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SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

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November 1, 2018 November 15, 2018	December 3, 2018 December 17, 2018	December 31, 2018 December 31, 2018	January 30, 2019 January 30, 2019
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May 1, 2019 May 15, 2019	June 3, 2019 June 17, 2019	June 30, 2019 June 30, 2019	July 30, 2019 July 30, 2019

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at www.sos.mo.gov/adrules/pubsched.

HOW TO CITE RULES AND RSMO

RULES

The rules are codified in the *Code of State Regulations* in this system–

Title		Division	Chapter	Rule
3	CSR	10-	4	.115
Department	<i>Code of State Regulations</i>	Agency Division	General area regulated	Specific area regulated

and should be cited in this manner: 3 CSR 10-4.115.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

The rule is properly cited by using the full citation, for example, 3 CSR 10-4.115 NOT Rule 10-4.115.

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated.

Code and Register on the Internet

The *Code of State Regulations* and *Missouri Register* are available on the Internet.

The *Code* address is www.sos.mo.gov/adrules/csr/csr

The *Register* address is www.sos.mo.gov/adrules/moreg/moreg

These websites contain rulemakings and regulations as they appear in the *Code* and *Registers*.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2016. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 65—Missouri Medicaid Audit and Compliance
Chapter 3—Participant and Provider Procedure**

EMERGENCY RULE

13 CSR 65-3.010 Participant Lock-In Program

PURPOSE: This rule establishes a process to safeguard against unnecessary or inappropriate utilization of care and services by MO HealthNet participants by identifying excessive use patterns in order to rectify overutilization practices of participants.

EMERGENCY STATEMENT: The Department of Social Services, Missouri Medicaid Audit & Compliance Unit (MMAC), determines that this emergency rule is necessary to protect public health, safety, and/or welfare and to preserve a compelling governmental interest. MMAC has long been responsible for reviewing MO HealthNet participants who may be subjecting the MO HealthNet program to fraud, waste, and abuse through mis-utilization or over-utilization of their MO HealthNet benefits. A participant usually engages in such conduct in order to obtain opiates or other pain-killing drugs. If MMAC determines that a MO HealthNet participant is mis- or over-utilizing MO HealthNet benefits, MMAC can lock-in the participant to a particular physician, to a specific pharmacy, or both. A version of the lock-in regulation currently exists under a MO HealthNet regulations in 13 CSR Chapter 70, but that regulation is scheduled to be rescinded on January 30, 2019. Because the regulation affected MMAC's

duties more than MO HealthNet, DSS decided to move the regulation to 13 CSR Chapter 65 – the chapter of regulations dedicated to MMAC – in conjunction with making a few amendments to the rule. Due to unforeseeable delays in the rulemaking process, however, the lock-in regulation of Chapter 65 will not be effective until February 28, 2019, leaving the state without the program for approximately one month. On average, MMAC reviews medical and pharmacy records of 210 MO HealthNet participants in a month with about 25% of these reviews leading to the locking in of the participant and a savings to the MO HealthNet program of an average of \$458,000 each month. MMAC needs this emergency regulation to combat instances of MO HealthNet participants misusing or abusing their physician or pharmacy benefits and thereby protecting the public health, safety, and/or welfare of MO HealthNet participants. MMAC also needs this emergency regulation to protect government interest of not paying for unnecessary MO HealthNet benefits. The scope of this emergency regulation is limited to circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. MMAC believes this emergency regulation is fair to all interested persons and parties under the circumstances. The proposed rule was published in the Missouri Register on September 4, 2018 (43 MoReg 2555-2556) and the order of rulemaking was published on January 15, 2019 (44 MoReg 440-441). This emergency rule, filed on January 18, 2019, becomes effective January 30, 2019, and expires February 28, 2019.

(1) Definitions applicable to the administration of this program are as follows:

(A) “Lock-In” means limiting or restricting a participant’s ability to access services to a single physician and/or a single pharmacy to reduce excessive MO HealthNet benefits usage;

(B) “Medically necessary” means health care services or supplies that are needed to diagnose or treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medicine;

(C) “Misutilization” or “misuse” means overusing, underusing, or using MO HealthNet services in a way that is harmful, wasteful, and uncoordinated or using services provided under the MO HealthNet program in an improper or incorrect manner, whether that use is intentional or unintentional;

(D) “Overlap” means at least one (1) day of overlapping dispensing of prescriptions written by two (2) or more different prescribers; and

(E) “Therapeutic class” means a class of medications that are used to treat similar medical conditions.

(F) “MMAC approved pharmacy” means a licensed pharmacy that is currently enrolled with MO HealthNet and is not currently sanctioned or under investigation by any federal or state authority; and

(G) “MMAC approved physician” means a licensed physician that is currently enrolled with MO HealthNet and is not currently sanctioned or under investigation by any federal or state authority.

(2) Unless a participant shows that the service or product provided to the participant was otherwise medically necessary, the Missouri Medicaid Audit and Compliance Unit (MMAC) may place the participant in the Lock-In Program if the participant’s utilization of benefits exceeds one (1) or more of the following parameters during a three- (3-) month period:

(A) Use of three (3) or more drugs in the same therapeutic class such that the prescriptions of such drugs overlap;

(B) Use of three (3) or more pharmacies;

(C) Use of sixteen (16) or more prescriptions for therapeutic classes such as, but not limited to, analgesics, anticonvulsants, skeletal muscle relaxants, anxiolytics, or other potential drugs of misuse;

(D) Use of three (3) or more providers that specialize in a same or similar service or product;

(E) Use of three (3) or more different emergency departments; or

(F) Use by referral, review, or other analysis that indicates possible overutilization or that identifies a patient safety issue.

(3) Placement in the Lock-In Program.

(A) The decision to place a participant in the Lock-In Program is at MMAC's discretion. MMAC is to consider the following factors when deciding whether to place the participant in the Lock-In Program:

1. Seriousness of the findings – MMAC will consider the seriousness of the findings including, but not limited to, overlaps of the same therapeutic class of prescription medications, the use of multiple pharmacies, the prescription of the same therapeutic class of prescription medications by multiple, like, or different prescribers, emergency department visits for non-emergent services, the use of multiple emergency departments in different locations, and the use of multiple primary care clinics;

2. Extent of Inappropriate Utilization of Services – MMAC will consider the extent as measured by, but not limited to, the number of overlapping prescriptions within the same therapeutic class prescribed by different prescribers and the number of emergency department visits and locations for diagnoses that are non-emergent such as back pain, lumbago, pain in limb, or toothache;

3. Prior History of Action Taken by the Lock-In Section – MMAC will consider whether or not the participant has been given prior education by the Lock-In Section which includes any education letters, warning letters, or previous placement in the Lock-In Program.

(4) A participant shall be placed in the Lock-In Program if the participant's utilization of benefits was misused by any of the following methods:

(A) Lending or giving the participant's Medicaid ID card to ineligible individuals who are not eligible for Medicaid;

(B) Submitting, or causing to be submitted, forged documents to providers for medical benefits or services;

(C) Refusing to submit to, or failing to have predicted, urine or blood levels following testing for medications prescribed to the participant and covered by the MO HealthNet program while engaged in a pain management or substance use disorder treatment program; or

(D) Paying cash for prescribed medications covered by the MO HealthNet program.

(5) Once MMAC identifies a participant that falls under subsection (2) or (3) of this rule and notifies the participant of its decision to place the participant in the Lock-In Program, the participant is to provide MMAC with the following:

(A) Notification within twenty (20) days of the participant's selection of a single physician and a single pharmacy that must be approved by MMAC. In the event the participant fails to select an MMAC approved physician and pharmacy, MMAC will select a single physician and a single pharmacy on behalf of the participant;

(B) Notification if the participant requires more than one (1) physician or pharmacy for the purposes of specialized medical treatment. MMAC may permit a participant to select more than one (1) physician or pharmacy upon showing of such need; and

(C) Notification of any request to change a selected physician and/or pharmacy. A participant may not request to change selection of physician and/or pharmacy more than once within a three (3) consecutive month period unless additional provider changes within that three (3) consecutive month period are approved upon verification of just cause. A participant may only change a selected physician and/or pharmacy if any of the following occur:

1. The physician or pharmacy moves, retires, dies, discontinues MO HealthNet participation, or refuses to provide care to the participant; or

2. The participant moves from the physician's service area.

(6) A participant who is subject to the Lock-In Program may not

select a single physician and single pharmacy if the single physician and/or single pharmacy decline to serve as the participant's single physician or pharmacy.

(7) A participant who is subject to the Lock-In Program may only receive services from a provider who is not the designated physician and/or a pharmacy that is not the designated pharmacy in the following circumstances:

(A) Documented medical emergencies;

(B) Upon referral by the participant's designated Lock-In provider; or

(C) As otherwise authorized by MMAC.

(8) A participant who is placed in the Lock-In Program will be subject to Lock-In for a minimum of twenty-four (24) months. If after twenty-four (24) months, MMAC determines that the participant is continuing to misuse the MO HealthNet program as set forth in this rule, MMAC may impose an additional Lock-In period for up to twenty-four (24) additional months.

(9) Any participant who is aggrieved by a decision made under this regulation may seek administrative review under section 208.080, RSMo.

AUTHORITY: sections 208.201 and 660.017, RSMo 2016. Emergency rule filed Jan. 18, 2019, effective Jan. 30, 2019, expires Feb. 28, 2019. A proposed rule covering this same material was published in the September 4, 2018, Missouri Register (43 MoReg 2555-2556) and the order of rulemaking in the January 15, 2019, Missouri Register (44 MoReg 440-441).

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo 2016.

EXECUTIVE ORDER 19-01

WHEREAS, the Missouri Department of Economic Development is created pursuant to Article IV, Section 12 of the Missouri Constitution and Chapter 620, RSMo, and is charged with promoting the economy of the State, the economic development of the State, trade and business, and other activities and programs impacting the economy of the State; and

WHEREAS, the Missouri Department of Natural Resources is created pursuant to Article IV, Section 12 of the Missouri Constitution and Chapter 640, RSMo, and is charged with administering the programs of the State relating to environmental control and the conservation and management of natural resources of the State; and

WHEREAS, the Division of Energy, located within the Department of Economic Development, is charged with coordinating actions relating to energy sustainability in the State, renewable energy use, and energy conservation pursuant to Section 640.157, RSMo; and

WHEREAS, energy sustainability, renewable energy use, and energy conservation are integrally related to the health of natural resources across the State; and

WHEREAS, the transfer of the Division of Energy from the Department of Economic Development to the Department of Natural Resources will benefit the State of Missouri by enhancing the Department of Natural Resources' ability to balance a healthy environment with a healthy economy; and

WHEREAS, top-performing state economic development agencies focus primarily on business development and community development, as well as close coordination with workforce development; and

WHEREAS, the transfer of the Division of Energy from the Department of Economic Development to the Department of Natural Resources will benefit the State of Missouri by enabling the Department of Economic Development to align itself more fully around the core economic development activities of business development and community development, closely coordinated with workforce development.

NOW THEREFORE, I, MICHAEL L. PARSON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order the Department of Economic Development and the Department of Natural Resources to cooperate to:

1. Transfer all authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Energy from the Department of Economic Development to the Department of Natural Resources by Type I transfer, as defined under the Reorganization Act of 1974;
2. Develop the mechanisms and processes necessary to effectively transfer the Division of Energy to the Department of Natural Resources; and
3. Take the steps necessary to maintain compliance with federal requirements so as not to jeopardize federal financial participation with this transfer.

This order shall become effective no sooner than August 28, 2019, unless disapproved within sixty days of its submission to the First Regular Session of the 100th General Assembly.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 17th day of January 2019.

A handwritten signature in black ink, appearing to read 'Michael L. Parson', written over a horizontal line.

Michael L. Parson
Governor

ATTEST:

A handwritten signature in black ink, appearing to read 'John R. Ashcroft', written over a horizontal line.

John R. Ashcroft
Secretary of State

**EXECUTIVE ORDER
19-02**

WHEREAS, the Missouri Department of Economic Development is created pursuant to Article IV, Section 12 of the Missouri Constitution and Chapter 620, RSMo, and is charged with promoting the economy of the State, the economic development of the State, trade and business, and other activities and programs impacting the economy of the State; and

WHEREAS, the Missouri Department of Insurance is created pursuant to Article IV, Section 12 of the Missouri Constitution, which was redesignated as the Department of Insurance, Financial Institutions and Professional Registration pursuant to Executive Order 06-04, and is charged with regulation of insurance companies, financial institutions, and professional registration of many industries and occupations, including consumer affairs; and

WHEREAS, the Office of Public Counsel, located within the Department of Economic Development, is charged with representing and protecting the interests of the public in any proceeding before or appeal from the Missouri Public Service Commission pursuant to Section 386.710, RSMo; and

WHEREAS, the Public Service Commission, located within the Department of Economic Development, is created pursuant to Chapter 386, RSMo, and is charged with regulating investor-owned electric, natural gas, steam, water, and sewer utilities; and

WHEREAS, the Department of Insurance, Financial Institutions and Professional Registration has extensive expertise in the regulation of complex industries and is well positioned to enhance State functions relating to utility regulation; and

WHEREAS, the transfer of the Office of Public Counsel and the Public Service Commission from the Department of Economic Development to the Department of Insurance, Financial Institutions and Professional Registration will benefit the State of Missouri by consolidating regulatory functions and programs to increase efficiencies and provide a more cohesive and coordinated approach to the regulation of complex industries, including protecting the interests of the public in regard to such industries; and

WHEREAS, top-performing state economic development agencies focus primarily on business development and community development, as well as close coordination with workforce development.

NOW THEREFORE, I, MICHAEL L. PARSON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order the Department of Economic Development and the Department of Insurance, Financial Institutions and Professional Registration to cooperate to:

1. Transfer all authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Office of Public Counsel and the Public Service Commission from the Department of Economic Development to the Department of Insurance, Financial Institutions and Professional Registration by Type III transfer, as defined under the Reorganization Act of 1974;
2. Develop the mechanisms and processes necessary to effectively transfer the Office of Public Counsel and the Public Service Commission to the Department of Insurance, Financial Institutions and Professional Registration; and
3. Take the steps necessary to maintain compliance with federal requirements so as not to jeopardize federal financial participation with this transfer.

The Department of Insurance, Financial Institutions and Professional Registration shall henceforth be known as the Department of Commerce and Insurance. Executive Order 06-04's designation of the Department of Insurance as the Department of Insurance, Financial Institutions and Professional Registration is hereby superseded and replaced by the designation as the Department of Commerce and Insurance set forth herein.

This order shall become effective no sooner than August 28, 2019, unless disapproved within sixty days of its submission to the First Regular Session of the 100th General Assembly.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 17th day of January, 2019.



