

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 35-71.300 Notification Requirements for License-Exempt Residential Care Facilities

PURPOSE: This emergency rule implements the notification requirements for License-Exempt Residential Care facilities in Missouri as required by sections 210.1250 through 210.1286, RSMo, as enacted into law in House Bill 557 (2021).

EMERGENCY STATEMENT: This regulation implements the requirements of the Residential Care Facility Notification Act, Sections 210.1250 to 210.1286 RSMo, which was enacted into law in HB 557 (2021). The Act requires License-Exempt Residential Care Facilities (LERCF) and Licensed Residential Care Facilities (LRCF) to notify the Department of Social Services of their operations in Missouri within three (3) months of the effective date of the Act. The Act became law on July 14, 2021; therefore, these residential care facilities have until October 12, 2021, to comply with the notification requirements of the Act. This is a new law, and there are no regulations which provide guidance and instructions to these facilities so that they can comply with the requirements of the Act. The Act requires the Department of Social Services to promulgate regulations to implement the requirements of the Act. Section 210.1286 RSMo. Promulgation of an emergency regulation is the only way to ensure that the necessary regulations are in place to enable the Department and impacted agencies to comply with the Act. HB 557 (2021) 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 notification requirements of the Act will immediately enable the Department to process the notifications from these facilities and maintain a list of LERCFs and LRCFs operating in Missouri in compliance with the emergency declared in HB 557 (2021). Compiling and maintaining this information is a critical component of Missouri’s child protection system in that it will help ensure that personnel of residential care facilities comply with the new criminal background check requirements of section 210.493, RSMo, which was included in HB 557 (2021), and it will help the Department in conducting its responsibilities of administering Missouri’s Child Welfare System. 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, 210.1253, RSMo and 13 CSR 35-71.010 and 35-71.015 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) “Residential Care Facility Notification Act” or “RCFNA” refers to sections 210.1250 through 210.1286, RSMo.

(2) 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., 13 CSR 35-71.015 and the RCFNA.

(3) Application and Purpose of this Regulation. This regulation implements the requirements of the RCFNA. It applies to License-Exempt Residential Care Facilities (LERCFs).

(4) All LERCFs shall notify the division of their operation within Missouri before they accept any children as provided in this regulation and the RCFNA. LERCFs operating in Missouri and providing Residential Care Facility services to children on July 14, 2021, shall register with the division no later than Tuesday, October 12, 2021.

(5) Notification Procedures.

(A) To notify with the division, the director of the LERCF, or his or her designee, shall file a notification using the division’s online portal, or as may be otherwise provided in this regulation.

1. The online notification form, instructions and filing the notification 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 65103, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/license-exempt.htm>, September 17, 2021. This rule does not incorporate any subsequent amendments or additions. The LERCF shall submit the completed notification form and upload any supporting or supplemental forms and documentation through this online portal. The LERCF shall attach all documentation that may be necessary to complete the required notification and upload the documentation with the notification form.

2. The LERCF may apply to the division for permission to file the notification and supporting documentation by mail or private delivery services rather than through the on-line portal when there are unusual, compelling, and extenuating circumstances which make filing the notification through the on-line portal impossible. The LERCF shall apply for permission to file the notification form, supporting or supplemental materials with the division in writing, and shall explain the circumstances why the LERCF cannot submit the notification through the on-line portal. A copy of the notification form for use in submitting notification 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 65103, at its website <https://www.dss.mo.gov/provider-services/children/residential-program/license-exempt.htm>, October 1, 2021. LERCFs may download a copy of the form. The LERCF shall attach all documentation that may be necessary to complete the required notification. If the division grants permission under this subsection the LERCF may submit the form with supporting materials by mail, by private delivery service or in person to the offices of the division at Residential Program Unit, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65102; or by e-mail at CD.NotifyRPU@dss.mo.gov.

(B) The notification form shall be signed by the director of the LERCF, or his or her designee, attesting that the information contained in the notice and the supplemental materials are true, accurate, complete, and subject to penalties of perjury. The division will accept

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e-signatures.

(C) The notification form shall designate the individual within the LERCF to be the point of contact between the LERCF and division. The point of contact between the division and the LERCF shall be the director unless otherwise specified by the LERCF. The notification form shall further indicate whether the LERCF prefers to receive communications by mail through the United States Postal Services or electronically by e-mail.

(D) The notification shall contain the information required in this subsection and otherwise in this regulation.

1. The LERCF shall list its full name, street address, mailing addresses, e-mail address, and phone number. The mailing address and e-mail addresses shall be the addresses of record of the LERCF and all official correspondence to the LERCF will be sent to the mailing or e-mail address on record.

