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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

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IN THIS ISSUE:

EMERGENCY RULES

Department of Social Services	
Children's Division	1121
Department of Health and Senior Services	
Division of Regulation and Licensure	1136

PROPOSED RULES

Department of Natural Resources	
Clean Water Commission	1153
Department of Social Services	
Children's Division	1287
Department of Health and Senior Services	
Division of Community and Public Health	1302
Division of Regulation and Licensure	1306
Department of Commerce and Insurance	
Missouri State Board of Accountancy	1337

ORDERS OF RULEMAKING

Department of Agriculture	
Animal Health	1338
Department of Social Services	
Family Support Division	1338
MO HealthNet Division	1338
Department of Health and Senior Services	
Division of Regulation and Licensure	1339

IN ADDITIONS

Department of Commerce and Insurance	
State Banking Board	1349
Division of Finance	1349

DISSOLUTIONS	1351
-------------------------------	------

SOURCE GUIDES

RULE CHANGES SINCE UPDATE	1355
EMERGENCY RULES IN EFFECT	1359
EXECUTIVE ORDERS	1360
REGISTER INDEX	1362

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
March 1, 2021 March 15, 2021	April 1, 2021 April 15, 2021	April 30, 2021 April 30, 2021	May 30, 2021 May 30, 2021
April 1, 2021 April 15, 2021	May 3, 2021 May 17, 2021	May 31, 2021 May 31, 2021	June 30, 2021 June 30, 2021
May 3, 2021 May 17, 2021	June 1, 2021 June 15, 2021	June 30, 2021 June 30, 2021	July 30, 2021 July 30, 2021
June 1, 2021 June 15, 2021	July 1, 2021 July 15, 2021	July 31, 2021 July 31, 2021	August 30, 2021 August 30, 2021
July 1, 2021 July 15, 2021	August 2, 2021 August 16, 2021	August 31, 2021 August 31, 2021	September 30, 2021 September 30, 2021
August 2, 2021 August 16, 2021	September 1, 2021 September 15, 2021	September 30, 2021 September 30, 2021	October 30, 2021 October 30, 2021
September 1, 2021 September 15, 2021	October 1, 2021 October 15, 2021	October 31, 2021 October 31, 2021	November 30, 2021 November 30, 2021
October 1, 2021 October 15, 2021	November 1, 2021 November 15, 2021	November 30, 2021 November 30, 2021	December 30, 2021 December 30, 2021

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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter [32—Child Care] 35—Alternative Care**

EMERGENCY AMENDMENT

13 CSR 35-[32.020/35.120 Foster Care Case Management Contracts. The division is renumbering this rule and moving it to chapter 35. The division is also amending sections (1), (3)-(8), (10), (11), (13), (15), and (16), and is adding section (17).

PURPOSE: This emergency amendment establishes the governing provisions for foster care case management contracts in light of the amendments to section 210.112, RSMo., enacted into law by House Bill 1414 (2020).

PURPOSE: This rule establishes the governing provisions for foster care case management contracts to provide a comprehensive system of service delivery for children and their families as set forth in section 210.112[.8.], RSMo.

EMERGENCY STATEMENT: The Department of Social Services, Children’s Division, by rule and regulation, must promulgate regulations to implement regulations to implement the 2020 amendments to section 210.112, RSMo, by July 1, 2021. This amendment was promulgated with extensive consultation from stakeholders over several months after the enactment of HB 1414. Stakeholders, including Foster Care Case Management Contractors, judges, juvenile officers

and academic experts, all play a unique role in the response and evaluation team that was created by HB 1414. Section 210.112, RSMo, required the division to create the team which was to meet for the first time no later than January 1, 2021. The division timely set up the response and evaluation team as required by the statute. Successive meetings and discussions with stakeholders have been taking place since then, and continue to occur. The implementation of this regulation now, on an emergency basis, is necessary to comply with the statutory mandate to promulgate rules pursuant to section 210.112, RSMo, by July 1, 2021. The amendments to this regulation are being promulgated in conjunction with 13 CSR 35-35.100, 35-35.130, and 35-35.140 because they cross reference each other and must therefore be implemented together to promulgate a consistent regulatory system. The Children’s Division is vested by law with the authority and responsibility to establish the child welfare system for the whole state. See sections 207.020, 210.109, and 210.112 RSMo. The Children’s Division has determined that promulgation of this regulation is necessary on an emergency basis to address a danger to public health, safety and/or welfare of children in Missouri. This amendment will ensure that contracts with private agencies which provide case management services for abused and neglected children in foster care on behalf of the State of Missouri and the Children’s Division will ensure the safety of vulnerable children under their supervision, it will provide new systems to ensure that foster care case management is accomplished in a transparent and accountable manner, and it will help ensure that the Children’s Division has effective remedies to address any concerns about the safety welfare of children under these contracts. This amendment was promulgated with extensive input from stakeholders. The Children’s Division therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The Children’s Division believes that this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment, which covers the same material is published in this issue of the *Missouri Register*. This emergency amendment was filed June 11, 2021, becomes effective July 1, 2021, and expires February 24, 2022.

(1) This rule shall apply to the foster care case management contracts for the provision of case management services for youth placed in the custody or under the supervision of the Children’s Division as provided in section 210.112, RSMo, as well as govern the work of contractors and their **subcontractors**, officers, agents, and employees pursuant to those contracts. **This regulation shall apply to any subcontractors of the contractor which provide foster care case management services. The safety and welfare of the children served under these contracts shall be the paramount consideration in all matters pertaining to these contracts.**

(3) Contractors shall provide a range of child welfare services including case management services for children in out-of-home placements, family-centered services for parents and legal guardians from whose care the child was removed, and community resource development. Family-centered services shall be defined as the family-focused intervention method utilized by the Children’s Division when working with families to assist them in identifying their strengths and needs and to develop a family plan for change.

(A) Case management services shall include assessments, case planning, placement services, service planning, permanency planning, and concurrent planning. The contractor shall have ongoing contact with the child; the child’s out-of-home care provider; the parents or the guardian of the child in care, if parental/guardianship rights have not been terminated; the children remaining in the home; the court; and the members of the child’s Family Support Team as

defined in the Children's Division's written policies. The contractor must provide case management services that respect the culture, ethnicity, and religious practices of the children and that of his/her family. The contractor shall document all case management services provided in the case record as well as in the automated case management system within the timeframes outlined in the contract and in the policies of the Children's Division.

1. Assessments shall be defined as the consideration of all social, psychological, medical, educational, and other factors to determine diagnostic data to be used as a basis for the case plan.

2. Case planning is a process of negotiation between the family case manager, the parent(s) or guardian(s) from whom the child was removed, and the juvenile officer, which describes the services and activities necessary for the purpose of achieving a permanent familial relationship for the child. The case plan shall include the permanency plan as defined in paragraph (3)(A)5. below, the concurrent plan as defined in paragraph (3)(A)6. below, the service plan as defined in paragraph (3)(A)4. below, the timeframes in which services will be delivered, and the timeframes for obtaining reports from service providers, when applicable.

A. Contractors shall develop a case plan no later than *[fourteen] thirty (14/30)* days after referral of the child's case to the contractor by the Children's Division. The contractor shall submit case plans to the court in accordance with local court procedures.

B. The case plan shall be developed in accordance with the written policies of the Children's Division and applicable federal and state law. In the event that the policies of the Children's Division conflict with applicable federal and state law, federal and state law shall prevail.

C. The contractor's case manager shall give careful consideration to the unique needs of each child and family when developing the case plan.

D. As necessary to effectuate the best interests of the subject child, the case plan may be amended from time-to-time *[throughout the contract period]*.

3. Placement services is the selection of, and placement with, the most appropriate resource for children in out-of-home care based on the assessment of the child's unique needs and personality and the out-of-home care provider's capacity and skills in meeting those needs.

A. The contractor's case manager must utilize the least restrictive out-of-home placement for a child.

(I) The best interests of the child in care shall govern all placement decisions. When the placement would not be contrary to the best interest of the child, the contractor must give relatives of the child in care preference and first consideration to serve as the child's out-of-home care provider. As required by applicable federal and state law, the contractor must conduct an immediate search to locate, contact, and, where appropriate, place the child in care with his/her grandparent(s). Therefore, grandparents of the child in care shall be given first consideration for placement before other relatives of the child in care are considered. Whenever the contractor decides that relative placement is contrary to the best interests of the child, the contractor shall document the reasons for this decision in the case plan.

(II) Placements in residential treatment shall be based on an **individualized, independent** assessment of *[the] each* child's needs **in the manner required by law, regulation and CD policy**. Such placements shall be considered for children in care who need structured and therapeutic intervention. Placement in a residential treatment facility must be of a limited duration and treatment during this time must be focused on enabling the child in care to transition to family and/or community-based care as soon as possible. **The contractor shall prioritize methods of reducing or eliminating a child's need for residential treatment through community-based services and supports.**

(III) In coordination with the child in care's Family Support Team, the contractor shall periodically reassess the place-

ment of the child to determine whether the placement is consistent with the child's permanency plan and is meeting the child's needs.

(IV) As required by the written policies of the Children's Division, the contractor shall convene Family Support Team meetings to discuss any change in placement.

B. The contractor shall exercise reasonable and continuing efforts to preserve, foster, and encourage the relationships between siblings of children under case management with the contractor unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so.

(I) Whenever reasonably possible, the contractor shall place a child in out-of-home care with any siblings who are also removed from their home. The contractor shall make reasonable efforts to place siblings in the same placement unless doing so would be contrary to the safety or welfare of any of the siblings.

(II) The contractor must make arrangements for regular, frequent, and continuing visitation between siblings who are not in the same placement unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so.

(III) Unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so, the contractor shall reunite siblings at the earliest time possible when circumstances change and different caregivers are no longer required.

(IV) The contractor shall document in the case file its efforts to place siblings in the same home and, if not placed in the same home, its efforts to maintain the sibling relationship. If the contractor determines that placement of siblings in the same placement or visitation between the siblings is contrary to the safety or welfare of the siblings, the contractor shall document the reasons therefore in the case file.

C. When an appropriate placement is available and it is in the best interests of the child to do so, placements of children in care shall be made in the child's home community.

D. Unless otherwise ordered or authorized by the court, placement of children in care shall be with a licensed out-of-home care provider.

E. The contractor's case manager shall not place a child in a home in which any person residing in the home has been found guilty of, or pled guilty to, any crimes identified in section 210.117, RSMo.

4. Service planning is the provision of any services indicated and identified as needed through an assessment and case plan, or ordered by the juvenile court.

5. Permanency planning is determining the permanent plan which best meets the needs of the child in care and which complies with the applicable requirements of federal law. Contractors shall provide ninety (90) calendar days of services to the child and family after a child is reunified with their parent(s) to assure a continued successful outcome as defined in the contract. Contractors shall provide ninety (90) calendar days of services to the child and family after a child is reunified with their legal guardian(s), from whom they were removed, to assure a continued successful outcome as defined in the contract. The permanency plan shall consider—

A. The child's need for a continuing relationship with his/her parent(s) or legal guardian(s) prior to the child's removal from the home;

B. The ability and willingness of the child's parent(s) or legal guardian(s) *[prior to the child's removal from the home]* to actively perform their functions as the child's caregiver with regards to the needs of the child;

C. The interaction and interrelationship of a child with the child's parent(s) or legal guardian(s) from whom they were removed, the child's out-of-home care provider, siblings, and any other person who may have a significant impact upon the child's best interest;

D. The child's adjustment to his/her out-of-home placement, school, and community; *[and]*

E. The mental and physical health of all individuals involved, including any history of abuse of or by any individuals involved././;

F. Any other information and factors that may be relevant to the care, safety and welfare of each child.

6. A permanency plan shall include an individualized primary permanency plan and a concurrent permanency plan for each child. Concurrent permanency planning is a process of pursuing a primary permanency goal for a child in care, such as reunification, while simultaneously establishing and implementing an alternative permanency plan for that child. The contractor shall make active, reasonable efforts to finalize the primary *[or]* and concurrent permanency plan and shall document those efforts in the case file. The permanency plan shall be developed at the earliest possible opportunity and in no case later than *[fourteen]* **thirty (14/30)** days after case referral. The plan shall be submitted to the court in the manner prescribed by law or as otherwise ordered by the court. As required by Children's Division written policies, the permanency plan shall be periodically reviewed and, where appropriate, may be modified if modification is in the best interests of the child as *[determined]* **recommended** by the child's Family Support Team or as ordered by the court.

(B) Community resource development is the recruitment, assessment, training, maintenance, and retention of out-of-home care providers. It shall also include the development of those services which shall best meet the needs of the child and family.

1. The contractor shall conduct community resource development activities to obtain appropriate out-of-home resource providers to enable the contractor to perform its duties under the contract.

2. Unless such policies conflict with applicable state law, the contractor shall ensure background investigations are conducted on all out-of-home care providers as required by **law, regulation and** the written policies of the Children's Division.

3. The contractor shall utilize a training curriculum which meets or exceeds the resource development standards set forth in the written policies of the Children's Division. The contractor shall obtain approval from the Children's Division designee prior to finalizing the curriculum and content for the training sessions.

(4) The contractor shall ensure that all children under the age of ten (10) years old referred to the contractor receive a Healthy Children and Youth assessment within thirty (30) days of entering care, as **often as necessary for the provision of follow-up care and treatment**, and *[every six (6) months]* **at least annually** thereafter. Such assessments will be utilized to determine treatment services which will meet the child's psychological and social needs. When the assessment indicates intensive twenty-four (24)-hour treatment services, appropriate services will be provided. A written report of the assessments **and documentation that the prescribed treatment has been timely provided to the child (or good cause why the treatment was delayed or not provided)** shall be **documented and maintained** in the case file.

(5) The contractor shall deliver all services through qualified professionals who have substantial, **current** and relevant **training**, education and experience and who are competent, *as defined by the Council on Accreditation,* to deliver case management services. The contractor's personnel must meet or exceed all of the applicable **accreditation**, licensing **and/or** certification requirements of their profession set by the state of Missouri, if such licensure or certification is required by their profession for the performance of their specific job function. The contractor's personnel must meet the education and experience expectations outlined in the most current child placing rules set forth at 13 CSR 40-73.035.

(A) The contractor shall maintain a personnel file for each employee which shall be accessible to the Children's Division upon request for the purpose of verifying compliance with **this regulation and** the requirements of its contract with the Children's Division. At a minimum, the file must include complete and current criminal record checks, background investigations, resumes, degrees or diplomas, date of employment, training records, performance appraisals, com-

mendations, disciplinary actions, and other related actions. Background checks, including **finger print based** criminal background checks, shall be periodically updated as requested by the Children's Division **or otherwise required by law**. Contractors shall immediately notify the Children's Division of any act or occurrence which may impact their employee's ability, qualifications, or certification to provide services under the contract.

(6) The contractors shall deliver all services through professionals who have substantial and relevant training.