Michael L. Parson
Governor

ATTEST:

John R. Ashcroft
Secretary of State

EXECUTIVE ORDER

19-03

WHEREAS, the Missouri Department of Economic Development is created pursuant to Article IV, Section 12 of the Missouri Constitution and Chapter 620, RSMo, and is charged with promoting the economy of the State, the economic development of the State, trade and business, and other activities and programs impacting the economy of the State; and

WHEREAS, the Missouri Department of Higher Education is created pursuant to Article IV, Section 12 of the Missouri Constitution and Chapter 173, RSMo, and is charged with coordinating higher education policy that fosters a quality post-secondary system, as well as increasing participation in Missouri's public institutions of higher education; and

WHEREAS, the Division of Workforce Development, located within the Department of Economic Development, is currently the state agency designated to receive federal Workforce Innovation and Opportunity Act (WIOA) and Wagner-Peyser funds, conduct job training programs and labor exchanges, and administer other federal and State workforce development programs pursuant to Section 620.010, RSMo; and

WHEREAS, the Division of Workforce Development and the Department of Higher Education have worked closely with each other in the past on issues relating to workforce development and higher education; and

WHEREAS, combining the post-secondary talent development functions of the Department of Higher Education and the Division of Workforce Development will result in better consolidation and coordination of the State's functions relating to workforce development and higher education and would benefit the citizens of the State by promoting efficient administration of post-secondary talent development functions; and

WHEREAS, the Missouri Economic Research and Information Center (MERIC), located within the Department of Economic Development's Division of Business and Community Services, compiles and analyzes labor market information that is essential to the effective and efficient administration of workforce development programs; and

WHEREAS, combining MERIC with the Department of Higher Education and the Division of Workforce Development would provide targeted labor market information and analyses critical to advancing Missouri's post-secondary talent development functions; and

WHEREAS, the transfer of the Division of Workforce Development from the Department of Economic Development to the Department of Higher Education will benefit the State of Missouri by enabling the Department of Economic Development to align itself around the core economic development activities of business and community development, while maintaining close coordination and partnership with the Division of Workforce Development and the Department of Higher Education; and

WHEREAS, the transfer of the Division of Workforce Development's customized job training programs to the newly created One Start division within the Department of Economic Development will promote economic growth and job creation; and

WHEREAS, the establishment of the Regional Engagement Division for business retention, expansion, and recruitment functions will enable the Department of Economic Development to better serve individuals and businesses in different regions of the State; and

WHEREAS, the establishment of the Strategy and Performance Division will enable the Department of Economic Development to enhance its long-term planning and use of data to more effectively carry out its internal and external operations; and

WHEREAS, the Division of Business and Community Services, located within the Department of Economic Development, provides finance and compliance functions and subject matter expertise crucial to helping Missouri's businesses and communities grow; and

WHEREAS, redesignating the Division of Business and Community Services as the Business and Community Solutions Division will more accurately reflect the Division's solutions-oriented nature and its mission of solving businesses' and communities' challenges across the State.

NOW THEREFORE, I, MICHAEL L. PARSON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby:

1. Establish the Regional Engagement Division within the Department of Economic Development and transfer all of the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Business and Community Services relating to sales, marketing, and initial customer engagement for business retention and expansion and business recruitment functions to the Regional Engagement Division by Type I transfer, as defined under the Reorganization Act of 1974;
2. Establish the Strategy and Performance Division within the Department of Economic Development and transfer all of the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Department of Economic Development and the Division of Business and Community Services relating to economic analysis, communications and marketing, broadband development, departmental performance and improvement, legislative affairs, military asset support, and strategic initiatives to the Strategy and Performance Division by Type I transfer, as defined under the Reorganization Act of 1974;

3. Establish the One Start Division within the Department of Economic Development and transfer all of the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Workforce Development relating to customized job training programs to the One Start Division by Type I transfer, as defined under the Reorganization Act of 1974;
4. Redesignate the Division of Business and Community Services within the Department of Economic Development as the Business and Community Solutions Division in recognition of its solutions-oriented mission to support businesses and communities through economic development finance and compliance functions and subject matter expertise;
5. Transfer all powers, duties and responsibilities of the Division of Business and Community Services not otherwise transferred pursuant to this Executive Order to the redesignated Business and Community Solutions Division;
6. Transfer the Division of Workforce Development and all of its authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges, except as set forth herein, from the Department of Economic Development to the Department of Higher Education by Type I transfer, as defined under the Reorganization Act of 1974;
7. Transfer the Missouri Economic Research and Information Center (MERIC) and all of its authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges, from the Department of Economic Development to the Department of Higher Education by Type I transfer, as defined under the Reorganization Act of 1974;
8. Transfer all of the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Workforce Development relating to employer service representatives to the Regional Engagement Division by Type I transfer, as defined under the Reorganization Act of 1974;
9. Order the Department of Economic Development and the Department of Higher Education to develop the mechanisms and processes necessary to effectively complete the orders described herein; and
10. Order the Department of Economic Development and the Department of Higher Education to take the steps necessary to maintain compliance with federal requirements so as not to jeopardize federal financial participation with the transfers completed herein.

This order shall become effective no sooner than August 28, 2019, unless disapproved within sixty days of its submission to the First Regular Session of the 100th General Assembly.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 17th day of January, 2019.

A handwritten signature in black ink, appearing to read 'Michael L. Parson', written over a horizontal line.

Michael L. Parson
Governor

ATTEST:

A handwritten signature in black ink, appearing to read 'John R. Ashcroft', written over a horizontal line.

John R. Ashcroft
Secretary of State



State of Missouri

Governor's Proclamation

WHEREAS, Article IV, Section 27, authorizes the Governor to control the rate at which any appropriation is expended by allotment and, further, authorizes the Governor to reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based; and

WHEREAS, in addition to the power to control the rate of expenditure established in Article IV, Section 27, three percent of each appropriation, with the exception of amounts for personal service to pay salaries fixed by law, shall be set aside pursuant to section 33.290, RSMo, as a reserve fund and not subject to expenditure except with the approval of the Governor; and

WHEREAS, Article IV, Section 27.2, provides that the Governor notify the General Assembly "whenever the rate at which any appropriation shall be expended is not equal quarterly allotments, the sum of which shall be equal to the amount of the appropriation"; and

WHEREAS, due to a variety of factors, including the three percent reserve that is legally required by section 33.290, RSMo, the rate at which most appropriations are expended is not in "equal quarterly allotments, the sum of which shall be equal to the amount of the appropriation"; and

WHEREAS, Article IV, Section 27.3, provides that the Governor notify the General Assembly "when the governor reduces one or more items or portions of items of appropriation of money as a result of actual revenues being less than the revenue estimates upon which the appropriations were based."

NOW THEREFORE, I, Michael L. Parson, GOVERNOR OF THE STATE OF MISSOURI, pursuant to Article IV, Section 27, do hereby make the following notification to the One Hundredth General Assembly of the State of Missouri:

I hereby notify the General Assembly, pursuant to Article IV, Section 27.2 of the Missouri Constitution, that through the second quarter of fiscal year 2019, the rate of expenditure for each of the appropriation lines in the fiscal year 2019 budget attached as Exhibit A is not in equal quarterly allotments, the sum of which shall be equal to the amount of the appropriation.

I further notify the General Assembly, pursuant to Article IV, Section 27.3 of the Missouri Constitution, that I have taken no action to permanently reduce one or more items or portions of items of appropriation of money as a result of actual revenues being less than the revenue estimates upon which the appropriations were based in the fiscal year 2019 budget.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, this 28th day of January 2019.



A handwritten signature in black ink, appearing to read "Michael L. Parson", written over a horizontal line.

Michael L. Parson
GOVERNOR

ATTEST:

A handwritten signature in black ink, appearing to read "Jay Ashcroft", written over a horizontal line.

SECRETARY OF STATE

Exhibit A

#	Agency	Budget Appropriation Line
1	ELEM & SEC EDUCATION-OPER	02.015
2	AGRICULTURE-OPERATING	06.085
3	CORRECTIONS-OPERATING	09.200
4	MENTAL HEALTH-OPERATING	10.110
5	MENTAL HEALTH-OPERATING	10.210
6	MENTAL HEALTH-OPERATING	10.225
7	SOCIAL SERVICES-OPERATING	11.465
8	SOCIAL SERVICES-OPERATING	11.490
9	SOCIAL SERVICES-OPERATING	11.505
10	SECRETARY OF STATE-OPER	12.080
11	SECRETARY OF STATE-OPER	12.085

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, ATTN: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 20—Division of Learning Services Chapter 400—Office of Educator Quality

PROPOSED RESCISSION

5 CSR 20-400.280 Required Assessments for Professional Education Certification in Missouri. This rule outlined required assessments for certificates of license to teach.

PURPOSE: This rule is being rescinded due to current requirements being contained within 5 CSR 20-400.510—20-400.680.

AUTHORITY: sections 161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. 2012 and sections 168.011, 168.405, and 168.409, RSMo 2000. This rule previously filed as 5 CSR 80-800.380. Original rule filed April 26, 2000, effective Nov. 30, 2000. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Jan. 17, 2019.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, ATTN: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

Title 6—DEPARTMENT OF HIGHER EDUCATION Division 10—Commissioner of Higher Education Chapter 2—Student Financial Assistance Programs

PROPOSED AMENDMENT

6 CSR 10-2.080 Higher Education Academic Scholarship Program. The commissioner is amending subsection (1)(D).

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 20—Division of Learning Services Chapter 400—Office of Educator Quality

PROPOSED RESCISSION

5 CSR 20-400.250 Certificate of License to Teach Content Areas.

This rule provided areas of certificates of license to teach.

PURPOSE: This rule is being rescinded due to current requirements being contained within 5 CSR 20-400.510 – 20-400.680.

AUTHORITY: sections 161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. 2011, and section 168.011, RSMo 2000. This rule previously filed as 5 CSR 80-800.350. Original rule filed April 26, 2000, effective Nov. 30, 2000. Rescinded: Filed Jan. 17, 2019.

PURPOSE: This amendment updates the definition of approved institution to reflect statutory revisions.

(1) Definitions.

(D) Approved institution means any institution located in the state of Missouri that meets the requirements set forth in [section] **subdivision 173.1102.1(2)** or (3), RSMo, and that has been approved under 6 CSR 10-2.140.

AUTHORITY: section 173.250, RSMo [Supp. 2013] 2016. Original rule filed Nov. 14, 1986, effective Feb. 28, 1987. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.100 Public Safety Officer or Employee's Child Survivor Grant Program. The commissioner is amending subsections (1)(H), (1)(I), and (1)(L), and section (2).

PURPOSE: These amendments update the definitions of institution of postsecondary education or approved institution, line of duty, and public safety officer to reflect statutory revisions. The amendments also correct the name of the program referenced in section (2).

(1) Definitions.

(H) Institution of postsecondary education or approved institution shall be any private or public institution located in Missouri that meets the requirements set forth in [section] **subdivision 173.1102.1(2)** or (3), RSMo.

(I) Line of duty shall mean any action of an employee directly connected to their employment with the Department of Transportation, or of a public safety officer, whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires, and] who is authorized or obligated by law, rule, regulation, or condition of employment or service to perform such function.

(L) Public safety officer shall be any firefighter, **uniformed employee of the office of the state fire marshal**, police officer, capitol police officer, parole officer, probation officer, state correctional employee, water safety officer, park ranger, conservation officer, or highway patrolman employed by the state of Missouri or a political subdivision thereof, including an individual serving in any such capacity as a certified volunteer, who is killed or permanently and totally disabled in the line of duty, or any **emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, air ambulance registered respiratory therapist, or flight crew member**, as these terms are defined in subsection

173.260.1, RSMo, who is killed or permanently and totally disabled in the line of duty.

(2) Responsibilities of Institutions of Postsecondary Education. Institutions participating in the Public Safety Officer or Employee's **Child Survivor Grant** program must meet the requirements set forth in 6 CSR 10-2.140, Institutional Eligibility for Student Participation.

AUTHORITY: section 173.260, RSMo [2000] Supp. 2018. Original rule filed April 29, 1988, effective July 28, 1988. Amended: Filed May 27, 1999, effective Jan. 30, 2000. Amended: Filed Feb. 20, 2009, effective Aug. 30, 2009. Amended: Filed June 15, 2016, effective Nov. 30, 2016. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.120 Competitiveness Scholarship Program. The commissioner is amending subsection (1)(C).

PURPOSE: This amendment updates the definition of approved institution to reflect statutory revisions.

(1) Definitions.

(C) Approved institution means any institution located in Missouri that meets the requirements set forth in [section] **subdivision 173.1102.1(2)** or (3), RSMo, and that has been approved under 6 CSR 10-2.140.

AUTHORITY: section 173.262, RSMo [2000] 2016. Original rule filed May 24, 1990, effective Nov. 30, 1990. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.140 Institutional Eligibility for Student Participation. The commissioner is amending section (1), subsections (3)(B) and (3)(C), and subsection (6)(C).

PURPOSE: These amendments update the definition of approved institution, approved private institution, and approved public institution, and add the definition of approved virtual institution to reflect statutory revisions. The amendments also update institutional eligibility provisions and statutory references to reflect statutory revisions.

(1) Definitions.

(A) Approved institution means any institution located in the state of Missouri that meets the requirements set forth in [section] **subdivisions** 173.1102.1(2) [or], (3), or (4), RSMo; that has been approved under 6 CSR 10-2.140; and that has been approved to participate in the federal student financial assistance programs created in Title IV of the Higher Education Act of 1965, as amended.

(B) Approved private institution means an educational institution as defined in [section] **subdivision** 173.1102.1(2), RSMo.

(C) Approved public institution means an educational institution as defined in [section] **subdivision** 173.1102.1(3), RSMo.

(D) Approved virtual institution means an educational institution as defined in subdivision 173.1102.1(4), RSMo.

[(D)](E) CBHE means the Coordinating Board for Higher Education created by section 173.005, RSMo.

[(E)](F) Department means the Department of Higher Education created by section 173.005, RSMo.

[(F)](G) Expenses shall mean any charges the student owes to the institution that can be paid with state student assistance program funds as defined by each state student assistance program.

[(G)](H) Standard admission policies shall mean policies approved and published by the approved institution to admit students to the institution.

[(H)](I) State student assistance program shall be any financial aid program created by Missouri statute that charges the CBHE with program administration and that establishes institutional eligibility through criteria consistent with section 173.1102, RSMo, as determined by the CBHE.

(3) Institutional Eligibility.

(B) Public [and], private, and virtual institutions are eligible to participate in state student assistance programs only if they permit faculty members to select textbooks without influence or pressure from any source in order to be approved institutions. This requirement is in addition to requirements set forth in [sections] **subdivisions** 173.1102.1(2) [and], (3), and (4), RSMo, and elsewhere in this rule. Selection of textbooks within individual departments or schools by faculty curriculum committees shall not be considered inconsistent with this requirement.