2. The LERCF shall identify the name of the director, owner, operator, all staff members, volunteers, and any individual eighteen years of age or older who resides at or on the property of the LERCF. The LERCF shall provide the name, street address, physical and electronic mailing addresses, and phone number of the director or director's designee who will serve as the point of contact between the division and the LERCF.

3. The LERCF shall provide a full description of the agency or organization operating the LERCF, including a statement as to whether the agency or organization is incorporated.

A. The description of the agency or organization shall specify the type of agency or organization.

B. If the agency or organization is incorporated then the LERCF shall provide the state in which the LERCF was incorporated in and the corporate name of the LERCF.

4. The LERCF shall identify the name and address of the sponsoring organization of the residential care facility, if applicable.

5. The LERCF shall identify the school or schools attended by the children served by the residential care facility. The LERCF shall list the name and address of each school.

6. Fire and safety inspection certificates.

A. The LERCF shall include with the notification a copy of any and all fire and safety inspection certificates required by law in the jurisdiction where the LERCF operates, and shall indicate the date of the inspection and the date that each certificate expires, if any. If the LERCF operates in more than one county or local jurisdiction then the LERCF shall submit the required certificates for each facility at each location. The LERCF shall indicate the date of the inspection and the date that each certificate expires, if applicable.

B. LERCFs operating in jurisdictions where there are no required fire and safety inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain fire and safety inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection when available.

7. Local health department inspection certificates.

A. The LERCF shall include with the notification a copy of any and all state or local health department inspection certificates required in the jurisdiction in which the facility operates. If the LERCF operates in more than one county or local jurisdiction, then the LERCF shall obtain the required certificates for each facility at each location. The LERCF shall indicate the date of the inspection and the date that each certificate expires, if any.

B. LERCFs operating in jurisdictions where there are no required local or county government health department inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain any required local health department inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county or local jurisdictions declining to conduct the inspection when available.

8. Proof that medical records are maintained for each child.

A. The division will accept a written attestation, made under oath, subject to penalty of perjury, and executed by the director of the LERCF, that the LERCF actually maintains medical records for each child served by the LERCF according to the written policy of the LERCF, which shall be attached to the attestation.

B. The LERCF shall provide the division access to the facility upon request to inspect the medical records maintained by the LERCF on the children served by the LERCF in order to verify that the medical records are being kept. The division will request access to this information only when the division has reasonable basis to believe that the LERCF is not maintaining records for any child as required by law.

9. Background Check completion/eligibility. The director of the LERCF, or his or her authorized designee, shall certify, under oath subject to the penalties of perjury that all individuals who are required to complete a background check have successfully completed the background checks and have been found eligible for employment or presence at the LERCF pursuant to section 210.493, RSMo and 13 CSR 35-71.015.

A. Phase in period for LERCFs in operation as of July 14, 2021. For all original notifications submitted by LERCFs which were both in operation and had children in its facility as of July 14, 2021, the division will accept a written certification from the director of the LERCF that all individuals who are required to submit to a background check pursuant to section 210.493 RSMo, and 13 CSR 35-71.015 either have completed the background check requirements or will have successfully completed the background check by December 31, 2021. Upon completion of this process the director or the director's designee shall provide written or electronic notice to the division certifying that the background check process for these individuals has been successfully completed. The division may extend this period for up to an additional one hundred twenty (120) days if the LERCF establishes, in writing, that it is unable to successfully complete the process by the deadline.

(E) When the division is satisfied that the LERCF has complied with all of the requirements for notification, the division will issue a letter to the LERCF:

1. Confirming the receipt of the completed Notification;

2. Informing the LERCF that the records of the division reflect that the LERCF has successfully completed all of the notification process as of the date of the letter, that the LERCF may accept children pursuant to section 210.1259, RSMo, and that the division will include the LERCF on the list of LERCFs as specified in section 210.1280, RSMo, and section (9) of this regulation; and

3. Notifying the LERCF of the deadlines for submitting any supplemental notifications as provided in subsection (5)(F).

(F) Duty to Supplement. The LERCF shall have a continuing duty to submit a supplemental notification within fifteen (15) calendar days if or when:

1. The LERCF terminates its operations in Missouri;

2. The LERCF has any change in its physical address, mailing address, or e-mail address, or other address on record; or

3. There is a change in the name, mailing address, e-mail address, or other contact information for the director of the LERCF or designated point-of-contact of the LERCF.

4. The supplemental notification form shall be signed by the

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director of the LERCF or his or her designee attesting that the information contained in the form and the supplemental materials are true, accurate and complete, and subject to penalties of perjury. The division will accept e-signatures.

