

Volume 45, Number 19
Pages 1367–1546
October 1, 2020

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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The *Missouri Register* is published semi-monthly by

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ISSN 0149-2942

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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 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 sos.mo.gov/adrules/csr/csr

The *Register* address is 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. 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) business 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

EMERGENCY AMENDMENT

5 CSR 20-400.220 Application for Substitute Certificate of License to Teach. The State Board of Education is amending section (1).

PURPOSE: This emergency amendment adds language that allows department-approved training as an alternative route to gain a substitute certificate of license to teach. This will expedite a strategy for addressing shortages of substitute teachers.

EMERGENCY STATEMENT: This emergency amendment is necessary to allow individuals to complete department-approved training as an alternative route to gain a substitute certificate of license to teach. There is a need to expand the pool of available substitute teachers. Successful completion of sixty (60) semester hours or more of college level credit is currently required to earn a substitute certificate of license to teach. For some individuals, this requirement is both time and cost prohibitive. Prior to the current COVID-19 circumstances, schools had already been experiencing and reporting shortages of substitute teachers. Because this is a large-scale health crisis with multiple phases of infection impacting not only the health of teachers but also their families, it is reasonable to assume there

will be an increase in the need for substitute teachers as a result of the pandemic. In addition, the number of candidates preparing to be teachers has been declining steadily over the past six (6) years, making it more difficult to fill needed positions and increasing demand for long-term substitute teachers. As a result, the board finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 19, 2020, becomes effective September 2, 2020, and expires February 28, 2021.

(1) An applicant for a substitute Missouri certificate of license to teach who has successfully completed sixty (60) semester hours or more of college level credit from a regionally-accredited academic degree granting institution recognized by the Department of Elementary and Secondary Education (department) or has successfully completed a minimum of twenty (20) clock hours of department-approved substitute teacher training that includes professionalism, honoring diversity, engaging students, foundational classroom management techniques, basic instructional strategies, supporting students with special needs, and working with at-risk youth may be granted a substitute Missouri certificate of license to teach pursuant to the rules promulgated by the State Board of Education (board).

AUTHORITY: sections 161.092, 168.011, 168.071, and 168.081, RSMo 2016, and section 168.021, RSMo Supp. 2019. This rule previously filed as 5 CSR 80-800.290. Emergency rule filed July 30, 1999, effective Aug. 9, 1999, expired Jan. 26, 2000. Original rule filed July 30, 1999, effective Feb. 29, 2000. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 19, 2020, effective Sept. 2, 2020, expires Feb. 28, 2021. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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

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

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Financial and Administrative
Services
Chapter 660—School Finance**

EMERGENCY RULE

5 CSR 30-660.090 Charter School Local Education Agency (LEA) Attendance Hour Reporting

PURPOSE: This emergency rule establishes policies and standards for charter school local education agencies (LEAs) for providing foundation formula payment in accordance with Chapter 160, RSMo, to meet the health and safety needs of students and faculty if social distancing is necessary due to COVID-19 during the 2020-2021 school year.

EMERGENCY STATEMENT: *This emergency rule is necessary due to the novel COVID-19 pandemic and charter schools' need for flexibility in their attendance claiming for purposes of state aid payments. The State Board of Education (board) voted on August 18, 2020, to grant the ability for charter school LEAs to claim weighted average daily attendance in an alternative method otherwise not outlined in statute. This applies only for the 2020-2021 school year. Because COVID-19 has caused a disruption in the provision of educational services during the 2020-2021 school year, this emergency rule is necessary to protect the health, safety, and welfare of those students by ensuring that there will be regulations in place that provide charter school LEAs with notice of the criteria set forth by the board on August 18, 2020. As a result, the board finds a compelling governmental interest, which requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The board believes this emergency rule is fair to all interested persons and parties under the circumstances. A proposed rule covering this same material is published in this issue of the Missouri Register. This emergency rule was filed August 19, 2020, becomes effective September 2, 2020, and expires February 28, 2021.*

(1) The following definitions apply to this rule:

(A) Average Daily Attendance (ADA): the quotient or the sum of the quotients obtained by dividing the total number of hours attended in a term by pupils between the ages of five (5) and twenty-one (21) by the actual number of hours school was in session in that term.

(B) First Preceding Year: The school year prior to the year attendance was impacted by COVID-19, specifically the 2019-2020 school year for the purpose of this rule.

(C) Weighted Average Daily Attendance (WADA): The average daily attendance plus the product of twenty-five hundredths (0.25) multiplied by the free and reduced price lunch pupil count that exceeds the free and reduced price lunch threshold, plus the product of seventy-five (0.75) hundredths multiplied by the number of special education pupil count that exceeds the special education threshold, plus the product of six-tenths (0.6) multiplied by the number of limited English proficiency pupil count that exceeds the limited English proficiency threshold.

(2) For the purposes of state aid calculation outlined in section 160.415, RSMo, during the 2020-2021 school year, WADA for charter school LEAs shall be defined as the higher of the current year's WADA or the first preceding year's WADA. This provision is applicable for the 2020-2021 school year.

(3) For the purposes of other state aid calculations outlined in sections 163.043 and 163.087, RSMo, that rely on the 2020-2021 school year ADA or WADA, charter school LEAs may rely on the higher of the 2019-2020 or 2020-2021 applicable ADA or WADA. This provision is applicable for the 2021-2022 school year.

AUTHORITY: *sections 161.092, 163.031, 163.043, and 163.087, RSMo 2016, and section 160.415, RSMo Supp. 2019. Emergency rule filed Aug. 19, 2020, effective Sept. 2, 2020, expires Feb. 28, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.*

PUBLIC COST: *This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency rule is effective.*

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—Notary Commissions**

EMERGENCY RULE

15 CSR 30-100.005 Notary Complaint Process

PURPOSE: *This emergency rule lays out the process for filing a complaint against a notary.*

EMERGENCY STATEMENT: *The secretary of state determined this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.*

(1) A complaint may be filed by an individual or by the Notary Commission Unit. All complaints must be—

(A) In writing and signed;

(B) Submitted to the Notary Commission Unit either by mail to commissions@sos.mo.gov or PO Box 784, Jefferson City, MO 65101;

(C) At a minimum, the complaint must contain the following information:

1. Circumstances surrounding the situation;

2. The notary's name, commission number (if known), and the county in which the alleged wrong doing allegedly took place;

(D) The complaint should include, if known, the names and contact information of any witnesses or parties, including addresses and telephone number, all documents related to the transaction, including copies of the notarized document in question, and any police report filed or investigative information if referred by another agency, and any contact information for legal representative;

(E) Upon receipt of the complaint the Notary Commission Unit will review the matter and determine if further action is required;

(F) If further action is required, the Notary Commission Unit will notify the notary and may request additional information from the notary;

(G) A notary has thirty (30) days from receipt of such notification from the Notary Commission Unit in which to respond. Failure to respond shall constitute grounds for suspension of the notary commission until compliance with the request is met;

(H) The Notary Commission Unit will review the response from the notary, and if necessary, make follow-up request for information;

(I) Upon completion of their review, the Notary Commission Unit will forward the matter to the Director of Business Services or their designee who will review the matter to determine appropriate action;

(J) Upon a decision by the Director of Business Services or their designee, the complainant and notary shall be notified of the decision made; and

(K) If the action taken by the Director of Business Services or their designee is to suspend or revoke the notary's commission, the notary may appeal such decision as outlined under the rules.

AUTHORITY: section 486.815.1, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—[Secretary of State—]
Notary Commissions**

EMERGENCY AMENDMENT

15 CSR 30-100.010 Approval, Revocation and/or Suspension of Notary Commission. The secretary is amending the chapter to remove the duplicative term, revising the title, and adding a subsection (3).

PURPOSE: This emergency amendment updates the chapter by removing the duplicative term “Secretary of State,” adds “Approval” to the title, and adds a new section.