(C) To be an approved private institution, an institution must be a nonprofit educational institution operating privately under the control of an independent board and not directly controlled or administered by any public agency or political subdivision. This requirement is in addition to requirements set forth in [section] **subdivision** 173.1102.1(2), RSMo, and elsewhere in this rule. For the purposes of this rule, an independent board is one that meets the following minimum criteria:

1. The governing instrument of the institution gives the governing board final decision making authority for the institution;

2. The governing board is composed of a number of members as fixed or provided for in the governing instrument of the institution, who serve for terms of definite duration;

3. Each member of the governing board is free to exercise judgment independently in the interest of the institution without being controlled by any person or authority; and

4. The members of the governing board may not be removed by any authority during their respective terms, except for cause. For purposes of this criterion, “cause” shall not include any reason based upon religious affiliation, including failure to follow the directives of any purported superior authority, religious or otherwise.

(6) Procedures.

(C) During a period in which an institution is certified as an approved institution, if a substantial change occurs in the institution’s governing structure; in the institution’s hiring policies pertaining to administration, faculty, and staff; in the institution’s admissions policies; in the institution’s textbook selection procedures; in the level of programs or degrees offered by the institution; in the institution’s qualification for accreditation by the Higher Learning Commission or other United States Department of Education-recognized accrediting agency; in the institution’s record of compliance with lawfully promulgated CBHE policies and procedures; or in any other matter affecting the criteria set forth in [sections] **subdivisions** 173.1102.1(2) [or], (3), or (4), RSMo, the CBHE may consider whether to terminate the institution’s approved status because of such change. Institutions shall notify the CBHE in writing within thirty (30) days after any such change occurs. Before the CBHE makes a decision regarding the status of an approved institution, the CBHE may, at its own discretion, hold one (1) or more public hearing(s) under the procedures set forth in subsection (6)(G) of this rule.

AUTHORITY: sections 173.236, 173.254, [173.260, and] 173.250, 173.262, and 173.1103, RSMo [2000] 2016, and sections 173.234[, 173.250,] and [173.1103] 173.260, RSMo Supp. [2013] 2018. Emergency rule filed Aug. 28, 2007, effective Sept. 7, 2007, expired March 4, 2008. Original rule filed Oct. 12, 2007, effective March 30, 2008. Amended: Filed Dec. 15, 2008, effective June 30, 2009. Amended: Filed June 15, 2016, effective Nov. 30, 2016. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.150 Access Missouri Financial Assistance Program. The commissioner is amending subsection (1)(E), section (3), and subsection (5)(H).

PURPOSE: These amendments update the definition of approved institution, and revise the basic eligibility and award policies to reflect statutory revisions.

(1) Definitions.

(E) Approved institution means any institution located in the state of Missouri that meets the requirements set forth in [sections] subdivisions 173.1102.1(2) [or], (3), or (4), RSMo, that has been approved under 6 CSR 10-2.140, and that has been approved to participate in the federal student financial assistance programs created in Title IV of the Higher Education Act of 1965, as amended.

(3) Basic Eligibility Policy. [To qualify for an Access Missouri award, an initial or a renewal recipient, at the time of his application and throughout the period during which the recipient receives the award, must meet the requirements set forth in section 173.1104, RSMo.]

(A) To qualify for an Access Missouri award, an initial or renewal recipient, at the time of application and throughout the period during which the recipient receives the award, must meet the requirements set forth in section 173.1104, RSMo.

(B) Initial or renewal recipients attending an approved virtual institution that fails to meet all of the requirements in subdivision 173.1102.1(4), RSMo are not eligible for assistance under sections 173.1104 and 173.1105, RSMo.

(5) Award Policy.

(H) No Access Missouri awards will be granted to a student after—

1. A baccalaureate degree has been granted to the student;
2. The [required] hours, or the equivalent to the hours, required for a baccalaureate degree have been completed by a student; or
3. The student has completed one hundred fifty (150) semester hours or the equivalent, or two hundred twenty-five (225) quarter hours or the equivalent of coursework.

AUTHORITY: section 173.1103, RSMo [Supp. 2013] 2016. Emergency rule filed Aug. 28, 2007, effective Sept. 7, 2007, expired March 4, 2008. Original rule filed Oct. 12, 2007, effective March 30, 2008. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.160 War Veteran’s Survivors Grant Program. The commissioner is amending subsection (1)(K).

PURPOSE: This amendment updates the definition of institution of postsecondary education or approved institution to reflect statutory revisions.

(1) Definitions.

(K) Institution of postsecondary education or approved institution shall be any Missouri public institution of postsecondary education

as defined in [section] subdivision 173.1102.1(3), RSMo.

AUTHORITY: section 173.234, RSMo Supp. [2013] 2018. Original rule filed Dec. 15, 2008, effective June 30, 2009. Amended: Filed June 15, 2016, effective Nov. 30, 2016. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.170 Kids’ Chance Scholarship Program. The commissioner is amending subsection (1)(J).

PURPOSE: This amendment updates the definition of institution of postsecondary education or approved institution to reflect statutory revisions.

(1) Definitions.

(J) Institution of postsecondary education or approved institution means any institution located in the state of Missouri that meets the requirements set forth in [sections] subdivisions 173.1102.1(2) or (3), RSMo, and that has been approved under 6 CSR 10-2.140.

AUTHORITY: section 173.254, RSMo [2000] 2016. Original rule filed Dec. 15, 2008, effective June 30, 2009. Amended: Filed June 15, 2016, effective Nov. 30, 2016. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.180 Minority and Underrepresented Environmental Literacy Program. The commissioner is amending subsection

(1)(D).

PURPOSE: This amendment updates the definition of approved institution to reflect statutory revisions.

(1) Definitions.

(D) Approved institution means any institution located in the state of Missouri that meets the requirements set forth in [section] **subdivisions** 173.1102.1(2) or (3), RSMo, that has been approved under 6 CSR 10-2.140.

AUTHORITY: section 173.240, RSMo [Supp. 2013] 2016. Original rule filed Feb. 17, 2011, effective Oct. 30, 2011. Amended: Filed June 15, 2016, effective Nov. 30, 2016. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Programs**

PROPOSED AMENDMENT

6 CSR 10-2.190 A+ Scholarship Program. The commissioner is amending subsection (3)(A).

PURPOSE: These amendments update the eligibility policy to reflect statutory revisions.

(3) Eligibility Policy.

(A) To qualify for A+ tuition reimbursement, an initial recipient must meet the following criteria:

1. Attend an A+ designated high school or high schools for at least three (3) years [immediately] prior to graduation **and graduate from an A+ designated high school**. Enrollment [at all A+ designated high schools attended] during the three (3) years [period immediately prior to the student's graduation] in which the student was in attendance at one (1) or more A+ designated high schools must total a minimum of eighty percent (80%) of the instructional days required by the high school from which the student graduates. Interruptions in enrollment cumulatively totaling no more than twenty percent (20%) of instructional days in the three (3) years [period] in which the student was in attendance at one (1) or more A+ designated high schools may occur consecutively or intermittently;

2. Make a good faith effort to first secure all available federal sources of funding that could be applied to the A+ Scholarship reimbursement;

3. Be a U.S. citizen or permanent resident;

4. Enter into a written agreement with the A+ designated high school prior to high school graduation;

5. Graduate from an A+ designated high school with an overall grade point average of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale;

6. Have at least a ninety-five percent (95%) attendance record overall for grades nine through twelve (9–12);

7. Have performed fifty (50) hours of unpaid tutoring or mentoring, of which up to twenty-five percent (25%) may include job shadowing, prior to high school graduation, except—

A. When there are circumstances beyond a student's control, the high school may extend the time period for completing this requirement on a case-by-case basis, not to exceed six (6) months beyond high school graduation;

8. Beginning with the high school senior class of 2015, meet one (1) of the following indicators of college preparedness, unless the A+ school district has met all of the Department of Elementary and Secondary Education's requirements for waiver of the Algebra I end-of-course exam for the recipient:

A. Have achieved a score of proficient or advanced on the official Algebra I end-of-course exam, or a higher level DESE approved end-of-course exam in the field of mathematics; or

B. Meet other criteria established by the CBHE. The CBHE will develop these criteria in consultation with participating A+ institutions and A+ designated high schools and may revise these criteria annually;

9. Have maintained a record of good citizenship and avoidance of the unlawful use of drugs and/or alcohol while in grades nine through twelve (9–12). Student participation in the Constitution Project of Missouri may be included in a student's record of good citizenship in accordance with the A+ designated high school's policy;

10. Be admitted as a regular student, enroll in an eligible program, and attend on a full-time basis a participating institution, except that students in the following circumstances may be enrolled less than full time:

A. The student is enrolled in all of the available hours applicable to the student's program of study in a given term;

B. The student is participating in a required internship; or

C. The student is enrolled in prerequisite courses that do not require full-time enrollment;

11. Not be enrolled or intend to use the award to enroll in a course of study leading to a degree in theology or divinity;

12. Not have a criminal record preventing receipt of federal Title IV student financial aid;

13. Meet the institution's definition of satisfactory academic progress as determined by the participating institution's policies as applied to other students at the participating institution receiving assistance under federal Title IV student financial aid programs, with the exception of cumulative grade point average (CGPA). The student must achieve a minimum CGPA of two (2.0) on a four-point (4.0) scale, or the equivalent on another scale, at the end of the fall semester for semester-based programs, or at the end of the initial payment period for non-semester based programs. The calculation of CGPA shall be based on the participating institution's policies as applied to other students in similar circumstances; and

14. For students that receive a positive net disbursement in a given term, maintain eligibility by meeting the following course completion standards. A course is considered complete if the student earns a standard grade for the course, including a failing grade but excluding a grade at withdrawal prior to completion:

A. Complete a minimum of twelve (12) semester credit hours in the fall or spring semester, six (6) credit hours in the summer term, or the equivalent, for students enrolled full-time in an eligible credit hour program. Students unable to satisfy the statutory minimum requirements for full-time status under the federal Title IV student financial aid programs as a result of a disability as defined by Title II of the Americans with Disabilities Act must complete a minimum of six (6) credit hours, or the equivalent, in any term;

B. Complete a minimum of ninety (90) percent of the clock hours required for the federal payment period, for students enrolled full-time in an eligible clock hour program; or

C. Complete all of the hours in which the student is enrolled in a given term, for students enrolled less than full-time in accordance

with subparagraphs (3)(A)10.A.–C. of this rule.

AUTHORITY: section 160.545, RSMo [2016] Supp. 2018 and Executive Order 10-16, dated January 29, 2010. Original rule filed Feb. 17, 2011, effective Oct. 30, 2011. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Jan. 29, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Higher Education, PO Box 1469, Jefferson City, MO 65102-1469 or kelli.reed@dhe.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures**

PROPOSED AMENDMENT

9 CSR 10-5.190 Background Screening [for Employees and Volunteers] Requirements. The department is amending the rule title, purpose, sections (1)-(10), and adding new section (11).

PURPOSE: This amendment clarifies the application of the rule and updates the rule to ensure it is consistent with section 630.170, RSMo, and makes necessary modifications to implement the changes impacting section 630.170, RSMo, that were effective January 1, 2017, and adds a definitions section.

PURPOSE: This rule establishes [standards for obtaining] background screening requirements for [certain] staff and certain volunteers, students, and members of a provider's household in any public or private facilities, community residential facilities, day programs, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the Department of Mental Health.

(1) Definitions. The following definitions apply to terms used in this rule:

(A) DMH—the Missouri Department of Mental Health;

(B) Members of the provider's household—persons age eighteen (18) or older whose permanent residence is the provider's household, or persons who visit the home on a frequent basis, or persons who spend the night in the home on a frequent basis such that direct, unsupervised contact with individuals served is likely to occur. For purposes of this rule, "frequent" means six (6) or more times over a rolling twelve- (12-) month period;

(C) Natural supports—supports provided by a person of the individual's choice that assist him or her in achieving his or her goals and facilitate his or her integration into the community. Natural supports are provided by persons who are not paid staff of an agency but may be initiated, planned, and facilitated in partnership with an agency;

(D) Staff (staff member, employee, personnel)—a paid employee or contractor providing services or supports on behalf of the agency on a full- or part-time basis who has contact with individuals served by the agency;

(E) Student (student worker, student intern, practicum student)—a person who is not on the agency or provider payroll, but

as part of his or her education or training has direct contact with individuals served;

(F) Visitor—a family member, friend, clergy, or other person invited by the individual served; and

(G) Volunteer—an unpaid person formally recognized by the agency to provide direct services or supports to individuals it serves.

[(1)](2) For the purposes of this rule, public or private facilities, community residential facilities, day programs, and specialized services (agencies) are divided into two (2) categories, as follows:

(A) Category I. [Those] Agencies that are certified or licensed exclusively by the Department of Mental Health (DMH) or, although not certified or licensed, are funded by [the department] DMH. Specifically this category includes:

1. [Agencies certified by DMH as community psychiatric rehabilitation programs (CPRP), comprehensive substance abuse and treatment and rehabilitation programs (CSTAR), residential and/or outpatient programs;] All agencies certified by DMH;

2. Agencies certified by DMH in the community-based waiver certification program;

3. Agencies certified by the Division of Alcohol and Drug Abuse;]

[4.]2. [Facilities] Agencies that have contractual arrangements with [the department] DMH but are exempt from [the department's] DMH's licensing and certification [rules] process due to accreditation or other reason; and

[5.]3. [Facilities and day programs which] Agencies that are licensed by [the department] DMH and do not have a license from another state agency; and

(B) Category II. [Those] Agencies that, in addition to a license or certificate from DMH, have a license or [certification] certificate from another state agency. Specifically, this category includes [facilities] agencies licensed by the Children's Division or the Department of Health and Senior Services; also included are intermediate care facilities/[mental retardation] for individuals with intellectual disabilities (ICF/[MR]IDD). [Facilities and a]Agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency [which] that licenses or certifies them and are not subject to sections [(2)](4) through (7) of this rule, however, all other sections of this rule apply. [However such agencies are subject to sections (7), (8), (9) and (10).]

[(2)](3) This rule applies to—

(A) Paid and unpaid [S]staff and volunteers of the agency, including student workers; and

[(B)] Volunteers who are recruited as part of an agency's formal volunteer program but does not apply to volunteers who assist individuals as a friend would by providing assistance with shopping, transportation, recreation, etc.; and]

[(C)] (B) For residential services, [M]members of the provider's [H]household, except children under the age of eighteen (18), who have contact with [residents or clients, except for minor children] individuals served.

[(3)](4) Each [residential facility, day program or specialized service] agency defined under Category I above shall make the following inquiries for all new [employees] staff, [and] volunteers, students, and members of the provider's household, where applicable:

(A) An inquiry with the Department of Health and Senior Services to determine whether the [new employee or volunteer] person having contact with [residents or clients] individuals served is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services;

(B) An inquiry with [the Department of Mental Health] DMH

to determine whether the *[new employee or volunteer]* person is on the DMH disqualification registry; and

(C) A criminal background check with the Missouri State Highway Patrol. The request for the background check *[shall]* does not require fingerprints and shall be in accordance with requirements of the Missouri State Highway Patrol under Chapter 43, RSMo. The *[facility, program or service]* agency may use a private investigatory agency to conduct this review.

