

Emergency Rule

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 35—Children’s Division Chapter 73—Child Placing Agencies

EMERGENCY AMENDMENT

13 CSR 35-73.017 Hearings and Judicial Review. The division is amending section (1).

PURPOSE: This emergency amendment is to ensure that the rule is updated to reflect the needs of current practice and to ensure that the rules are consistent with 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), License-Exempt Residential Care Facilities (LERCFs) and Licensed Child Placing Agencies (CPAs). 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 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 and to determine whether individuals are eligible for employment or presence at these institutions. This regulation is part of a series of regulations which establish the general principles governing the implantation of all of the regulations governing licensed Child Placing Agencies and Residential Care Facilities in Missouri. This includes the requirements for conducting the required background checks required in section 210.493, RSMo. 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) License Denial, or 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 Chapter 453, RSMo if licensed as an adoption agency, and the applicable corresponding rules;
2. Violates any of the provisions of its license;
3. Violates state laws or rules relating to the protection of

children;

4. **Abuses or neglects children, or /P/permits the abuse or neglect of children, or is the subject of multiple or serious reports of child abuse or neglect which upon investigation results in a finding of probable cause to suspect child abuse or neglect and fails to take corrective action acceptable to the division to ensure the safety of children;**

5. **Employs persons who the division has found ineligible for employment or presence at the Child Placing Agency pursuant to section 210.493 and 13 CSR 35-71.015, or who abuse or neglect children, or are the subjects of multiple or /serious/ reports of child abuse or neglect which upon investigation results in a finding of [probable cause to suspect] preponderance of the evidence that the individual is responsible for child abuse or neglect and the agency fails to take corrective action acceptable to the division to ensure the safety of children;**

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

7. Refuses to submit any reports or 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; or

10. Fails to provide adequate financial resources for the satisfactory care of children being served.

AUTHORITY: sections [210.481-210.536, RSMo (1994) and (Cum. Supp. 1996)] 207.020, 210.506, and 660.017 RSMo 2016, and sections 210.493, 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.017. Original rule filed Feb. 6, 1997, effective July 30, 1997. Moved to 13 CSR 35-73.017, effective June 30, 2018. 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 is estimated to cost state agencies or political subdivisions three hundred fifty-eight thousand ninety-four dollars (\$358,094) in the time 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.

Emergency Rule

FISCAL NOTE PUBLIC COST

- I. Department Title:** 13-Social Services
Division Title: 35-Children’s Division
Chapter Title: 73-Child Placing Agencies

Rule Number and Name:	13 CSR 35-73.017 Hearing and Judicial Review
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS	\$358,094

III. WORKSHEET

Implementation of this rule will require 7 staff total.

Cost calculation (6 months)

Salaries	\$178,983
Fringe Benefits	\$108,447
<u>Equipment and Expense</u>	<u>\$ 70,664</u>
Total	\$358,094

IV. ASSUMPTIONS

The Division of Legal Services anticipates the need for two litigation attorneys to advise and represent the Children’s Division (CD) in child health and safety assessment proceedings; injunctive proceedings to halt operations at residential care facilities; investigative subpoenas, proceedings regarding the removal and placement of children; to defend additional Children’s Division findings of child abuse or neglect in the circuit courts; and to advise CD on determinations of eligibility to be present or employed at licensed residential care facilities and child placing agencies and to be present or employed at license-exempt residential care facilities.

The Division of Legal Services further anticipates the need for 1 Hearings Officer and one Special Counsel for hearings regarding eligibility of those to be present or employed at licensed residential care facilities and child placing agencies and to be present or employed at license-exempt residential care facilities.

The Children’s Division will require 3 Children’s Service Workers to prepare information for hearings.