*[(A)]*The contractor's personnel providing case management services or direct supervision of case management services must successfully complete **the same training [which emphasizes—] curriculum as the Children's Division's personnel which provide case management services or direct supervision of case management services. This applies to both pre-service and in-service training as required by the Children's Division. Contractors may provide or require additional training as they deem appropriate, provided that the additional training is consistent with the Children's Division's regulations, policies, and procedures. Contractor's personnel attending Children's Division pre-service training will be scheduled for the first available session with openings.**

[1. A strengths-based assessment of the family;

2. Engagement of the family throughout a child's out-of-home placement beginning with the assessment;

3. Treatment and service planning for all family members with a commitment to reunifying the child with his/her biological family whenever possible, to preserving a child's connection to his/her family of origin whenever possible, and a commitment to a child's right to belong to a family;

4. Family dynamics, including human growth and development;

5. A team approach to case planning which draws upon the experience of professionals who are familiar to the members of the child in care's family;

6. Advocacy for the families and children served through the child welfare system;

7. The relevant legal and due process rights of children, parents, families, and care providers;

8. A background in the laws and procedures governing the juvenile courts; and

9. Cultural sensitivity.

(B) The contractor's personnel providing case management and direct supervision of case management staff must successfully complete pre-service training either by attending the Children's Division pre-service training, or by directly providing or arranging for another entity to provide pre-service training. The training shall include all of the topics listed in subsection (6)(A) above.

1. When the contractor plans to provide or arrange for another entity to provide pre-service training for its employees, the contractor must submit the curriculum to the Children's Division for prior approval.

A. When the contractor is granted permission to provide the pre-service training, or to arrange for another entity to provide the pre-service training, it shall be the contractor's responsibility to ensure the training is provided. In such instances, employees and/or subcontractors of the contractor will be eligible to attend the pre-service training provided by the Children's Division only if agreed between the children's division and the contractor.

2. The pre-service training for newly-hired case managers and direct supervisors must be completed within the first ninety (90) calendar days of employment.

3. Pre-service training must incorporate skill-based instruction and skill building exercises. For the first ninety (90) days of employment, the contractor must provide case managers with on-the-job support which includes experiential

learning techniques.

4. Contractor's personnel attending Children's Division pre-service training will be scheduled for the first available session with openings.

5. The pre-service training must—

A. Clearly identify the case management role;

B. Clearly acquaint personnel with federal and state laws relating to child welfare practices; this includes, but is not limited to, the constitutional rights of families and children who are involved in the juvenile justice system, including training on due process, the Fourth Amendment to the U.S. Constitution, the Adoption and Safe Families the requirement that Children's Division exercise reasonable efforts to finalize permanency plans, concurrent planning, termination of parental rights, guardianships, the Missouri Rules of Procedure for Juvenile Courts, and federal and state law governing permanency planning;

C. Acquaint personnel with Children's Division's policies relating to out-of-home care, adoption and guardianship subsidy programs, family-centered services, intensive in-home services, and resource development as defined by Children's Division written policies;

D. Acquaint personnel with recordkeeping requirements as set forth in the written policies of the Children's Division;

E. Acquaint personnel with the automated information system utilized by the Children's Division; and

F. Successful completion of pre-service training must be documented in personnel records for all personnel providing case management services and direct supervisors.]

[(C)](A) The contractor's personnel who recruit, train, and assess foster parents serving children with elevated needs, or who provide ongoing support to such foster parents, must successfully complete specific training which is designed for the elevated needs program. Elevated needs shall be defined as provided in 13 CSR 35-60.070. Training for elevated needs providers must be provided by the Children's Division or by the contractor's staff utilizing curriculum which has been previously approved by the Children's Division.

[(D)](B) The contractor's personnel who train staff who are tasked to recruit, train, and assess foster parents serving children with elevated needs must successfully complete a Train-the-Trainer session provided by the Children's Division or by another entity approved to provide such training by the Children's Division.

(7) The contractor must submit all required information to the family care safety registry on behalf of all professional personnel assigned to provide services under the contract prior to such personnel providing service to children in care. Such information shall be updated on an annual basis thereafter. Any personnel who reside in another state and work in the state of Missouri, or who have relocated to the state of Missouri within the last five (5) years, shall provide documentation of background screening(s) from their state of origin to include, but not limited to, child abuse/neglect and criminal background screening check(s), prior to such personnel providing service. If the employee continues to reside in another state while performing case management services for the contractor, the out-of-state check shall be done annually. The contractor's professional personnel assigned to the contract must have background investigations, **including fingerprint based criminal background checks**, submitted to the Children's Division via a form provided by the Children's Division prior to such professional personnel providing services under the contract.

(C) When child abuse/neglect or criminal activity is discovered through the background investigation of any professional personnel assigned to provide services under the contract, the contractor must review the information to determine the relevance of such finding to the provision of case management services.

1. The contractor shall not allow individuals to perform case

management duties when his/her background investigation reveals that he/she has been found guilty, pled guilty, or has been convicted of—

A. A felony conviction for child abuse or neglect or spousal abuse;

B. A felony or misdemeanor conviction for any crime in which a child was a victim or a crime against children, to include, but not limited to, any offense involving child pornography;

C. Any crime involving violence and/or sexual offenses, including, but not limited to, rape, domestic violence, domestic assault, armed criminal action, sexual assault, or homicide;

D. Failure to report suspected child abuse to the child abuse and neglect hotline as required by section 210.115, RSMo;

E. A felony conviction for physical assault, battery, or a drug-related offense within the past five (5) years; or

F. Any other crime listed in section 210.117, RSMo.

2. The contractor must submit a written request to the Children's Division designee when the contractor desires to hire an individual with a history of child abuse/neglect or criminal activity which does not meet the criteria identified in paragraph (7)(C)1. above. The Children's Division designee shall review the request and provide a written response indicating if the individual may provide case management services.

A. The contractor **or the individual or both may [shall]** request an administrative review no later than thirty (30) days from the date of Children's Division decision **[when]** if they dispute such decision. **If the Children's Division does not receive a timely request for administrative review the Children's Division's decision shall be final.**

B. The request for an administrative review shall be in writing and generally set out the reasons for the request.

C. The Children's Division shall schedule an administrative review within **[three] five (3/5)** business days of receipt of the request. The administrative review shall take place before the Children's Division designee. The Children's Division shall notify the contractor **and/or the individual** of the date and time of the review. The review may be continued at the request of the contractor **or the individual**, but the employment exclusion shall remain in effect pending the administrative review.

D. The review shall be informal, the rules of evidence shall not apply, and both the contractor and the Children's Division may submit any information relevant to the appealed decision. The purpose of the review will be to determine the potential employee's suitability for employment under the contract.

(I) The contractor's personnel application must include an authorization for the Children's Division to release information which directly relates the employee's suitability for employment under the contract.

(II) Upon completion of the administrative hearing, the Children's Division designee will submit a recommendation to the director of the Children's Division. The director may affirm or reverse the initial decision. Such decision shall be final.

(F) Except for employment and workers' compensation matters, the contractor must disclose any relevant litigation within the past five (5) years involving the contractor, the contractor's employees, officers, agents, and/or subcontractors within five (5) business days from the date the contractor receives a demand or is served with process, whichever takes place first. Individuals and entities who submit a response to an RFP or IFB shall also disclose this information during the procurement process. The contractor shall disclose the names of the parties (initials may be used in lieu of party name for minors); the Court and case number in which the case was filed; and a brief description of the claims or criminal charges brought. The contractor shall include a copy of the complaint or petition if requested by the Department of Social Services or the division.

1. Relevant litigation under this agreement is defined as any civil claims, judgments, or out of court settlements and/or criminal charges which are pending or have been disposed of by a

finding or plea of guilt, an Alford plea, or a plea of nolo contendere regarding the following:

- A. allegations of child abuse or neglect;
- B. personal injury to a client;
- C. violent acts, including but not limited to, domestic violence and other crimes against persons;
- D. acts against the family, which include, but are not limited to Orders of Protection, and criminal charges denominated as offenses against the family;
- E. fraud and/or misrepresentation;
- F. sexual offenses, including pornography, and any registration on a sexual offender registry;
- G. weapons offenses;
- H. controlled substance offenses; or
- I. any other claims or charges which relate to the delivery of foster care case management services to children.

2. The contractor must also disclose any pending investigation or assessment or “substantiated finding” of any contractor’s employee, officer, agent, and/or subcontractor within five (5) business days from the date of notification.

3. Substantiated finding is defined as a court adjudication, or determination by the state agency or any Court of a probable cause and/or preponderance of the evidence finding, or substantially similar findings in this state or any other.

4. Failure of the contractor to disclose relevant litigation, pending investigations, assessment, or “substantiated finding” as specified herein, shall be considered a breach of the contract and subject to appropriate and available remedies by the State of Missouri.

5. The Children’s Division may share information about any disclosed litigation, pending investigations, assessments, or “substantiated findings” with all state and federal agencies, law enforcement agencies, state and federal auditors, children and families, Family Support Team (FST), and any courts, in the sole discretion of the Children’s Division on a need to know basis as determined by the state agency and consistent with applicable state law.

(8) Contractors shall have a proven record of providing quality child welfare services within the state of Missouri.

(C) The contractor’s case management program must be accredited by one (1) or more of the following national accrediting bodies: the Council on Accreditation (COA); the Joint Commission; or the Commission on Accreditation of Rehabilitation Facilities. The Children’s Division *[shall]* will accept **proof of accreditation in good standing** as prima facie evidence of completion of the requirements for licensure under sections 210.481 *[and]* to 210.511, RSMo, *[proof that an agency is accredited. The Children’s Division shall not require any further evidence of qualification for licensure if such proof of voluntary accreditation is submitted] only as provided in 13 CSR 35-35.140.*

(10) Subject to appropriation, the Children’s Division shall continue to offer contracts in areas of the state where eligible providers are capable of providing a broad range of services. Subject to appropriation, the Children’s Division may consider expansion of the contracts to areas of the state where **Children’s Division’s staff** caseloads exceed COA standards.

(11) The contract may not result in the loss of federal funding. The contractor shall therefore comply with and implement the requirements of all relevant federal and state laws, **regulations**, and policies including, but not limited to, those listed below which pertain to the child under case management by the contractor. In the event of a discrepancy between the policies of the Children’s Division and federal or state law, the contractor shall comply with the federal or state law—

(K) Federal laws, rules, and regulations including, but not limited to, *[the Adoption and Safe Families Act] Title IV-E of the*

Social Security Act, as amended, and the Health Insurance Portability and Accountability Act, as amended;

(M) Local initiatives pertaining to services which a case manager provides to children in out-of-home placements and their families which have been approved by the Children’s Division state office. *[This shall include, but shall not be limited to, requirements related to Family-to-Family. Expectations of contractors shall not exceed requirements of Children’s Division staff.]*

(13) **The Children’s Division shall monitor and evaluate** *[C]contractors [shall be evaluated by the Children’s Division]* based on objective, consistent, and performance-based criteria as *[further defined]* provided in both 13 CSR 35-35.100 and the contract. **In the event of a conflict between 13 CSR 35-35.100 and the contract, the regulation shall prevail over the contract.**

(D) *[The Children’s Division may monitor additional outcomes including, but not limited to: the number of placement settings for children in out-of-home care; residential utilization; outcomes for older youth; and the number of resource homes developed by the contractor as identified in the Request for Proposal or Invitation for Bid. The Children’s Division may require corrective action when the contractor fails to meet the standards set forth in the Request for Proposal or Invitation for Bid.] Children in the custody of, or under the supervision of, the Children’s Division and whose cases are being managed by the contractor must receive comprehensive and quality services as measured by the evaluation tool set forth in 13 CSR 35-35.100.*

(15) If the contractor does not comply with its obligations under this regulation, or breaches its contract with the Children’s Division, **or the Children’s Division has reasonable cause to suspect that any child or children’s safety or welfare may be at risk** the Children’s Division shall have the discretion to **halt new referrals of cases to the Contractor, transfer cases to other performing providers, terminate the contract and seek any remedies which may be available in law and equity for breach of contract. The Children’s Division may take immediate action as the Children’s Division in its discretion may deem be necessary to ensure the safety, welfare and best interests of children served by the Contractor.** If the Children’s Division determines that the contractor has failed to meet the outcome measures specified in the contract, the Children’s Division may reduce the contractor’s caseload or cancel the contract in its entirety. The contractor shall be allowed an opportunity to review the outcomes prior to the development of the final outcomes report. The contractor shall be responsible for any updates in the automated case management system which are necessary to correct the outcomes. The Children’s Division shall correct any programming errors identified by the contractor.

(16) In addition to those measures authorized in section (15) above, if the contractor does not meet the **performance and/or** outcome goals specified in the contract **and in 13 CSR 35-35.100**, or otherwise fails to comply with this regulation, **any other laws or regulations**, or the contract, the Children’s Division may elect to require the contractor to implement a *[practice improvement] corrective action* plan to *[correct] remedy* any deficiencies in performance. Failure of the contractor to take action as indicated in the practice improvement plan within ninety (90) calendar days, or the number of days specified in the practice improvement plan, shall be considered a breach of contract. Thereafter, the Children’s Division may terminate the contract or pursue any other remedies in law or equity available to the Children’s Division. The written *[practice improvement] corrective action* plan shall address—

- (A) Reasons why the *[outcome] goal* was not achieved;
- (B) Steps taken to meet the *[outcome] goal*;
- (C) Individual(s) responsible for necessary action; and
- (D) Timeframe for meeting the defined *[outcome] goal*.

(17) All contractors, whether accredited, licensed or not, shall fully comply with the information sharing requirements set forth in 13 CSR 35-35.140(5).

AUTHORITY: sections 207.020 and 660.017, RSMo [2000] 2016, section 210.112.8, RSMo Supp. [2010] 2020, and *Young v. Children's Division, State of Missouri Department of Social Services*, 284 S.W.3d 553 (Mo. 2009). Original rule filed Feb. 28, 2011, effective Oct. 30, 2011. Emergency amendment filed June 11, 2021, effective July 1, 2021, expires Feb. 24, 2022. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter [32—Child Care] 35—Alternative Care**

EMERGENCY AMENDMENT

13 CSR 35-[32.030]35.130 Contracted Foster Care Case Management Costs. The division is renumbering this rule and moving it to Chapter 35. The division is also amending sections (1)-(6) and adding section (7).

PURPOSE: This amendment implements House Bill 1414 (2020), which amended section 210.112, RSMo. in regards to how the Department of Social Services and the Children's Division will determine the reasonable cost for contracted foster care case management services for foster care case management contracts under 210.112, RSMo; and how foster care case management contractors may earn incentive payments for superior performance pursuant to section 210.112, RSMo.

EMERGENCY STATEMENT: The Department of Social Services, Children's Division, by rule and regulation, must promulgate regulations to implement House Bill 1414 (2020), which amended section 210.112, RSMo, by July 1, 2021. This amendment was promulgated with extensive consultation from stakeholders over several months after the enactment of HB 1414. Stakeholders, including Foster Care Case Management Contractors, judges, juvenile officers and academic experts, all play a unique role in the response and evaluation team that was created by HB 1414. Section 210.112, RSMo, required the division to create the team which was to meet for the first time no later than January 1, 2021. The division timely set up the response and evaluation team as required by the statute. Successive meetings and discussions with stakeholders have been taking place since then, and continue to occur. The implementation of this regulation now, on an emergency basis, is necessary to comply with the statutory mandate to promulgate rules pursuant to section 210.112, RSMo. by July 1, 2021. The amendment to this regulation is being promulgated in conjunction with the promulgation of 13 CSR 35-35.100, 35-35.120, and 35-35.140 because they cross reference each other and must therefore be implemented together to promulgate a consistent regulatory system. The Children's Division is vested by law with the authority and responsibility to establish the child welfare system for the whole state. See sections 207.020, 210.109, and 210.112 RSMo. The Children's Division has determined that promulgation of this regulation is necessary on an emergency basis to address a danger to public health, safety and/or welfare of children in Missouri. This amend-

ment will ensure that protecting the safety and welfare of the children will be the paramount consideration in managing services for abused and neglected children in foster care, it will establish new systems to measure the performance of foster care case management providers, and ensure that foster care case management is accomplished in a transparent and accountable manner. This regulation will further ensure that incentive payments to private foster care case management agencies will be based upon a comprehensive set of performance criteria. The Children's Division therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Children's Division believes that this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment, which covers this same material is published in this issue of the *Missouri Register*. This emergency amendment was filed June 11, 2021, becomes effective July 1, 2021, and expires February 24, 2022.