[(4)](5) The criminal background check and inquiries required under section *[(3)] (4)* of this rule shall be initiated *[prior to the employee or volunteer having contact with residents, clients or patients.]* within two (2) working days of hire for staff who will have contact with individuals served. The criminal background check and inquiries required under section (4) of this rule shall be initiated prior to a volunteer, student, or members of the provider's household having contact with individuals served, where applicable. A criminal background check is not required for visitors, persons providing natural supports, students, or other persons who are job shadowing and do not have unsupervised contact with individuals served, or volunteers who do not have unsupervised contact with individuals served.

[(5)](6) Each *[residential facility, day program and specialized service]* agency included under Category I above shall require all new applicants for employment, *[or]* volunteer positions, students, and members of the provider's household, where applicable, *[involving]* who will have contact with *[residents or clients]* individuals served to—

(A) Sign a consent form authorizing a criminal record review with the highway patrol, either directly through the patrol or through a private investigatory agency;

(B) Disclose his/her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(C) Disclose if s/he is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services, or the DMH disqualification registry.

[(6)](7) Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the *[guidelines shall address—]* policies and procedures shall include:

(A) Procedures for obtaining the criminal record review;

(B) Procedures for confidentiality of records; and

(C) Guidelines for evaluating information received through the criminal record review which establish a clear boundary between *[those]* convictions *[which]* that by statute, *[must]* exclude an individual from service, and *[those]* convictions *[which]* that would not automatically exclude an individual.

[(7)](8) Offenses *[which]* under section 630.170, RSMo, that disqualify a person from service are as follows:

(A) A person *[shall be]* is disqualified from holding any position in the agency if that person—

1. Has been *[convicted of,]* found *[guilty]* guilty of *[,]* or *[pled]* pleaded guilty to or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence to any of the following *[crimes.]* offenses:

A. *[Physical abuse or Class I Neglect of a patient, resident or client]* Abuse or neglect of an individual served as defined in section 630.155, RSMo; *[or]*

B. Furnishing unfit food to *[patients, residents or clients]* an individual served as defined in section 630.160, RSMo.; *[or]*

C. Vulnerable person abuse, as described in sections 565.210 to 565.214, RSMo, as those sections existed prior to January 1, 2017.

2. Is listed on the DMH disqualification registry; or

3. Is listed on the employee disqualification list of the Department of Health and Senior Services or Department of Social Services.

(B) A person who has been *[convicted of,]* found guilty *[to,]* of or *[pled]* pleaded guilty to or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence, to any of the *[following crimes]* offenses specified in section 630.170.2, RSMo, *[shall be]* is disqualified from holding any position having contact with *[patients, residents or clients]* individuals served in the agency. For reference purposes, DMH maintains an updated list of disqualifying crimes under section 630.170, RSMo, at <http://dmh.mo.gov/about/employee-disqualification/>. *[The crimes listed below are not disqualifying unless they are felonies, except for failure to report abuse and neglect to the Department of Health and Senior Services, which is a Class A misdemeanor. The disqualifying crimes are:*

1. First or second degree murder;

2. Voluntary manslaughter (includes assistance in self-murder);

3. Involuntary manslaughter;

4. First or second degree assault;

5. Assault while on school property;

6. Unlawful endangerment of another;

7. First or second degree assault of a law enforcement officer;

8. Tampering with a judicial officer;

9. Kidnapping;

10. Felonious restraint;

11. False imprisonment;

12. Interference with custody;

13. Parental kidnapping;

14. Child abduction;

15. Elder abuse in the first degree or the second degree;

16. Harassment;

17. Stalking;

18. Forcible rape;

19. First or second degree statutory rape;

20. Sexual assault;

21. Forcible sodomy;

22. First or second degree statutory sodomy;

23. First or second degree child molestation;

24. Deviate sexual assault;

25. First degree sexual misconduct;

26. Sexual abuse;

27. Endangering the welfare of a child;

28. Abuse of a child;

29. Robbery in the first degree or second degree;

30. Arson in the first or second degree;

31. First or second degree pharmacy robbery;

32. Incest;

33. Causing catastrophe;

34. First degree burglary;

35. Felony count of invasion of privacy;

36. Failure to report abuse and neglect to the Department of Social Services as required under subsection 3 of section 198.070, RSMo; or

37. Any equivalent felony offense.]

1. A person who has been found guilty of or pleaded guilty to or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence, to a violation of section 577.010, RSMo or section 577.012, RSMo and who is alleged and found by the court to be an aggravated or chronic offender under section 577.023, RSMo, is disqualified from holding any position having contact with individuals served in the agency if the person is hired by the agency after January 1, 2014.

~~[(8)](9)~~ Any person disqualified from employment under this rule may request an exception from the DMH Exceptions Committee in accordance with 9 CSR 10-5.210 Exceptions Committee Procedures.

(A) The right to request an exception under this subsection ~~[shall]~~ does not apply to persons who are disqualified due to being listed on the employee disqualification registry of the Department of Social Services or Department of Health and Senior Services, nor does it apply under section 630.170.4, RSMo, to persons who are disqualified due to any ~~[of the following crimes:]~~ offenses pursuant to the provisions of Chapter 566 or sections 565.020, 565.021, 568.020, 568.060, 569.025, as that section existed prior to January 1, 2017, or 574.080, RSMo. For reference purposes, DMH maintains an updated list of disqualifying crimes not eligible for exception under section 630.170.4, RSMo, at <http://dmh.mo.gov/about/employee-disqualification/>.

1. First or second degree murder;
2. First or second degree statutory rape;
3. Sexual assault;
4. Forcible sodomy;
5. First or second degree statutory sodomy;
6. First or second degree child molestation;
7. Deviate sexual assault;
8. Sexual misconduct involving a child;
9. First degree sexual misconduct;
10. Sexual abuse;
11. Incest;
12. Causing catastrophe;
13. Abuse of a child;
14. First degree pharmacy robbery; or
15. Forcible rape.]

~~[(9)](10)~~ For the purposes of this rule, a verdict of not guilty by reason of insanity (NGRI) is not per se disqualifying. A suspended imposition of sentence (SIS) or suspended execution of sentence (SES) is disqualifying.

~~[(10)](11)~~ ~~[A provider shall not hire a]~~Any person who has committed a disqualifying crime as identified in section (8) of this rule, unless the person has received an exception from ~~[the department]~~ DMH, is not eligible for hire by an agency. However, the ~~[provider]~~ agency retains the discretionary authority to deny employment to persons who—

- (A) Have committed crimes not identified as disqualifying;
- (B) Have received an exception from the Exceptions Committee;

or

- (C) Have received a verdict of Not Guilty by Reason of Insanity.

AUTHORITY: sections 630.170, ~~[and 660.317, RSMo Supp. 2003 and]~~ 630.655 ~~[and]~~, 630.710, and 660.317, RSMo [2000] 2016. Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct. 29, 1998, effective May 30, 1999. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Amended: Filed March 29, 2004, effective Sept. 30, 2004. Amended: Filed Jan. 22, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Gail Vasterling, General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be delivered by regular mail, express or overnight mail, or by

courier within thirty (30) days after publication in the Missouri Register. If to be hand delivered, comments must be brought to the Department of Mental Health at 1706 E. Elm Street, Jefferson City, Missouri. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 30—Certification Standards Chapter 3—Substance Use Disorder Treatment Programs

PROPOSED AMENDMENT

9 CSR 30-3.230 Required Educational Assessment and Community Treatment Program (REACT). The department is amending the rule title, purpose, and sections (1)-(23), deleting old sections (7), (10), (18), (20), (21) and (26), and renumbering as needed.

PURPOSE: This amendment updates terminology and requirements for the REACT program.

PURPOSE: This rule identifies the Department of Mental Health (**department**) as being responsible for the certification of ~~[Required Educational Assessment Community Treatment]~~ REACT programs as mandated by state statute.

(1) Mission. ~~[The Missouri Required Educational Assessment and Community Treatment (REACT) program]~~ As specified in section 559.633, RSMo, REACT is a statewide system of comprehensive, accessible, community-based education and treatment programs designed for individuals who have been found guilty of, or pled guilty to a Chapter 195 felony drug offense. The mission of REACT is—

(A) To promote a drug- and crime-free lifestyle **for individuals served;**

(B) To provide education and/or treatment on the multi-faceted consequences of substance use **for individuals served;**

(C) ~~[To explore intervention and treatment options]~~ **To engage individuals appropriate for treatment towards personal change and recovery;** and

(2) Program Functions. REACT programs shall provide or arrange for ~~[assessment/ screening;/]~~, education~~;/]~~, and treatment **services for individuals referred to the program.**

(3) Performance Indicators. The following are intended as examples of indicators that can be used by the department and the organization providing REACT to demonstrate achievement of the program's mission and functions. Indicators can include, but are not limited to the following:

(A) Characteristics of persons participating in REACT such as type of offense, prior alcohol and drug offenses, **and** prior treatment history ~~[etc.];~~

(E) ~~[Consumer s/]~~**Satisfaction with services and feedback as reported by individuals served.**

(4) Types of Programs. The department ~~[shall]~~ recognizes and ~~[certify]~~ **certifies** the following types of ~~[Required Educational Assessment and Community Treatment]~~ REACT programs:

(A) REACT Screening Unit (RSU) ~~[which provides assessment screening including an]~~—**provide substance use screenings as part of the assessment process, including an individualized interview[,]** and recommendation and referral for further services for ~~[those coming]~~ **individuals** under the purview of section 559.630, RSMo; and

(B) REACT Education Program (REP) ~~[which]~~—**provide[s]** basic ~~[offender]~~ education over the course of ten (10) hours ~~[for lower risk first offenders to assist them]~~ **to assist individuals** in understanding the choices they made that led to their arrest and the

resulting consequences. All persons completing this course shall develop a personal **change plan** [*of action*] to assist them in preventing future offenses.

(5) Requirements for Program Certification. REACT programs shall comply with [*Certification of Alcohol and Drug Abuse Programs.*] **9 CSR 30-3.032.**

(A) [*Rules*] **Requirements** under 9 CSR 10-7.120 [*Physical Plant and Safety*] shall be applicable based on the type of services provided by the program and whether services are offered to individuals and groups at the program site. In addition—

1. The program must be located in an office, clinic, or other professional setting.

2. [*Assessment s*]Screenings must be located in a setting which provides space for private, one-on-one interviews and ensures confidentiality. With the department's written approval, screenings may be conducted at other locations on a limited basis, if confidentiality is assured and the individual agrees to a screening at the alternate site.

(B) The following [*rules and standards*] **regulations** shall be waived for REACT programs[,], unless the department determines [*that*] a specific requirement is applicable due to the unique circumstances and service delivery methods of a program:

1. 9 CSR 10-7.010 [*Treatment Principles and Outcomes*];
2. 9 CSR 10-7.030 [*Service Delivery Process and Documentation*];
3. 9 CSR 10-7.060 [*Behavior Management*];
4. 9 CSR 10-7.070 [*Medications*];
5. 9 CSR 10-7.080 [*Dietary Services*];
6. 9 CSR 30-3.100 [*Service Delivery Process and Documentation (ADA)*]; and
7. 9 CSR 30-3.110 [*Service Definitions and Staff Qualifications (ADA)*].

(6) Other Requirements. Agencies certified as a [*Required Educational Assessment and Community Treatment*] **REACT** program shall follow the [*standards found*] **regulations** in 9 CSR 30-3.[200]201 through 9 CSR 30-3.[210]208, unless otherwise specified in this rule. [*When reference is made to the Substance Abuse Traffic Offender Program (SATOP), it shall apply to the REACT program. When reference is made to SATOP Offender Management Unit (OMU), it shall apply to the RSU.*]

[(7) *Assessment Screening Required. The program shall have written policies and procedures that stipulate the methods of assessment screening and the conditions under which referrals are made for further services.*

(A) *The written policies and procedures must follow the screening guidelines outlined by the Department of Mental Health and the Department of Corrections.*

(B) *The program shall provide assessment screening and recommendation, where appropriate, to education or treatment.*

(C) *A program that provides assessment screening must also provide REP services.*

(D) *A person may request and attend a REP operated by a different agency due to reasonable circumstances, such as distance, work schedule or other time factors.*

(E) *A separate amount paid by the client shall cover the assessment screening in addition to the cost of the program.*

[(8) *Qualifying Staff. A REACT program shall not employ, or sub-contract with any individual, nor themselves be currently, or within a two (2)-year period, under the supervision or jurisdiction of federal, state, county or local corrections or court system.*] (7) **Staff Requirements.** REACT programs shall

not utilize any person under the supervision of any federal, state, county, and/or city correctional department to provide services to offenders.

[(9) *Assessment Screening Process.*] (8) **Screening Requirements.** All persons referred to REACT shall[, prior to attending the education or treatment program,] receive an individualized [*assessment*] screening prior to participating in services to determine the [*need for treatment or education.*] severity of his or her substance use disorder and the type of education and/or treatment needed. The program shall utilize a screening instrument approved by the Department of Corrections (DOC). [*The assessment screening process shall include:*]

(A) **Policies and procedures shall define the program's screening process, including referral criteria when the screening determines additional services are needed. The screening process shall include, but is not limited to:**

[(A) *Demographic data collection;*]

1. Collection of demographic information;

[(B)]2. [*A*] Use of the standardized screening instrument as required by DOC;

[(C)]3. A face-to-face [*individualized assessment screening*] interview with a **qualified addiction professional (QAP);**

[(D) *A legible hand printed or typewritten screening report;*]

4. A summary report of screening results;

[(E)] 5. Completion of the REACT Offender Assignment form and[, when requested,] a narrative report **provided** to the [*court*] **individual's probation/parole officer; and**

[(F) *Minimal case*] 6. Case coordination [*when appropriate, to coordinate*] as needed with the courts, probation and parole, and/or [*the Department of Corrections*] DOC to verify [*that*] education[, rehabilitation] and treatment recommendations have been completed.

[(G) *An assessment*] (B) **A written screening recommendation** shall be [*delivered in writing*] **provided** to the person served.

(C) **With proper authorization from the individual served, collaborative data may be obtained such as treatment history and relevant information from family members and other natural supports.**

(D) **Individuals may participate in a REP with an agency that did not conduct his/her screening due to reasonable circumstances such as distance, work schedule, or other time-related factors.**

[(10) *Components of Assessment Screening. The assessment screening by the certified program shall follow basic guidelines established by the Department of Corrections (DOC).*

(A) *All clients shall complete a valid and reliable screening instrument approved by the DOC to identify problem users. The screening instrument shall be standardized, consistent statewide, and interpreted by certified qualified substance abuse professionals who are properly supervised and trained in the use of the screening device.*

(B) *All clients shall have an individualized assessment screening interview conducted by a qualified substance abuse professional.*

1. *The individualized assessment screening shall determine the extent of the problem (or lack of a problem) and the level or type of treatment or education services needed.*

2. *The assessment screening shall include, but not be limited to, a screening instrument summary including a substance use history, prior treatment history, summary of findings and a recommendation for either education or treatment based on minimum referral guidelines.*

3. *Collaborative information, such as previous treatment information and contacting significant others, may be*

obtained with proper authorization when appropriate.]

