

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 RULE

13 CSR 35-71.150 Designation Rules for Qualified Residential Treatment Programs

PURPOSE: This emergency rule sets forth the requirements for the designation of a Qualified Residential Treatment Program (QRTP).

PUBLISHER’S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

EMERGENCY STATEMENT: The Children’s Division has determined that this emergency regulation is necessary on an emergency basis to address an immediate danger to the public health, safety and/or welfare of children in Missouri. The federal Family First Prevention Services Act of 2018 (FFPSA) implemented significant changes to federal child welfare financing effective October 1, 2019, and Missouri has delayed implementation until September 29, 2021. The decision to delay implementation was made after discussions with internal and external partners in order to allow more time to plan for the policy, statutory, regulatory, and fiscal implications that accompany implementation of this broad, sweeping legislation. One of the reforms in the FFPSA places a limit of two (2) weeks on federal payments for placements that are not foster homes or on placements that are not considered to be “Qualified Residential Treatment Programs (QRTP).” The Children’s Division is responsible for the creation and implementation of the QRTP designation criteria, and the division and Department of Social Services have been working with stakeholders in the provider community, child welfare experts, and other state agencies to develop the QRTP designation, which requires the implementation of trauma-informed treatment models in an effort to improve the quality of residential placement settings, and to mitigate the use of congregate care facilities, by expanding prevention resources. Children’s Division is vested by law with the authority and responsibility to establish the licensing standards for residential care facilities for children and youth throughout the state. See 210.486, 210.491, and 210.496, RSMo and 13 CSR 35-71. Failure to implement the QRTP designation in Missouri will result in the use of state General Revenue funds in lieu of federal funding sources. See 42 U.S.C. 672 and 42 U.S.C. 675a. Therefore, the Children’s Division has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Children’s Division believes that this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed November 18, 2021, becomes effective December 6, 2021, and expires June 3, 2022.

(1) A qualified residential treatment program (QRTP) means a program that has met all program requirements for designation as a QRTP, as determined herein.

(2) To qualify for designation as a QRTP, the agency shall meet the requirements set forth below. The designation shall not be considered

a license issued by the Department of Social Services, Children’s Division.

(3) Designation Requirements.

(A) The agency shall be a residential treatment agency licensed by Children’s Division at the specialized standards for residential treatment or intensive residential treatment level in accordance with 13 CSR 35-71.

(B) The agency shall be accredited by any of the following independent, not-for-profit organizations:

1. The Commission on Accreditation of Rehabilitation Facilities (CARF);
2. The Joint Commission (JCO); or
3. The Council on Accreditation (COA).

(C) The agency shall have a trauma-informed treatment model designed to address the needs of children in the program.

(D) The agency shall be equipped to meet the clinical needs, as appropriate, of children with serious emotional or behavioral disorders or disturbances, as appropriate for the agency’s residential treatment license.

(E) The agency shall be equipped to implement the treatment identified as necessary for the children in the program.

(F) The agency shall acquire the services of registered or licensed nursing staff who—

1. Provide care within the scope of their practice as defined by law;
2. Are available twenty-four (24) hours a day and seven (7) days a week; and
3. Are on-site according to the minimum standards set forth in 13 CSR 35-71.

(G) The agency shall acquire the services of licensed clinical staff to fulfill the clinical needs of children in the program.

(H) The agency shall designate lead personnel (one (1) or more individuals) involved in the implementation of the trauma-informed practices.

(I) The agency shall create a family engagement plan to explain how the requirements below will be met for each child—

1. To the extent appropriate, and in accordance with the child’s treatment plan, agencies shall facilitate the participation of family members in the child’s treatment program by:

A. Facilitating outreach to the family members of the child, including siblings. The agency shall maintain documentation demonstrating how the outreach is made (including contact information), and shall maintain contact information for any known biological family and fictive kin of the child;

B. Documenting how family members are integrated into the treatment process for the child, including post-discharge, and how sibling connections are maintained; and

C. Providing discharge planning and family-based aftercare support for at least six (6) months post-discharge. This service may be performed by the agency or a subcontractor of the agency. Any subcontracting agreements shall be in writing and provided to the division upon request.

(J) The agency shall create and follow a family engagement plan, as described in this section, for each child.

(4) Application.