EMERGENCY STATEMENT: The secretary of state determined this emergency amendment is necessary to preserve a compelling governmental interest. This emergency amendment is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency amendment since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(3) An individual who has been convicted of a felony involving dishonesty or moral turpitude, committed in the last five (5) years, will be denied approval to be a commission.

AUTHORITY: sections [486.385.2, RSMo 2016] 486.605 and 486.815.1, RSMo Supp. 2020. Original rule filed Dec. 16, 1985, effective April 11, 1986. Amended: Filed April 17, 2017, effective Oct. 30, 2017. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 100—[Secretary of State—]
Notary Commissions**

EMERGENCY AMENDMENT

15 CSR 30-100.015 Request for Hearing on Suspension or an Appeal on a Denial of an Application. The secretary is amending the rule to add denial of an application to the reasons one can request a hearing.

PURPOSE: This emergency amendment adds a section (5) to add denial of an application to appeals.

EMERGENCY STATEMENT: The secretary of state determined that this emergency amendment is necessary to preserve a compelling governmental interest. This emergency amendment is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency amendment since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(5) An applicant who has been denied a notary commission may appeal the denial to the Director of Business Services or his or her designee. This appeal does not include a right to a hearing.

AUTHORITY: section [486.385.2, RSMo 2016] 486.815.1, RSMo Supp. 2020. Original rule filed April 17, 2017, effective Oct. 2017. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

EMERGENCY RULE

15 CSR 30-110.030 Remote Online Notarization (RON) Approval

PURPOSE: This emergency rule provides the process that vendors must go through to have their software approved for use by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined this emergency rule is necessary to preserve a compelling governmental

interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Vendors wishing to have their software approved for use by electronic notaries in Missouri make an application to do so to the Commission Unit. The information on the application must include:

- (A) Name of the vendor's company;
- (B) Name of the software to be used;
- (C) Name of contact to perform demonstration of software;
- (D) Contact information for customer inquiries; and
- (E) List of other states the software is approved in.

(2) Upon filing of an application, the Commission Unit will review the software for compliance.

(3) Each software requesting approval must undergo a live demonstration by the Commission Unit.

(4) Once the Commission Unit has determined the software meets compliance, a certificate of acceptability will be issued to the vendor.

(5) A list of all approved software will be published on the Missouri Secretary of State's (SOS) website.

AUTHORITY: section 486.1110, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

EMERGENCY RULE

15 CSR 30-110.040 Remote Online Notarization (RON) Criteria

PURPOSE: This emergency rule states the criteria that remote online notary (RON) must meet for use by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined that this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency

rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Remote online notary (RON) must meet the following RON Credential Analysis and Authentication to be approved for use in Missouri:

(A) The software must allow for at least two (2) types of the following:

1. Credential Analysis of Government Issued Identification;
2. Dynamic Knowledge-Based Authentication; and
3. Biometrics;

(B) The software must provide for a live session using audio-video communication integrated with electronic document processing as described in section 110.060, RSMo;

(C) The software must be able to capture the necessary details for the notary to keep an accurate record of the transaction as described in section 110.070, RSMo; and

(D) The software must provide an audit trail for each session as described in section 110.080, RSMo.

AUTHORITY: section 486.1110, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization**

EMERGENCY RULE

15 CSR 30-110.050 Remote Online Notarization (RON) Credentials

PURPOSE: This emergency rule sets out the credentials that remote online notary (RON) must meet for use by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health

care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Remote Online Notarization (RON) providers must use automated software processes to aid the notary in verifying each principal's identity.

(2) The credential must pass an authenticity test, consistent with sound commercial practices that—

(A) Uses appropriate technology to confirm the integrity of visual, physical, or cryptographic security features;

(B) Uses appropriate technology to confirm that the credential is not fraudulent or inappropriately modified;

(C) Uses information held or published by the issuing source or authenticity source(s), as available, to confirm the validity of credential details; and

(D) Provides the output of the authenticity to the notary.

(3) The credentials analysis procedure must enable the notary to visually compare both of the following for consistency:

(A) The information and photo on the presented credential image; and

(B) The principal as viewed by the notary in real time through the audio/video system.

(4) Credentials must be a government issued document meeting the requirements of the state that issued the document, may be imaged, photographed, and video recorded under state and federal law, and can be subject to credential analysis.

(5) The credential image capture procedure must confirm that—

(A) The principal is in possession of that credential at the time of the notarial act;

(B) That the credential image submitted for analysis has not been manipulated; and

(C) The credential image matches the credential in the principal's possession.

(6) The following general principles should be considered in the context of image resolution:

(A) The captured image resolution should be sufficient for the service provider to perform credential analysis per the requirements above;

(B) The image resolution should be sufficient to enable visual inspection by the notary, including legible text and clarity of photographs, barcodes, and other credential features;

(C) All images necessary to perform visual inspection and credential analysis must be captured - e.g. U.S. Passport requires identity page; state driver's license requires front and back.

(7) A Dynamic Knowledge-Based Authentication (KBA) procedure must meet the following requirements:

(A) Each principal must answer questions and achieve a passing score from:

1. At least five (5) questions drawn from public or private data sources;

2. A minimum of five (5) possible answer choices per question;

3. At least four (4) of the five (5) questions answered correctly to pass (a passing score of eighty percent (80%)); and

4. All five (5) questions answered within two (2) minutes;

(B) Each principal must be provided a reasonable number of attempts per signing session:

1. If a principal fails their first quiz, they may attempt up to two (2) additional quizzes within forty-eight (48) hours from the first failure; and

2. During any quiz retake, a minimum of forty percent (40%), or two (2), of the prior questions must be replaced;

(C) The RON system provider must not include the KBA procedure as part of the video recording or as part of the system provided person-to-person video interaction between the notary and the signatory; and must not store the data or information presented in the KBA questions and answers. However, the output of the KBA assessment procedure must be provided to the notary; and

(D) Biometric sensing technology include, but are not limited to, facial, voice, and fingerprint recognition.

AUTHORITY: section 486.1110, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 110—Electronic Notarization

EMERGENCY RULE

15 CSR 30-110.060 Audio and Video Quality

PURPOSE: This emergency rule sets out the requirements for audio/video quality used by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) A reliable Remote Online Notarization (RON) operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can be clearly seen and understood at all times during the notarial act.

(2) Inherent in online audio/video technology is the presence of temporary surges or spikes in quantitative measures like bitrate and/or frequency of communications and no simple technical limits are practical or prudent. Rather, a sounder approach to ensuring reliable real-time communications is to rely on the judgment of the notary to

determine the adequacy of the communications and provide direction to terminate the session if those conditions are not met.

(3) The audio/video recording must include the person-to-person interaction required as part of the Notarial Act as defined by the state, must be logically associated to the electronic Audit Trail, and must be capable of being viewed and heard using broadly available audio/video players.

(4) The video recording of the transaction documents executed in the RON process is not required as part of these standards.

AUTHORITY: section 486.1110, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization

EMERGENCY RULE

15 CSR 30-110.070 Storage and Retention of Notarial Records

PURPOSE: This emergency rule sets out the requirements for storage and retention of notarial records used by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined that this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Remote Online Notarization (RON) systems.

(A) RON must—

1. Facilitate the process of collecting the required notarial records;
2. Provide a method by which a notary can access and/or export the notarial records; and
3. Provide automated backup of the notarial records and audio/video recording to ensure redundancy.

(B) RON technology solution must employ data protection safeguards consistent with generally accepted information security stan-

dards.

(C) Retention of the audio/video recording and notarial records by either the notary or their designated third party, as directed by the notary, must adhere to the laws, directives, rules, and regulations of the state.

(2) A notary must retain an electronic journal and an audio-visual recording created under Chapter 486, RSMo in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process.

(A) The recording must be created in an industry standard audio-visual file format and must not include images of any electronic record on which the remotely located individual executed an electronic signature.

(B) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least the (10) years after the recording is made.