[(11)](9) Quality Recommendations. The program must develop *[assessment]* screening recommendations that are—

(A) Impartial and solely based on the needs of the offender and the welfare of society; and

(B) Never used as a means of case finding for any particular treatment program or as a marketing tool for any REACT program.

[(12)](10) Referral Guidelines. The program must base *[the assessment screening]* its recommendation and referral plan for each person on the following *[referral]* guidelines:

(A) REP *[education]* unless *[a more intense program]* treatment for a substance use disorder is indicated by *[such]* factors such as other alcohol/drug-related arrests, screening instrument recommendations, prior alcohol/drug treatment, or other occupational, relationship, or medical problems; and

(B) *[Persons with a serious mental illness should have their mental health treatment needs addressed before completing any REACT recommendation. A mental health evaluation should be arranged for those clients identified with serious emotional or mental health problems during the REACT assessment screening process. In order to promptly arrange the mental health evaluation, the REACT agency conducting assessment screenings must maintain a formal affiliation agreement with either a certified community mental health center, state mental health facility, licensed psychiatrist, licensed psychologist, or licensed clinical social worker. The client may resume REACT participation upon stabilization of the problem as determined by the client's mental health provider.]* Individuals who have a serious emotional disorder or serious mental illness which may interfere with his/her participation in REACT shall be referred to a qualified mental health professional for an evaluation. Participation in REACT may be delayed until the individual's mental health needs are evaluated and necessary services are obtained.

1. RSUs shall maintain an affiliation agreement or memorandum of understanding with a certified community mental health center or a licensed mental health professional in order to promptly coordinate mental health services.

[(13)](11) *[Assessment]* Screening Cost. The cost of the *[assessment screening, along with the sixty-dollar (\$60) supplemental fee approved by the department,]* screening is determined by DOC and shall be paid by the *[client and should]* individual served. The screening fee shall not be excessively greater than relative costs indicate and *[shall]* include the costs for any case coordination functions necessary to—

(A) Monitor the *[client's]* individual's progress in *[either]* the education or *[a]* treatment program(s); and/or

(B) Coordinate with the courts or probation and parole.

[(14)](12) Notice of Program Assignment and Completion. The *[agency]* RSU that conducts the *[assessment]* screening *[for offenders]* shall provide each individual with a REACT Offender Assignment form after completion of the screening and a REACT Report of Offender Compliance form *[regarding]* indicating successful completion or unsuccessful completion of the education portion of the program.

(A) *[A referring probation and parole office shall be sent a REACT Offender Assignment form within one (1) week of the assessment screening and a REACT Report of Offender Compliance form within one (1) week of program completion.]* The RSU shall provide a copy of the REACT Offender Assignment form to the referring probation and parole office within one (1) week of completion of the screening. The RSU shall provide a copy of the REACT Report of Offender Compliance form to the referring probation and parole office

within one (1) week of each individual's successful program completion.

(B) The RSU shall send *[A]* a copy of the REACT Offender Assignment form and the REACT Report of Offender Compliance form *[shall be sent]* to *[the Department of Mental Health] DOC, Division of Offender Rehabilitation Services, 2715 Plaza Drive, Jefferson City, MO 65109.*

(C) *[A copy of the REACT Offender Assignment form and the]* The RSU shall provide a REACT Completion Certificate *[shall be given to the offender.]* to each individual served who successfully completes the program.

(13) Cost of the REP. The individual served shall pay for the cost of the REP. The cost is determined and approved by DOC and shall cover the operating expenses of the REP.

(14) Curriculum Guide. The REP shall be conducted in accordance with the curriculum established by DOC. A program must specifically request and obtain approval from DOC before deviating in any manner from the established curriculum.

(15) Treatment Programs Recognized for REACT. When the *[assessment]* screening indicates the individual's need for substance use disorder treatment, *[and rehabilitation,]* arrangements shall be made for the person to participate in such services. *[The department shall recognize the following types of treatment and rehabilitation programs for offenders:*

(A) Certified or Accredited Alcohol and/or Drug Treatment and Rehabilitation Programs.]

(A) The recognized providers of treatment services for individuals in the REACT program include department-certified, deemed certified, and nationally accredited substance use disorder treatment programs.

(16) Criteria for Successful Completion of Treatment. *[When the assessment screening process indicates and if the person is eligible, certified alcohol and drug treatment and rehabilitation programs may also provide services for offenders. In addition, such persons who complete certified treatment programs after being charged or adjudicated for their offense but prior to their RSP screening process, may substitute participation in these treatment programs under certain conditions.]* In order to be recognized by REACT as successfully completing treatment, the *[offender]* individual must have written verification from a department-certified, deemed certified, or nationally accredited substance use disorder treatment program that he or she has—

(A) Participated as scheduled in treatment services *[on a residential and/or outpatient basis]* for a period of at least ninety (90) *[calendar]* days;

(B) *[Substantially]* Successfully achieved his/her personal recovery goals; and

(C) Met any other program requirements for successful completion of treatment. *[Those persons presenting]* Individuals with a moderate to severe substance use disorder *[along with]* who have a history of multiple offenses must participate in *[one hundred sixty (160) hours]* a minimum of seventy-five (75) hours of treatment services during the treatment episode.

(D) Individuals who complete a department-certified, deemed certified, or nationally accredited substance use disorder treatment program after being charged or adjudicated for their offense, but prior to screening with a RSU, must receive approval from DOC to waive the REACT requirements as a result of his/her participation in such treatment.

(17) Cost of Treatment. The *[offender shall be]* individual served is responsible for all costs related to *[the]* completion of *[the]* substance use disorder treatment *[programs]* referenced in or required

by this rule. *[subsequent to the RSP assessment screening.]*

[(A)] All offenders shall be required to pay an initial base amount determined by the Department of Corrections before applying the Standard Means Test in accordance with 9 CSR 10-1.016.]

[(B)](A) *[The client shall be responsible for all c]Costs related to treatment [that are not reimbursed through a third-party payer, including the Department of Corrections, or the Standard Means Test process.] shall be based on the department's Standard Means Test sliding fee scale.*

[(C)](B) Programs may develop long-term payment plans to reasonably assist *[the client] individuals* in paying *[off]* any outstanding balances.

[(18)] Cost of the REP Education Program. The cost shall be determined and approved by the Department of Corrections and shall be paid by the offender and shall cover the cost of the REP education program.]

[(19)](18) Review and Approval of Costs. All REACT screening and education fees approved by *[the Department of Corrections] DOC* shall be periodically reviewed and adjusted, if necessary, based on the best interests of *[the offender] individuals served*, society, and the programs.

[(20)] Curriculum Guide. The REP program shall be conducted in accordance with the current edition of the OEP Missouri Curriculum Guide, REACT Addendum. A program must specifically request and obtain approval from the division before deviating in any manner from the content and methods in the applicable Missouri Curriculum Guide.

(21) REACT Training Program. A certified training program must, in addition to following standards found in 9 CSR 30-3.206, provide training on REACT standards. Certified staff shall complete a written examination and demonstrate the knowledge necessary to conduct the REACT programs.]

[(22)](19) Supplemental Fee. All REACT programs shall collect *[from all applicants entering the program]* a sixty[-]dollar (\$60) supplemental fee *[which shall be] from all individuals entering the program* in addition to any other costs that may be charged by the program. The supplemental fee shall be collected no more than one (1) time from any individual who has entered REACT, whether for *[assessment] screening* or for an educational program.

[(23)](20) Remittance of Supplemental Fees. On or before the fifteenth (15th) day of each month, REACT program directors shall remit the total of all supplemental fees collected during the prior calendar month, less two percent (2%) which, by law, may be retained by the program to offset collection and remittance costs.

(A) Remittance shall be mailed to: Correctional Substance Abuse Earnings Fund, Department of Corrections, 2729 Plaza Drive, Jefferson City, MO 65102.

(B) Transfer of supplemental fees from the program to the Correctional Substance Abuse Earnings Fund shall be in the form of a single check made payable to the Correctional Substance Abuse Earnings Fund.

(C) Program remittance checks shall be accompanied by a Supplemental Fee Remittance Form (to be provided by *[the Department of Corrections] DOC* at no cost to the program), which shall list name and Social Security *[n]* Number of persons paying each supplemental fee being remitted.

[(24)](21) Documentation of Supplemental Fee Transactions. Each REACT program shall maintain, at its principal administrative center, a single record of all supplemental fee transactions~~,~~ which is separate from all other program records. This separate record will

facilitate audits that may *[from time-to-time]* be conducted periodically by the *[Department of Mental Health, the Department of Corrections,] department, DOC*, or the state auditor's office. A separate program record of supplemental fee transactions shall include copies of monthly remittance forms and copies of checks forwarded to the Correctional Substance Abuse Earnings Fund.

[(25)](22) Acceptance of Supplemental Fees. *[The Department of Corrections] DOC* shall accept supplemental fee remittances only from certified REACT programs. Supplemental fee remittances, if received by *[the department] DOC* from any agency not certified, will be returned to that agency. If an agency's certification has been revoked, *[the department] DOC* will only accept supplemental fee remittances that were collected prior to the date the agency's certification was revoked. Remittances collected by the agency from *[clients] individuals* after the date of the revocation shall not be accepted by *[the department] DOC*. In such case, the supplemental fee must be returned to the *[client] individual* by the agency.

[(26)] Notice Posted. Programs shall post in places readily accessible to persons served, one (1) or more copies of a Student Notice Poster that shall be provided by the Department of Corrections at no cost to the program. Posters shall explain the statutory requirement for supplemental fees, disposition of supplemental fees, and the means by which programs collect and remit supplemental fees.]

[(27)](23) Compliance. Failure to adhere to the stipulations, conditions, and requirements set forth in this rule shall be considered cause for revocation of program certification.

AUTHORITY: sections 559.630, 559.633, 559.635, 630.050, 630.655 and 631.010, RSMo [2000] 2016. This rule originally filed as 9 CSR 30-3.800. Original rule filed Oct. 16, 1998, effective March 30, 1999. Moved to 9 CSR 30-3.230 and amended: Filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed Jan. 22, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Gail Vasterling, General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be delivered by regular mail, express or overnight mail, or by courier within thirty (30) days after publication in the Missouri Register. If to be hand-delivered, comments must be brought to the Department of Mental Health at 1706 E. Elm Street, Jefferson City, Missouri. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 45—Division of Developmental Disabilities Chapter 3—Services and Supports

PROPOSED AMENDMENT

9 CSR 45-3.010 *[Individualized Habilitation Plan Procedures] Individual Support Plans.* The division is amending the purpose, deleting sections (1)–(8), and amending new sections (1)–(13).

PURPOSE: This amendment changes the name of the division to comply with HB 555 and HB 648 passed by the 95th Missouri

General Assembly, which remove the term “mental retardation” from Missouri statutes, updates the rule with more current terminology in the field of developmental disabilities, and modifies the rule to be in compliance with the final federal rule for home and community-based services at 42 CFR Part 441.301.

PURPOSE: This rule prescribes procedures for development and implementation of individualized habilitation support plans for all individuals receiving services from the Division of [Mental Retardation and] Developmental Disabilities.

[(1) Terms defined in sections 630.005 and 633.005, RSMo are incorporated by reference for use in this rule. Unless the context clearly indicates otherwise, the following terms mean:

(A) **Assessment**—the process of gathering information about a client for use by the interdisciplinary team as a basis for the client’s individualized habilitation plan (IHP);

(B) **IHP amendment**—documentation of an interdisciplinary team’s change in an IHP at a time other than the time of annual review;

(C) **Interdisciplinary team**—the client, the client’s designated representative(s), the case manager or qualified mental retardation professional, and representatives of services required or desired by the client;

(D) **Qualified mental retardation professional (QMRP)**—a person with qualifications, training and experience as defined in 42 CFR 483.430; and

(E) **Reassessment**—data obtained from training programs, results of screenings and formal or informal assessments completed since the previous interdisciplinary team meeting.

(2) Every individual receiving services from the division shall have an IHP.

(A) The interdisciplinary team shall develop an IHP within thirty (30) days after the individual has been found eligible for services.

(B) The IHP shall be based upon a comprehensive, functional evaluation of individual needs. It shall define the individual’s current level of independence, identify the projected level of independence that the individual is expected to achieve and describe objectives to reach that level.

(C) The interdisciplinary team shall ensure completion of the following steps to efficiently plan, implement and monitor the IHP: assessment, team synthesis of assessment results, development of the IHP, development of training programs, implementation of the IHP, reassessments and annual review of the IHP by the entire team.

(D) The IHP shall contain at least the minimum information required to comply with the division’s approved IHP format.

(3) The interdisciplinary team shall review every IHP at least annually. IHP reassessments shall be completed within ninety (90) days before annual IHP reviews.

(4) The case manager or QMRP shall regularly monitor implementation of the IHP.

(A) The case manager or QMRP shall periodically observe each individual during implementation of the IHP.

(B) Each month the case manager or QMRP shall monitor every IHP which prescribes residential services or contains habilitative objectives to determine if services are being delivered as planned and, to assure that progress is being made.

(C) At least annually, the case manager or QMRP shall review each IHP which prescribes nonhabilitative services only.

(5) The case manager or QMRP may make changes in IHP objectives only with prior approval of the interdisciplinary team. Addition of training objectives and deletion of training and service objectives also require prior team approval. Addition of service objectives requires notification of the team. The case manager or QMRP may make changes in training plans or methods to insure progress toward achievement of objectives. Any amendment to the IHP shall be documented in the individual’s record.

(6) Division facilities shall prescribe services in an eligible individual’s IHP or IHP amendment before the services are authorized, delivered or purchased.

(7) The division facility may authorize emergency residential services, respite care or crisis intervention for up to thirty (30) days without prior approval of the interdisciplinary team.

(8) Each division facility shall develop a policy for implementing the IHP process.]

(1) Definitions.

(A) **Assessment**—the process of gathering information about an individual for use by the individual support plan team as a basis for the individual support plan. Assessment, as used in this rule, does not include determination of eligibility by the Department of Mental Health (DMH) as set forth in 9 CSR 45-2.010.

(B) **Division**—the Division of Developmental Disabilities.

(C) **Home and Community-based Waivers**—also referred to as home and community-based services (HCBS) in this rule; a set of long-term community-based supports and services authorized by the Centers for Medicare and Medicaid Services which are provided as an alternative to care in institutions such as nursing facilities and intermediate care facilities for individuals with intellectual disabilities.

(D) **Individual Support plan (ISP)**—a document developed by the individual, with assistance as needed from a representative, in collaboration with the individual support plan team. The ISP identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. The ISP encompasses a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments and/or other services to be provided for the individual become part of the ISP. ISP is also referred to as a person-centered service plan.

(E) **Individual support plan team**—the individual, the individual’s guardian or designated representative(s), and the support coordinator. Providers of waiver-funded services may also participate in the support plan team if such participation is requested by the individual, guardian, or designated representative.

(F) **MO HealthNet**—Missouri’s name for the state’s Medicaid program, authorized under Title XIX of the Social Security Act.

