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# EMERGENCY RULE

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## TITLE 13 – DEPARTMENT OF SOCIAL SERVICES Division 35 – Children’s Division Chapter 71 – Rules for Residential Treatment Agencies for Children and Youth

### EMERGENCY AMENDMENT

**13 CSR 35-71.045 Personnel.** The division is amending subsections (1)(C) and (D).

*PURPOSE: This emergency amendment conforms Rule 13 CSR 35-71.045 to section 210.493, RSMo, as amended by Senate Bill 40, taking effect on August 28, 2023. Amended section 210.493 no longer requires officers, managers, and other support staff of licensed residential treatment facilities (LERCFS) to undergo the background checks mandated in section 210.493. This regulation also conforms 13 CSR 35-71.045 to the Emergency Amendment of 13 CSR 35-71.015 presently in effect, which permits LERCFS, with the Department’s permission, to hire personnel prior to completing all background checks.*

*EMERGENCY STATEMENT: This emergency amendment is necessary to fulfill the compelling governmental interest of having the Division’s regulations conform to the Missouri statutes. In Senate Bill 40, the General Assembly deleted language in section 210.493 that previously required officers, managers, and other support staff of licensed residential care facilities (“LRCFs”) to undergo the background checks mandated in section 210.493. Pending emergency amendments to Rule 13 CSR 35-71.015 permit LRCFs to hire staff prior to the completion of pending background checks with the Division’s permission. Rule 13 CSR 35-71.045 presently provides that officers, managers and other support staff 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 before commencing service or being afforded access to the facilities of the LRCF. Because section 210.493 no longer requires officer, managers, and other support staff to complete backgrounds and be found eligible for presence and employment, Rule 13 CSR 35-71.045 will be in conflict with section 210.493 if not amended. A regulation that is in conflict with a statute 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 has a compelling governmental interest in making sure that the public is not confused by published regulations that are not valid. 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 on February 23, 2024.*

(1) General Requirements.

(C) 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) 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 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 of child abuse or neglect, or if they were arrested or charged with any crime listed in section 210.493, RSMo.

*AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. [2021] 2023. 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. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 14, 2023, effective Aug. 28, 2023, 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 emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in 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.*