

# 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 35-71.045 Personnel.** The Department of Social Services is amending sections (1), (2), (3), and (5).

*PURPOSE:* This emergency amendment sets forth the requirements for child abuse/neglect and criminal background screenings, medical examinations, personnel records, job descriptions, and staff orientation and training.

*EMERGENCY STATEMENT:* Section 210.493, RSMo, of HB 557 (2021) authorizes the Department of Social Services to promulgate regulations, including emergency regulations, to implement new requirements for background checks of officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of Licensed Residential Care Facilities (LRCF). 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, welfare, peace and safety. 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 institutions 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 amendment is fair to all interested persons and parties under the circumstances. The Department of Social Services published a draft of this emergency amendment on its website and solicited feedback from the public and stakeholders through e-mail and at public meeting held on August 5, 2021. This emergency amendment was filed September 17, 2021, becomes effective October 1, 2021, and expires March 29, 2022.

(1) General Requirements.

(A) The [agency] LRCF shall have a written statement of person-

nel practices which are approved by the governing body and provided to all staff at the time of employment.

(B) The [agency] LRCF shall evaluate and investigate application information carefully to determine whether employment or service of an applicant with the LRCF is in the best interests of the children in care.

(C) [The agency shall require that each employee, intern, volunteer, and any contracted personnel secure and provide to the agency upon initial employment and annually thereafter, a child abuse/neglect and criminal background screening utilizing the family care safety registry from the Department of Health and Senior Services.] All officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of such LRCF who will have access to the facilities of the LRCF shall submit to a background check and shall be found eligible for employment or presence at the LRCF as provided in section 210.493 RSMo and 13 CSR 35-71.015 before commencing service or being afforded access to the facilities of the LRCF. These individuals shall notify the LRCF and the division of any change in circumstances which would render them ineligible for employment or presence at the LRCF. After the individual completes the background check, the LRCF shall further require all officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of the LRCF who will have access to the facilities of the LRCF to successfully complete an annual check of the Family Care Safety Registry. The LRCF shall maintain documentation of the Family Care Safety Registry checks in its personnel records.

(D) [Any employee who resides in another state and works in the state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of background screening(s) from those states to include, but not limited to, child abuse/neglect and criminal background screening check(s). When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screenings check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. An agency shall exclude from employment (effective August 4, 2008) staff who 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 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.] After the individual completes the background check, the LRCF shall require all officers, managers, contractors, volunteers with access to children, employees, other support staff, and owners of the LRCF who will have access to the facilities of the LRCF, and who reside outside of the state of Missouri, to successfully complete an annual background screening which shall consist of a check of the child abuse and neglect registry and a criminal background check of the state or jurisdiction in which the individual resides. LRCFs shall further implement and apply policies which require all personnel who are otherwise required to submit to a background check

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pursuant to section 210.493, RSMo to immediately notify the LRCF if they are listed in a state or local government registry as a perpetrator or child abuse or neglect, or if they arrested or charged with any crime listed in section 210.493 RSMo.

(E) *[If an employee is hired with a child abuse/neglect/criminal history that does not otherwise exclude the employee from employment, the agency administrator/executive director shall document in writing in the employee's file the reason for hiring the employee and how children in residence at the operating site will be protected.]* Any person who makes a materially false statement in connection with an application for licensure or relicensure as a LRCF shall be ineligible for employment or presence at the LRCF.

(F) Prior to the employment of any person for a position requiring credit hours, a degree, or both from an accredited college or university, a resume and an official college transcript, or a copy of the diploma, shall be on file at the *[agency]* LRCF. Any person employed in a position requiring general educational development certificate or high school diploma shall provide documentation of such within thirty (30) days of employment.

(G) An *[agency]* LRCF shall require the names of at least three (3) persons for each **employee, volunteer, or [s]staff** person, who are unrelated to the *[staff member]* individual, who can provide character references. **At least two (2) of the three (3) persons shall be professional references from a previous employer, internship, or volunteer position. If the individual is a student then this requirement may be satisfied by providing the references from the individual's professor, guidance counselor, teacher, or academic advisor.**

*[(H) An agency shall require references for each staff person from all previous employers within the last five (5) years and a history of any previous employment in child care settings.]*

*[(I)](H) [All references shall be] The LRCF shall contact[ed] all references and [documented by the agency with letters or verification in the record of verbal contacts, providing the date, person making the contact, and the content of the contact] maintain documentation of the reference checks in the LRCF's employee records.*

*[(J)](I) The [agency] LRCF shall require an annual driver record check for any staff, **employee, intern, volunteer, or contract personnel** who transport residents. No *[staff]* individual with a suspended or revoked driver's license or record of driving while under the influence of alcohol or any other intoxicating substance within the last five (5) years shall transport residents.*

## (2) *[Medical Examinations]* Health Verification.

(A) All **staff, employees, interns, volunteers, and contracted personnel** shall be free of *[signs]* symptoms of *[highly]* communicable disease or other evidence of ill health which poses a threat to children. *[This shall be verified by a medical examination by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician before employment, or within ten (10) days following employment, and biennially thereafter.]*

*[(B) Medical examinations shall include tests and/or procedures that indicate they are free from communicable disease including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician.]*

*[(C)](B) Staff, **interns, volunteers and contracted personnel** shall be free of any conditions which would adversely affect their ability to care for, or pose a threat to children.*

*[(D)](C) If the division has reason to question the capabilities of any *[person]* individual working directly with children served by*

the LRCF, the division may require *[additional examinations]* the individual to submit to a medical examination and obtain a report of an appropriate medical professional that the individual is medically fit to perform the services for the LRCF without reasonable risk to the children.