(A) The agency shall submit written documentation to the division or the division’s designee to demonstrate the minimum qualifications identified in section three (3) of this regulation utilizing the Qualified Residential Treatment Provider Designation form (RPU-35), which is incorporated by reference and made part of this rule as published by the Department of Social Services at their website at <https://dss.mo.gov/cd/info/forms/pdf/rpu35.pdf>, November 10, 2021. This rule does not incorporate any subsequent amendments or

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additions.

(B) The division or designee may conduct site visits, a review of records, and interviews with staff and residents to assess the application materials and qualifications of the agency in meeting the requirements herein.

(C) Upon receipt of all documents and information set forth herein, the division shall review and determine if all QRTP designation requirements are met.

(D) The division may request further supporting documentation or information to demonstrate the minimum qualifications herein.

(E) The division shall issue a written finding to either approve or deny the agency's application for QRTP designation within forty-five (45) days of receipt of the agency's complete application.

(F) In the event that the division denies the agency's application for QRTP designation, the agency shall have the right to administrative review as stated in section six (6) of this regulation. The denial shall be in writing and shall provide the factual basis for the decision.

(5) Designation.

(A) The QRTP designation shall be valid for a period not to exceed six (6) years and shall be subject to periodic announced and unannounced monitoring, as determined by the division.

(B) The agency shall participate in all requests by the division to review records or documents, or contact agency personnel or residents, related to the trauma-informed model and QRTP designation.

(C) The agency shall provide written notice to the division within five (5) calendar days identifying a personnel change of the lead personnel of the trauma informed practices and shall name a new individual to lead trauma-informed practices within thirty (30) calendar days of the change.

(D) The division shall have the authority to suspend, revoke, or deny the QRTP designation in the event the division determines the agency does not meet the requirements of 13 CSR 35-71.

(E) In the event of non-compliance with the requirements of 13 CSR 35-71, the division may suspend or revoke the QRTP designation. In the notice of suspension or revocation, the division shall—

1. Include the factual basis for the suspension or revocation;

2. In the event of a suspension, issue an immediate corrective action plan to mitigate the conditions related to the suspension; and

3. Notify the agency of the right to administrative review pursuant to 13 CSR 35-71.150(7).

(F) The agency may rescind the suspension on its own decision in the event that the division determines—

1. The agency has successfully implemented the corrective action plan requested by the division to remedy the concerns that resulted in the suspensions of the designation; and

2. The agency meets all criteria set forth in 13 CSR 35-71.150.

(G) The failure to correct areas of non-compliance as identified in any request for corrective action shall be grounds for designation revocation.

(H) In the event that an agency's QRTP designation has been suspended, the agency shall have a maximum of three (3) months to correct the areas of non-compliance which lead to the suspension action by the division. If the areas of non-compliance are not corrected after three (3) months, as determined by the division, or within any timeframes set by the division, the division shall have the right to revoke the designation.

(I) In the event that an agency's QRTP designation has been revoked, the agency shall wait a period of not less than six (6) months prior to submitting the designation application again.

(6) Designation Renewal.

(A) The agency shall submit updated application materials as outlined in section (4) of this rule at least three (3) months prior but not more than six (6) months prior to the expiration date of the designation for designation renewal.

(B) The division shall issue a written finding to either approve or deny the agency's renewal for QRTP designation within forty-five (45) days of receipt of the agency's complete renewal application.

(C) The agency shall participate in all requests by the division to review records or documents, or contact agency personnel or residents, related to the trauma-informed model and QRTP designation, during the renewal application assessment.

(D) The designation shall be valid for a period not to exceed six (6) years.

(7) Administrative Review.

(A) The agency which is aggrieved by the decision of the division to suspend or revoke a QRTP designation shall have the right to a hearing on administrative review of the division's decision.

(B) The division shall provide written notice to the agency of its adverse action against the QRTP designation of an agency. The notice shall—

1. Inform the agency of the nature of the decision;

2. State the factual and legal basis for the division's action;

3. State the effective date of the action, if applicable; and

4. Notify the agency of its right to seek administrative review.

(C) To request a hearing the agency shall submit a written request for administrative review within thirty (30) calendar days of the decision of the division. The request for administrative review shall set forth the basis of the agency's objection to the division's decision.

(D) If the agency requests a hearing the division shall hold an administrative hearing. The hearing shall be held by the director or the director's designee.

(E) The determination of the director or the director's designee shall be the final agency decision.