(C) A notary must take reasonable steps to ensure that a backup of the electronic journal and audio-visual recording exists and is secure from unauthorized use.

AUTHORITY: sections 486.1110 and 486.1195, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 110—Electronic Notarization

EMERGENCY RULE

15 CSR 30-110.080 Audit Trail

PURPOSE: This emergency rule states the requirements for the remote online notarization (RON) audit trail for use by electronic notaries in Missouri.

EMERGENCY STATEMENT: The secretary of state determined that this emergency rule is necessary to preserve a compelling governmental interest. This emergency rule is necessary to address changes made by the legislatures, which took effect on August 28, 2020, to electronic notarization. The secretary of state needs this emergency rule since the Executive Order issued by the governor expired on August 28, 2020. The secretary of state finds there is a compelling governmental interest, which requires this emergency action since due to the pandemic of COVID-19, in person notarization is unable to be performed for wills, powers of attorney, and durable power of attorney in health care decisions. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Significant actions completed as part of a Remote Online Notarization (RON) signing session should be recorded in an audit trail. Each entry in this audit trail should clearly indicate the action performed (e.g. addition of an electronic signature), the date/time of its performance (e.g., Coordinated Universal Time, 2018-08-21 01:14:22 UTC), the name of the party performing the action (e.g. John Doe), and the IP address of the party performing the action.

(2) Each document completed as part of a RON should be electronically signed and rendered Tamper-Evident.

AUTHORITY: section 486.1110, RSMo Supp. 2020. Emergency rule filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 61—Licensing Rules for Family [Day] Child Care Homes

EMERGENCY AMENDMENT

19 CSR 30-61.055 [License Renewal] Annual Requirements. The department is amending the rule title, deleting sections (1) through (4), and adding new sections (1) and (2).

PURPOSE: This emergency amendment replaces the license renewal process with a similar annual compliance process. The amendment adds the new Annual Declaration for Licensed Facilities form.

EMERGENCY STATEMENT: The Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020). One of the statutory changes included in this legislation was removal of the limitation in section 210.211.1, RSMo, that the Department of Health and Senior Services may only issue a child care license for a term not exceeding two (2) years. With this limitation removed, the department can transition to non-expiring child care licenses and an annual compliance monitoring process that will replace the current licensing renewal process. This new process will be similar to the license renewal process, with providers submitting documentation to show they meet the basic health and safety requirements for a child care provider and affirming their desire to continue on as a licensed provider in compliance with child care licensing rules and statutes. The annual compliance process will require a provider to submit less documentation than the renewal process did; however, this documentation must now be submitted annually rather than every two (2) years. As of August 28, 2020, the department will no longer accept applications to renew child care licenses as it will be transitioning all current licenses to a non-expiring status. However, to ensure that basic requirements for licensees are still met and that providers who wish to continue operating child care facilities agree to do so in compliance with licensing rules and statutes, it is imperative that the department have an annual compliance process in place immediately. This will ensure that providers who would have received a renewal inspection during the September 2020 to March 2021 time period will still be monitored and that those providers whose license would have expired during that time are able to be smoothly transitioned to a

non-expiring licenses without a decrease in monitoring of safety standards. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings as the department transitions to non-expiring licenses as now allowed under 210.211.1, RSMo. A proposed amendment, which covers the same material is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

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 application for license renewal shall be filed at least sixty (60) days prior to expiration of the license. In addition, the following information is required:

(A) Evidence of compliance with a fire and safety inspection as conducted by the State Fire Marshal or his/her designee;

(B) Evidence of compliance with local, state, or both, sanitation requirements;

(C) Medical examination reports on file at the home as required by 19 CSR 30-61.125 Medical Examination Reports;

(D) A health report on file at the home for each school-age child in care as required by 19 CSR 30-61.125 Medical Examination Reports;

(E) Enrollment information on file at the home for each child in care as required by 19 CSR 30-61.135 Admission Policies and Procedures;

(F) Identifying information on file at the home regarding each child in care who is related to the provider and not living in the home as required by 19 CSR 30-61.135 Admission Policies and Procedures;]

(G) A current list of available equipment;

(H) Materials and information which have changed since the previous licensing period;

(I) Documentation as required by the Missouri Secretary of State and state law to verify the legal entity is in good standing if a family day care home is owned by a legal entity;

(J) A completed Safety Plan form if a sex offender resides within 1,000 feet of the facility. See Safety Plan form, promulgated as of 2018 and incorporated by reference in this rule. As published by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>. This rule does not incorporate any subsequent amendments or additions. If the provider has an existing safety plan a new form is not required. This rule does not incorporate any subsequent amendments or additions; and

(K) A listing of household members.]

(1) The provider shall submit the following to the department on an annual basis, at least thirty (30) calendar days prior to the anniversary date as printed on the license:

(A) An Annual Declaration for Licensed Facility form, promulgated as of August 2020 and incorporated by reference in this

rule. As published by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/child-care/forms.php> indicating the licensee's intent to continue operating a licensed family child care home and agreement to comply with all statutes and department licensing rules;

(B) A current list of available equipment;

(C) A listing of household members and assistant(s); and

(D) A completed safety plan if a sex offender resides within 1,000 feet of the facility. If the provider has an existing safety plan, a new plan is not required.

[(2) The child care provider shall conduct a Family Care Safety Registry check for all child care staff members within sixty (60) days prior to the expiration of the license.]

(2) The provider shall have the following on file and available for review:

(A) Evidence of compliance with a fire and safety inspection as conducted by the State Fire Marshal or his/her designee;

(B) Evidence of compliance with local, state, or both, sanitation requirements;

(C) The child care provider shall conduct a Family Care Safety Registry check for all child care staff members within thirty (30) days prior to the anniversary date as printed on the license; and

(D) Documentation as required by the Missouri Secretary of State and state law to verify the legal entity is in good standing, if a family child care home is owned by a legal entity.

[(3) Child care staff members shall have qualifying background screening results on file as required by 19 CSR 30-63.020 General Requirements, prior to renewal of the license.]

[(4) Upon determination of the applicant's continued compliance with state statutes and licensing rules for family day care homes, an official license shall be granted for up to two (2) years.]

AUTHORITY: section 210.221.1(3), [RSMo 2016, and section 210.1080,] RSMo Supp. [2018] 2020. This rule previously filed as 13 CSR 40-61.031, 13 CSR 40-61.055, and 19 CSR 40-61.055. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

PRIVATE COST: This emergency amendment will cost private entities four thousand one hundred fifty-one dollars and four cents (\$4,151.04) in the time the emergency is effective.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 19 – Department of Health and Senior Services
Division Title: Division 30 – Division of Regulation and Licensure
Chapter Title: Chapter 61 – Licensing Rules for Family Day Care Homes

Rule Number and Name:	19 CSR 30-61.055 Annual Requirements
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT – EMERGENCY RULE PERIOD

Estimated Cost to Complete Annual Requirements per Provider	Estimated Number of Providers Required to Complete Annual Requirements	Total Estimated Cost of Annual Requirements Across Missouri
\$11.28	368	\$4,151.04

III. WORKSHEET

ESTIMATED TOTAL COST TO COMPLETE ANNUAL REQUIREMENTS	
Total Cost to Complete Annual Requirements	\$11.28
Total Number of Providers Required to Complete Annual Requirements	368
Total Private Cost	\$4,151.04

Methodology: Total Cost to Complete Annual Requirements * Total Number of Providers Required to Complete Annual Requirements = Total Private Cost

ESTIMATED COST TO COMPLETE ANNUAL REQUIREMENTS FOR FACILITIES				
Document	Time Estimate (Hours)	Average Hourly Wage of Missouri	Unemployment, Social Security, Payroll Taxes, and Workers' Comp	Total Cost per Child Care Provider
<i>Annual Declaration for a Licensed Facility</i> form	.25	\$13.05	17%	\$3.81
Current list of available equipment	.16	\$13.05	17%	\$2.44
Listing of household members and assistant(s)	.08	\$13.05	17%	\$1.22
Family Care Safety Registry screening results for all child care staff members	.25	\$13.05	17%	\$3.81
TOTALS	.74			\$11.28

Methodology: (Average Hourly Wage * Time Estimate) * Employer Expenses = Total Cost per Child Care Provider

IV. ASSUMPTIONS

1. Current licensing rules require providers to prepare and submit a current list of available equipment, listing of household members and assistant(s), and Family Care Safety Registry screening results for all child care staff members at renewal. Therefore, the department assumes that this is actually not an additional cost for 172 providers whose licenses were schedule to expire in this six month time period that this emergency rule will be in effect. For 196 providers who were not scheduled to renew during this six month timeframe but whose license anniversary falls during this time, there is an additional cost to prepare and submit a current list of available equipment, listing of household members and assistant(s), and Family Care Safety Registry screening results for all child care staff members. Because the Annual Declaration for Licensed Facility form is a new requirement, this is an additional cost for all 368 providers. For the sake of simplicity and transparency, the overall cost for this rule was calculated using all 368 providers who will submit documentation during the emergency period.