(3) Personnel Records. *[Personnel records shall be maintained]* The LRCF shall maintain personnel records for each **staff member, employee, intern, volunteer, and contracted employee** as indicated below. **The LRCF shall maintain the staff records on site, and shall keep the records for at least five (5) years following the date of separation from the LRCF.**

(A) For *[an employee]* staff members and employees, the personnel record shall include—

1. Verification of education and experience, and a copy of professional license, if applicable;

2. Verification of the names of three (3) persons, unrelated to the staff member, who can provide character **and professional** references;

3. Verification of employer references for the past five (5) years and *[a history of any]* previous employment in child care settings;

4. A copy of the job description signed and dated by the employee;

*[5. Reports of initial and biennial medical examinations that indicate that they appear to be free from communicable disease;]*

*[6.]5. Results of annual checks of the family care safety registry;*

*[7.]6. [Results of background screenings from other states in which employees have resided and/or have lived or worked within the past five (5) years, including an annual out-of-state check if the person resides in another state] Documentation that the individual has completed the background checks and that the division has found the individual eligible for employment or presence at the LRCF pursuant to section 210.493, RSMo. and 13 CSR 35-71.015;*

*[8.]7. The date of employment, date of separation, reason(s) for separation;*

*[9.]8. Copies of [an initial six (6) months'] annual performance evaluations [and each subsequent annual evaluation];*

*[10.]9. Results of an annual driver record check for any employee, intern, volunteer, and any contracted personnel who transport residents;*

*[11.]10. A signed and dated copy of the confidentiality statement;*

*[12.]11. A signed and dated copy of the discipline policy;*

*[13.]12. A signed and dated copy of the mandated child abuse/neglect reporting policy;*

*[14.]13. A signed and dated copy of an acknowledgement of receipt of program and personnel policies **and manuals**;*

*[15.]14. A signed and dated copy of the acknowledgment of completed agency orientation;*

***[16.]15. Documentation that the staff member has successfully completed all [of staff] training required for the successful performance of the individual's duties;***

*[17.]16. Documentation of current first aid/cardio pulmonary resuscitation training and certification; and*

*[18.]17. Documentation of current medical aid certification, when applicable.*

(B) For Interns, volunteers, and contracted employees who have direct contact with children, **the personnel record** shall include—

1. Copy of professional credentials *[(if applicable)]*;

2. Documentation of initial and *[biennial]* subsequent medical examinations *[that indicates that they are free from communicable disease including, but not limited to, tuberculosis and hepatitis];*

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3. Results of annual checks of the family care safety registry and documentation that the individual has completed the background check process and been found eligible for service as provided in section 210.493, RSMo. and 13 CSR 35-71.015;

[4. Results of background screenings from other states in which interns/volunteers who have direct contact with children have resided and/or have lived or worked within the past five (5) years, including an annual out-of-state check if the person resides in another state;

[5.]4. A signed and dated copy of the contract or any agreement outlining purpose of presence on site;

[6.]5. A signed and dated copy of the confidentiality policy;

[7.]6. A signed and dated copy of the discipline policy;

[8.]7. A signed and dated copy of the mandated child abuse/neglect and critical incident reporting policies;

[9.]8. A signed and dated copy of the acknowledgement of receipt of manuals and policies related to [their] the agreement/contract; and

[10.]9. Documentation of staff orientation participation.

(5) Staff Orientation. Immediately before or within one (1) week following appointment, an employee, intern, volunteer, and any contracted personnel shall be oriented to the agency's programs, practices, and the duties and expectations of his/her position. The orientation program shall include, but not be limited to:

(D) The family's role in the child's care and the worker's role and responsibilities in relation to the family;

*AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo [2000] 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.045. Emergency rule filed Nov. 1, 1993, effective Nov. 12, 1993, expired March 11, 1994. Emergency rule filed March 2, 1994, effective March 12, 1994, expired July 9, 1994. Original rule filed Nov. 1, 1993, effective June 6, 1994. Emergency amendment filed July 25, 2008, effective Aug. 4, 2008, expired Jan. 30, 2009. Moved to 13 CSR 35-71.045 and amended: Filed July 25, 2008, effective Jan. 30, 2009. Amended: Filed Dec. 16, 2013, effective June 30, 2014. 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 estimated to cost private entities thirty thousand dollars (\$30,000) in the time the emergency 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:** Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

<b>Rule Number and Title:</b>	13 CSR 35-71.045 Personnel
<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	$\$1,000 \times 60 \text{ agencies} =$ $\$60,000.00 / 2 = \$30,000.00$ 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 a total costs of \$30,000.00 for 6 months.

### 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.