(1) Payment to **individuals and entities providing** foster care case management [providers] services pursuant to section 210.112, RSMo., and 13 CSR 35-35.120 (hereinafter referred to as "contractors") contracted by the Children's Division of the Department of Social Services (hereinafter referred to as the "division" or "CD") shall be based on the reasonable cost of services as determined through the competitive procurement process. [Providers] Contractors and prospective contractors (hereinafter referred to as "contractor" or contractors") shall certify their bid covers all reasonable costs at a firm fixed price unless otherwise provided by law.

(A) Upon request by CD, the [provider] contractor shall submit a written explanation and supporting documentation detailing how the [provider] contractor calculated the reasonable costs of services. The CD may not award a contract to any [provider] contractor which fails to submit such information when requested by CD.

(B) CD, in its sole discretion, may reject any bid where CD determines that the bid amount for a service or services exceeds the reasonable cost of the service or services. **The Department of Social Services shall apply the cost principles set forth in 2 CFR Part 200 as applicable in the approval, evaluation, and audit of bids and contracts.** CD shall use federal **Uniform Guidance, pursuant to 2 CFR 200.404**, to define reasonable costs as follows:

1. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost[s]. The question of the reasonableness [of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by federal agencies] is particularly important when the contractor is predominantly federally funded. In determining the reasonableness of a given cost, consideration shall be given to—

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the [organization] contractor or the proper and efficient performance of the [award] contract;

B. The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; federal, state, local, tribal, and other laws and regulations; the terms and conditions of the federal award of monies to the state, generally-accepted sound business practices, [arms-length bargaining, federal and state laws and regulations,] and terms and conditions of the [award] contract;

C. Market prices for comparable goods or services for the geographic area;

D. Whether the individuals concerned acted with prudence in

the circumstances, considering their responsibilities to the [organization] contractor, its members, employees, and clients, the public at large, and the state and federal government; and

[D.]E. [Significant deviations] Whether the contractor significantly deviates from the established practices of the division or the [organization] contractor which may unjustifiably increase the contract costs.

(2) CD may, in its sole discretion, establish a cap on the highest amount that CD will pay for the reasonable cost of services identified in the Request for Proposal (RFP) or Invitation for Bid (IFB). CD will announce the cap for services in the RFP or IFB. CD shall utilize one (1) or more of the following methods to establish the cap as part of the competitive procurement process:

(A) Industry cost reports for the previous three (3) calendar years which demonstrate the costs to the [provider] contractor to deliver the services identified in the RFP or IFB. Such reports shall include costs for case management services, community resource development, treatment services, special expenses, crisis expenses, administrative costs, and any other cost incurred to provide the services identified in the RFP or IFB. Upon request by CD, case management [provider] contractors or prospective case management [provider] contractors who submit a proposal or bid for a contract shall provide CD with cost reports and supporting documentation, **if and when required by the RFP or IFB**. The format for submission of cost report information shall be included in the RFP or IFB.

1. Cost for case management services shall include all costs associated with assessments, case planning, placement services, service planning, permanency planning, and concurrent planning. Such costs shall include salaries and benefits for required staff.

A. Assessments shall be defined as the consideration of all social, psychological, medical, educational, and other factors to determine diagnostic data to be used as a basis for the case plan.

B. Case planning is a process of negotiation between the family case manager, parent(s) or guardian(s) from whom the child was removed, and the juvenile officer which describes the services and activities necessary for the purpose of achieving a permanent familial relationship for the child.

C. Placement services is the selection of the most appropriate placement resource for children in out-of-home care based on the assessment of the child's unique needs and personality and the out-of-home care [provider] contractor's capacity and skills in meeting those needs.

D. Service planning is the provision of any services indicated and identified as needed through an assessment and case plan or ordered by the juvenile court.

E. Permanency planning is determining the permanent plan which best meets the needs of the child.

F. Concurrent planning is a process of pursuing a primary permanency goal for children in out-of-home care, such as reunification, while simultaneously establishing and implementing an alternative permanency plan for that child.

2. Cost for community resource development shall include all costs associated with the recruitment, assessment, training, and maintenance and retention of out-of-home care providers. It shall also include the development of those services which shall best meet the needs of the child and his/her family.

3. Cost for treatment services shall include all services designed to meet the service and treatment needs of an individual.

4. Cost for special expenses shall include all costs associated with needs of children which are not designed to meet a service or treatment need. These costs would not be included in the foster care maintenance payment to the placement [provider] contractor. An example is a clothing allowance.

5. Cost for crisis expenses shall include all **reasonably necessary** costs incurred to address the critical financial and resource needs of families. Crisis funds are utilized to purchase specific items family members need to alleviate a crisis. An example is payment to

have utilities restored so that a child may be returned home.

6. Administrative costs are those which are incurred to deliver the case management services defined in the RFP or IFB which are not included above in paragraph (2)(A) 1., (2)(A) 2., (2)(A) 3., (2)(A) 4., or (2)(A) 5. Such costs include expenses for general administrative functions and overhead.

7. [Provider] Contractor costs shall be determined and validated by a third-party contractor retained by CD or the Department of Social Services for that purpose. The [provider] contractor shall submit any and all information that CD, the Department of Social Services, or the third-party contractor may require to validate the cost report. The [provider] contractor shall certify such information is truthful, accurate, and complete.

8. [Provider] Contractor costs shall include any applicable credits or payments received through federal or state funding sources or private contributions.

9. Industry cost reports shall include any audited financial statements for the applicable time period under review;

(3) **Contracts** shall be made to the lowest and best qualified bidder(s), subject to applicable procurement law and available appropriation. A qualified bidder is a [provider] contractor which meets all of the requirements in law, regulation, and policy related to the services identified in the RFP or IFB. A qualified bidder must also meet the qualifications outlined in the RFP or IFB.

(4) The number of bids, **contracts** and cases awarded to any given [provider] contractor are subject to available appropriation.

(5) The contract shall specify the monthly amount which is to be paid based on the number of cases awarded unless payment has been reduced for reasons specified in this regulation. The contract may include a provision that the parties to the contract may amend the contract to increase **or decrease** the rate if [specifically] authorized by statute or appropriation.

(6) The contract shall provide for the payment of incentives to recognize accomplishment of case goals and corresponding cost savings to the state, **subject to the availability of appropriated funds. In the event that sufficient funds are not available to pay the full incentives, as adjusted, and calculated pursuant to this section, the Department of Social Services shall reduce the payment to each contractor eligible to receive an incentive payment pro rata on the basis of the proportion of cases that the eligible contractor handled during the period to the total number of cases handled by foster care case management contractors eligible to receive an incentive payment during the period.**

(A) For contracts effective on or before September 30, 2011, incentives shall be provided when contractors exceed the permanency expectations identified in the contract as follows:

1. The contract shall identify the percentage of children who are to achieve permanency in a twelve (12)-month period. Permanency shall be defined as reunification with the child's parent(s) or legal guardian(s), a finalized adoption, or establishment of a legal guardianship;

2. CD shall refer the number of cases in the Notice of Award during the first month of the contract year. CD shall refer additional cases throughout the contract year with the intention of replacing cases which are expected to move to permanency each month based on the percentage of children who are to achieve permanency as identified in the contract; and

3. The contractor shall be paid monthly for the number of cases awarded, regardless of the number they actually serve, except in the following situations:

A. CD shall reduce the payment when CD determines it is in the best interest of a child to reassign the case to CD staff and the case is not replaced. CD shall reduce payment by the number of cases which have been disenrolled and reassigned for case management

which were not replaced;

B. CD shall reduce payment when the contractor is placed on referral hold as the result of the contractor's staff involvement with an unacceptable, egregious situation as defined in the contract. Payment shall be reduced by the number of cases which CD is unable to refer while the contractor is on referral hold due to an egregious situation. Egregious situations are defined in this rule to include any situation which seriously impacts the delivery of services to a child or family assigned to the contractor, including a material breach of the contract with the division, and shall include, but is not limited to, the following:

- (I) Court contempt order;
- (II) Violating the condition(s) of a court order;
- (III) Unsafe environments or inappropriate out-of-home provider as evidenced by the following:
 - (a) Placement in unlicensed foster homes or facilities unless approved by the court;
 - (b) Placements with a provider without conducting a background screening;
 - (c) Placements with a provider with a failed background screening as defined in the CD Child Welfare Manual;
 - (d) Placements without full compliance with the requirements of the Interstate Compact on the Placement of Children (section 210.620, RSMo); and
 - (e) Placements without court approval where court approval is required;
- (IV) Breaches of confidentiality as defined in the contract;
- (V) Intentionally, recklessly, knowingly, or negligently entering false data in CD's automated case management system;
- (VI) Failure to comply with the requirement to report suspected child abuse and neglect, child injuries, child fatalities, or other critical incidents as required by contract and/or as required by section 210.115, RSMo; and
- (VII) Other violations of federal or state law[;].

C. The contractor shall not invoice for reentries into care within twelve (12) months of previous exit except under those circumstances described below—

(I) The contractor shall be paid for reentries into care during the contract year whereby the number of cases replacing those which are expected to move to permanency each month shall be reduced to correspond with the number of reentries when—

- (a) The contractor does not have an opportunity to serve the case or the court terminates jurisdiction and there is clear and convincing documentation to support the contractor was against the release of jurisdiction;
- (b) Reunification does not occur; and
- (c) The case has been replaced; and

(II) The contractor shall be paid for reentries into care during the next contract year whereby the reentry into care shall count as an active case at the beginning of the contract year when—

- (a) The contractor does not have an opportunity to serve the case or the court terminates jurisdiction and there is clear and convincing documentation to support the contractor was against the release of jurisdiction; and
- (b) Reunification did occur when the court first terminated jurisdiction after assignment to the contractor;

D. CD shall reduce the monthly case rate to remove the foster care maintenance payment for those children who have been enrolled in the interdivisional agreement through the *[Mental Retardation and] Developmental Disabilities (MRDD)* waiver with the Missouri Department of Mental Health; and

E. CD shall reduce the monthly case rate to reimburse the contractor for only case management services when a child meets the definition of a catastrophic case as defined in the contract and CD is providing additional funding for the child.

(B) For new contracts issued based on an RFP or IFB on or after October 1, 2011, subject to available appropriation, CD shall pay an incentive for the sum of the monthly differences between the number

of children who are expected to achieve permanency as defined in the contract and the number of children who do achieve permanency when the one-for-one case replacement methodology is utilized. Permanency shall be defined as reunification with the child's parent(s) or legal guardian(s), a finalized adoption, or establishment of a legal guardianship. The following provisions shall apply to the administration of the incentive:

1. The percentage of children which are to achieve permanency in a twelve (12)-month period shall be based on the following percentage, whichever number is higher:

A. The percentage of children who move to permanency within a region, utilizing an average for all counties served within the region; or

B. The percentage of children contractors serve who move to permanency within a region, utilizing an average of the performance of contractors serving the region;

2. The contractor may return cases to CD when children have been placed with their parent(s) for more than ninety (90) days. The contractor may return cases to CD when children have been placed with their legal guardian(s), from whom they were removed, for more than ninety (90) days. The contractor may retain management of the case after ninety (90) days only with the prior, written permission of the CD. When permission is granted, the contractor shall understand the permanency expectation will not change. The contractor shall return cases when an adoption has been finalized, the courts have awarded a legal guardianship, and when the juvenile court has terminated jurisdiction over the child. CD may replace such cases on a one-for-one basis. When the one-for-one case replacement methodology is utilized, CD shall replace cases in the following order of preference if cases are available:

A. The next child and any sibling who enter care within ten (10) calendar days in the county where the case was returned;

B. A child and any sibling currently case managed by CD in the county where the case was returned with services being provided by a supervisor or coworker due to the extended absence of the service worker;

C. A child and any sibling which entered care within thirty (30) calendar days in the county where the case was returned which is case managed by CD;

D. A child and any sibling from a county other than the one where the record was returned which is served by the contracted *[provider] contractor* and meets the criteria set forth in subparagraph (6)(B)2.A., (6)(B)2.B., or (6)(B)2.C. above, when agreeable to the contractor; and

E. In the event the contractor is assigned more active cases than awarded in an effort to keep one (1) worker assigned to a sibling group, cases shall not be replaced until such a time when the contractor is serving the amount of active cases awarded. Active cases do not include children who have been placed with their parent(s) for more than ninety (90) days unless the CD has granted permission for the contractor to keep the case; children who have been placed with their legal guardian(s), from whom they were removed, for more than ninety (90) days unless the CD has granted permission for the contractor to keep the case; children who have been adopted; those situations where the courts have awarded a legal guardianship; situations where the juvenile court has terminated jurisdiction over the child; or reentries into care unless they meet the criteria specified in part (6)(A)3.C. (I) above or the rate of re-entries or the number of re-entries into care within twelve (12) months has not exceeded the allowable rate or number as defined in (6)(B) 3.D. below. The contractor shall not be assigned a sibling group which would increase the number of cases awarded by more than two percent (2%). The contractor shall inform CD of the additional number of cases which may need to be replaced to keep the contractor at the number of cases awarded by the end of the contract year;

3. The contractor shall be paid for the number of cases awarded except in the following situations:

A. Payment shall be reduced in the following and subsequent

months during the contract year and subsequent renewal periods to correspond with the number of cases which could not be assigned when the counties have no case which meets any of the criteria identified in subparagraph (6)(B)2.A., (6)(B)2.B., (6)(B)2.C., or (6)(B)2.D. above. CD reserves the right to increase the number of referrals during subsequent renewal periods when the number of children entering CD's custody increases in the geographic region served by the contractor, when the *[provider]* contractor is agreeable to such;

B. CD shall reduce the payment when CD determines it is in the best interest of a child to reassign the case to CD staff and the case is not replaced. CD shall reduce payment by the number of cases which have been disenrolled and reassigned for case management which were not replaced;

C. CD shall reduce payment when the contractor is placed on referral hold as the result of the contractor's staff involvement with an unacceptable, egregious situation as defined in the contract. Payment shall be reduced by the number of cases which CD is unable to refer while the contractor is on referral hold;

D. CD shall set an allowable rate of re-entries or the number of re-entries into care within twelve (12) months of previous exit, which shall not include the re-entries defined below. The rate or the number allowed shall be based on historical data. CD, at its sole discretion, may adjust this rate or number based on mitigating factors. The contract shall set forth that after the rate is exceeded, the contractor shall not be paid for cases exceeding the allowable number of reentries set forth in the contract or shall be assessed a penalty after the rate is exceeded. If a penalty is assessed, the penalty shall be based on a methodology set forth in 13 CSR 35-35.100 and the contract.