AUTHORITY: section 207.020, 210.535, RSMo 2016. Emergency rule filed Nov. 18, 2021, effective Dec. 6, 2021, expires June 3, 2022. An emergency rule and a proposed rule covering this same material will be published in the Jan. 3, 2022, issue of the Missouri Register.

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions four million five hundred fifty-nine thousand eight hundred ninety-nine dollars (\$4,559,899) in the time the emergency rule is effective.

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

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FISCAL NOTE PRIVATE COST

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

Rule Number and Title:	13 CSR 35-71.150 Designation Rules for Qualified Residential Treatment Programs
Type of Rulemaking:	Emergency

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:
5	Licensed Residential Treatment Programs	\$0

III. WORKSHEET

DSS contracted with Public Consulting Group for the purposes of conducting a fiscal analysis related to QRTP implementation.

There will be cost to the facilities to achieve accreditation. The cost is based on the Public Consulting Group cost outlined for CARF accreditation and includes an application fee, surveyor fee and licensing for standards manual and survey preparation books.

This cost is not mandatory, but is required if a facility wishes to achieve QRTP designation.

IV. ASSUMPTIONS

Facilities would bear the cost of accreditation before they could participate in increased per diem rates.

The increased reimbursement rate received could offset the accreditation cost.

The participation and the cost are voluntary.

PCG estimated that the cost of achieving accreditation would total \$13,364 for participating residential treatment facilities.

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FISCAL NOTE PUBLIC COST

- I. Department Title:** 13 Social Services
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II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS	\$4,559,899; \$1,585,497 GR, \$2,974,402 Federal Funds

III. WORKSHEET

Without implementing Qualified Residential Treatment Programs, the state will lose over \$5 million of federal funding, which will require a general revenue pick-up. The cost for the rule is consistent with the Family First supplemental budget request submitted by DSS.

There are four categories of cost.

1. Increased cost for assessments

Assessments per year	1,400
Cost per assessment	\$350
Total	\$490,000

6 month assessment cost (for emergency bill) $\$490,000/2 = \$245,000^*$

General Revenue - \$82,418

Federal Funds - \$162,582

***Such amount is not calculated in the total fiscal impact because this cost is already contemplated by related-to and separate regulation concerning Independent Assessments (see Proposed Emergency Reg. 13 CSR 35.060). Amount for assessments is for informational purposes only.**

2. Increased cost for aftercare (Level IV – 618 youth)

Currently half of the children receive 3 months of care	
Cost for half at 3 months	
Number of Children	309

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Rate	\$82.40
3 months	91.25
Total	\$2,323,371

Cost for half at 6 months	
Number of Children	309
Rate	\$82.40
6 months	182.5
Total	\$4,646,742
Total After Care Costs	\$6,970,113

6 month cost for After Care $\$6,970,113/2 = \$3,485,057$

General Revenue \$1,172,373

Federal Funds \$2,312,684

3. Increased cost for on-site nursing

# kids	618
Rate	\$8.16
days in a year	365
Total	\$1,840,651

6 month cost for on-site nursing $\$1,840,651/2 = \$920,326$

General Revenue \$309,598

Federal Funds \$610,728

4. Increased per diem rate for youth in residential treatment

# kids	618
Rate	\$1.37
days in a year	365
Total	\$309,031

6 month cost for per diem increase $\$309,031/2 = \$154,515.50$

General Revenue \$103,526

Federal Funds \$50,990

**Total cost : $(\$245,000 - \$245,000) + \$3,485,057 + \$920,326 + \$154,515.50 =$
\$4,559,899**

IV. ASSUMPTIONS

For the application review, DSS assumes that the licensed residential care facilities seeking this designation shall be in compliance with licensure requirements under 13 CSR 35-71.

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For the per diem increase, DSS assumes that the licensed residential care facilities seeking this designation will be accredited and in compliance with licensure requirements detailed in 13 CSR 35-71.

Cost estimates are based on a fiscal analysis specific to a 32 bed accredited, licensed facility implementing QRTP outlined in the analysis conducted by PCG.

These changes will impact 618 youth in level IV care.

Please note that the cost for assessments of \$245,000 is already calculated as a cost in proposed emergency regulation 13 CSR 35.060. Such assessments are completed prior to placement in a QRTP and are presented in this fiscal note for informational purposes.