2. The average wage comes from the 2018 average wage for Child Care Workers in Missouri available from the Missouri Department of Economic Development (\$11.29) plus estimated inflation. No additions were made to this number for items such as 401k contributions or other fringe benefits because those are not an industry standard for child care workers.

3. Time estimates for the documents that must be completed to meet the annual requirements are estimated by the Department of Health and Senior Services for the estimated average amount of time necessary to review, compile and/or update, and submit the necessary documents.

The time estimates seen here are based on the following assumptions:

<i>Annual Declaration for a Licensed Facility form</i>	0.25 hours (15 minutes) was allotted for this based on the fact that this is a one-page fillable form requesting identifying information. The provider is required to review, sign, date, and return the form to the department.
Current list of available equipment	.16 hours (10 minutes) was allotted for this because an equipment list is required for initial licensure. Child care providers should routinely update this list and keep it current for insurance and departmental purposes. The department currently requires a list of available equipment at renewal (once every two years).
Listing of household members and assistant(s)	.08 hours (5 minutes) was allotted for this because a listing of household member and assistant(s) is required for initial licensure. Child care providers are currently required to notify the department of any changes in household members and assistant(s). The department currently requires a list of household members and assistant(s) at renewal (once every two years).

Family Care Safety Registry screening results for all child care staff members	.25 hours (15 minutes) was allotted for this based on discussions with Family Care Safety Registry (FCSR) staff about how long it typically takes for a family child care provider when they call to request background screenings.
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4. The time estimates only include one staff member because typically only one staff person (e.g. owner, provider, board chairperson, LLC member or designee) completes documentation that is submitted to the department.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

**Division 30—Division of Regulation and Licensure
Chapter 62—Licensing Rules for Group Child Care
Homes and Child Care Centers**

EMERGENCY AMENDMENT

19 CSR 30-62.052 [License Renewal] Annual Requirements. The department is amending the rule title, deleting sections (1) through (5), and adding new sections (1) and (2).

PURPOSE: This emergency amendment replaces the license renewal process with a similar annual compliance process. The amendment adds the new Annual Declaration for Licensed Facilities form.

EMERGENCY STATEMENT: The Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020). One of the statutory changes included in this legislation was removal of the limitation in section 210.211.1, RSMo, that the Department of Health and Senior Services may only issue a child care license for a term not exceeding two (2) years. With this limitation removed, the department can transition to non-expiring child care licenses and an annual compliance monitoring process that will replace the current licensing renewal process. This new process will be similar to the license renewal process, with providers submitting documentation to show they meet the basic health and safety requirements for a child care provider and affirming their desire to continue on as a licensed provider in compliance with child care licensing rules and statutes. The annual compliance process will require a provider to submit less documentation than the renewal process did; however, this documentation must now be submitted annually rather than every two (2) years. As of August 28, 2020, the department will no longer accept applications to renew child care licenses as it will be transitioning all current licenses to a non-expiring status. However, to ensure that basic requirements for licensees are still met and that providers who wish to continue operating child care facilities agree to do so in compliance with licensing rules and statutes, it is imperative that the department have an annual compliance process in place immediately. This will ensure that providers who would have received a renewal inspection during the September 2020 to March 2021 time period will still be monitored and that those providers whose license would have expired during that time are able to be smoothly transitioned to a non-expiring licenses without a decrease in monitoring of safety standards. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings as the department transitions to non-expiring licenses as now allowed under 210.211.1, RSMo. A proposed amendment, which covers the same material is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

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 application for license renewal shall be filed at least sixty (60) days prior to expiration of the license. In addition,

the following information is required:

(A) Evidence of compliance with a fire and safety inspection as conducted by the State Fire Marshal or his/her designee;

(B) Evidence of compliance with local or state, or both, sanitation requirements;

(C) Evidence of compliance with local building and zoning requirements, if applicable;

(D) Documentation as required by the Missouri Secretary of State and state law to verify the legal entity is in good standing if a group child care home or child care center is owned by a legal entity;

(E) Medical examination reports on file at the facility as required by 19 CSR 30-62.122 Medical Examination Reports;

(F) A health report on file at the facility for each school-age child in care as required by 19 CSR 30-62.122 Medical Examination Reports;

(G) Enrollment information on file at the facility for each child in care as required by 19 CSR 30-62.132 Admission Policies and Procedures;

[(H) Identifying information on file at the facility regarding children who are related to the center owner(s) or group day care home provider as required by 19 CSR 30-62.132 Admission Policies and Procedures;]

(I) A current list of available equipment;

(J) Current staff sheet; and

(K) Materials and information which have changed since the previous licensing period.]

(1) The provider shall submit the following to the department on an annual basis, at least thirty (30) calendar days prior to the anniversary date as printed on the license.

(A) An *Annual Declaration for Licensed Facility* form, promulgated as of August 2020 and incorporated by reference in this rule. As published by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/child-care/forms.php> indicating the licensee's intent to continue operating a licensed group child care home or child care center and agreement to comply with all statutes and department licensing rules;

(B) Evidence of compliance with local building and zoning requirements, if applicable;

(C) A current list of available equipment; and

(D) A current staff sheet.

[(2) The child care provider shall conduct a Family Care Safety Registry check for all child care staff members no more than sixty (60) days prior to the expiration of the license.]

(2) The provider shall have the following on file and available for review:

(A) Evidence of compliance with a fire and safety inspection as conducted by the State Fire Marshal or his/her designee;

(B) Evidence of compliance with local, state, or both, sanitation requirements;

(C) The child care provider shall conduct a Family Care Safety Registry check for all child care staff members within thirty (30) days prior to the anniversary date as printed on the license; and

(D) Documentation as required by the Missouri Secretary of State and state law to verify the legal entity is in good standing, if a group child care home or child care center is owned by a legal entity.

[(3) The facility owner(s), board president, or chairperson, and the center director or group day care home provider,

shall have qualifying background screening results on file as required by 19 CSR 30-63.020 General Requirements, prior to renewal of the license.

(4) Child care staff members shall have qualifying background screening results on file as required by 19 CSR 30-63.020 General Requirements, prior to renewal of the license.

(5) Upon determination of the applicant's continued compliance with state statutes and licensing rules for group day care homes and day care centers, an official license shall be granted for up to two (2) years.]

