Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 10—Office of the Director
Chapter 15—Abortions

EMERGENCY AMENDMENT

19 CSR 10-15.060 Prohibition on Expenditure of Funds. The department is updating the rule purpose, replacing section (1), and removing sections (2), (3), and (4).

PURPOSE: The department is updating specific language in the rule purpose and rule body to align with HB2010, which is the Fiscal Year 2021 budget bill.

PURPOSE: [This rule defines terms used in House Bill 10, 100th General Assembly, First Regular Session, for purposes of expenditures by the Department of Health and Senior Services.] This rule outlines how the Department of Health and Senior Services ensures that expenditures are compliant with annual General Assembly budget bills.

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: House Bill 2020, 100th General Assembly, Second Regular Session ("HB2010"), contains the authority of the Department of Health and Senior Services ("Department") to spend funds for state fiscal year 2021. State fiscal year 2021 begins and HB2010 takes effect July 1, 2020. This rule must be updated to give notice to entities that receive funds from the Department for providing services of the particular prohibitions on expenditures of funds as designated by the Legislature. Some entities that received funds in state fiscal year 2020 may become ineligible to receive funds in state fiscal year 2021. Other entities that were ineligible to receive funds in state fiscal year 2020 may remain ineligible to receive funds in state fiscal year 2021. This rule must also be in effect to ensure that there is not a lapse in claims being paid to providers and so that the Department does not expend funds in violation of HB2010 and Article IV, Section 28 of the Missouri Constitution. The regular rulemaking process takes several months, and state fiscal year 2021 would be more than half over by the time regular rules would take effect. In the interim, for several months, the Department’s ability to expend funds for a variety of health services could be impaired. Impairment of the ability to expend funds for health services could compromise the Department’s ability to protect the public health and welfare. Further, if the Department does not update the terms and phrases by emergency amendment, the Department may be subject to legal challenges and attorney fees for having inaccurate rule references. Moreover, such a rule may be unenforceable. Thus, if the Department does not formally promulgate an emergency amendment, it may not be able to timely and effectively implement HB2010. Finally, as expressed in the laws of the State of Missouri, the State has a compelling governmental interest in protecting the sanctity of human life. Ensuring that no State funds are expended in support of abortion, as expressed in HB2010, further compels governmental interest. The Department finds an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest, which requires this emergency action. 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 Department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 22, 2020, becomes effective June 8, 2020, and expires February 25, 2021.

(1) Definitions.

(A) Affiliate of any clinic, physician’s office, or any other place or facility in which abortions are performed or induced (as used in section 10.1100 of HB 10 and this regulation)—factors to be considered in making this determination include, but are not limited to: an organization or location that shares, or has in common, any resource with any clinic, physician’s office, or any other place or facility in which abortions are performed or induced including, but not limited to, operating funds, bank accounts, facilities, employees, service contracts, equipment, mailing lists, trademarks, copyrights, service marks, brands, trade names, financial reporting, marketing, advertising, websites, information and education materials, or any other assets.

(B) Associate of any clinic, physician’s office, or any other place or facility in which abortions are performed or induced (as used in section 10.1100 of HB 10 and this regulation)—factors to be considered in making this determination include, but are not limited to: an organization or location that shares an organizational structure with any clinic, physician’s office, or any other place or facility in which abortions are performed or induced including, but not limited to, parent, subsidiary, or sister organizations; or an organization or location with common or interlocking management, ownership, or governance with any clinic, physician’s office, or any other place or facility in which abortions are performed or induced, such as a shared name, or part of a name; an alliance or federation with an organization or location that is commonly identified as an advocate for abortion; or that holds itself out, has held itself out, or refers to itself publicly in a way that demonstrates a connection to an organization or location that is commonly identified as any clinic, physician’s office, or any other place or facility in which abortions are performed or induced.

(C) Counsels women to have an abortion (as used in section 10.1005 of HB 10)—in the absence of an exception required by federal law, includes, but is not limited to, encouraging a patient to have an abortion, referring a patient for an abortion, or providing a patient with information encouraging her to have an abortion.

(D) Program (as used in section 10.1005 of HB 10)—a project, service, or activity administered by the department.

(E) Referring a patient for an abortion (as used in section 170.015, RSMo, for purposes of section 10.725 of HB 10)—does not include providing comprehensive, factual information regarding options, so long as the information is provided for all of the options and in a neutral manner. Also does not include providing contact information, so long as the contact information is provided for all of the options and in a neutral manner. Other actions, such as assisting with making an appointment or assisting with transportation, constitute referring a patient for an abortion.

(2) The department shall not expend any funds to any clinic,
physician’s office, or any other place or facility in which abortions are performed or induced other than a hospital, including an abortion facility as defined in section 188.015, RSMo, or any affiliate or associate of any such clinic, physician’s office, or place or facility in which abortions are performed or induced other than a hospital, as determined by the department in accordance with this regulation.

(3) The department shall not expend any funds on any program that, in the absence of an exception required by federal law, performs abortions or counsels women to have an abortion.

(4) After July 1, 2019, no claims for payment shall be submitted by a provider until the provider submits the form provided by the department declaring that the provider will not submit claims for payment that violate HB 10. A copy of the form can be requested by contacting the department.

(1) After July 1 of each calendar year, no claims for payment shall be submitted by any provider until that provider submits the requisite form issued by the department to be used for the upcoming fiscal year. Such form shall contain the applicable provisions related to legislative authority regarding expenditure of funds, including but not limited to, definitions, restrictions, and prohibitions. Such form shall also contain a declaration to be executed by the provider, which shall state that said provider will not submit claims for payment that violate the applicable provisions related to the legislative authority regarding expenditure of funds. This form shall be effective from the date that the department receives a provider’s executed copy until a new form is issued by the department. A copy of this form can be requested by contacting the department.


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 will not cost private entities more than five hundred dollars ($500) in the time the emergency is effective.