(1) The reentry into care will count as an active case and the contractor will be paid for the case when CD is able to determine that the contractor did not have an opportunity to serve the case or the court terminated jurisdiction and there is clear and convincing documentation to support the contractor was against the release of the jurisdiction. In the event the contractor is serving more active cases than awarded as the result of the reentry into care, they shall not be paid for such. However, cases shall not be replaced until such a time when the contractor is serving the amount of active cases awarded;

E. The monthly case rate shall be reduced to remove the foster care maintenance when the contract specifies the division shall be responsible for such; and

F. CD shall reduce the monthly case rate to reimburse the contractor for only case management services when a child meets the definition of a catastrophic case as defined in the contract and CD is providing additional funding for the child;

4. CD shall determine the number of children achieving permanency during the contract year while being served by the contractor. The contractor will be paid for the sum of the monthly differences between the number of children who are expected to achieve permanency as defined in the contract and the number of children who do achieve permanency, subject to available appropriation, as follows:

A. Contractors shall be paid the monthly amount bid and awarded for the sum of the monthly differences during the contract year as identified in paragraph (6)(B) 4. above, subject to available appropriation; and

B. The incentive shall be a one (1)-time payment for the number of children who exceeded the permanency standard during the contract year as identified in paragraph (6)(B)4. above; and

5. CD reserves the right in its sole discretion to reduce the number of cases assigned in subsequent contract years with payment reduced to correspond when the contractor fails to meet the permanency standard defined in the contract. CD also reserves the right to terminate the contract. In the event the contractor fails to meet the permanency standard and the number of cases are reduced in subsequent contract years, CD may reduce the number of cases awarded as follows:

A. CD may request the return of active cases;

B. CD may not replace cases which are closed by the contractor; and

C. CD will reduce payment to correspond with the number of active cases served.

(C) For all contracts effective on or after April 1, 2022, the provisions of subsections (6)(A), (6)(B), and this subsection (6)(C) shall apply. To receive an incentive the contractor must first qualify to receive an incentive by exceeding the permanency performance goal for the region as specified in this subsection. If the contractor qualifies for an incentive by exceeding the permanency performance goal for the region, then the contractor will qualify to receive fifty percent (50%) of the incentive payment. To earn the remaining fifty percent (50%) of the incentive payment, the contractor must meet the performance goals and outcomes established pursuant to 13 CSR 35-35.100 as they are phased in, and as further provided in this subsection.

1. The CD shall establish relative weights to be given to each item in the Safety, Well-Being and Service Domains and the additional requirements of the Permanency domain as they are phased in as provided in 13 CSR 35-35.100. The incentive payment shall be reduced as provided in paragraph 2. of this subsection if the contractor fails to meet the performance goals established of 13 CSR 35-35.100 and the evaluation tool therein.

2. The remaining fifty percent (50%) of the incentive payment shall be calculated as follows:

A. If the contractor achieves a score of equal to or greater than one hundred percent (100%) of the weighted performance and outcome score then the contractor shall receive the full portion of the incentive payment under paragraph 2. of subsection (6)(C) of this regulation;

B. If the contractor receives a score of ninety to ninety-nine percent (90-99%) of the weighted performance and outcome score the contractor shall receive ninety percent (90%) portion of the full incentive payment under paragraph 2. of subsection (6)(C) of this regulation; or

C. If the contractor receives a score of less than ninety percent (90%) or less of the weighted performance and outcome score the contractor shall not receive an incentive payment under paragraph 2 of subsection (6)(C) of this regulation.

3. To calculate the performance and outcome score specified in paragraph 2. of this subsection, the division will calculate for each contractor the percentage of the performance outcome goal for each item in each Domain being scored under 13 CSR 35-35.100 that each contractor actually achieved for that item during the Phase for the period. The percentage achieved for each item under each Domain shall then be multiplied by the weight factor (if any) assigned to each item. The net sum of the weighted percentages will be the final score for each contractor for the period. The performance outcome goals for the period and the weights to be assigned to each item will be established by the division, in conjunction with the Research and Evaluation team and other individuals, following the procedures specified in 13 CSR 35-35.100.

4. The final scores shall rounded up to the nearest whole number.

5. The scores for each contractor shall be published on the division's website.

(7) Changes to reimbursements for services in addition to the contracted amounts will be based upon available increased or decreased appropriations for case management purposes and will be allocated to both public and private providers of such services. The allocation shall be made pro rata to the division and each contractor based upon the proportion of the total number of cases that the division and each contractor served during the period to the total number of cases of children served statewide during the period.

AUTHORITY: sections 207.020 and 660.017, RSMo [2000] 2016, section 210.112.8, RSMo Supp. [2010] 2020, and *Young v. Children's Division, State of Missouri Department of Social Services, 284 S.W.3d 553 (Mo. 2009)*. Original rule filed Feb. 28, 2011, effective Oct. 30, 2011. Emergency amendment filed June 11, 2021, effective July 1, 2021, expires Feb. 24, 2022. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 35—Alternative Care**

EMERGENCY RULE

13 CSR 35-35.100 Response and Evaluation Process for Case Management of Children in Foster Care

PURPOSE: This rule implements House Bill 1414 (2020), which amended section 210.112, RSMo. The purpose of this rule is to regulate the Response and Evaluation process for case management services that are identified in the amended statute.

EMERGENCY STATEMENT: The Department of Social Services, Children's Division, by rule and regulation, must promulgate regulations to implement the 2020 amendments to section 210.112, RSMo, by July 1, 2021. This rule was promulgated with extensive consultation from stakeholders over several months after the enactment of HB 1414. Stakeholders, including Foster Care Case Management Contractors, judges, juvenile officers and academic experts, all play a unique role in the response and evaluation team that was created by HB 1414, section 210.112, RSMo required the division to create the team which was to meet for the first time no later than January 1, 2021. The division timely set up the response and evaluation team as required by the statute. Successive meetings and discussions with stakeholders have been taking place since then and continue to occur. The implementation of this regulation now, on an emergency basis, is necessary to comply with the statutory mandate to promulgate rules pursuant to section 210.112, RSMo, by July 1, 2021. This regulation is also being promulgated in conjunction with amendments to 13 CSR 35-35.120, 35-35.130, and 35-35.140 because they cross reference each other and must therefore be implemented together to promulgate a consistent regulatory system. The Children's Division is vested by law with the authority and responsibility to establish the child welfare system for the whole state. See sections 207.020, 210.109, and 210.112, RSMo. The Children's Division has determined that promulgation of this regulation is necessary on an emergency basis to address a danger to public health, safety, and/or welfare of children in Missouri. This rule will ensure that protecting the safety and welfare of the children will be the paramount consideration in managing services for abused and neglected children in foster care, it will establish new systems to measure the performance of foster care case management providers, and ensure that foster care case management is accomplished in a transparent and accountable manner. The Children's Division therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The Children's Division believes that

this emergency rule is fair to all interested persons and parties under the circumstances. A proposed rule, which covers this same material, is published in this issue of the *Missouri Register*. This emergency rule was filed June 11, 2021, becomes effective July 1, 2021, and expires February 24, 2022.

(1) Purpose and Scope.

(A) The purpose of this regulation is to implement the amendments to section 210.112, RSMo. that were enacted into law in HB 1414 of the 2020 regular session of the Missouri General Assembly. This regulation applies to case management services, whether provided by employees of the Children's Division (hereinafter the "division") or by Foster Care Case Management Contractors (FCCMs).

(B) In implementing this regulation, the safety and welfare of children shall be the paramount consideration.

(2) Definitions. For the purposes of this section the following definitions shall apply:

(A) "Accrediting body" shall refer to the Council on Accreditation of Services for Children and Families, Inc., the Joint Commission on Accreditation of Healthcare Organizations, or the Commission on Accreditation of Rehabilitation Facilities;

(B) "CFSR" shall mean the Child and Family Services Review process, standards, goals and measures established by the Administration of Children and Families of the United States Department of Health and Human Services.

(C) "CFSR-OSRI" shall refer to the CFSR On-Site Review Instrument utilized by the Administration of Children and Families of the United States Department of Health and Human Services.

(D) "Case management services" shall include assessments, case planning, placement services, service planning and concurrent planning for children. These services include, but are not limited to:

1. Coordinating and facilitating the provision of services necessary ensure the safety and well-being of the child, to meet the needs of the child's parent(s) or caretaker and to promote timely permanency;
2. Facilitation of family support team meetings;
3. Facilitation and/or supervision of visits between children and their family members;
4. Preparation of court reports;
5. Attending and participating in court hearings; and
6. Coordination of services and provisions in compliance with federal and state law, and directed by Children's Division policy and regulation.

(E) "Child" or "Children" shall mean any individual who has been placed under the supervision of the division or in the legal or physical custody of the division by judgment or order of a juvenile or family court.

(F) "Direct Service Providers" means any person or entity who is providing case management services to children and families of children who are under the jurisdiction of the juvenile court and who are either placed under the supervision of the division or placed in the legal or physical custody of the division. This applies to alternative care Children's Division Case Managers and their supervisors, and to FCCMs.

(G) "Foster Care Case Management Contractors", "FCCM" or "FCCMs" shall mean any individual or entity which has a contract with the children's division to provide case management services for children. It also shall mean any contractor or subcontractor of an FCCM which provides case management services. It does not mean individual employees of the FCCM.

(H) "Large Contractor" shall mean any FCCM which is contracted to provide case management services for one hundred (100) or more children. It shall also refer to the lead FCCM contractor and their sub-contracted partner agencies.

(I) A "near fatality" means any physical injury or illness of a child caused by suspected or substantiated child abuse or neglect that, as certified by a physician, places the child in serious or critical condition.

(J) "Provider" shall mean the Children's Division and FCCM, but shall not mean individual employees of the division or FCCMs.

(K) "Response and Evaluation Team" or "the R&E Team" shall refer to the Response and Evaluation Team established pursuant to 210.112.3 RSMo.

(L) "Sentinel events" shall mean any critical incident as described in 13 CSR 35-71.070, any unusual event as described in 13 CSR 35-73.050 and:

1. A child fatality or near fatality;
2. An incident that causes serious emotional harm or serious bodily injury to a child. For purposes of this regulation a serious emotional or physical injury occurs when it is medically reasonable or necessary for a child to obtain professional medical intervention as a result of something that happens to the child while placed with the individual or organization;
3. A child elopes from his or her placement;
4. A fire in a location routinely occupied by children, which requires the fire department to be called;
5. A report of child physical abuse, emotional abuse, sexual abuse, or neglect pertaining to a child; and
6. Whenever a child attempts to harm him/herself or others, including suicide attempts.

(M) The term "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(N) Children with "Special Needs" shall include children who have physical, behavioral or mental health conditions that require specialized care.

(3) Evaluation Tool and Metrics.

(A) The division shall establish and implement a uniform evaluation tool, metrics and performance outcome goals for Providers to evaluate the quality of case management services. Performance outcome goals, but not metrics, may be adjusted regionally to account for regional differences in the availability of services, provided that the same performance outcome goals apply all Providers in the same region; provided that the performance outcome goals that apply to the division shall be adjusted to take into consideration the factors set forth in subparagraph (3)(F). The division shall establish the tool in conjunction with the R&E Team and other appropriate individuals. The division may establish and implement the evaluation tool in phases as described elsewhere in this regulation. The evaluation tool may draw from the following sources of data and information:

1. Data contained in the information system of the division, including FACES;
2. Data from surveys;
3. Detailed Case reviews of individual cases of children as described below;
4. Data and information from federal CSFR reviews;
5. External audits and program reviews;
6. Reports from an accrediting body; and
7. Other sources of information as may be necessary.

(B) The division will publish the proposed tool for Phase I on its website by April 1, 2022, and solicit comments from providers, stakeholders and the public. Providers may recommend alternative metrics based on the best interests of the child. In making such recommendations the providers shall explain, in writing, how the alternative metrics are in the best interests of the child and promote the safety and welfare of children. The division and the R&E Team will review the comments, and the R&E Team will submit recommendations based upon the comments within thirty (30) days of receipt of the comments. The division will consider the public comments and recommendations of the R&E Team and publish final evaluation tools and metrics for Phase I on or before July 31, 2022. The final, Phase I evaluation tools, metrics and performance outcome goals shall be implemented by and applicable to all effective October 1, 2022.

(C) The evaluation tool shall include selected metrics and perfor-

mance outcome goals from the CFSR and the CFSROSRI.

(D) By October 1, 2022, the division, in conjunction with the R&E Team and following the procedures set forth in subsection (3)(B), shall implement and all providers are required to utilize and implement a uniform, standardized stakeholder feedback tool. This tool will collect data from stakeholders pertaining to the quantity, quality and effectiveness of case management services that the division and FCCMs provide.

1. The tools may be surveys and will also provide space for stakeholders to provide narrative feedback and comments.

2. Separate stakeholder feedback tools shall be designed for and provided to each of the following categories of stakeholders: children twelve (12) years of age or older, parents or legal guardians of children, foster parents or resource providers, juvenile officers and judges of juvenile and family courts.

3. Stakeholder feedback tools shall be submitted on the following schedule:

A. Children twelve (12) years of age or older: annually and at the conclusion of the time the child is in care;

B. Foster parents and resource parents annually;

C. Parents or legal guardians of children in care, annually;

D. Juvenile officers, annually;

E. Judges of the juvenile and/or family courts who preside over proceedings under chapter 211 RSMo – annually.

(E) The evaluation tool for Providers shall include metrics and performance outcome goals for the following domains listed below. The division may implement these in phases, but it shall implement at least one metric and performance outcome goals for each Domain in Phase I no later than October 1, 2022; implement additional metrics and performance goals in Phase II no later than October 1, 2023, and implement all remaining metrics and performance goals in Phase III no later than October 1, 2024. The division may implement additional performance outcome goals and metrics or make amendments to any Domain, performance outcome goal or metric in conjunction with the Response and Evaluation Team following the process set forth in section (9)(B) of this regulation as may be necessary and appropriate. Some metrics and performance outcome measures may apply to more than one Domain. To the maximum extent possible the metrics and performance outcome measures shall be based upon, and preferably mirror, the federal CSFR and PIP metrics, measures and goals. The achievement of the deadlines specified in this regulation are contingent on the availability information processing capability and the availability of funds that are necessary for implementation. The division, with the permission of the Department of Social Services, may extend the deadlines for implementation of a goal or metric if it is not technically feasible or if there are insufficient funds to implement by the deadline. The Domains are:

1. Safety Domain. The purpose of the Safety Domain metrics and performance outcome goals is to ensure, to the maximum extent possible, that children are kept safe from the risk of abuse and/or neglect for the duration of their experience within the child welfare system. Metrics and performance outcome goals will be developed and implemented to address the following:

A. Worker/child visits;

B. Reports of abuse and/or neglect of a child;

C. Sentinel events; and

D. Any other metrics and outcome goals that may be required by law or that the division may decide are appropriate.

2. Well-Being Domain. The purpose of the Well-Being Domain metrics and performance outcome goals is to ensure, to the maximum extent possible, that children receive the necessary care and services for them to grow, develop and thrive for the duration of their experience within the child welfare system. Metrics and performance outcome goals will be developed and implemented to address the following:

A. Parent/child visits to the extent that they are not contrary to the orders of the court;

B. Healthy Child and Youth program compliance (i.e. compliance with federal EPSDT requirements and standards). This will include timely completion of HCY/EPSDT screenings and also timely compliance with diagnosed and prescribed treatment;

C. Residential – Placement of a child in a residential or institutional setting shall be in compliance with the requirements of federal and state law;

D. Education – such as achievement of identified, developmentally and age appropriate educational milestones;

E. All case managers and supervisors successfully complete training in providing trauma informed and trauma based services; and

F. Any other metrics and outcome goals that may be required by law or that the division may decide are appropriate.

3. Permanency Domain. The purpose of the Permanency Domain metrics and performance outcome goals is to ensure, to the maximum extent possible, that children achieve permanency and are discharged to a safe and appropriate placement from the care and supervision of the child welfare system in a timely manner. Metrics and performance outcome goals will be developed and implemented to address the following:

A. Worker/parent visits;

B. Re-entries into foster care;

C. Timely achievement of the child's court approved permanency plan;

D. Stability of Placements;

E. Provision of services to meet the needs of older youth;

F. Timely development and effective implementation of a primary and concurrent permanency plan for each child;

G. Development and implementation of a social service plan to address the reasons why the child is in care; and

H. Any other metrics and outcome goals that may be required by law or that the division may decide are appropriate.

4. Service Domain. The purpose of the Service Domain metrics and performance outcome goals is to ensure that providers are effectively and efficiently managing the services that they are providing. Metrics and performance outcome goals will be developed and implemented to address the following:

A. Caseloads – including caseloads per case manager and the number of changes in case manager that a child may experience while a child is in care;

B. Effective ratio of supervisors to supervision of case managers;

C. Timely reporting of sentinel events;

D. Cases returned to the division due to catastrophic costs or court order for case management by Foster Care Case Management agencies; and

E. Any other metrics and outcome goals that may be required by law or that the division may decide are appropriate.

(F) All metrics and performance outcome goals for the division shall be designed to take into consideration the following factors:

1. The fact that caseloads of FCCM case managers are capped;

2. The fact that FCCMs may return cases to the division due to catastrophic costs or court order for case management.

(G) The division, in conjunction with the R&E Team shall develop objective standards and criteria to identify cases which a Provider may feel are anomalous and should not be considered in developing the case management tool. The standards and criteria shall be implemented following the process and deadlines established in subsection (3)(B) of this regulation.