AUTHORITY: *sections 210.221.1(3) and 210.252.5, [RSMo 2016, and section 210.1080,] RSMo Supp. [2018] 2020. This rule previously filed as 13 CSR 40-62.031, 13 CSR 40-62.052, and 19 CSR 40-62.052. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

PUBLIC COST: *This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.*

PRIVATE COST: *This emergency amendment will cost private entities nineteen thousand one hundred ninety-one dollars and forty-eight cents (\$19,191.48) in the time the emergency is effective.*

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 19 – Department of Health and Senior Services
- Division Title:** Division 30 – Division of Regulation and Licensure
- Chapter Title:** Chapter 62 – Licensing Rules for Group Child Care Homes and Day Care Centers

Rule Number and Name:	19 CSR 30-62.052 Annual Requirements
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT – EMERGENCY RULE PERIOD

Estimated Cost to Complete Annual Requirements per Provider	Estimated Number of Providers Required to Complete Annual Requirements	Total Estimated Cost of Annual Requirements Across Missouri
\$22.11	868	\$19,191.48

III. WORKSHEET

ESTIMATED TOTAL COST TO COMPLETE ANNUAL REQUIREMENTS	
Total Cost to Complete Annual Requirements	\$22.11
Total Number of Providers Required to Complete Annual Requirements	868
Total Private Cost	\$19,191.48

Methodology: Total Cost to Complete Annual Requirements * Total Number of Providers Required to Complete Annual Requirements = Total Private Cost

ESTIMATED COST TO COMPLETE ANNUAL REQUIREMENTS FOR FACILITIES				
Document	Time Estimate (Hours)	Average Hourly Wage of Missouri	Unemployment, Social Security, Payroll Taxes, and Workers' Comp	Total Cost per Child Care Provider
<i>Annual Declaration for a Licensed Facility form</i>	.25	\$13.05	17%	\$3.80
Current list of available equipment	.75	\$13.05	17%	\$11.45
Current staff sheet	.15	\$13.05	17%	\$2.29
Family Care Safety Registry screening results for all child care staff members	.30	\$13.05	17%	\$4.57
TOTALS	1.45			\$22.11

Methodology: (Average Hourly Wage * Time Estimate) * Employer Expenses = Total Cost per Child Care Provider

IV. ASSUMPTIONS

1. Current licensing rules require providers to prepare and submit a current list of available equipment, listing of household members and assistant(s), and Family Care Safety Registry screening results for all child care staff members at renewal. Therefore, the department assumes that this is not an additional cost for 429 providers whose licenses were schedule to expire in this six month time period that this emergency rule will be in effect. For 439 providers who were not scheduled to renew during this six month timeframe, there is an additional cost to prepare and submit a current list of available equipment, listing of household members and assistant(s), and Family Care Safety Registry screening results for all child care staff members. Because the Annual Declaration for Licensed Facility form is a new requirement, this is an additional cost for all 868 providers. For the sake of simplicity and transparency, the overall cost for this rule was calculated using all 868 providers who will submit documentation during the emergency period.

2. The average wage comes from the 2018 average wage for Child Care Workers in Missouri available from the Missouri Department of Economic Development (\$11.29) plus estimated inflation. No additions were made to this number for items such as 401k contributions or other fringe benefits because those are not an industry standard for child care workers.

3. Time estimates for the documents that must be completed to meet the annual requirements are estimated by the Department of Health and Senior Services for the minimum amount of time necessary to review, compile and/or update, and submit the necessary documents.

The time estimates seen here are based on the following assumptions:

Annual Declaration for a Licensed Facility form	0.25 hours (15 minutes) was allotted for this based on the fact that this is a one-page fillable form requesting identifying information. The provider is required to review, sign, date, and return the form to the department.
Current list of available equipment	.75 hours (45 minutes) was allotted for this because an equipment list is required for initial licensure. Child care providers should routinely update this list and keep it current for insurance and departmental purposes. The department currently requires a list of available equipment at renewal (once every two years).
Current staff sheet	.15 hours (15 minutes) was allotted for this because a staff sheet is required for initial licensure. The department assumes that child care providers will update this staff sheet periodically as staff change. The department currently requires a staff sheet at renewal (once every two years).
Family Care Safety Registry screening results for all child care	.30 hours (30 minutes) was allotted for this based on discussions with Family Care

staff members	Safety Registry (FCSR) staff about how long it typically takes for a group home or center child care provider to submit an online background screening request.
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4. The time estimates only include one staff member because typically only one staff person (e.g. owner, provider, board chairperson, LLC member or designee) completes documentation that is submitted to the department.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

**Division 30—Division of Regulation and Licensure
Chapter 63—Child Care Comprehensive
Background Screening**

EMERGENCY AMENDMENT

19 CSR 30-63.010 Definitions. The department is deleting section (1), amending section (2), and adding new sections (1) and (6).

PURPOSE: This amendment revises and adds definitions to comply with section 210.1080.1 RSMo; specifically, this amendment revises the definitions for child care provider and child care staff member and adds a definition for qualifying result.

EMERGENCY STATEMENT: The Child Care and Development Block Grant (CCDBG) Act of 2014 Section 658H, which passed November 19, 2014, requires states to conduct comprehensive criminal background checks. The Missouri legislature enacted section 210.1080, RSMo, as a part of HB 1350, 99th General Assembly, First Regular Session (2018). During that same session the Missouri legislature made significant changes to section 210.025, RSMo, to extend background screening requirements to those unlicensed child care providers that receive subsidy payments through the Department of Social Services. Implementation of these statutes has revealed inconsistencies between how the departments determine eligibility for employment or presence in a child care setting and gaps in compliance with the CCCDBG Act. To which authorizes the DHSS to promulgate emergency rules to implement criminal background checks for licensed and license-exempt child care providers as required by the CCDBG Reauthorization. Governor Parson commissioned the Missouri Child Care Working Group on May 4, 2019 and charged the working group with conducting a thorough review of current child care regulations and reporting back with recommendations to ensure safe, quality child care. One of the working group's recommendations was that these inconsistencies and gaps in child care background screening requirements be corrected. In response, the Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020), revising section 210.1080, RSMo to now include identical requirements to work in a child care setting in Missouri, whether licensed or unlicensed but receiving subsidy payments. This law clarifies who must have a criminal background check, expands the list of offenses which could result in someone being determined to not be eligible for employment or presence in a child care setting, and creates a Child Care Background Screening Review Committee to ensure that appealed results are handled consistently between DHSS and DSS. This law also gives DHSS authority to promulgate emergency rules consistent with its provisions. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings, and to ensure criminal background checks are completed as required by and in compliance with the CCDBG Reauthorization and section 210.1080, RSMo. A proposed amendment, which covers this same material is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

[(1) Child care provider, group day care home provider, or provider is the person(s) licensed or required to be licensed under section 210.211, RSMo, or person(s) exempted by section 210.1080.9(1), RSMo, in order to establish, conduct, or maintain a child care facility. This person(s) shall have the following rights and responsibilities as determined by the department:

*(A) Ultimate responsibility for making and implementing decisions regarding the operation of the facility; and
(B) Ultimate financial control of the operation of the facility.]*

(1) Child care provider is a person licensed or regulated to provide child care within the state of Missouri, including the member or members, manager or managers, shareholder or shareholders, director or directors, and officer or officers of any entity licensed or regulated to provide child care within the state of Missouri.

(2) Child care staff member is—/ a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or individuals residing in a family child care home who are seventeen (17) years of age and older.

(3) Criminal background check includes the following:

(A) A Federal Bureau of Investigation fingerprint check;
(B) A search of the National Crime Information Center's National Sex Offender Registry; and

(C) A search of the following registries, repositories, including the Family Care Safety Registry, or databases in Missouri, the state where the child care staff member resides, and each state where such staff member resided during the preceding five (5) years:

1. The state criminal registry or repository, with the use of fingerprints being required in the state where the staff member resides and optional in other states;

2. The state sex offender registry or repository; and

3. The state-based child abuse and neglect registry and database.

(4) Director is the director of the Missouri Department of Health and Senior Services.

(5) Department is the Missouri Department of Health and Senior Services.

(6) Qualifying result or qualifying criminal background check is a finding that a child care staff member or prospective child care staff member is eligible for employment or presence in a child care setting.