(G) **MO HealthNet participant**—an individual enrolled with MO HealthNet.

(H) **Natural supports**—any unpaid support including but not limited to immediate and extended family members, friends, co-workers, neighbors, and community services available to any individual regardless of disability.

(I) **Reassessment**—data obtained from training programs, results of screenings, and formal or informal assessments completed since the previous ISP team meeting.

(J) **Waiver participant**—individual receiving HCBS services.

(2) Every individual referred to a qualified provider of targeted case management who is a participant of MO HealthNet or who receives any services funded by the division, including services under a home and community-based waiver or services funded

only by general revenue, shall have an individual support plan (ISP).

(3) Person-centered planning shall be done in accordance with 42 CFR 441.301(c)(1). The individual shall lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual or guardian, if applicable. In addition to being led by the individual receiving services and supports, the person-centered planning process shall:

- (A) Include people chosen by the individual;
- (B) Provide necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions;
- (C) Be scheduled at times and locations of convenience to the individual;
- (D) Reflect cultural considerations of the individual and be conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient; and
- (E) Include strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants.

(4) In accordance with 42 CFR 441.301(c)(2), the ISP shall reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual and the scope of services and supports available through the division, the ISP shall:

- (A) Reflect the individual's strengths and preferences;
- (B) Reflect clinical and support needs as identified through an assessment of functional need;
- (C) Include individually identified goals and desired outcomes;
- (D) Reflect the services and supports (paid and unpaid) to assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports;
- (E) Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed;
- (F) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the ISP to be understandable, it is written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient;
- (G) Identify the individual and/or entity responsible for monitoring the ISP;
- (H) Be distributed to the individual and any other individuals or providers who sign the plan, as specified in section (5) of this rule;
- (I) Include those services, the purpose or control of which the individual elects to self-direct or designate an authorized representative to direct on his or her behalf;
- (J) Prevent the provision of unnecessary or inappropriate services and supports; and
- (K) Document that any restrictions of individual rights is supported by a specific assessed need and justified in the ISP in accordance with 42 CFR 441.301(c)(2).

(5) The ISP shall be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation in accordance with 42 CFR 441.301(c)(2)(ix), with the exception of providers of assistive technology, dental, durable medical equipment, environmental accessibility adaptations, specialized medical equipment

and supplies, and transportation.

(A) Signatures may be added to the plan electronically using a format accepted by MO HealthNet.

(B) If it is not possible to obtain a written signature from the individual or guardian, the Division Regional Office Director or his or her designee may approve an exception if the following steps are completed:

- 1. At least two (2) attempts to obtain the signature are documented. One (1) attempt may be either by phone or E-mail, and the other attempt documented through certified mail with delivery validated by a signed return receipt;
- 2. A justification is attached to the ISP describing these and any other efforts made to obtain the signature; and
- 3. The regional director may require additional efforts by the support coordinator to obtain the signature from the individual or guardian.

(C) If the exception to the signature is approved by the regional director or designee, a copy of the approved exception request is sent to everyone to whom a copy of the ISP is distributed.

(6) **ISP Review:** The ISP shall be reviewed and revised upon reassessment of functional need in accordance with 9 CSR 45-2.010 at least every twelve (12) months, when the individual's circumstances or needs change significantly, or at the request of the individual. The reassessment of functional need shall be completed within ninety (90) days before the ISP review.

(7) ISP updates require prior written approval from the ISP team before implementation of the change and signatures in accordance with section (5) of this rule. ISP updates requiring prior written approval include:

- (A) Addition of a new service;
- (B) Increase or decrease in amount and/or frequency of a service already in place;
- (C) Termination of a service;
- (D) Limitation of rights as set forth in 9 CSR 45-3.030; and
- (E) Change in ISP outcomes.

(8) Changes in legal information including, but not limited to, arrests, incarceration, court orders, and legal actions other than changes in guardianship shall be documented in the ISP but shall not require prior written approval or signatures if the change does not result in a change in services.

(9) Denial, reduction, or termination of a service is subject to appeal as set forth in 9 CSR 45-2.020.

(10) Changes in training plans or methods to ensure progress toward achievement of outcomes already documented in the ISP may be made by the provider of the related service as needed without approval of the ISP team.

(11) The division may authorize emergency residential services, respite care, or crisis intervention for up to thirty (30) days without prior approval of the ISP team.

(12) The division shall provide guidance and technical assistance to providers of support coordination in the person-centered planning process and the development and oversight of the ISP.

(13) Individuals with developmental disabilities, as defined in 9 CSR 45-2.010, but who are not MO HealthNet participants and who do not receive services from the division funded by general revenue shall be provided with individualized information based on, but not limited to, their age, diagnosis, and geographic residence.

AUTHORITY: section 630.655, RSMo [(1994)] 2016. The rule was

previously filed as 9 CSR 10-5.150. Original rule filed Nov. 30, 1990, effective April 29, 1991. Amended: Filed May 25, 1995, effective Dec. 30, 1995. Amended: Filed Jan. 22, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Gail Vasterling, General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be delivered by regular mail, express or overnight mail, or by courier within thirty (30) days after publication in the *Missouri Register*. If to be hand delivered, comments must be brought to the Department of Mental Health at 1706 E. Elm Street, Jefferson City, Missouri. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.240 Advertising of Intoxicating Liquor [and Nonintoxicating Beer]. The division is amending sections (1)–(18).

PURPOSE: This amendment reflects the elimination of language that the Division of Alcohol and Tobacco Control has been enjoined from enforcing, which now allows manufacturers of intoxicating liquor to offer consumer rebate coupons and advertise of sales price below cost. This amendment further updates the regulation to reflect current trends in advertising, such as advertisements via the Internet, email, and text messages. Language regarding advertising that is duplicative of statute is eliminated, along with language that has become obsolete following the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. Finally, this amendment revises the regulation to enhance clarity and remove unnecessary regulatory restrictions.

(1) No person engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor [or nonintoxicating beer], directly or indirectly, [shall] may publish or disseminate or cause to be published or disseminated [in any newspaper, magazine or similar publication] any advertisement of intoxicating liquor [or nonintoxicating beer], unless the advertisement is in conformity with the regulations.

(A) These provisions [shall] do not apply to the publisher of any newspaper, magazine, or similar publication, unless the publisher is engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor [or nonintoxicating beer], directly or indirectly.

(2) The term advertisement includes any [advertisement] dissemination of information by print, audio or video means, whether through the media or otherwise [of], including but not limited to, radio, television, motion pictures, newspapers, Internet, email, texting, website, mobile applications, magazines or similar publications [or any sign or outdoor billboard] or other printed or graphic matter, or any electronic means, except that the term shall not include:

(A) Any label affixed to any container of intoxicating liquor [or nonintoxicating beer] or any individual covering, carton, or other wrapper of a container; and

(B) Any editorial [or other reading matter] in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(3) Mandatory [S/statements/.] include:

(A) [The advertiser shall state t/The name and address of the producer, manufacturer, bottler, brewer, importer, wholesaler, or retailer responsible for its publication/.];

(B) [The advertisement shall contain a/A conspicuous statement of the class and type or other designation of the product, corresponding with the complete designation which appears on the brand label of the product/.];

(C) The alcoholic content [shall be] stated in the manner and form in which it appears on the labels of intoxicating liquor [or nonintoxicating beer] advertised/.];

(D) In the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production of distilled spirits, [there shall be stated in the advertisement] the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, [there shall be stated in the advertisement] the name of the commodity from which the neutral spirits or gin have been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised/.];

(E) Where an advertisement does not mention a specific product but merely refers to a class of intoxicating liquor [or nonintoxicating beer] (such as whiskey or beer) and the advertiser markets more than one (1) brand of intoxicating liquor [or nonintoxicating beer] of that class, or where the advertisement refers to several classes of intoxicating liquor [or nonintoxicating beer] (such as whiskey, brandy, rum, gin, liqueur, wine, beer, etc.) marketed under a single brand, the only mandatory information prescribed by section (1) applicable to advertisement would be the name and address of the responsible advertiser/.]; and

(F) Advertisements by retail establishments which merely refer to the availability of intoxicating liquor [or nonintoxicating beer] in these establishments, but which otherwise make no reference to a specific brand of intoxicating liquor [or nonintoxicating beer shall be] are subject only to the prohibited statements provisions of section (5) of this rule.

(4) Statements required by these regulations to be stated in any written, printed, or graphic advertisement [shall] should appear in lettering or type of a size, kind, and color sufficient to render them both conspicuous and readily legible. In particular—

(B) [Required/ Mandated] information [shall] should be so stated as to appear to be a part of the advertisement and [shall] not be separated in any manner from the remainder of the advertisement;

(C) Where an advertisement relates to more than one (1) product, the [required] necessary information [shall] is to appear in a manner as to clearly indicate the particular products to which it is applicable; and

(D) [Required] No mandated information [shall not] may be buried or concealed in unrequired descriptive matter or decorative designs.

(5) No advertisements of intoxicating liquor [or nonintoxicating beer shall] may contain:

(E) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which is likely to mislead the consumer. Nothing in this subsection [shall prohibit] prevents the use of any enforceable guarantee in substantially the following form: “We will refund the purchase price to the purchaser if s/he is in any

manner dissatisfied with the contents of this package”;

(F) Any statement that the product is produced, blended, brewed, made, bottled, packaged, sold under or in accordance with any authorization, law or regulation of any municipality, county, state, federal or foreign government unless the statement is *[required]* **necessary** or specifically authorized by the laws or regulations of the government; and, if a municipality, county, state, or federal permit number is stated, the permit number shall not be accompanied by an additional statement relating to it;

(G) Any statement offering any coupon, premium, prize, rebate, sales price below cost or discount as an inducement to purchase intoxicating liquor *[or nonintoxicating beer]* except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating liquor may offer and advertise coupons for non-alcoholic merchandise in accordance with section 311.355, RSMo;

(H) Any statement offering free delivery or credit terms to consumers, as an inducement to purchase intoxicating liquor *[or nonintoxicating beer]*; and

(6) *[The]* **No** advertisement *[shall not]* **may** contain any statement concerning a brand or lot of intoxicating liquor *[or nonintoxicating beer]* that is inconsistent with any statement on the labeling.

(7) *[The]* **No** advertisement *[ing shall not]* **may** contain any statement, design, or device representing that the use of any intoxicating liquor *[or nonintoxicating beer]* has curative or therapeutic effects or tending to create an impression that it *[does have]* **has** curative or therapeutic effects.

(8) No advertisement *[shall]* **may** contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States or of the American flag, any state flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor *[shall]* **may** any advertisement containing any statement device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by or produced for or under the supervision of or in accordance with the specifications of the government, organization, family or individual with whom the flag, seal, coat of arms, crest, or insignia is associated.

(9) *[An]* **No** advertisement for distilled spirits *[shall not]* **may** contain:

(B) Any statement, design, or device, directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction with the advertisement and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, which does not bear a statement of age on the label or an advertisement for rum which is four (4) years or more old, may contain general inconspicuous age, maturity or other similar representations, for example aged in wood, mellowed in fine oak cask; and

(C) A representation that intoxicating liquor *[or nonintoxicating beer]* was manufactured in or imported from a place or country other than of its actual origin or was produced or processed by one who was not in fact the actual producer or processor.

(10) *[An a]* **No** Advertisement for wine *[shall not]* **may** contain[:]—

(A) Any statement of bonded winecellar or bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. Statement of bonded

winecellar and bonded winery numbers may be made in the following form: “Bonded Winecellar No. . . .,” “Bonded Winery No.,” “B.W.C. No.,” or “B.W. No.,” No additional reference to numbers shall be made, *[n]*or *[shall]* any use be made of a statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards[.]; **and**

(B) Any statement, design, device, or representation which relates to alcoholic content or which tends to create the impression that a wine is unfortified or has been fortified or has intoxicating qualities or contains distilled spirits except for a reference to distilled spirits in a statement of composition where the statement is required by these regulations to appear as a part of the designation of the product.

(11) No statement of age or representation relative to age (including words or devices in any brand name or mark) *[shall]* **may** be made, except that—

(12) The statement of any bottling date *[shall]* **is not** *[be]* deemed to be a representation relative to age, if the statement appears without undue emphasis in the following form: “bottled in,” (inserting the year in which the wine was bottled).

(13) No date, except as provided in this section and section (12) of this rule with respect to statement of vintage year and bottling date, *[shall]* **may** be stated unless, in addition to the year and date, and **in** direct conjunction with the year and date, in the same size and kind of printing *[there shall be stated]* an explanation of the significance of the date **is stated**. If any date refers to the date of establishment of any business, this date *[shall]* **is to** be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(14) *[The]* **No** advertisement *[shall not]* **may** represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin or produced or processed by one who was not in fact the actual producer or processor.

(15) No retail licensee *[shall]* **may** advertise for sale any brand of intoxicating liquor *[or nonintoxicating beer]* unless s/he has the particular brand and size of container or package of intoxicating liquor *[or nonintoxicating beer]* in his/her licensed premises for sale.

(16) No wholesale licensee *[shall]* **may** allow any sign owned by him/her or advertising his/her product to be placed or allowed to remain on or upon any building unless the building has an occupant holding a license issued by the supervisor.

(17) No wholesale or retail licensee *[shall]* **may** use any loudspeaker or public address system to advertise intoxicating liquor *[or nonintoxicating beer]*.

(18) No producer, manufacturer, brewer, bottler, importer, or wholesaler of intoxicating liquor *[or nonintoxicating beer]* **shall]** **may** advertise the retail price or suggested retail price of intoxicating liquor *[or nonintoxicating beer]*.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Dec. 12, 1986, effective Feb. 28, 1987. Amended: Filed Jan. 22, 1996, effective July 30, 1996. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998. Amended: Filed Jan. 17, 2019.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at 573-526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Driver License Bureau Rules**

PROPOSED RULE

12 CSR 10-24.405 Proof of State of Domicile Requirements for Commercial Driver License Applicants

PURPOSE: This rule clarifies what documents meet the requirements contained in 49 CFR section 383.71(a)(2)(vi) and section 383.71(b)(10), and will thus be accepted by the Department of Revenue for purposes of issuing a commercial driver's instruction permit or commercial driver's license.

(1) As used herein and consistent with 49 CFR section 383.5, the following words and phrases mean:

(A) "State of domicile," that state where a person has their true, fixed, and permanent home and principal residence and to which they have the intention of returning whenever they are absent;

(B) "Commercial driver's instruction permit," a commercial learner's permit issued to an individual by a state or other jurisdiction of domicile in accordance with the standards contained in 49 CFR 383, which, when carried with a valid driver's license issued by the same state or jurisdiction, authorizes the individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a commercial learner's permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid; and

(C) "Commercial driver's license (CDL)," a license issued by the state of Missouri or another state of domicile in accordance with 49 CFR 383 which authorizes the individual to operate a class of commercial motor vehicle.