(6) Nothing in this regulation shall give the division jurisdiction or authority to regulate or attempt to regulate, control, or influence the form, manner, or content of the religious curriculum, program, or ministry of the LERCF.

(7) When the department or the division is advised or has reason to believe that any LERCF is operating without proper notification in accordance with the RCFNA and the division's implementing regulations, the division shall give the director of the LERCF written notice by certified mail that the director shall file notification in accordance with the RCFNA and the division's implementing regulations, or the department may request a court injunction as provided under section 210.1271 RSMo or take other action as may be authorized by law. The division shall send its written notice to the address of record of the LERCF when an address has been provided.

(A) The division may extend the time for the LERCF to comply with the notification requirements for up to sixty (60) days upon request of the LERCF and a showing by the LERCF that the LERCF has reasonable cause for the delay in completing the notification requirements and that the health and safety of the children will not be at risk.

(B) The division may further condition an extension of time upon the LERCF submitting a time limited, corrective action plan to complete the notification requirements that is mutually satisfactory to the LERCF and the division.

(8) Administrative Review and Judicial Review.

(A) Any LERCF which is aggrieved by a decision of the department or division under this regulation may file a request for administrative review of the decision within fourteen (14) days of the mailing of the decision as provided in this regulation.

(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 or submitted electronically by e-mail to the division to the e-mail address specified in the division's decision. The request for administrative review shall include the following information:

A. The name, address, telephone number, and e-mail address of the LERCF making the request for administrative review;

B. Specify whether the LERCF is requesting a response and notice of final decision by first class mail or by e-mail;

C. Identify the division's decision to be reviewed, and why the LERCF is aggrieved by the decision;

D. The LERCF shall include copies of any relevant documents, materials or information that the LERCF wishes to submit in support of the request for administrative review; and

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

2. The LERCF may be represented by legal counsel.

3. The administrative review shall be conducted and decided based upon the written materials submitted to the division and any information and materials presented at an in-person review conference. If the LERCF establishes that there is a good reason to hold an in-person review conference then the division will hold an in-person review conference.

4. The in-person review conference may take place by telephone conference call, video conference, or in-person review conference at a date and time during regular working hours that are mutually convenient to the division and the LERCF requesting the conference.

5. The administrative review process and in-person review conference shall be informal. The rules of evidence shall not apply. There is no right to conduct discovery. There shall be no right to compel the production of witnesses or evidence by subpoena or otherwise.

6. The administrative review shall be conducted by an individual designated by the director of the department or 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.

7. 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.

8. The decision upon administrative review shall be the final decision of the department.

(9) The division will maintain a list of all LERCFs which are in compliance with the requirements of sections 210.1250- 210.1286, RSMo and this regulation:

(A) The list shall include the following information:

1. The name, physical address and mailing address of the LERCF;

2. The name of the director of the LERCF; and

3. Whether the LERCF has submitted any fire and safety, or health department certificates with the notification.

(B) The division will provide a copy of the list to anyone who asks, upon request submitted to the Children's Division, Residential Program Unit, 205 Jefferson Street, PO Box 88, Jefferson City, Missouri 65102; or by e-mail at CD.NotifyRPU@dss.mo.gov.

(C) The director of any LERCF may submit written request to correct any errors in the list or to supplement the list with updated information.

(D) The division will update the list when errors or updates are brought to its attention. Except in cases where there is a scrivener's error, the division will provide notice and an opportunity to object making any changes about the LERCF on the list. The LERCF may seek administrative review of any changes in the list following the procedures specified in this regulation.

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 is estimated to cost state agencies or political subdivisions two hundred eighty-three thousand nine hundred seventy-four dollars (\$283,974) in the time the emergency is effective.

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

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FISCAL NOTE PUBLIC 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

Rule Number and Name:	13 CSR 35-71.300 Notification Requirements for License-Exempt Residential Care Facilities
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	The cost is estimated to be \$283,974 for the first six months.
Department of Public Safety	\$0
Department of Health and Senior Services	\$0

III. WORKSHEET

This rule will require 5 FTE.

Cost breakout	
Salaries	\$118,908
Fringe	\$ 74,502
Equipment and Expense (including a safe portal for submission)	<u>\$ 90,564</u>
TOTAL	\$283,974

IV. ASSUMPTIONS

DSS assumes that license-exempt residential care facilities are already compliant with local ordinances and requirements specific to inspections provided by the Department of Public Safety and the Department of Health and Senior Services.

It remains unknown how many license exempt residential care facilities currently exist in Missouri to date; however, DSS based fiscal impact estimates utilizing the assumption that there are 100 license exempt agencies currently operating in the state.