation to reflect current practice and to implement the requirements of HB 557 (2021).

*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). 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 LRCF. 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 also requires DSS to implement requirements that residential care facilities notify DSS that they are conducting operations in Missouri. See sections 210.1250 through 210.1286 RSMo. 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, to determine whether individuals are eligible for employment or presence at these institution and implement the new notification requirements. This regulation is part of a series of regulations which establish the general principles governing the implantation of all of the regulations governing residential care facilities in Missouri. 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 regulation 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) License Denial or License Revocation.

(A) The division may refuse to issue a license to an applicant, or may deny or revoke the license of a licensee, who—

1. Fails consistently to comply with the applicable provisions of sections 210.481–210.536, and 210.1250 through 210.1286, RSMo, and the applicable corresponding rules;

2. Violates any of the provisions of its license;

3. Violates federal or state laws or rules relating to the protection of children;

4. Abuses or neglects children, or is the subject of multiple or serious reports of child abuse or neglect which upon investigation results in a [court adjudicated, probable cause, and/or preponderance of evidence finding, or (effective August 4, 2008) are] substantiated finding of child abuse or neglect; or is found guilty, pleads guilty, or pleads no contest to [felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section] any crime which would render an individual ineligible for employment or presence at the LRCF pursuant to section 210.493 RSMo ;

5. Employs persons who the division has found ineligible for employment or presence at the LRCF pursuant to section 210.493, RSMo and 13 CSR 35-71.015, or who abuses or neglects children[, persons who are the subjects of multiple or serious reports of child abuse or child neglect which upon investigation results in a court adjudicated, probable cause, and/or preponderance of evidence finding or (effective August 4, 2008) are found guilty, plead guilty, or plead no contest to are found guilty, plead guilty, or plead no contest to felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which

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the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section];

6. Furnishes or makes any misleading or false statements or reports to the division;

7. Refuses to submit any reports or refuses to make available to the division any records required in making an investigation;

8. Fails or refuses to submit to an investigation by an authorized and identified representative of the division at any reasonable time;

9. Fails to provide, maintain, equip, and keep in safe and sanitary condition the premises established or used for the care of children as required by law, rule, or ordinance applicable to the location of a facility;

10. Fails to provide adequate financial resources for the satisfactory care of children being served, or the upkeep of the premises, or both; [or]

11. [When a potential employee of a licensed residential treatment agency for children and youth is excluded from employment pursuant to paragraphs 13 CSR 35-71.030(1)(A)4. and 5. above, the Children's Division may grant an informal meeting only if the potential employee and the licensed residential treatment agency for children and youth request the informal meeting in writing and explain, based on the specified criteria, the reason the employee would be hired and how children in residence at the operating site would be protected. When the written request is received, the division shall schedule an informal meeting as soon as practicable. The meeting shall take place before the division director/designee. The division shall notify the agency of the date and time of the meeting. The meeting may be continued at the request of the agency, but the employment exclusion shall remain in effect pending the meeting. The meeting shall be informal, the rules of evidence shall not apply and both the agency and the division may submit any information relevant to the employment issues. The purpose of the meeting will be to determine the potential employee's suitability for employment based on the criteria listed in paragraphs 13 CSR 35-71.030(1)(A)4. and 5.

above. Upon receipt of the final decision of the division, the agency may decide to accept the final decision or file petition for a hearing on administrative review pursuant to section (5) of this rule.] **Fails to satisfactorily comply with all fire, safety, health, and sanitation inspections as may be required by state law or local ordinance and required under section 210.252, RSMo; or**

**12. Is a health or safety concern for the children at the LRCF.**

(2) License Suspension.

(A) The division shall have the authority to suspend the license of an agency when—

1. The division determines that the suspension of the license is necessary to protect the health, safety, and welfare of children who are or may be placed at the operating site; and

2. The division determines that one (1) or more of the criteria set out in sections 210.496, **and 210.1250 through 210.1286, RSMo** and/or subsection (1)(A) of this rule may exist; and

3. The division has reasonable cause to believe that the agency will be able to develop and effectively implement a corrective action plan to resolve the concerns which gave rise to the suspension of the license.

(3) Suspension of Intake.

(A) The division shall have the authority to suspend the authorization of the agency to admit additional children into placement during time periods proscribed by the division when the division determines that the agency is not in compliance with the requirements of sections **210.493, 210.496, and 210.1250 through 210.1286, RSMo** and/or subsection (1)(A) of this rule and—

1. The addition of additional children to the agency is not in the best interests of the children already placed within the agency or who may be placed with the agency; and

2. Allowing the placement of additional children with the agency may pose a risk to the health, safety, and welfare of children already placed with the agency or who may be placed with the agency.

*AUTHORITY: sections 207.020, 210.506 [and], 210.526, and 660.017, RSMo [2000] 2016, and sections 210.493, 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.030. Original rule filed Nov. 9, 1978, effective Feb. 11, 1979. 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 is anticipated to cost private entities approximately thirty thousand dollars (\$30,000) in the time the emergency amendment is effective.*

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## FISCAL NOTE PRIVATE COST

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

<b>Rule Number and Title:</b>	13 CSR 35-71.030 Hearing and Judicial Review
<b>Type of Rulemaking:</b>	Emergency Amendment

### II. SUMMARY OF FISCAL IMPACT

<b>Estimate of the number of entities by class which would likely be affected by the adoption of the rule:</b>	<b>Classification by types of the business entities which would likely be affected:</b>	<b>Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:</b>
60	Licensed Residential Agencies	$\$1,000 \times 60 = \$60,000.00 / 2 = \$30,000.00$ for six months

### III. WORKSHEET

Average of 1 employees x \$1,000 for hiring and training cost = \$1,000 average per residential agency for 60 agencies equals \$60,000.00 (divided by 2 for only 6 months of the year) equals \$30,000.00

### IV. ASSUMPTIONS

This new regulation contains new exclusionary criteria for residential agency employment in HB 557 and 560, residential agencies will have to terminate an estimated 1 employees per agency. An estimate of \$1,000 per employee for job posting, hiring, orientation and training cost for new staff.

This estimate is based on an average of 1 employees per agency and an estimated cost to hire and train new employees.