AUTHORITY: section 210.1080, RSMo Supp. [2018] 2020. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

**Division 30—Division of Regulation and Licensure
Chapter 63—Child Care Comprehensive
Background Screening**

EMERGENCY AMENDMENT

19 CSR 30-63.020 General Requirements. The department is

amending sections (1), (2) and (4).

PURPOSE: This amendment makes changes consistent with recent changes to section 210.1080, RSMo; specifically, changing when a person may begin working in a child care facility to the point in which they have received the qualifying result of a fingerprint based background check and adds an exemption to background screening for those child care providers who are not directly responsible for the oversight or direction of the child care facility and who do not have independent access to the facility.

EMERGENCY STATEMENT: The Child Care and Development Block Grant (CCDBG) Act of 2014 Section 658H, which passed November 19, 2014, requires states to conduct comprehensive criminal background checks. The Missouri legislature enacted section 210.1080, RSMo, as a part of HB 1350, 99th General Assembly, First Regular Session (2018). During that same session the Missouri legislature made significant changes to section 210.025, RSMo, to extend background screening requirements to those unlicensed child care providers that receive subsidy payments through the Department of Social Services. Implementation of these statutes has revealed inconsistencies between how the departments determine eligibility for employment or presence in a child care setting and gaps in compliance with the CCDBG Act. To which authorizes the DHSS to promulgate emergency rules to implement criminal background checks for licensed and license-exempt child care providers as required by the CCDBG Reauthorization. Governor Parson commissioned the Missouri Child Care Working Group on May 4, 2019 and charged the working group with conducting a thorough review of current child care regulations and reporting back with recommendations to ensure safe, quality child care. One of the working group's recommendations was that these inconsistencies and gaps in child care background screening requirements be corrected. In response, the Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020), revising section 210.1080, RSMo, to now include identical requirements to work in a child care setting in Missouri, whether licensed or unlicensed but receiving subsidy payments. This law clarifies who must have a criminal background check, expands the list of offenses which could result in someone being determined to not be eligible for employment or presence in a child care setting, and creates a Child Care Background Screening Review Committee to ensure that appealed results are handled consistently between DHSS and DSS. This law also gives DHSS authority to promulgate emergency rules consistent with its provisions. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings, and to ensure criminal background checks are completed as required by and in compliance with the CCDBG Reauthorization and section 210.1080, RSMo. A proposed amendment, which covers the same material is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Prior to the employment or presence of a child care staff member in a family child care home, group child care home, child care center, or license-exempt facility not exempted by section 210.1080.[9(1)]13, RSMo, the child care provider shall request the results of a criminal background check for such child care staff member from the department.

(2) A prospective child care staff member may begin work for a child care provider after the [criminal background check has been requested] **qualifying result of either a Federal Bureau of Investigation fingerprint check or a search of the Missouri criminal registry or repository with the use of fingerprints has been**

received from the department; however, pending completion of the criminal background check, the prospective child care staff member shall be supervised at all times by another child care staff member who received a qualifying result on the criminal background check within the past five (5) years.

(3) Child care providers shall request the results of a criminal background check for all child care staff members, unless the requirements of section (4) of this rule are met by the child care provider and proof is submitted to the department.

(4) A child care provider shall not be required to submit a request for a criminal background check for a child care staff member if—

(A) The staff member received a **qualifying** criminal background check within five (5) years before the latest date on which such a submission may be made and while employed by or seeking employment by another child care provider within Missouri;

(B) The first provider received a qualifying criminal background check result, consistent with this chapter, for the staff member; and

(C) The staff member is employed by a child care provider within Missouri or has been separated from employment from a child care provider within Missouri for a period of not more than one hundred eighty (180) consecutive days[.]; **or**

(D) **The individual meets the definition of child care provider, but is not responsible for the oversight or direction of the child care facility and does not have independent access to the child care facility. Such staff members shall be accompanied by an individual with a qualifying criminal background check in order to be present at the child care facility during child care hours.**

(5) Criminal background checks shall be completed for each child care staff member every five (5) years.

AUTHORITY: section 210.1080, RSMo Supp. [2018] 2020. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure

Chapter 63—Child Care Comprehensive Background Screening

EMERGENCY AMENDMENT

19 CSR 30-63.040 Background Screening Findings. The department is amending section (1).

PURPOSE: This amendment adds criteria that would cause a child care staff member to be ineligible for employment or presence at a family child care home, group child care home, child care center, or license-exempt facility to comply with section 210.1080.4, RSMo 2020.

EMERGENCY STATEMENT: The Child Care and Development Block Grant (CCDBG) Act of 2014 Section 658H, which passed November 19, 2014, requires states to conduct comprehensive criminal background checks. The Missouri legislature enacted section 210.1080, RSMo, as a part of HB 1350, 99th General Assembly, First Regular

Session (2018). During that same session the Missouri legislature made significant changes to section 210.025, RSMo, to extend background screening requirements to those unlicensed child care providers that receive subsidy payments through the Department of Social Services. Implementation of these statutes has revealed inconsistencies between how the departments determine eligibility for employment or presence in a child care setting and gaps in compliance with the CCCDBG Act. To which authorizes the DHSS to promulgate emergency rules to implement criminal background checks for licensed and license-exempt child care providers as required by the CCDBG Reauthorization. Governor Parson commissioned the Missouri Child Care Working Group on May 4, 2019 and charged the working group with conducting a thorough review of current child care regulations and reporting back with recommendations to ensure safe, quality child care. One of the working group's recommendations was that these inconsistencies and gaps in child care background screening requirements be corrected. In response, the Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020), revising section 210.1080, RSMo to now include identical requirements to work in a child care setting in Missouri, whether licensed or unlicensed but receiving subsidy payments. This law clarifies who must have a criminal background check, expands the list of offenses which could result in someone being determined to not be eligible for employment or presence in a child care setting, and creates a Child Care Background Screening Review Committee to ensure that appealed results are handled consistently between DHSS and DSS. This law also gives DHSS authority to promulgate emergency rules consistent with its provisions. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings, and to ensure criminal background checks are completed as required by and in compliance with the CCDBG Reauthorization and section 210.1080, RSMo. A proposed amendment, which covers this same material is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) Any child care staff member or prospective child care staff member shall be ineligible for employment or presence at a family child care home, group child care home, child care center, or license-exempt facility not exempted by section 210.1080.[9(1)]13, RSMo if such person—

(A) Refuses to consent to the criminal background check as required by section 210.1080, RSMo;

(B) Knowingly makes a materially false statement in connection with the criminal background check as required by section 210.1080, RSMo;

(C) Is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry;

(D) [Has a finding of child abuse or neglect under section 210.145 or 210.152, RSMo or any other finding of child abuse or neglect based on any other state's registry or database;] Is listed as a perpetrator of child abuse or neglect under sections 210.109 to 210.183, RSMo or has any other finding of child abuse or neglect based on any other state's registry or database;

[(E) Has been convicted of a felony consisting of—

1. Murder, as described in 18 U.S.C. Section 1111;
2. Child abuse or neglect;
3. A crime against children, including child pornography;
4. Spousal abuse;
5. A crime involving rape or sexual assault;
6. Kidnapping;

7. Arson;
8. Physical assault or battery; or
9. A drug-related offense committed during the preceding five (5) years;

(F) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, or sexual assault, or of a misdemeanor involving child pornography; or

(G) Has been convicted of any similar crime in any federal, state, municipal, or other court.]

(E) Has pled guilty or nolo contendere to or been found guilty of:

1. Any felony for an offense against the person as defined in chapter 565;
2. Any other offense against the person involving the endangerment of a child as prescribed by law;
3. Any misdemeanor or felony for a sexual offense as defined in chapter 566;
4. Any misdemeanor or felony for an offense against the family as defined in chapter 568;
5. Burglary in the first degree as defined in 569.160;
6. Any misdemeanor or felony for robbery as defined in chapter 570;
7. Any misdemeanor or felony for pornography or related offense as defined in chapter 573;
8. Any felony for arson as defined in chapter 569;
9. Any felony for armed criminal action as defined in section 571.015, unlawful use of a weapon as defined in section 571.030, unlawful possession of a firearm as defined in section 571.070, or the unlawful possession of an explosive as defined in section 571.072;
10. Any felony for making a terrorist threat as defined in section 574.115, 574.120, or 574.125;
11. A felony drug-related offense committed during the preceding five years, or
12. Any similar offense in any federal, state, municipal, or other court of similar jurisdiction of which the director of the designated department has knowledge.