(H) To calculate the performance and outcome scores the division will calculate for each Provider the percentage of the performance outcome goal for each item in each Domain being scored under 13 CSR 35-35.100 that each Provider actually achieved for that item during the Phase for the period. The percentage achieved for each item under each Domain shall then be multiplied by the weight factor (if any) assigned to each item. The net sum of the weighted percentages will be the total score for each Provider for the period. The per-

formance outcome goals for the period and the weights to be assigned to each item will be established by the division, in conjunction with the Research and Evaluation team and other individuals, following the procedures specified in this regulation.

(4) Collection of Data.

(A) Effective October 1, 2022, the division and FCCMs shall implement policies and procedures to require their staffs to timely record all of the necessary data in the information system. Information shall be timely posted if it is posted no later than the fifteenth (15th) day of the each calendar month for the preceding calendar month or sooner as may be required by policy of the division.

(B) The division and each FCCM shall develop and implement a system to track the timely and accurate recording of data in the information system by October 1, 2022; this may include, implementing a system to send reminders to staff, or prohibit completion of data entries, when mandatory data fields are not timely completed.

(C) The division will publish a list on its website describing the specific items of data that Providers will be responsible for recording and reporting. The division will publish its first list of data items on or before April 1, 2022 to be effective July 1, 2022. The division shall send a notice by e-mail blast to all providers notifying them when a change has been made in the data points at least on quarter prior to the effective date of the list to ensure that providers have notice and an opportunity to prepare.

(D) Detailed Case reviews.

1. The division and the R&E Team will utilize the information and findings from individual case reviews from the federally required, statewide CFSR process.

2. In addition to the CFSR process, the division, in conjunction with the R&E Team, may develop and implement a detailed case review process if necessary to supplement the CFSR process and/or to ensure the quality of data that is being reported and utilized for calculating metrics and performance outcome goals and measures. The division and the R&E Team may also utilize detailed case reviews as part of the process of identifying and providing technical assistance to Providers who are having difficulty meeting performance outcome goals and measures, and for other purposes as provided in the Contract.

3. When a case has been selected for a detailed individual case review the provider providing case management services will be given the opportunity to propose different evaluation metrics if the case may have circumstances far beyond those which would be expected.

A. The division, in conjunction with the R&E Team and other stakeholders shall develop and implement objective standards and criteria for identifying cases which will be evaluated on different evaluation metrics. The division shall utilize the process described in paragraph (3)(B) for developing, publishing and implementing the standards and criteria.

B. The provider shall make the request to apply different evaluation metrics in writing, within ten (10) days of the date that the division identified the case for a detailed review. The request shall include:

(I) A detailed explanation for why the generally applicable criteria and metrics for conducting case reviews cannot be reasonably and appropriately applied to the case and why the case may have circumstances far beyond those that would be expected; and

(II) Explain in detail what performance measures and metrics the provider proposes that the division and the R&E Team apply to the review of the case.

C. The provider shall have the burden of proving that the case falls far beyond what is expected and what alternative metrics should be applied by clear and convincing evidence.

D. The division and/or the R&E Team shall conduct a full case review of each and every case that a provider identifies as a case that should be evaluated using different evaluation metrics.

(E) The division will collect data and all providers will provide

data on a monthly basis; provided that Detailed Case Reviews will be conducted when necessary to supplement other data sources as determined by the division in conjunction with the R&E Team.

(F) Providers shall make available all data, files, records and information pertaining to each and every case to the division and the R&E Team to perform their duties under 210.112 and this regulation. This includes information maintained in physical and electronic formats. Providers shall direct their staffs to provide true, complete, accurate and timely information to the division and the R&E Team members when performing their duties under this regulation. Providers shall make their employees and subcontractors available for interviews when conducting detailed case reviews.

(G) Providers shall ensure that staff are trained and have the opportunity to enter data into the information system in a timely manner to ensure that the data retrieved from the information system is timely and accurate. Data for the preceding calendar month shall be entered into the information system no later than the fifteenth (15th) day of the following calendar month or sooner as may be required by policy of the division.

(H) The data and metrics shall be analyzed and reported in the aggregate across the whole system, and then by judicial circuit, county (or city within a county) and Provider.

(5) The division and the R&E Team will develop, propose and implement a system for reviewing and working with providers who request assistance or who show signs of performance weakness. Performance weakness shall be defined and measured with reference to the metrics and performance outcome goals as discussed in this regulation, in addition to other provisions in the Contract.

(A) The division, in conjunction with the R&E Team will identify objective, performance measures and standards based on the metrics and performance goal outcome scores as calculated in subsection (3)(H) to identify providers who are showing areas in weakness of performance. This may be done in phases so as to be consistent with the phased implementation of the evaluation tool, metrics and performance outcome goals. The division will give the public and stakeholders thirty (30) days to submit comments and suggestions. The division will consider the comments and then publish the operational performance measures and standards on the division's website consistent with the phased implementation deadlines.

(6) Data Reporting.

(A) The division, in conjunction with the R&E Team shall develop and implement a standardized format for analyzing and reporting the data and lessons learned from the data. This will ensure that data is analyzed reported in a consistent and comparable manner from quarter to quarter. The division will follow the procedures specified in this regulation for developing and implementing the reporting tools.

(B) All measures, metrics and performance measures shall be designed to take into consideration the following factors:

1. The fact that case loads of FCCM case managers are capped; and

2. The fact that FCCMs may return cases to the division due to catastrophic costs or court order for case management.

(C) The division will publish the report quarterly on its website. The report for the preceding quarter shall be published on or before the last day of the end of the last month of the subsequent calendar quarter. The initial report shall be published no later than March 31, 2023, for the October 1, 2022 through December 31, 2022 quarter.

(D) In developing the standardized format for reporting the R&E Team shall be responsible for determining how to aggregate cases for the division and large contractors so that performance and outcomes may be compared effectively while also protecting confidentiality.

(7) Conflicts of Interest.

(A) Private Providers shall not participate in conducting detailed case reviews under this regulation when they or one of their officers, employees or subcontractors have a conflict of interest. It shall be

considered a conflict of interest:

1. For an officer or employee of a FCCM or private provider to conduct a case review of a case managed by the FCCM or private provider which employs them; and/or

2. For an officer or employee of a FCCM or private provider to conduct a case review of a case managed by a subcontractor of the FCCM or private provider which employs them; and

3. Where the provider or the employee of the provider has any interest in the underlying case.

(B) division staff shall not conduct detailed case reviews of cases under this regulation arising from the circuit where the division staff member conducting the review is assigned. The division may assign special staff not affiliated with any one particular circuit or region to conduct case reviews.

(C) No person shall conduct a detailed case review of a case in which he or she participated as a case manager or supervisor.

(8) All members of the R&E Team shall maintain the confidentiality of all information, documents and data that they receive in the performance of their duties as members of the R&E Team to the same extent that the information, documents and data is confidential in the hands of the division, its employees and contractors. R&E Team members shall submit requests for access to information and data to the division for review.

(9) Review and Evaluation of the Evaluation Tools, metrics and reporting format.

(A) The R&E Team shall review the evaluation tool and report format established under this section at least twice each year and submit a report to the division making any recommendations for changes in the tool. The Reports shall be due each year on or before July 1st and January 1st, with the first report being due July 1, 2023.

(B) The division may amend the evaluation tool, metrics and report formats as may be necessary to ensure that information is collected and reported in an accurate, efficient and useful way. The division will utilize the following process to amend the evaluation tool and report format:

1. The proposed amendments will be submitted to the R&E Team for review and comment. The R&E Team will have thirty (30) days to provide comments.

2. The division will then publish an announcement of the proposed amendments to all providers and to the public by an announcement on the division's website. The announcement will give providers and the public thirty (30) days to submit written comments.

3. The division may, but is not required to, hold one or more public hearings to solicit comments. These public hearings may be held in person, virtually or by telephone conference.

4. The division will consider the comments from the R&E Team and other sources and publish the final amendments on the division's website. The amendments shall be effective on the first day of the calendar quarter following the publication of the amendment, provided however that the effective date of the amendment shall not be less than thirty (30) days from the date of publication.

(C) Twenty-four months after the first publication of the tools and metrics established under this regulation the R&E Team and the division shall conduct a comprehensive review of the tools and metrics established pursuant to the process established in 210.112 and this regulation. The division shall publish a report on its evaluation within six (6) months of commencing the review.

AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and section 210.112.8, RSMo Supp. 2020. Emergency rule filed June 11, 2021, effective July 1, 2021, expires Feb. 24, 2022. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter [50—Licensing] 35—Alternative Care**

EMERGENCY AMENDMENT

13 CSR 35-[50.010] 35.140 Accreditation as Evidence for Meeting Licensing Requirements. The division is renumbering this rule and moving it to chapter 35. The division is also amending sections (1)-(5), and is adding a new section (2) and (7), and is renumbering accordingly.

PURPOSE: This emergency amendment establishes the criteria and procedures by which the Children’s Division will accept proof of accreditation as a foster home, residential care facility or child placing agency by certain accrediting bodies as prima facie evidence of meeting the requirements for licensure as a foster home, residential care facility or child placing agency in light of the amendments to section 210.112, RSMo in HB 1414 (2020).

EMERGENCY STATEMENT: The Department of Social Services, Children’s Division, by rule and regulation, must promulgate regulations to implement the 2020 amendments to section 210.112, RSMo, by July 1, 2021. This amendment was promulgated with extensive consultation from stakeholders over several months after the enactment of HB 1414. Stakeholders, including Foster Care Case Management Contractors, judges, juvenile officers and academic experts, all play a unique role in the response and evaluation team that was created by HB 1414. Section 210.112, RSMo, required the division to create the team which was to meet for the first time no later than January 1, 2021. The division timely set up the response and evaluation team as required by the statute. Successive meetings and discussions with stakeholders have been taking place since then, and continue to occur. The implementation of this regulation now, on an emergency basis, is necessary to comply with the statutory mandate to promulgate rules pursuant to section 210.112, RSMo, by July 1, 2021. The amendments to this regulation are being promulgated in conjunction with 13 CSR 35-35.100, 35-35.120, and 35-35.130 because they cross-reference each other, and must therefore be implemented together to promulgate a consistent regulatory system. The Children’s Division is vested by law with the authority and responsibility to establish the child welfare system for the whole state. See sections 207.020, 210.109, and 210.112, RSMo. The Children’s Division has determined that promulgation of this regulation is necessary on an emergency basis to address a danger to public health, safety, and/or welfare of children in Missouri. This amendment will ensure that protecting the safety and welfare of the children will be the paramount consideration in managing services for abused and neglected children in foster care, it will establish new systems to measure the performance of foster care case management providers, and ensure that foster care case management is accomplished in a transparent and accountable manner. This regulation will further ensure that the Children’s Division has the regulatory tools to obtain and verify that accredited foster family homes, residential facilities, and child placing agencies comply with all of the requirements of licensure. The Children’s Division therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Children’s Division believes that this emergency amendment is fair to all inter-

ested persons and parties under the circumstances. A proposed amendment, which covers this same material, is published in this issue of the Missouri Register. This emergency amendment was filed June 11, 2021, becomes effective July 1, 2021, and expires February 24, 2022.

(1) [The Children’s Division shall accept accreditation by Council on Accreditation of Services for Children and Families, Inc., the Joint Commission on Accreditation of Healthcare Organizations, or the Commission on Accreditation of Rehabilitation Facilities, as specified in section (2) of this rule, as prima facie evidence that the organization meets licensing requirements under sections 210.481 through 210.511, RSMo] **Purpose and scope.** This regulation applies to Licenses issued to Individuals or Organizations which are accredited by an Accrediting Body.

(2) **Definitions.** For the purpose of this regulation, the definitions set forth in section 210.481, RSMo, and the following definitions shall apply:

(A) “Accrediting body” shall mean the Council on Accreditation of Services for Children and Families, Inc., the Joint Commission on Accreditation of Healthcare Organizations, or the Commission on Accreditation of Rehabilitation Facilities.

(B) “Individual or organization” shall mean any adult person, corporation, partnership, religious denomination, religious organization or organized group of human beings.

(C) “Prima facie evidence” means evidence that will establish a fact or sustain a decision unless contradictory evidence is produced.

[(2)](3) [Type of License.] The Children’s Division shall accept accreditation by an accrediting body as prima facie evidence that the individual or organization meets the requirements for a license to operate a foster home, residential care facility, or child placing agency in accordance with the applicable provisions of sections 210.481 to 210.511, RSMo. The division will accept accreditation for purposes of documenting eligibility for license or relicensure. However, any individual or organization whose license is based upon accreditation must still fully comply with all of the requirements of licensure (including full compliance with all federal, state and local health and safety codes) as if not accredited for the duration of the license to maintain the license. The safety and welfare of children served by the individual or organization shall be the paramount consideration in all licensing decisions.

[(A)] The organization shall provide to the Children’s Division, sufficient evidence that they are accredited in the service or program for which they are requesting a license.]

[(B)] If a service or program, including but not limited to child placing, maternity, infant/toddler, residential treatment, and intensive residential treatment in residential child care, is not accredited by the accrediting body, than the organization must apply for and meet all [other] licensing requirements as [put forth by the division] for the unaccredited program or service.

[(3)](4) Application[/] and Reapplication for License for Accredited Individual or Organizations[:].