(2) For purposes of providing proof of state of domicile in accordance with 49 CFR section 383.71(a)(2)(vi), 49 CFR section 383.71(b)(10), and 49 CFR section 383.212, all applicants for a commercial driver's instruction permit under section 302.720, RSMo, or a commercial driver's license under section 302.735, RSMo, shall present two (2) acceptable documents from two (2) different issuing sources. Documents acceptable to verify state of domicile must contain the applicant's name and address and must be the most recently issued credential. Acceptable documents for proof of state of domicile include the following:

- (A) Utility Bill;
- (B) Paycheck or Government Check;
- (C) Mortgage, Housing, or Leasing Document;
- (D) Tax Records;
- (E) Voter Registration Card;
- (F) Property Tax Receipt;
- (G) Bank Statement;
- (H) School or College Records;
- (I) Vehicle Insurance Policy;
- (J) Medical Record or Hospital Bill; and

(K) Correspondence from Recognized Organizations, including other government-issued documents.

(3) Applicants requesting a separate mailing address for a commercial driver's instruction permit or commercial driver's license must present one (1) additional document as proof of their mailing address.

AUTHORITY: section 302.765, RSMo 2016. Original rule filed Jan. 30, 2019.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 10—Division of Finance and Administrative
Services
Chapter 3—Tax Credits**

PROPOSED RULE

13 CSR 10-3.060 Diaper Bank Tax Credit

PURPOSE: This rule describes the procedures for the implementation of section 135.621, RSMo, Contributions to Diaper Bank Tax Credit.

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.

(1) A diaper bank may apply for tax credits on behalf of taxpayers who make contributions to the agency. The amount of tax credit issued may be equivalent to up to fifty percent (50%) of the contribution to the agency. Initial credits issued cannot be less than fifty dollars (\$50). The amount of credit claimed by a taxpayer cannot exceed the amount of the taxpayer's state tax liability for the taxable year the credit is claimed and cannot exceed fifty thousand dollars (\$50,000) per taxable year. The total amount of tax credits issued under this rule cannot exceed the amount stated in section 135.621, RSMo. in a fiscal year.

(2) Definitions of terms.

(A) "Director," means the director of the Department of Social Services (DSS) or designee.

(B) "Qualified diaper bank," for the purpose of the Diaper Bank Tax Credit, means a diaper bank that meets the definition stated in section 135.621, RSMo.

(3) Beginning July 1, 2019, the director will annually develop and maintain a list of centers which are qualified for the Diaper Bank Tax Credit. A copy of the diaper bank listing will be posted annually after July 1, 2019, on the Department of Social Services website: www.dss.mo.gov.

(4) Annually, the director of the Department of Social Services will determine which facilities in Missouri may be classified as diaper banks for purposes of the Diaper Bank Tax Credit. To be a qualified diaper bank for the purpose of the Diaper Bank Tax Credit, a facility must meet the definition set forth in section 135.621 RSMo.

(A) In order for the director to make such determinations, diaper banks seeking qualification should submit the following information:

1. A complete and accurate application. The process to be followed is found on the Diaper Bank Tax Credit Application for Agency Eligibility Verification form which is incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Finance and Administrative Services, 221 West High Street, Jefferson City, MO 65101, and is available on the DSS website at www.dss.mo.gov, or by writing to the address below. This does not incorporate any subsequent amendments or additions.

Department of Social Services
Attn: Diaper Bank Tax Credit Program
PO Box 853
Jefferson City, MO 65102-0853;

2. A copy of the articles of incorporation;
3. Verification of Internal Revenue Service (IRS) tax exempt status; and
4. A brief program description including the primary business function as it relates to the mission of helping persons in need of diapers and hygiene products for infants, children, and incontinent adults, the number served annually, and a list of the schools, health care facilities, governmental agencies, or other non-profit entities which received diapers and hygiene products from the diaper bank in the last calendar year.

(B) All information should be submitted to the address referenced in paragraph (4)(A)1. of this subsection.

(5) All diaper banks must establish their eligibility for the Diaper Bank Tax Credit Program on a prospective basis by submitting an application for eligibility along with the required documentation as stated in subsection (4) (A) of this rule no later than June 1.

(6) By August 1, the director will make a determination of qualification and notify the diaper bank of the determination in writing.

(7) Qualified diaper banks must contact the Department of Social Services within thirty (30) days of any changes in business functions that could impact their qualifying status. The department will review the agency's eligibility for participation in this tax credit program and notify the agency of the determination in writing.

(8) A qualified diaper bank shall report the receipt of any contribution it believes qualifies for the tax credit on a form provided by the Department of Social Services. This form is known as the Diaper Bank Tax Credit Application for Claiming Tax Credits.

(A) Diaper banks may request the tax credit application at the Department of Social Services website: www.dss.mo.gov or by writing to the address referenced in paragraph (4)(A)1. of this rule.

(B) Diaper banks are permitted to decline a contribution from a taxpayer.

(C) The tax credit application shall be submitted to the Department of Social Services, by the diaper bank, within one (1) calendar year of the receipt of the contribution. Tax credit applications submitted more than one (1) year following the date of the contribution will be void and the right to the tax credit will be forfeited.

(D) Verifying documentation must be attached to the tax credit application when submitted by the diaper bank. The type of documentation necessary will depend on the type of donation. Necessary documentation includes the following:

1. Cash—legible receipt from the diaper bank, which indicates the name and address of the diaper bank; name, address, and telephone number of the contributor; amount of the cash donation and

the date the contribution was received; and a signature of a representative of the diaper bank receiving the contribution;

2. Check—photocopy of the canceled check, front and back—if not possible then copy of the original check and a receipt from the diaper bank including the same information needed for a cash donation as described in paragraph (8)(D)1.;

3. Credit card—legible transaction receipt with the name and address of the diaper bank; name, address, and telephone number of the contributor; amount and date the contribution was received; and a signature of a representative of the diaper bank receiving the contribution. Receipts should have the credit card account number redacted;

4. Money order or cashier's check—legible copy of the original document with the name and address of the diaper bank; name, address, and telephone number of the contributor; amount of the cash donation, and the date the contribution was received; and a signature of a representative of the diaper bank receiving the contribution;

5. Stocks and bonds—the amount of the contribution is the fair market value of the item as of the date of the donation. Information needed when submitting applications for tax credit shall include the source, date, and number of shares of stock which was donated, and confirmation documentation of the transfer from the contributor's account to the diaper bank;

6. Real estate—the fair market value of the real estate within three (3) months prior to the date of the donation. The fair market value is the lower of at least two (2) qualified independent appraisals for commercial, vacant, or residential property that has been determined to have a value of over fifty thousand dollars (\$50,000). Commercial, vacant, or residential property having a value of fifty thousand dollars (\$50,000) or less will require only one (1) appraisal. The appraisals will be conducted by two (2) different, licensed real estate appraisers; and

7. Contributions that include a benefit to the donor—in addition to the documentation necessary in paragraphs (8)(D)1.-6., the diaper bank shall provide written documentation of the type of function or event from which the benefit was received, description of the benefit received (if an auction item, identify the item received), gross amount of the contribution, fair market value of the benefit, and how the fair market value of the benefit was determined.

(9) The director will verify with the Department of Revenue any outstanding balances due from the taxpayer's prior year's state tax liability. If a balance due is outstanding, the amount of tax credit issued under this rule will be reduced by that amount. The director is subject to the confidentiality and penalty provisions of section 32.057, RSMo, relating to the disclosure of tax information.

(10) Within forty-five (45) days of receipt of the tax credit application, the director will provide written notification of its decision to approve or deny the application to the following parties:

(A) Taxpayer (notification to the taxpayer will include the amount of tax credit that was approved); and

(B) Missouri Department of Revenue.

(11) Each eligible diaper bank determination shall be final after receipt of written notice from the DSS, unless the diaper bank files a protest with the director setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the DSS to the diaper bank. If a timely protest is filed, the director shall reconsider the determination the diaper bank has so requested. The director shall issue a final decision within forty-five (45) days of protest from the diaper bank.

(12) The director shall equally apportion the total available tax credits among all qualified diaper banks, and the apportionment will be effective the first day of each state fiscal year (FY).

(A) The director shall inform each qualified diaper bank of its share of the apportioned credits no later than thirty (30) days following July 1 of each fiscal year.

(B) The director will, no less than quarterly, review the cumulative amount of apportioned tax credits being utilized by each qualified diaper bank. Upon request by the director, diaper banks will provide in writing the amount their agency plans to utilize in tax credits for the fiscal year along with supporting documentation. Diaper banks seeking additional apportionment shall submit requests and supporting documentation to the director in writing. If a diaper bank fails to use all or a portion of their available tax credits throughout the fiscal year, the director may reapportion any unused tax credits to maximize the amount of tax credits available to taxpayers.

(C) Within thirty (30) days of any reapportionment, the director shall notify those diaper banks in writing that would be affected by the reapportioned tax credit. The director will consider comments the diaper banks submit concerning planned future uses of the agency's tax credit allocation prior to the end of the thirty (30) day period. The director's decision regarding reapportionment shall be final.

AUTHORITY: section 660.017, RSMo 2016, and section 135.621, RSMo Supp. 2018. Original rule filed Feb. 1, 2019.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 10—Division of Finance and Administrative
Services
Chapter 3—Tax Credits**

PROPOSED RULE

13 CSR 10-3.070 Unmet Health, Hunger, and Hygiene Needs of Children In School Tax Credit

PURPOSE: This rule describes procedures for the implementation of section 135.1125, RSMo, to provide a tax credit for funding for unmet health, hunger, and hygiene needs of children in school.

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.

(1) An eligible provider may apply for tax credits on behalf of taxpayers who make donations to the provider as provided herein. Those who donate to qualifying providers are eligible to receive a tax credit up to fifty percent (50%) of their donation. Qualified health, hunger, and hygiene providers that accept these donations are required to remit payments equivalent to the amount of the tax credit to the state

of Missouri.

(2) Definitions of terms.

(A) "Director," means the director of the Department of Social Services (DSS) or designee.

(B) "Eligible donation," means a donation that meets the definition stated in section 135.1125, RSMo.

(C) "Eligible provider," means a provider that meets the definition stated in section 135.1125, RSMo.

(D) "Taxpayer," means a person or entity that meets the definition stated in section 135.1125, RSMo.

(3) An application for the Unmet Health, Hunger, and Hygiene Needs of Children In School Tax Credit must be submitted by an eligible provider on behalf of a taxpayer. Acceptable applications for the tax credit require—

(A) A complete and accurate Unmet Health, Hunger, and Hygiene Needs of Children In School Tax Credit Application. Applications which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Finance and Administrative Services, 221 West High Street, Jefferson City, MO 65101, at its website: www.dss.mo.gov/dfas/taxcredit/index.htm, or by writing to the address below. This does not incorporate any subsequent amendments or additions.

Department of Social Services
Attn: Unmet Health, Hunger, and Hygiene Needs of
Children In School Tax Credit
PO Box 853
Jefferson City, MO 65102-0853;

(B) A statement attesting to the receipt of an eligible donation, which includes the following information:

1. Taxpayer type and supporting documentation;
2. Taxpayer's name;
3. Taxpayer's identification number;
4. Amount of the eligible donation and verifying documentation, when applicable;
5. Amount of anticipated tax credit;
6. Date the donation was received by the eligible provider; and
7. The signature of the executive director of the eligible provider;

(C) Payment from the eligible provider in an amount equal to fifty percent (50%) of the eligible donation for which the tax credit is being submitted. For example, if the donation was for one hundred dollars (\$100) the payment is fifty dollars (\$50). Checks from the eligible provider must be made payable to the Department of Social Services;

(D) Verifying documentation must be attached to the tax credit application. The type of documentation required will depend on the type of donation. Verifying documentation includes the following:

1. Cash—legible receipt from the health, hunger, and hygiene provider which indicates the name and address of the organization; name, address, and telephone number of the contributor; and amount of the cash donation and date the contribution was received; signature of a representative of the health, hunger, and hygiene provider receiving the contribution;
2. Check—photocopy of the canceled check, front and back—if not possible then copy of the original check and a receipt from the health, hunger, and hygiene provider including the same information required of a cash donation as described in paragraph (2)(D)1. of this rule;
3. Credit card—legible transaction receipt with the name and address of the health, hunger, and hygiene provider; contributor's name, address, and telephone number; amount and date the contribution was received; and signature of a representative of the health, hunger, and hygiene provider receiving the contribution. Receipts should have the credit card account number redacted;
4. Money order or cashier's check—legible copy of the original

document with the name and address of the health, hunger, and hygiene care provider; contributor's name, address, and telephone number; amount and date the contribution was received; and signature of a representative of the health, hunger, and hygiene provider receiving the contribution;

5. Stocks and bonds—the amount of the contribution is the fair market value of the item as of the date of the donation. Information required when submitting applications for tax credit shall include the source, date, and the number of shares of the stock which was donated;

6. Real estate—the fair market value of the real estate within three (3) months prior to the date of the donation. The fair market value is the lower of at least two (2) qualified independent appraisals for commercial, vacant, or residential property that has been determined to have a value of over fifty thousand dollars (\$50,000). Commercial, vacant, or residential property having a value of fifty thousand dollars (\$50,000) or less will require only one (1) appraisal. The appraisals will be conducted by two (2) different licensed real estate appraisers; and

7. Contributions that include a benefit to the donor—in addition to the documentation needed in paragraphs (3)(D)1.-6., the eligible provider must provide written documentation of the type of function or event from which the benefit was received, description of the benefit received (if an auction item, identify the item received), gross amount of the contribution, fair market value of the benefit, and how the fair market value of the benefit was determined;

(E) A statement describing how the eligible provider provides funding for unmet health, hunger, and hygiene needs of children in school; and

(F) Verification of the eligible provider's federal tax-exempt status.

(4) All applications and payments must be submitted within twelve (12) months from the date the eligible donation was received from the taxpayer. The date of submission will be determined by the date that the application and payment are postmarked. Tax credit applications submitted more than one (1) year following the date of the contribution will be void, and the right to the tax credit will be forfeited.

(5) Information required in section (3) of this rule must be submitted to the address referenced in subsection (3)(A).

(6) Upon receipt of the information required in subsection (3)(B), the Department of Social Services will verify with the Department of Revenue whether or not the taxpayer has any outstanding balances due from the taxpayer's prior year's state tax liability. If a balance due is outstanding, the amount of tax credit issued under this rule will be reduced by that amount. The director of the Department of Social Services is subject to the confidentiality and penalty provisions of section 32.057, RSMo, relating to the disclosure of tax information.

(7) Upon verification of the information required in section (3) of this rule, the DSS will issue a certificate to the taxpayer indicating the amount of tax credit that is approved for the application.

(A) Certificates will be mailed to the taxpayer at the address provided on the application submitted by the qualified health, hunger, and hygiene provider.

(B) The DSS will not provide information regarding taxpayers' state tax liability to unauthorized individuals.

(C) In the event a taxpayer's tax credit is reduced as a result of delinquent taxes, a refund will not be issued to the health, hunger, and hygiene provider.