(2) Adult household members seventeen (17) years of age and older in a family child care home shall be ineligible to maintain a presence at a family child care home if any one (1) or more of the provisions of section (1) of this rule applies to them.

AUTHORITY: section 210.1080, RSMo Supp. [2018] 2020. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 63—Child Care Comprehensive Background Screening

EMERGENCY AMENDMENT

19 CSR 30-63.050 Process for Appeal Required in Section 210.1080, RSMo. The department is amending section (1).

PURPOSE: This amendment updates the process for appeal for a prospective child care staff member or child care staff member of a licensed facility to comply with section 210.1080.9, RSMo 2020.

EMERGENCY STATEMENT: The Child Care and Development Block Grant (CCDBG) Act of 2014 Section 658H, which passed November 19, 2014, requires states to conduct comprehensive criminal background checks. The Missouri legislature enacted section 210.1080, RSMo, as a part of HB 1350, 99th General Assembly, First Regular Session (2018). During that same session the Missouri legislature made significant changes to section 210.025, RSMo, to extend background screening requirements to those unlicensed child care providers that receive subsidy payments through the Department of Social Services. Implementation of these statutes has revealed inconsistencies between how the departments determine eligibility for employment or presence in a child care setting and gaps in compliance with the CCCDBG Act. To which authorizes the DHSS to promulgate emergency rules to implement criminal background checks for licensed and license-exempt child care providers as required by the CCDBG Reauthorization. Governor Parson commissioned the Missouri Child Care Working Group on May 4, 2019 and charged the working group with conducting a thorough review of current child care regulations and reporting back with recommendations to ensure safe, quality child care. One of the working group's recommendations was that these inconsistencies and gaps in child care background screening requirements be corrected. In response, the Missouri legislature passed HB 1414, 100th General Assembly, Second Regular Session (2020), revising section 210.1080, RSMo, to now include identical requirements to work in a child care setting in Missouri, whether licensed or unlicensed but receiving subsidy payments. This law clarifies who must have a criminal background check, expands the list of offenses which could result in someone being determined to not be eligible for employment or presence in a child care setting, and creates a Child Care Background Screening Review Committee to ensure that appealed results are handled consistently between DHSS and DSS. This law also gives DHSS authority to promulgate emergency rules consistent with its provisions. As a result, this emergency amendment is necessary to protect the safety and health of children in child care settings, and to ensure criminal background checks are completed as required by and in compliance with the CCDBG Reauthorization and section 210.1080, RSMo. A proposed amendment, which covers the same material is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2020, becomes effective September 15, 2020, and expires March 13, 2021.

(1) The prospective child care staff member or child care staff member of a licensed facility may appeal a finding of ineligibility for employment or presence at a child care facility in writing to the department [to challenge the accuracy or completeness of the information contained in his or her criminal background check, or to offer information mitigating the results and explaining why an eligibility exception should be granted] as allowed by 210.1080.9, RSMo.

(2) The appeal shall be filed within ten (10) days from the mailing of the notice of ineligibility.

(3) The written appeal shall include the child care staff member's full name, Social Security number, date of birth, e-mail address, mailing address and zip code, and telephone number, including the area code, where s/he can be reached Monday through Friday, during the hours from 8:00 a.m. through 5:00 p.m.

AUTHORITY: section 210.1080, RSMo Supp. [2018] 2020. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expires March 13, 2021. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 91—Authorized Electronic Monitoring in Long-Term Care Facilities

EMERGENCY RULE

19 CSR 30-91.010 Authorized Electronic Monitoring

PURPOSE: The emergency rule sets forth requirements to implement legislation regarding the use of an electronic monitoring device in long-term care facilities.

AGENCY NOTE: All rules relating to long-term care facilities licensed by the department are followed by a Roman Numeral notation which refers to the class (either Class I, II or III) of standard as designated in section 198.085 RSMo.

EMERGENCY STATEMENT: The Authorized Electronic Monitoring in Long-Term Care Facilities Act becomes law on August 28, 2020. Under this new law, the department is required to promulgate rules and to create a form in this rule that residents and roommates of residents can utilize to give his or her consent to have electronic monitoring devices placed in his or her room. Currently, families of residents in long-term care facilities utilize electronic monitoring devices based on their desire to monitor the care of residents when they can't be present and to communicate with residents. For families, the use of electronic monitoring devices to watch over a loved one brings them peace of mind and a higher level of involvement especially for family members far away. The Authorized Electronic Monitoring in Long-Term Care Facilities Act prohibits anyone in long-term care facilities from utilizing these electronic monitoring devices without completing a form created by the department that provides consent from residents and any roommates for the placement of the electronic monitoring device into the rooms. Without this form being available through the rule as close as possible to the time that the law becomes effective, then these families will be required to turn off and/or remove the electronic monitoring devices and not have such device to communicate and/or watch over the residents for an extended time period because the form will not be available for the residents and roommates to complete. Additionally, the placement of these devices, without the appropriate knowledge of and consent from the resident, resident's guardian or legal representative, or the resident's roommates, violates the resident's and his or her roommates' privacy and dignity. This would include privacy and Health Insurance Portability and Accountability Act (HIPAA) issues such as exams or procedures being conducted by a healthcare professional on residents, when the residents are dressing or bathing or during a visit (e.g., attorney, financial planner, intimate partner, etc.) occurring in the residents' room. This emergency rule implements the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Thus, it is

imperative that this rule become effective as close to the same time that the law becomes effective in order to allow families of residents currently utilizing electronic monitoring devices to continue to utilize these devices. As a result, the department finds a compelling governmental interest, which requires this emergency action. A proposed rule, covering this same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 20, 2020, becomes effective September 3, 2020, and expires March 1, 2021.

(1) For the purposes of this rule the following definitions shall apply:

(A) Authorized electronic monitoring means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632, RSMo;

(B) Electronic monitoring device means a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;

(C) Facility or long-term care facility means any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined under section 198.006, RSMo;

(D) Guardian means the same as defined under section 475.010, RSMo; and

(E) Legal representative means a person authorized under a durable power of attorney that complies with sections 404.700 to 404.737, RSMo, to act on behalf of a resident of a facility.

(2) A resident shall be permitted to place in the resident's room an authorized electronic monitoring (AEM) device that is owned and operated by the resident or provided by the resident's guardian or legal representative consistent with sections 198.610 to 198.632, RSMo and this regulation. II/III

(3) A facility shall offer the DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form, included herein to any resident or resident's guardian or legal representative upon request and utilize this form to document consent and use of an electronic monitoring device. II/III

(4) AEM shall not begin nor an electronic monitoring device(s) be installed until the Electronic Monitoring Device Acknowledgment and Request Form has been completed and returned to the facility. The facility may require the resident or the resident's guardian or legal representative to remove or disable the electronic monitoring device. II/III

(5) AEM shall be conducted in accordance with consent and limitations provided in the Electronic Monitoring Device Acknowledgment and Request Form. II/III

(6) If AEM is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, AEM shall cease until the new resident has consented through the Electronic Monitoring Device Acknowledgment and Request Form. The facility may require the resident or the resident's guardian or legal representative to remove or disable the electronic monitoring device. II/III

(7) The placement and use of the AEM device shall be open and obvious.

(8) If a resident installs and uses an electronic monitoring device, a notice to alert and inform visitors shall be posted at the entrance of

the facility and resident's room.