(A) The individual or organization applying for licensure as an accredited individual or organization shall present to the division with its application for licensure[—] or relicensure all of the following—

1. A copy of the individual or organization’s official final accreditation report and accreditation certificate from the accrediting body establishing that the individual or organization is accredited in good standing for the period of time covered by the license;

2. A list of operating sites which includes the capacity served,

the gender served, and the ages served by that organization. This list *[must]* shall be updated if there is a change in operating sites by the individual or organization;

3. A copy of the accrediting body's official standards and policies for accreditation;

4. A copy of any corrective action documents or other notices from the accrediting body regarding areas of non-compliance or required improvement or monitoring;

5. Any documentation required at initial licensure or re-licensure as stated in chapters 13 CSR 35-71 (for residential treatment agencies) and 13 CSR 35-73 (for child placing agencies), including but not limited to, agency policies, procedures, organizational charts, budgets, staff training records, personnel records verifying compliance with background check requirements; and

6. Any and all other information and documentation that the division may determine is reasonably necessary to verify that the individual or organization is accredited in good standing and otherwise meets all of the requirements for licensure.

(B) *[If the organization has not been previously licensed by the state of Missouri,]* The division in its discretion may conduct *[an]* on-site visits to verify compliance with licensure requirements *[may be required by the division]* before a license is issued*[/]*.

(C) The division shall examine the areas that the organization is applying for a license. The division then *[shall]* may issue a corresponding license for those areas in which the organization is accredited. The license shall be valid for the period of time up to two (2) years (or such other time as may be specifically authorized or required by statute), or when the organization's accreditation expires, whichever is shorter*[/]*.

(D) *[Nothing in this section will result in the loss of license if the accreditation certificate has expired,]* If the individual or organization's accreditation expires during the term of the license, the division may issue a provisional license pursuant to section 210.486 RSMo for a period of time not to exceed six (6) months upon the individual or organization showing that —

1. *[t]*The individual or organization is still in good standing with the accrediting body, *[and]* the re-accreditation process is being diligently pursued, and accreditation is expected within six (6) months of the date the accreditation expired. The division may, at its discretion, request a letter of good standing from the accrediting body; *[and]*

2. The individual or organization otherwise demonstrates the potential capacity to meet full requirements for licensure; and

3. The division director is satisfied that the operation of the foster home, residential care facility, or child placing agency provisionally licensed is not detrimental to the health and safety of the children being served.

(E) *[Any denial or revocation of license based upon an organization's accreditation standing is entitled to a hearing as specified under the licensing rules or they may undergo the licensing process and meet all licensing rules in order to obtain a license.]* The division may deny the issuance of a license to, or may suspend or revoke the license of, any individual or organization which fails to provide information that the division may require to establish eligibility for licensure.

(F) The individual or organization seeking licensure under this section shall have the responsibility to apply for accreditation and/or re-accreditation in a timely manner to ensure compliance with all deadlines set out in this section and other applicable laws.

[(4)](5) Information Sharing.

(A) The individual or organization shall notify the division immediately of any sentinel event, any critical incident as required in 13 CSR 35-71.070, any unusual event as required in 13 CSR 35-73.050, and of any suspension, limitation, including but not limited to required corrective action or monitoring, or revocation of

accreditation. The procedures and requirements for reporting shall be the same for non-accredited, licensed individuals and organizations as provided in chapters 13 CSR 35-71 and 13 CSR 35-73.

(B) Sentinel events are *[as defined by the accrediting body]* those events which the accrediting body requires the individual or organization to report to the accrediting body as a condition of accreditation, but shall at a minimum include the following*[/]*—

1. A death of a child in one (1) of the individual's or organization's facilities; *[or]*

2. A serious emotional or physical injury of a child in one of the individual's or organization's facilities. For purposes of this regulation, a serious emotional or physical injury occurs when it is medically reasonable or necessary for a child to obtain professional medical intervention as a result of something that happens to the child while placed with the individual or organization; *[or]*

3. A child elopes from the individual's or organization's facility;

4. A fire in a location routinely occupied by children, which requires the fire department to be called; *[or]*

[4.]5. An allegation or report of *[child]* physical abuse, *[physical or]* sexual abuse, emotional abuse, or neglect of a child pertaining to the individual or organization, or an employee, contractor, subcontractor, volunteer, or officer of the individual or organization *[which is substantiated by the division or through an internal investigation by the organization which occurs within a facility]; [or]*

[5.]6. An employee is terminated from employment in relation to the safety and care of children; *[or]*

[6.]7. There is any change in the chief executive officer; *[or]*

[7.]8. There is a lawsuit filed against the individual or organization by or on behalf of a person who is or was in the individual's or organization's care; *[or]*

[8.]9. Any known criminal charges are filed against the individual, facility, organization, any resident of the facility, or any employee or volunteer of the individual or organization who has contact with children;

10. When the individual or organization is not in compliance with any of the criteria for accreditation, including maintaining the required level of services and staffing levels, for more than three (3) consecutive days; or

11. Whenever a child attempts to harm him/herself or others, including suicide attempts.

(C) The individual or organization shall notify the division of the entrance, exit and any performance review meetings of the accrediting body which are held in conjunction with the accreditation of the organization. The division has a right to attend any or all of these meetings between the organization and the accrediting body.

[(5)](6) The division may make such inspections and investigations as it deems necessary to *[conduct an initial visit to a facility not previously licensed]* ensure that the individual or organization continues to meet the requirements of licensure, for investigative purposes involving *[complaints]* reports of alleged child abuse or neglect, *[at reasonable hours]* and to address a complaint concerning the health and safety of children which the individual or organization serves*[/]*, or any other mutually agreed upon time*[/]*.

(7) Any individual or organization who is aggrieved by a decision of the division to deny, revoke or suspend a license based upon an organization's accreditation standing under this section may either—

(A) Seek administrative review following the procedures set forth in 13 CSR 35-71.030 for residential treatment agencies or 13 CSR 35-73.017 for child placing agencies; or

(B) Apply for licensure as an unaccredited individual or organization.

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo 2016, and section 210.112.8, RSMo Supp. [2004] 2020. Emergency rule filed Dec. 23, 2004, effective Jan. 2, 2005, expired June 30, 2005. Original rule filed Dec. 23, 2004, effective June 30, 2005. Emergency amendment filed June 11, 2021, effective July 1, 2021, expires Feb. 24, 2022. 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 84—Training Program for Nursing Assistants

EMERGENCY AMENDMENT

19 CSR 30-84.010 [Nurse] Nursing Assistant Training Program.

The department is amending the title of the rule and sections (4), (5), (6), (7), (9), and (10) and adding two (2) new forms.

PURPOSE: The emergency amendment sets forth requirements for the type of course setting and curricula content and instructional materials. Adds reciprocity qualifications for others states' certified nursing assistants (CNA) to be added to the Missouri CNA Registry and changes testing requirements by allowing a third party proctor to administer the test.

EMERGENCY STATEMENT: This emergency amendment is necessary due to the novel COVID-19 pandemic. COVID-19 has caused a disruption in the training of certified nurse assistants (CNAs). This emergency amendment provides greater flexibility in training CNAs in environments that are more conducive to limit the spread of COVID-19 and that are away from medically vulnerable residents of long term care facilities.

The novel COVID-19 pandemic has also challenged the long-term care facilities in hiring and retaining qualified CNAs. Therefore, the department is making it easier for CNAs who are on CNA registries in other states to be able to work in Missouri without having to complete additional requirements. This change will allow long-term care facilities to have a greater number of qualified CNA candidates to employ.

The department has updated the current CNA training program to include the most up-to-date standards of practice for CNAs, including the most up-to-date infection control and prevention standards in order to better train CNAs and to protect the medically vulnerable residents who reside in these long-term care facilities. This new CNA training program will also allow the training agencies that teach the nursing assistant program to be able to choose and utilize various instructional training materials that will be easier to access and purchase. The publisher/distributor of the current manual had closed for a period of time making the purchase of the current manuals more difficult for training agencies.

Finally, the department has updated and expedited the testing process for CNAs by allowing a third party test administrator to quickly test the CNAs. The current process requires department staff and certifying agencies to review the required CNA forms for accuracy and completeness which takes up to six (6) to eight (8) weeks or longer for a CNA to be eligible to be placed on the CNA registry. Getting CNAs placed on the CNA registry faster allows long-term care facilities to be able to more quickly hire these CNAs and allow

the CNAs to work without nursing supervision.

As a result, the department 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 State Constitutions*. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 14, 2021, becomes effective June 28, 2021, and expires December 24, 2021.

(4) Basic Course Requirements.

The program shall consist of a basic course [consisting] that includes, at a minimum, the following:

(A) [of a minimum of] [s]Seventy-five (75) [classroom] hours of instructional training in the curricula identified in section (5) of this rule [on basic nursing skills, fire safety and disaster training, resident safety and rights, social and psychological problems of residents, and the methods of handling and caring for mentally confused residents such as those with Alzheimer's disease and related disorder];

(B) [o]One hundred (100) hours of supervised on-the-job training (clinical practice) in an approved laboratory or other setting in which the student demonstrates knowledge while performing tasks on an individual under the supervision of a licensed practical nurse or registered nurse; and

(C) [a] A final examination [; and, following the basic course, continuing in-service training as provided for in 13 CSR 15-14.042(19) through (24)].

(5) Curricula Content.

(A) Until August 31, 2021, a training agency identified in paragraphs (7)(A)1. and 2., of this rule, shall teach the basic course and utilize either the content outlined in paragraphs (5)(A)1.-7. or (5)(C)1. and 2. This basic course includes the following:

1. Curriculum content of the program shall include procedures and instructions on basic nursing skills in the following areas: basic hygiene techniques; bedmaking; personal care of residents; food service; charting; safety measures (including fire/safety and disaster preparedness, and infection control); basic preventative and restorative care and procedures; basic observation procedures, such as weighing and measuring; communication skills; methods of handling and caring for mentally confused residents; residents' rights; ethical and legal responsibilities; death and dying; and mental health and social needs.

[(A)]2. The course curriculum as outlined in the manual entitled The Nurse Assistant in a Long-Term Care Facility, produced by the Instructional Materials Laboratory, University of Missouri-Columbia, 1987, catalogue number 50-5061-S shall be considered an approved course curriculum. Other manuals and course material may be used to supplement the curriculum. Instructors shall use the companion instructor's guide, catalogue number 50-5061-I.

[(B)]3. An orientation module consisting of certain topics identified as such in the approved course curriculum shall be the first material covered in the course unless the course is taught in its entirety before nursing assistants have resident contact. All students must complete the nurse assistant orientation module prior to providing direct care to any resident. For those students already employed by an intermediate care or skilled nursing facility, the orientation module shall be taught at the beginning of the course and before the nursing assistant is allowed to provide direct care to residents independently.

[1.]4. The orientation module shall include, as a minimum, the following topics: handwashing, gloving and infection control; emergency procedures and Heimlich Maneuver; residents' rights; abuse and neglect reporting; safety (fire and accident); lifting; moving and ambulation; answering signal lights; bedpan, urinal, commode and

toilet; preparing residents for and serving meals; feeding the helpless; bathing; dressing and grooming; mouth care; bedmaking (occupied and unoccupied); promoting residents' independence; communication and interpersonal skills.

[2.]5. Students shall complete the orientation module taught by a qualified instructor even though they may be employed in a facility that uses the approved course material for orientation as required by 13 CSR 15-14.042 (20). The instructor, in that instance, may adjust the time required to cover the material or may integrate the material into the basic course content.

[(C)]6. The suggested time schedule included for each curriculum topic in the approved course cited in subsection (5)(A) may be adjusted by the instructor to meet the particular learning abilities of the students providing that the orientation module shall be taught in at least sixteen (16) hours for Medicare- or Medicaid-certified facilities. Licensed-only facilities shall provide at least twelve (12) hours of basic orientation approved by the division.

[(D)]7. The on-the-job supervised component of one hundred (100) hours shall start after the student has enrolled and started the course curriculum and shall precede the final examination.

[(E)](B) Continuing in-service education shall be offered in the intermediate care or skilled nursing facility (ICF/SNF) to nursing assistants on a regular basis following their successful completion of the basic course as required in 13 CSR 15-14.042 (20) through (23).

(C) On the effective date of this emergency amendment, a training agency identified in paragraph (7)(A)3., of this rule, shall begin teaching the basic course content outlined in paragraphs (5)(C)1. and 2. If, prior to the effective date of this emergency amendment, a training agency identified in paragraph (7)(A)3. had begun teaching the basic course content outlined in paragraphs (5)(A)1.-7., then the training agency may continue to use that course content for the rest of the class as long as the class is completed within sixty (60) days. By August 31, 2021, a training agency identified in paragraphs (7)(A)1. and 2. of this rule, shall transition and begin teaching the basic course content outlined in paragraphs (5)(C)1. and 2. This basic course includes the following:

1. The curriculum content shall include the required seventy-five (75) hours of instructional training and covers all of the following areas:

- A. Communication and interpersonal skills.
- B. Infection control.
- C. Safety/emergency procedures, including the Heimlich maneuver.
- D. Promoting residents' independence.
- E. Respecting residents' rights.
- F. Basic nursing skills including, but not limited to—
 - (I) Taking and recording vital signs;
 - (II) Measuring and recording height and weight;
 - (III) Caring for the residents' environment;
 - (IV) Recognizing abnormal changes in body functioning

and the importance of reporting such changes to a supervisor; and

- (V) Caring for residents when death is imminent.
- G. Personal care skills including, but not limited to—
 - (I) Bathing;
 - (II) Grooming, including mouth care;
 - (III) Dressing;
 - (IV) Toileting;
 - (V) Assisting with eating and hydration;
 - (VI) Proper feeding techniques;
 - (VII) Skin care; and
 - (VIII) Transfers, positioning, and turning.
- H. Mental health and social service needs including, but not limited to—
 - (I) Modifying nursing assistant's behavior in response to resident's behavior;
 - (II) Awareness of developmental tasks associated with

the aging process;

- (III) How to respond to resident behavior;
- (IV) Allowing the residents to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

- (V) Utilizing the resident's family as a source of emotional support.

I. Care of cognitively impaired residents including, but not limited to—

- (I) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others);
- (II) Communicating with cognitively impaired residents;

- (III) Understanding the behavior of cognitively impaired residents;

- (IV) Appropriate responses to the behavior of cognitively impaired residents; and

- (V) Methods of reducing the effects of cognitive impairments.

J. Basic restorative services including, but not limited to—

- (I) Training the resident in self-care according to the resident's abilities;

- (II) The use of assistive devices in transferring, ambulation, eating, and dressing;

- (III) Maintenance of range of motion;
- (IV) Proper turning and positioning in bed and chair;
- (V) Bowel and bladder training; and
- (VI) Care and use of prosthetic and orthotic devices.

K. Residents' rights including, but not limited to—

- (I) Providing privacy and maintenance of confidentiality;

- (II) Promoting the residents' right to make personal choices to accommodate their needs;

- (III) Giving assistance in resolving grievances and disputes;

- (IV) Providing needed assistance in getting to and participating in resident and family groups and other activities;

- (V) Maintaining care and security of residents' personal possessions;

- (VI) Promoting the residents' right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

- (VII) Avoiding the need for restraints in accordance with current professional standards.

2. The basic course shall be taught using current published instruction material(s) that are no more than ten (10) years old. The material(s) shall include current standards of practice for nursing assistants. Other course materials that contain current standards of practice in healthcare and are no more than ten (10) years old may be used to supplement the curriculum.

(6) Student Enrollment and Qualifications.