(8) Approved tax credit certificates will be issued within forty-five (45) days of receipt of the completed application submitted by the qualified health, hunger, and hygiene provider.

(9) Each eligible unmet health, hunger, and hygiene needs provider

determination shall be final after receipt of written notice from the DSS, unless the unmet health, hunger, and hygiene needs provider files a protest with the director setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the DSS to the unmet health, hunger, and hygiene needs provider. If a timely protest is filed, the director shall reconsider the determination the unmet health, hunger, and hygiene needs provider has so requested. The director shall issue a final decision within forty-five (45) days of protest from the unmet health, hunger, and hygiene needs provider.

(10) The owner of a health, hunger, and hygiene provider tax credit certificate must notify the DSS within thirty (30) days of the date of the transaction to assign, transfer, sell, or convey the credit. Information submitted to effectuate such a transfer must include a complete and accurate DSS Tax Credit Transfer Form. Forms may be obtained by writing to the address provided in subsection (3)(A) of this rule or at the Department of Social Services website: www.dss.mo.gov/dfas/taxcredit/index.htm.

AUTHORITY: section 660.017, RSMo 2016, and section 135.1125, RSMo Supp. 2018. Original rule filed Feb. 1, 2019.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS Division 40—State Auditor Chapter 3—Rules Applying to Political Subdivisions

PROPOSED AMENDMENT

15 CSR 40-3.125 Calculation and Revision of Property Tax Rates by School Districts. The State Auditor's office is replacing Form A, Form C, and Informational Data form referenced in section (2) and replacing Form A, Form C, Informational Form A, and Form G referenced in section (3).

PURPOSE: This amendment updates the forms and calculations used by school districts to calculate and revise their property tax rate under section 137.073, RSMo. Under the Missouri Constitution, Article X, Section 22, and section 137.073, RSMo, school districts must calculate their annual tax rate ceilings and submit them to the Missouri State Auditor's Office. This amendment updates Form A, Form C, and Informational Data form referenced in section (2) and Form A, Form C, and Informational Form A referenced in section (3) to comply with the amendments to Section 164.011, RSMo, passed in 2018. This amendment also incorporates changes to recoupment form, Form G referenced in section (3), with corresponding instructions.



PRO FORMA - STATE AUDITOR'S REVIEW OF DATA SUBMITTED

Form A

(20__)

For School Districts Levying a Single Rate on All Property

Name of Political Subdivision

Political Subdivision Code

Purpose of Levy

The final version of this form MUST be sent to the county clerk.

Computation of reassessment growth and rate for compliance with Article X, Section 22, and Section 137.073, RSMo.

1. (20__) Current year assessed valuation

Include the current locally assessed valuation obtained from the county clerk, county assessor, or comparable office finalized by the local board of equalization.

(a) _____	+	(b) _____	=	_____
(Real Estate)		(Personal Property)		(Total)

2. Assessed valuation of new construction & improvements

2(a) - Obtained from the county clerk or county assessor

2(b) - Increase in personal property, use the formula listed under Line 2(b)

(a) _____	+	(b) _____	=	_____
(Real Estate)		Line 1(b) - 3(b) - 5(b) + 6(b) + 7(b) If Line 2b is negative, enter zero		(Total)

**3. Assessed value of newly added territory
obtained from the county clerk or county assessor**

(a) _____	+	(b) _____	=	_____
(Real Estate)		(Personal Property)		(Total)

**4. Adjusted current year assessed valuation
(Line 1 total - Line 2 total - Line 3 total)**

5. (20__) Prior year assessed valuation

Include prior year locally assessed valuation obtained from the county clerk, county assessor, or comparable office finalized by the local board of equalization.

NOTE: If this is different than the amount on the prior year Form A, Line 1, then revise the prior year tax rate form to recalculate the prior year tax rate ceiling. Enter the revised prior year tax rate ceiling on this year's Summary Page, Line A.

(a) _____	+	(b) _____	=	_____
(Real Estate)		(Personal Property)		(Total)

**6. Assessed value of newly separated territory
obtained from the county clerk or county assessor**

(a) _____	+	(b) _____	=	_____
(Real Estate)		(Personal Property)		(Total)

**7. Assessed value of property locally assessed in prior year, but state assessed in current year
obtained from the county clerk or county assessor**

(a) _____	+	(b) _____	=	_____
(Real Estate)		(Personal Property)		(Total)

**8. Adjusted prior year assessed valuation
(Line 5 total - Line 6 total - Line 7 total)**



PRO FORMA - STATE AUDITOR'S REVIEW OF DATA SUBMITTED

Form A

(20__)

For School Districts Levying a Single Rate on All Property

Name of Political Subdivision	Political Subdivision Code	Purpose of Levy
The final version of this form MUST be sent to the county clerk.		
Computation of reassessment growth and rate for compliance with Article X, Section 22, and Section 137.073, RSMo.		

Information on this page takes into consideration any voluntary reduction(s) taken in previous even numbered year(s) If in an even numbered year, the political subdivision wishes to no longer use the lowered tax rate ceiling to calculate its tax rate, it can hold a public hearing and pass a resolution, a policy statement, or an ordinance justifying its action prior to setting and certifying its tax rate. The information in the Informational Data, at the end of these forms, provides the rate that would be allowed had there been no previous voluntary reduction(s) taken in an even numbered year(s).

**For Political
Subdivision Use in
Calculating its
Tax Rate**

- 9. **Percentage increase in adjusted valuation** of existing property in the current year over the prior year's assessed valuation
(Line 4 - Line 8 / Line 8 x 100)
- 10. **Increase in Consumer Price Index (CPI)** certified by the State Tax Commission
- 11. **Adjusted prior year assessed valuation** (Line 8)
- 12. (20__) **Tax rate ceiling from prior year** (Summary Page, Line A)
- 13. **Maximum prior year adjusted revenue from locally assessed property** that existed in both years
(Line 11 x Line 12 / 100)
- 14. **Maximum prior year revenue from state assessed property** before reductions, provided by the Department of Elementary & Secondary Education (DESE)
- 15. **Total adjusted prior year revenue** (Line 13 + Line 14)
- 16. **Permitted reassessment revenue growth**
The percentage entered on Line 16 should be the lower of the actual growth (Line 9), the CPI (Line 10), or 5%. A negative figure on Line 9 is treated as a 0 for Line 16 purposes. Do not enter less than 0 or more than 5%.
- 17. **Additional revenue permitted** (Line 15 x Line 16)
- 18. **Total revenue permitted in current year**
from property that existed in both years (Line 15 + Line 17)
- 19. **Estimated current year revenue from state assessed property** before reductions
The school district should use its best estimate. (i.e. same amount as Line 14, current year's Line 14 multiplied by the percentage increase in state assessed valuation per the State Tax Commission, or using the best educated guess) If this amount declines substantially from the amount on Line 14, please provide written documentation to explain the reasons for such difference.
- 19a. **New construction and improvements** (Line 19 - Line 14, if negative enter 0)
- 19b. **Adjusted estimated current year revenue from state assessed property** before reductions
(Line 19 - Line 19a)
- 20. **Total revenue permitted in current year** from existing locally assessed property *
(Line 18 - Line 19b)
- 21. **Adjusted current year assessed valuation** (Line 4)
- 22. **Maximum tax rate permitted by Article X, Section 22, and Section 137.073, RSMo**
(Line 20 / Line 21 x 100)
Round a fraction to the nearest one/one hundredth of a cent.
Enter this rate on the Summary Page, Line B.

* To compute the total property tax revenues billed for the current year (including revenues from all new construction and improvements and annexed property), multiply Line 1 by the rate on Line 22 and divide by 100. The property tax revenues billed would be used in estimating budgeted revenues.



PRO FORMA - STATE AUDITOR'S REVIEW OF DATA SUBMITTED

Form C

(20__)

For School Districts Levying a Single Rate on All Property

Name of Political Subdivision _____

Political Subdivision Code _____

Purpose of Levy _____

The final version of this form MUST be sent to the county clerk.

Debt Service Calculation for General Obligation Bonds Paid for with Property Taxes

The tax rate for debt service will be considered valid if, after making the payment(s) for which the tax was levied, the bonds remain outstanding, and the debt fund reserves do not exceed the following year's payments.

Since the property taxes are levied and collected on a calendar year basis (January - December), it is recommended that this levy be computed using calendar year data.

1. **Total current year assessed valuation** obtained from the county clerk or county assessor (Form A, Line 1 total) _____
2. **Amount required to pay debt service requirements during the next calendar year** (i.e. Assuming the current year is year 1, use January - December year 2 payments to complete the year 1 Form C) Include the principal and interest payments due on outstanding general obligation bond issues plus anticipated fees of any transfer agent or paying agent due during the next calendar year. _____
3. **Estimated costs of collection and anticipated delinquencies (i.e. collector fees & commissions & assessment fund withholdings)**
Experience in prior years is the best guide for estimating uncollectible taxes.
It is usually 2% to 10% of Line 2 above. _____
4. **Reasonable reserve up to one year's payment**
(i.e. Assuming the current year is year 1, use January - December year 3 payments to complete the year 1 Form C) It is important that the debt service fund have sufficient reserves to prevent any default on the bonds.
Include payments for the year following the next calendar year, accounted for on Line 2. _____
5. **Total required for debt service (Line 2 + Line 3 + Line 4)** _____
6. **Anticipated balance at end of current calendar year**
Show the anticipated bank or fund balance at December 31st of this year (this will equal the current balance minus the amount of any principal or interest due before December 31st plus any estimated investment earning due before December 31st). Do not add the anticipated collections of this tax into this amount. _____
7. **Property tax revenue required for debt service (Line 5 - Line 6)**
Line 6 is subtracted from Line 5 because, the debt service fund is only allowed to have the payments required for the next calendar year (Line 2) and the reasonable reserve of the following year's payment (Line 4). Any current balance in the fund is already available to meet these requirements so it is deducted from the total revenues required for debt service purposes. _____
8. **Estimated revenue from state assessed property for debt service for the next calendar year (January - December)** - must be estimated by the school district. In most instances a good estimate would be the same amount as the state assessed revenues actually placed in the debt service fund in the prior year. _____
- 8a. **New construction and improvements (Line 8 - Form A Line 14, if negative enter 0)** _____
- 8b. **Adjusted estimated current year revenue from state assessed property before reductions (Line 8 - Line 8a)** _____
9. **Revenue required from locally assessed property for debt service (Line 7 - Line 8b)** _____
10. **Computation of debt service tax rate (Line 9 / Line 1 x 100)**
Round a fraction to the nearest one/one hundredth of a cent. _____
11. **Less voluntary reduction by school district** _____
12. **Actual rate to be levied for debt service purposes * (Line 10 - Line 11)**
Enter this rate on Line AA of the Summary Page _____

* The tax rate levied may be lower than the rate computed as long as adequate funds are available to service the debt requirements.



PRO FORMA - STATE AUDITOR'S REVIEW OF DATA SUBMITTED

Informational Data

(20__)

For School Districts Levying a Single Rate on All Property

Name of Political Subdivision	Political Subdivision Code	Purpose of Levy
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This page shows the information that would have been on the line items for the Summary Page, Form A, and/or Form B had no voluntary reduction(s) been taken in prior even numbered year(s). The information on this page should not be used in the current year unless the taxing authority wishes to reverse any voluntary reduction(s) taken in prior even numbered year(s) and follows the following steps in an even numbered year.

- Step 1 The governing body should hold a public hearing and adopt a resolution, a policy statement, or an ordinance justifying its action prior to setting and certifying its tax rate.
- Step 2 Submit a copy of the resolution, policy statement, or ordinance to the State Auditor's Office for review.

**Based on Prior
Year Tax Rate
Ceiling as if No
Voluntary
Reductions
were Taken**

Informational Summary Page

- A. **Prior year tax rate ceiling** (Prior year Informational Summary Page, Line F)
- B. **Current year rate computed** (Informational Form A, Line 22 below)
- C. **Amount of increase authorized by voters for current year** (Informational Form B, Line 16 below)
- D. **Rate to compare to maximum authorized levy** (Line B if no election, otherwise Line C)
- E. **Maximum authorized levy** Greater of the 1984 rate or most recent voter approved rate
- F. **Tax rate ceiling if no voluntary reductions were taken in a prior even numbered year** (Lower of Line D or E)

Informational Form A

- 9. **Percentage increase in adjusted valuation** (Form A, Line 4 - Line 8 / Line 8 x 100)
- 10. **Increase in Consumer Price Index (CPI)** certified by the State Tax Commission
- 11. **Adjusted prior year assessed valuation** (Form A, Line 8)
- 12. (20__) **Tax rate ceiling from prior year** (Informational Summary Page, Line A from above)
- 13. **Maximum prior year adjusted revenue** from locally assessed property that existed in both years (Line 11 x Line 12 / 100)
- 14. **Maximum prior year adjusted revenue** from state assessed property before reductions, provided by DESE
- 15. **Total adjusted prior year revenue** (Line 13 + Line 14)
- 16. **Permitted reassessment revenue growth**
The percentage entered on Line 16 should be the lower of the actual growth (Line 9), the CPI (Line 10), or 5%. A negative figure on Line 9 is treated as a 0 for Line 16 purposes. Do not enter less than 0, nor more than 5%.
- 17. **Additional reassessment revenue permitted** (Line 15 x Line 16)
- 18. **Total revenue permitted in current year** from property that existed in both years (Line 15 + Line 17)
- 19. **Estimated current year revenue from state assessed property** before reductions, estimated by school district
- 19a. **New construction and improvements** (Line 19 - Line 14, if negative enter 0)
- 19b. **Adjusted estimated current year revenue from state assessed property** before reductions (Line 19 - Line 19a)
- 20. **Revenue permitted from existing locally assessed property** (Line 18 - Line 19b)
- 21. **Adjusted current year assessed valuation** (Form A, Line 4)
- 22. **Maximum tax rate permitted by Article X, Section 22, and Section 137.073, RSMo**, if no voluntary reduction was taken (Line 20 / Line 21 x 100)

Informational Form B

- 7. **Prior year tax rate ceiling to apply voter approved increase to** (Informational Summary Page, Line A if increase to an existing rate, otherwise 0)
- 8. **Voter approved increased tax rate to adjust**
(If an "increase of/by" ballot, Form B, Line 6a + Line 7, if an "increase to" ballot, Form B, Line 6b)
- 9. **Adjusted prior year assessed valuation** (Form A, Line 8)
- 10. **Maximum prior year adjusted revenue** from property that existed in both years (Line 8 x Line 9 / 100)
- 11. **Consumer Price Index (CPI)** certified by the State Tax Commission
- 12. **Permitted revenue growth for CPI** (Line 10 x Line 11)
- 13. **Total revenue allowed from the additional voter approved increase** from property that existed in both years (Line 10 + Line 12)
- 14. **Adjusted current year assessed valuation** (Form A, Line 4)
- 15. **Adjusted voter approved increased tax rate** (Line 13 / Line 14 x 100)
- 16. **Amount of rate increase authorized by voters for the current year** (if Line 8 > Line 15, then Line 8, otherwise, Line 15)