(A) The facility shall post a notice at the main entrance of the facility in large, legible type and font and display the words "Electronic Monitoring" and state: "The rooms of some residents may be monitored electronically by, or on behalf of, the residents and monitoring is not necessarily open or obvious." III

(B) The facility shall require the resident to post and maintain a conspicuous notice at the entrance of the resident's room stating: "This room is being monitored by an electronic monitoring device." III

(9) The facility shall require an electronic monitoring device to be installed as follows:

(A) In plain view;

(B) Mounted in a fixed, stationary position;

(C) Directed only on the resident who initiated the installation and use of AEM device;

(D) Placed for maximum protection of the privacy and dignity of the resident and the roommate; and

(E) In a manner that is safe for residents, employees, or visitors who may be moving about the room. II/III

(10) The facility shall not refuse to admit an individual or discharge a resident because of a request to conduct AEM. II

(11) The facility shall not discharge a resident because unauthorized electronic monitoring is being conducted by or on behalf of a resident. II

(12) The facility shall make reasonable physical accommodation for AEM, including:

(A) Provide a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) Provide access to power sources for the video surveillance camera or other electronic monitoring device. II

(13) The facility shall ensure all staff are knowledgeable of the applicable laws and rules regarding AEM, sections 198.610 to 198.632, RSMo, including the consequences of hampering, obstructing, tampering with, or destroying an electronic monitoring device without the consent of the resident or resident's guardian or legal representative. III

(14) The facility shall ensure the Electronic Monitoring Device Acknowledgment and Request Form is maintained in the clinical records of the residents using AEM devices. The roommate's consent to the AEM device shall be maintained in his or her clinical record. These forms shall be retained for a period of five (5) years from the date of discharge. III



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

FORMS AND INSTRUCTIONS

Important Information

A resident or the resident's guardian or legal representative has the right to conduct authorized electronic monitoring (AEM) under sections 198.610 to 198.632, RSMo.

Written notice must be given to the long-term care facility.

The resident or the resident's guardian or legal representative shall complete and give notice via the consent form to the facility of your intent to place and use an AEM device.

To request AEM, the resident or the resident's guardian or legal representative shall:

- Complete this DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form.
- Obtain consent from other residents, if any in your room, using this DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form.
- Give the designated form(s) to the facility administrator/manager or his or her designee (facility representative).

NOTE: Authorized electronic monitoring shall not begin nor an electronic monitoring device be installed until this Electronic Monitoring Device Acknowledgment and Request Form has been completed, signed, and returned to the facility representative.

Complete Applicable Parts of this Form

There are options for who can complete an Electronic Monitoring Device Acknowledgment and Request Form. The requirements and instructions are different for each part. Make sure you choose the part(s) that fits your situation. For example, if you are a resident and have a roommate, you complete the resident's consent to electronic monitoring (Part I) and your roommate completes the roommate's consent to electronic monitoring (Part II).

The three (3) parts of this form are:

- **Part I** Resident's Request and Consent to Electronic Monitoring: *used when a resident consents for him or herself or the resident's guardian or legal representative gives consent.*
- **Part II** Roommate's Consent to Electronic Monitoring: *when the resident shares a room with another person and the roommate is consenting for him or herself or the roommate's guardian or legal representative gives consent.*

NOTE: If a new roommate has moved into the room the authorized electronic monitoring device cannot be used until Part II is completed, signed, and returned by the new roommate to the facility representative.

- **Part III** Revocation of Consent for the Placement and Use of Authorized Electronic Monitoring Device.**

****Part III - Optional.** A resident or a resident's roommate may withdraw AEM consent to electronic monitoring at any time. You may use Part III of this form to communicate to the facility your decision to no longer authorize electronic monitoring in your room.

Installation and Costs

The resident or the resident's guardian or legal representative shall pay for all costs associated with conducting electronic monitoring, except for the costs of electricity. The resident or the resident's guardian or legal representative shall be solely responsible for:

1. All costs associated with installation or removal of equipment incurred by the resident or the facility;
2. Maintaining the equipment; and
3. Internet service or network access to any electronic monitoring device.

Monitoring Device

An electronic monitoring device to be installed as follows:

1. In plain view;
2. Mounted in a fixed, stationary position;
3. Directed only on the resident who initiated the installation and use of AEM device and not the area(s) occupied by the roommate;
4. Placed for maximum protection of the privacy and dignity of the resident and the roommate; and
5. In a manner that is safe for residents, employees, or visitors who may be moving about the room.

Monitoring Device Recordings

1. If the footage is a videotape or recording, the footage MUST show the date and time that the events acquired on the footage occurred.
2. Contents of the tape or recording cannot have been edited or artificially enhanced.
3. If contents of the footage have been transferred from the original format to another technological format, you shall ensure the transfer is done by a qualified professional and that the contents are not altered.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

Signage

If a resident installs and uses an electronic monitoring device, a notice to alert and inform visitors shall be posted.

1. The facility shall clearly and conspicuously post a notice at the main entrance of the facility in large, clearly legible type and font and display the words "Electronic Monitoring" and state: "The rooms of some residents may be monitored electronically by, or on behalf of, the residents and monitoring is not necessarily open or obvious."
2. A resident shall be required to post and maintain a conspicuous notice at the entrance of the resident's room stating: "The room is being monitored by an electronic monitoring device."

Immunity

- No facility shall be civilly or criminally liable for activity or action arising out of the use by any resident or any resident's guardian or legal representative of any electronic monitoring device, including the facility's inadvertent or intentional disclosure of a recording made by a resident, or by a person who consents on behalf of the resident, for any purpose not authorized under sections 198.610 to 198.632, RSMo.
- No facility shall be civilly or criminally liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.632, RSMo.
- The department and the facility shall be immune from civil liability in connection with the unauthorized placement or use of an electronic monitoring device in the room of a resident.

FREQUENTLY ASKED QUESTIONS:

WHO may request AEM?

- The resident, if the resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, notwithstanding the terms of any durable power of attorney, general power of attorney, or similar instrument.
- If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian may request AEM.
- If a resident has been determined by a physician to lack capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

WHO may consent to AEM?

- Any resident and his or her roommate(s).
- A resident's guardian or legal representative.

Can you change your mind about the installation and use of an electronic monitoring device in your room?

Yes. You or your guardian or legal representative may REVOKE a choice to have or not have a monitoring device installed and used. You may revoke your choice at any time and can give notice of such revocation to the facility. You can use Part III of the attached form, *Revocation of Consent for the Placement and Use of Authorized Electronic Monitoring Device*.

Whose choice is it to have a monitoring device installed and used in your room?

This is a choice that ONLY you and, if applicable, your guardian or legal representative can make.

NOTE: If there is audio recording used it will likely record conversations with staff, other health care providers, family and friends, and other parties in the facility. This may mean private information about finances, family relationships, and protected health information may be recorded.

Can a person/resident be refused admittance or discharged for requesting AEM?

A facility CANNOT deny a person/resident admission to a facility or be discharged just because the person/resident chooses to authorize the installation and use of an electronic monitoring device.

What happens if you want a monitoring device in your room, but your roommate does not want one?

A facility may move a resident requesting AEM to a comparable room to accommodate the request to conduct AEM.

How does AEM affect the reporting of abuse and neglect?

If abuse or neglect is suspected the most important thing is to report it immediately. Abuse and neglect cannot be addressed unless reported.

Adult Abuse and Neglect Hotline: 1-800-392-0210 or https://apps4.mo.gov/APS_Portal/

1. A person is required to report abuse based on that person's viewing of, or listening to footage only if the incident of abuse is acquired on the footage.
2. A person is required to report neglect based on that person's viewing of, or listening to footage only if it is clear from viewing or listening to the footage that neglect has occurred.
3. If abuse or neglect of the resident is reported to the facility, and the facility requests a copy of any relevant footage made by an electronic monitoring device, the person who possesses such footage shall provide the facility with a copy at the facility's expense.