(B) All full or part-time employees of an ICF/SNF who are involved with direct resident care, and hired in that capacity after January 1, 1980, shall have completed the approved Nurse Assistant Training Program or shall enroll in and begin study in the approved training program within ninety (90) days of employment, except that the following persons shall be permitted to challenge the final examination:

1. Persons who were enrolled in a professional (RN) or practical (LPN) nursing education program for at least four (4) months or who are enrolled in this program and who have successfully completed the Fundamentals of Nursing Course, including clinical hours within the last five (5) years, may challenge the final examination of the course, as this training is deemed equivalent to the required classroom hours and on-the-job training;

2. Professional nursing or practical nursing licensure candidates who have failed state licensure examinations may challenge the final

examination, as their training is deemed equivalent to the required classroom hours and on-the-job training;

[3. *Persons from other states who are approved to work as a nurse assistance in the other states may challenge the final examination, as their training is deemed equivalent to the required classroom hours and on-the-job training;*]

[4]3. Students who have completed a nursing program outside the United States and who are awaiting the licensure examination in this country shall be required to apply to the division to take the challenge examination. In addition to a completed application, the student must also include: a copy of the out of country license or certificate; a copy of the school transcript translated to English; a copy of the out of country criminal background check translated to English. Students shall be required to complete the orientation module of the course as given in subsection (5)(B) of this rule and then may challenge the final examination, as their training is deemed equivalent to the other required classroom hours and on-the-job training;

[5]4. Persons trained in acute care sections of hospitals as nursing assistants or persons trained as psychiatric aides shall complete the orientation module with special emphasis on the geriatric residents' needs, residents' rights and orientation to the facility and shall complete the one hundred (100) hours of on-the-job training in an LTC facility or LTC unit of a hospital and then they may challenge the final examination, as their training is deemed equivalent to the other required classroom hours and on-the-job training;

[6]5. Persons trained in an LTC unit of a hospital and who have been employed in the LTC unit of the hospital for at least twelve (12) months and who submit a letter of recommendation from the administrator or director of nursing documenting their training may challenge the final examination after completing the units on residents' rights and care of the confused resident. Such training shall be deemed equivalent to the other required classroom hours and on-the-job training; and

[7]6. Any other persons whose background, education and training in gerontology and health occupations includes the components of the approved training curriculum may be allowed to challenge the final examination after taking those portions of the course as determined to be necessary based on evaluation of their credentials by the supervisor of health education of the Division of Aging.

7. Individuals who are certified and active on another state's nurse aide registry shall not be required to challenge the final examination. The individual shall submit, in writing to the department, a request to be added to the Missouri Certified Nurse Assistant Registry. At a minimum, the request shall include: the individual's legal name; Social Security number; current address; telephone number; email address, if applicable; and proof of their current certified nursing assistant certificate. The department will respond in writing, either approving or denying the request to be added to the registry.

(C) Those persons designated in paragraphs (6)(B)1.-[7.]6., who want to challenge the final examination shall submit a request in writing to the division enclosing any applicable documentation. The division will respond, in writing, either approving or denying the request to challenge the final examination and, if approved, the letter from the division may be presented to an approved training agency to challenge the examination or complete the course or portions of the course as required and then challenge the examination.

(K) A student who received instructional training from the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule, shall register with the department approved third party test administrator upon successful completion of the seventy-five (75) hours of instructional training and one hundred (100) hours of supervised on-the-job training.

(7) Training Agencies.

(G) In the event that a qualified instructor for the basic course did not sign records of a student who successfully completed the

program, without justification or due to resignation from his or her position, the administrator or designee of the training agency shall validate the training by signature.

(H) Evidence of successful completion of the basic course shall be documented prior to a student taking the final examination and shall include:

1. Class schedules and form MO 580-2473 (12-07) Certified Nurse Assistant Competency Score Sheet (For Use Only With The 2001 Manual) Appendix A/B, included herein for training agencies using the basic course content outlined in paragraphs (5)(A)1.-7. of this rule; or

2. Class schedules and form DHSS-DRL-111 (08-20), Classroom and On-the-Job Training Record, included herein for training agencies using the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule.

(I) The training agency shall ensure that all applicable portions of appropriate forms identified in paragraphs (7)(H)1. and 2. of this rule, is complete and shall provide a copy to the student within seven (7) calendar days of successful completion of the seventy-five (75) hours of instructional training and one hundred (100) hours of supervised on-the-job training.

(9) Qualifications of Instructors, Clinical Supervisors and Examiners.

(A) Instructor.

1. An instructor shall be a registered professional nurse currently licensed in Missouri or shall have a temporary permit from the Missouri State Board of Nursing. The licensee shall not be subject of current disciplinary action, such as censure, probation, suspension or revocation.

2. An instructor shall have had, at a minimum, two (2) years of nursing experience and at least one (1) year of experience in the provision of LTC facility services in the last five (5) years. Other personnel from the health professions may assist the instructor; however, they must have at least one (1) year of experience in their field.

3. An applicant to be an instructor, shall submit credentials (resume) and a copy of his/her current license renewal card or temporary permit to the Division of Aging. A letter shall be provided by the division to the applicant indicating the status of the applicant's qualifications and, if not qualified, the reasons and what additional requirements are needed.

4. An applicant to be an instructor shall attend a seminar approved by the Division of Aging to learn the methodology of teaching the course but only after his/her credentials have been reviewed and approved by the Division of Aging. The Division of Aging shall issue a final letter of approval to be a qualified instructor after the person has satisfactorily completed the seminar. The seminar shall be conducted either by an LTC association or the Missouri Department of Elementary and Secondary Education using qualified teacher educators approved by the Missouri Department of Elementary and Secondary Education and the Division of Aging.

5. Any registered nurse approved by the division or the Department of Elementary and Secondary Education as an instructor or examiner prior to January 1, 1990, except those involved in nurse assistant curriculum development with the division or who are employed by a certifying agency, shall attend a training seminar on teaching the nurse assistant course conducted by a LTC association or the Department of Elementary and Secondary Education by July 1, 1993 in order to maintain status as an approved instructor. Instructors approved prior to January 1, 1990 who are exempt from attending the training seminar shall write the Division of Aging submitting documentation of classes and students taught. The division will issue those instructors letters of approval so they will not have to attend the new training seminar. After July 1, 1993 all credentials issued prior to January 1, 1990 shall be void. Nurses who attend the approved seminar shall be issued new certificates and the division shall maintain a list of all approved instructors, including those issued letters of approval.

6. The instructor teaching the seventy-five (75) hours of instructional training and/or sixteen (16) of the one hundred (100) hours of supervised on-the-job training for the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule, shall complete and sign all applicable portions of form DHSS-DRL-111 (08-20), Classroom and On-the-Job Training Record for each student participating in the program.

7. An instructor teaching the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule, shall provide a copy of the student's completed form DHSS-DRL-111 (08-20), Classroom and On-the-Job Training Record to the student within seven (7) calendar days of successful completion of the seventy-five (75) hours of instructional training and one hundred (100) hours of supervised on-the-job training.

8. If the course is not completed, records and documentation regarding the completed portions shall be provided by the instructor to the student, if requested, and to the training agency.

(B) Clinical Supervisor (On-the-Job Supervisor). The clinical supervisor shall be a currently licensed registered professional nurse or licensed practical nurse, whose license is not currently subject to disciplinary action such as censure, probation, suspension or revocation. The clinical supervisor shall be licensed in Missouri or shall have a temporary permit from the Missouri State Board of Nursing. The clinical supervisor shall be currently employed by the facility where the students are performing their duties or by the agency conducting the course and shall have attended a seminar approved by the Division of Aging to learn methodology of supervising the on-the-job training. Upon successful completion of the training seminar, the clinical supervisor shall be issued a certificate and the division shall maintain a list of approved clinical supervisors. The clinical supervisor shall be on the facility premises in which the students are performing their duties while the students are completing the on-the-job component of their training and shall directly assist the students in their training and observe their skills when checking their competencies. The clinical supervisor shall have at least one (1) year of experience in LTC if not currently employed by an LTC facility.

1. The clinical supervisor(s) shall complete and sign all applicable portions of form DHSS-DRL-111 (08-20), Classroom and On-the-Job Training Record for each student who participated in the basic course using the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule.

(D) Causes for Disqualification. A person shall not be allowed to be an instructor, clinical supervisor or examiner if it is found that he or she—

1. Knowingly acted or omitted any duty in a manner which would materially or adversely affect the health, safety, welfare or property of a resident;

2. Defrauded a training agency or student by taking payment and not completing a course, not administering the final examination as required, or not being on-site while students are being trained;

3. Failed to teach, examine or clinically supervise in accordance with 13 CSR 15-13.010, or taught students from the state test, changed answers on the state test, lost test booklets, or recorded false information on test materials or test booklets of the program; or

4. Failed to send documentation of a completed course to a certifying agency within thirty (30) days.

5. Is disqualified as a RN Test Observer by the department approved third party test administrator.

(10) Testing.

(D) If the basic course content outlined in paragraphs (5)(C)1. and 2. of this rule, is used to teach the course, testing shall comply with the following:

1. A student shall pass a minimum of three (3) written or oral tests throughout the course with an eighty percent (80%) score or better on each test in order to be eligible to take the final examination. Each test shall consist of a minimum of fifteen (15) questions;

2. The final examination shall be conducted by the department approved third party test administrator and a fee will be assessed for each examination;

3. The instructor shall verify the eligibility of the students by reviewing form DHSS-DRL-111 (08-20), Classroom and On-the-Job Training Record to establish that the student has completed the approved program;

4. The student shall successfully complete an examination proctored by the department approved third party test administrator. The student shall achieve a passing score of at least eighty percent (80%); and

5. The student shall successfully complete the skills evaluation portion of the examination proctored by the department approved third party test administrator. The student shall achieve a score of one hundred percent (100%).

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
CERTIFIED NURSE ASSISTANT COMPETENCY SCORE SHEET (FOR USE ONLY WITH 2001 MANUAL) **APPENDIX A**

STUDENT NAME (PLEASE PRINT) (LAST)	(FIRST)	(MIDDLE)	(MAIDEN)	SOCIAL SECURITY NO.	HOME PHONE NO.
PERMANENT ADDRESS (STREET)	(CITY)	(STATE)	(ZIP)	DATE OF BIRTH	WORK PHONE NO.
SITE NAME - 75 HRS CLASSROOM	SITE NO.	BEGIN DATE	COMPLETE DATE	COMPLETE DATE - 84 HRS/100 HRS	ATTENDANCE
SITE NAME - 84 HRS/100 HRS*	SITE NO.	BEGIN DATE	COMPLETE DATE	COMPLETE DATE - 16 HRS.	MAKE-UP
SITE NAME - WRITTEN/ORAL FINAL EXAM	SITE NO.	1ST ATTEMPT	BOOKLET NO.	WRITTEN	ORAL
SITE NAME - WRITTEN/ORAL FINAL EXAM	SITE NO.	2ND ATTEMPT	BOOKLET NO.	WRITTEN	ORAL
SITE NAME - WRITTEN/ORAL FINAL EXAM	SITE NO.	3RD ATTEMPT	BOOKLET NO.	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	1ST ATTEMPT	EXAM DATE	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	2ND ATTEMPT	EXAM DATE	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	3RD ATTEMPT	EXAM DATE	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	1ST ATTEMPT	EXAM DATE	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	2ND ATTEMPT	EXAM DATE	WRITTEN	ORAL
SITE NAME - PRACTICUM EXAM	SITE NO.	3RD ATTEMPT	EXAM DATE	WRITTEN	ORAL

3. EACH SCORE MUST BE AT LEAST 80% (MUST BE COMPLETED BY INSTRUCTOR PRIOR TO EXAM)

APPROVED FOR CERTIFICATION NOT APPROVED FOR CERTIFICATION

Evaluation of procedures includes: knowledge, safety, encouraged self-help, work habits, student-resident interaction, organization, resident's rights. Other procedures may be determined by resident's needs. All procedures must be evaluated.

PRACTICUM EXAM PROCEDURES	PASS/FAIL	PRACTICUM EXAM PROCEDURES	PASS/FAIL
1. BATH		3. TRANSFER TECHNIQUES	
4. FEEDING TECHNIQUES		6. SKIN CARE	
7. HANDWASHING		9. ACTIVE OR PASSIVE FOM TO ↑ AND ↓ EXTERMITIES	

Examiner advised individual that successful completion of the evaluation will result in the addition of his/her name to the state nursing assistant register. If you have been determined to have committed abuse, neglect or misappropriation of goods in a certified facility, a permanent federal marker will be placed against your name on the CNA register. You will **NEVER AGAIN** be allowed to work in a certified facility. **STUDENT MUST INITIAL**

1ST INSTRUCTOR SIGNATURE	LICENSE NO.	PRINTED LAST NAME
2ND INSTRUCTOR SIGNATURE	LICENSE NO.	PRINTED LAST NAME
ADMINISTRATOR/DON SIGNATURE - 75 HOURS	LICENSE NO.	PRINTED LAST NAME
CHARGE NURSE SIGNATURE - FACILITY VERIFICATION 84 HRS OJT COMPLETED	LICENSE NO.	PRINTED LAST NAME
CHARGE NURSE SIGNATURE - FACILITY VERIFICATION 16 HRS COMPETENCY EVALUATION	LICENSE NO.	PRINTED LAST NAME
CLINICAL SUPERVISOR - 84 HRS OJT	LICENSE NO.	PRINT LAST NAME
CLINICAL SUPERVISOR - 16 HRS OJT	LICENSE NO.	PRINT LAST NAME
1ST EXAMINER SIGNATURE	LICENSE NO.	PRINT LAST NAME

APPENDIX B

STUDENT NAME - PLEASE PRINT (LAST)	(FIRST)	(MIDDLE)	(MAIDEN)	SOCIAL SECURITY NO.					
<p>APPENDIX A-B - INSTRUCTIONS: 1st Column: List date of classroom instruction - 75 hours. 2nd Column: Classroom instructor initials. 3rd Column: Date the competency evaluation (16 hrs - #1-#64 below) was completed in state approved training agency. 4th Column: Simulation must be done in white area and only if care issue NOT AVAILABLE in state approved training agency. 5th Column: Clinical Supervisor/Instructor must SIGN CORRESPONDING PINK SHEET THEN initial that the Nurse Assistant is competent in this skill and that the competency evaluation was completed on a ONE TO ONE RATIO IN A STATE APPROVED TRAINING AGENCY.</p>									
COMPETENCY	DATE OF CLASSROOM INSTRUCTION	INSTRUCTOR INITIALS	DATE OF COMPETENCY ACHIEVED	SIMULATION	COMPETENCY EVALUATION INSTRUCTOR INITIALS	COMPETENCY ACHIEVED	DATE OF COMPETENCY ACHIEVED	SIMULATION	COMPETENCY EVALUATION INSTRUCTOR INITIALS
1. Take oral temperature									
2. Take rectal temperature									
3. Take axillary temperature									
4. Count radial pulse									
5. Count apical pulse									
6. Count respirations									
7. Measure blood pressure									
8. Wash hands									
9. Put on and remove daily care non-sterile gloves									
10. Put on and remove mask									
11. Put on and remove non-sterile gown									
12. Feed helpless resident									
13. Serve a food tray									
14. Clear airway obstruction in conscious resident									
15. Clear airway obstruction in unconscious resident									
16. Thicken liquids									
17. Distribute drinking water									
18. Measure fluid intake									
19. Measure fluid output									
20. Shave with disposable razor									
21. Shave with electric razor									
22. Assist with oral hygiene									
23. Administer oral hygiene to resident who is helpless/unconscious									
24. Provide denture care									
25. Give fingernail care									
26. Give toenail care									
27. Comb/brush hair									
28. Give shampoo during tub bath/shower bath									
29. Give bed shampoo									
30. Give perineal care to male resident									
31. Give perineal care to female resident									
32. Assist resident to dress									
PERSONAL COMPETENCY EVALUATION (PASSING SCORE REQUIRED ON ALL ITEMS PRIOR TO BEING ALLOWED TO TAKE FINAL EXAM)									
	RATER NAME	LICENSE NO.	COMP.	RATER NAME	LICENSE NO.	COMP.			
65. Wears clean uniform, wears name tag and is free of body odor									
66. Observes resident rights									
67. Reports to work on time									
68. Uses facility's procedure for absenteeism									
69. Completes assignments									
70. Communicates well with others, is courteous									
71. Incorporates acceptable techniques when caring for the confused resident, the mentally ill resident or the resident with unconventional behaviors.									
COMMENTS									

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION
CLASSROOM AND ON-THE-JOB TRAINING RECORD

(1) STUDENT NAME (LAST, FIRST, MIDDLE)		(2) FORMER NAMES USED	
(3) SOCIAL SECURITY NO.		(4) STUDENT E-MAIL	
(5) STUDENT PERMANENT ADDRESS (STREET, CITY, STATE, ZIP)		(7) STUDENT PHONE NO.	
(8A) SITE NO.	(8B) BEGIN DATE	(8C) COMPLETION DATE	(8D) COMPLETED INSTRUCTIONAL TRAINING
(9A) SITE NO.	(9B) BEGIN DATE	(9C) COMPLETION DATE	(9D) COMPLETED OJT HRS
(10A) SITE NO.	(10B) BEGIN DATE	(10C) COMPLETION DATE	(10D) COMPLETION DATE 84 OJT HOURS
(11) CLASS TEST SCORES			
1. 2. 3. Each test score must be at least 80% (must be completed prior to final exam)			
(12) 1ST INSTRUCTOR SIGNATURE - INSTRUCTIONAL HRS	(12A) LICENSE NO.	(12B) LAST NAME	
(13) 2ND INSTRUCTOR SIGNATURE - INSTRUCTIONAL HRS	(13A) LICENSE NO.	(13B) LAST NAME	
(14) ADMINISTRATOR/DIRECTOR OF NURSING (DON)/CEO SIGNATURE	(14A) LICENSE NO.	(14B) LAST NAME	
(15) CHARGE NURSE SIGNATURE - FACILITY VERIFICATION 84 HRS OJT COMPLETED	(15A) LICENSE NO.	(15B) LAST NAME	
(16) CHARGE NURSE SIGNATURE - FACILITY VERIFICATION 16 HRS OR 100 HRS OJT COMPLETED	(16A) LICENSE NO.	(16B) LAST NAME	
(17) 1ST INSTRUCTOR SIGNATURE - 16 HRS OJT	(17A) LICENSE NO.	(17B) LAST NAME	(18) 2ND INSTRUCTOR SIGNATURE - 16 HRS OJT
(19) CLINICAL SUPERVISOR SIGNATURE - 84 HRS OJT	(19A) LICENSE NO.	(19A) LAST NAME	(20) CLINICAL SUPERVISOR SIGNATURE - 84 HRS OJT
		(18A) LICENSE NO.	(18B) LAST NAME
		(20A) LICENSE NO.	(20B) LAST NAME
		<input type="checkbox"/> (11A) APPROVED FOR FINAL EXAM <input type="checkbox"/> (11B) NOT APPROVED FOR FINAL EXAM	

STUDENT NAME - (LAST, FIRST, MIDDLE)		SOCIAL SECURITY NO.									
<p>PG 2 – INSTRUCTIONS: 1st Column: List date of 75 hours instructional training. 2nd Column: Classroom instructor initials. 3rd Column: Date the OJT evaluation was completed in state approved training agency. 4th Column: Simulation may be done only if care issue is not available in state approved training agency. 5th Column: Clinical Supervisor/Instructor must initial the student is competent in this skill and the competency evaluation was completed on a one to one ratio in a state approved training agency. NOTE: An instructor must provide at least 16 hours of the 100 hours OJT.</p>											
SKILLS	DATE OF CLASSROOM INSTRUCTION	INSTRUCTOR INITIALS	DATE OUT ACHIEVED	SIMULATION	OUT EVALUATION CS / INSTRUCTOR INITIALS	SKILLS	DATE OF CLASSROOM INSTRUCTION	INSTRUCTOR INITIALS	DATE OUT ACHIEVED	SIMULATION	OUT EVALUATION CS / INSTRUCTOR INITIALS
1. Take oral temperature						35. Give complete bed bath					
2. Take axillary temperature						36. Give tub bath					
3. Count radial pulse						37. Give shower bath					
4. Count apical pulse						38. Make an unoccupied bed					
5. Count respirations						39. Make an occupied bed					
6. Measure blood pressure						40. Give back rub					
7. Wash hands						41. Give stage 1 pressure ulcer care & discuss prevention					
8. Put on/remove daily care non-sterile gloves						42. Discuss pressure relieving devices					
9. Put on/remove mask						43. Reposition for pressure relief in bed					
10. Put on/remove non-sterile gown						44. Reposition for pressure relief in chair					
11. Feed a resident that requires total assistance						45. Suspend resident's heels					
12. Serve a food tray						46. Give perineal care with catheter					
13. Clear airway obstruction in conscious resident						47. Change a drainage bag					
14. Clear airway obstruction in unconscious resident						48. Empty a urinary drainage bag					
15. Thicken liquids						49. Assist resident in using urinal					
16. Distribute drinking water						50. Assist resident in using bedpan					
17. Measure fluid intake						51. Care of an uncomplicated established colostomy					
18. Measure fluid output						52. Turn resident to one side (¼ turn)					
19. Shave with disposable razor						53. Move resident to head of bed (two-person assist)					
20. Shave with electric razor						54. Demonstrate one-person pivot transfer from bed to chair					
21. Assist with oral hygiene						55. Demonstrate one-person pivot transfer from chair to bed					
22. Administer oral hygiene to resident that requires						56. Demonstrate two-person pivot transfer from chair to bed (resident can assist)					
23. Denture care						57. Demonstrate two-person transfer with a mechanical lift to chair					
24. Fingernail care						58. Ambulate resident using a gait belt					
25. Toenail care						59. Ambulate resident using a walker					
26. Comb/brush hair						60. Ambulate resident using a cane					
27. Shampoo tub bath/shower bath						61. Range of Motion (ROM) exercises neck and shoulders					
28. Bed shampoo						62. ROM exercises elbow					
29. Perineal care to male resident						63. ROM exercises wrist/fingers					
30. Perineal care to female resident						64. ROM exercises hip/knee					
31. Assist resident to dress						65. ROM exercises ankle/toes					
32. Changing a brief						66. Measure weight of resident					
33. Assist resident to undress						67. Measure height of resident					
34. Apply and remove therapeutic stockings						68. Give post-mortem care					
COMMENTS											

GUIDE TO CLASSROOM AND ON-THE-JOB TRAINING RECORD**Guide for page 1**

8. Name of approved training agency site where 75 hours of instructional training was conducted.
- 8A. Site number of training agency where instructional training was conducted.
- 8B. Beginning date of instructional training (this date must pre-date any on the job training).
- 8C. Date instructional training was completed.
- 8D. Number of instructional training hours completed.
9. Name of approved long-term care (LTC) facility where student completed 16 or 100 hours of OJT.
- Note:** If all 100 hours of OJT were completed in an approved LTC facility, boxes 10 through 10C may be left blank.
- 9A. Site number of approved LTC facility where student completed 16 or 100 hours of OJT.
- 9B. Date student began 16 or 100 hours of OJT in an approved LTC facility.
- 9C. Date student completed 16 or 100 hours of OJT in an approved LTC facility.
- 9D. Number of hours of the 16 or 100 hours of OJT the student completed.
10. Name of the approved LTC facility where student completed 84 hours of OJT.
- Note:** An approved LTC facility that has been denied the ability to provide 100 hours of OJT due to enforcement issues may be able to provide only 84 hours of OJT. The other 16 hours of OJT must be completed in an approved/eligible facility.
- 10A. Site number of approved LTC facility where 84 hours of OJT was completed.
- 10B. Date 84 hours of OJT began.
- 10C. Date student completed 84 hours of OJT.
11. During the course of 175 hours of training, the student must take and pass at least three sample tests with a score of at least 80% prior to sitting for the final exam. Those test scores shall be documented by the instructor at (11) 1., (11) 2., and (11) 3.
- 11A. 11B. Instructor checks applicable box if student has successfully met all required criteria to sit for final exam or failed to successfully complete all required to sit for final exam.
12. The signature of the first classroom instructor shall ensure that all training requirements are met according to 19 CSR 30-84.010 and that all portions of form DHSS-DRL-2473 is complete. Signing indicates all training, with the exception of the final exam has been completed.
- 12A. First instructor's nurse license number.
- 12B. First instructor's last name.
13. If applicable, signature of the second instructor who assisted with the instructional training, indicating he/she provided instructional training to the student.
- 13A. If applicable, second instructor's nurse license number.
- 13B. If applicable, second instructor's last name.

14. Signature of the Administrator, DON, or CEO of the approved LTC facility where 16 hours of OJT occurred. This signature is to acknowledge the CNA training occurred in the facility named in box #9.
- 14A. Administrator, DON, or CEO's license number.
- 14B. Administrator, DON, or CEO's last name.
15. Signature of charge nurse verifying the student was present in the LTC facility for 16 or 100 hours of OJT.
- 15A. Charge nurse's nurse license number.
- 15B. Charge nurse's last name.
16. Charge nurse's signature verifying that the student was present in the facility for 84 hours of OJT (may be left blank if charge nurse signed for all 100 hours at #15.)
- 16A. Charge nurse's nurse license number.
- 16B. Charge nurse's last name.
17. Signature of first instructor who provided at least 16 hours of 100 hours OJT in an approved LTC facility. (These 16 hours of training may be shared between one or more instructors.)
- 17A. Instructor's nurse license number.
- 17B. Instructor's last name.
18. If applicable, signature of second instructor who provided any portion of the 16 hours of 100 hours of OJT for the student in an approved LTC facility.
- 18A. If applicable, the second instructor's nurse license number.
- 18B. If applicable, the second instructor's last name.
19. Signature of clinical supervisor who supervised 84 hours of the OJT.
- 19A. Clinical supervisor's nurse license number.
- 19B. Clinical supervisor's last name.
20. If applicable, the signature of the second clinical supervisor who supervised any portion of 84 hours of OJT.
- 20A. If applicable, the second clinical supervisor's nurse license number.
- 20B. If applicable, the second clinical supervisor's last name.

Guide for Page 2

- All boxes on page 2 must be completed prior to the final exam with the exception of the comments box, which may be filled out as appropriate to the student.
- All clinical supervisors and instructors who provided training and/or supervision must sign this form. If extra space is needed, signatures may be included in the comment section at the bottom of page 2.

AUTHORITY: sections 198.009 and 198.079, RSMo 2016, and section 198.082, RSMo [1994] Supp. 2020. This rule originally filed as 13 CSR 15-13.010. Original rule filed Aug. 13, 1982, effective Jan. 13, 1983. For intervening history, please consult the Code of State Regulations. Emergency amendment filed June 14, 2021, effective June 28, 2021, expires Dec. 24, 2021. A proposed amendment covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency amendment will cost state agencies or political subdivisions thirty-four thousand three hundred six dollars (\$34,306) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will cost private entities three hundred seventy-seven thousand two hundred ninety-four dollars (\$377,294) in the time the emergency is effective.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Health and Senior Services**
Division Title: Division of Regulation and Licensure
Chapter Title: Training Program for Nursing Assistants

Rule Number and Name:	19 CSR 30-84.010 Nursing Assistant Training Program
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
(14) Skilled Nursing Facilities (SNFs)	\$24,014
(6) Hospitals	\$10,292
TOTAL COSTS =	\$34,306

III. WORKSHEET

Costs of Student Training Materials/Materials on public entities

SNFs: (1 student manual @ \$51.68) x (10 students per class) x (14 long term care facilities) x 3 classes = \$21,705.60

Hospitals: (1 student manual @\$51.68) x (10 students per class) x (6 public owned hospitals) x 3 classes = \$9,302.40

Total for costs of student manual/instructional materials for public entities: \$21,705.60 + \$9,302.40 = \$31,008.00

Costs of Instructor Training Materials/Manuals on public entities

SNFs: (1 instructor manual @ \$54.95) x (3 instructors per facility) x (14 facilities) = \$2,307.90

Hospitals: (1 instructor manual @ \$54.95) x (3 instructors per facility) x (6 hospitals) = \$989.10

Total for costs of instructor materials/manuals for public entities: \$2,307.90 + \$989.10 = \$3,297.00

TOTAL COSTS: \$31,008.00 (total for student manual/instructional materials) + \$3,297.00 (total for instructor materials/manuals) = \$34,305.00

IV. ASSUMPTIONS

Costs of Student and Instructor Manual/Instructional Materials on public entities

All approved training agencies are required to provide each student and instructor his or her own instruction training material(s) that encompasses the required curricula content found in 19 CSR 30-84.010. A training agency conducting the nursing assistant basic course must purchase material(s) that is published, includes all the curricula content for the basic course listed in 19 CSR 30-84.010, and is no more than ten (10) years old. The proposed regulation contained in the emergency amendment will require a licensed hospital or department licensed intermediate care or skilled nursing facility to begin using newer training materials.

The public fiscal note is based on the assumption that all department approved nursing assistant training agencies will purchase the required training material(s) for each student and instructor.

There are two (2) types of approved publicly-owned training agencies that will be affected by the emergency amendment period: skilled nursing facilities and hospitals. Currently, there are fourteen (14) skilled nursing facilities and six (6) hospitals that are publicly-owned. Furthermore, it would only be these entities that would be affected during the emergency amendment period.

For the purposes of this emergency public fiscal note, the department only used the two (2) types of affected training agencies (skilled nursing facilities and hospitals) to calculate its determination. The formula for determining the costs an approved training agency would incur to purchase the required nursing assistant training materials for instructors and students would be at least one (1) textbook for each student and one (1) textbook for each instructor. The department estimated that each approved training agency would maintain an average number of instructors per class, conduct a certain number of training classes per year with an average number of students per class. During the emergency amendment period, only a licensed hospital or department licensed skilled nursing facility will be required to begin using new training materials.

The department reviewed three (3) entities that publish a nursing assistant training textbook for students and instructors to determine an average costs for a training manual/material. Based on the information, the department estimated the average cost for a student nursing assistant training manual/materials to be: \$51.68 and the average cost for an instructor's nursing assistant training manual/materials to be: \$54.95

The department received input from several training agencies on the number of instructor's employed/contracted, number of students per class, and the number of classes held per year. Based on the information provided the estimated number of instructors per class is 3; average students per class is 10; and the number of classes held per year is 3.

The formula for determining the cost to a training agency to purchase the nursing assistant training material for each student is as follows: (Average cost of one (1) student textbook) x (number of students per class) x (number of publicly-owned training agency) x (number of classes).

The formula for determining the cost to a training agency to purchase the nursing assistant training material for each instructor is as follows: (Average cost of one (1) instructor textbook) x (number of instructors per training agency) x (number of privately-owned training agency). NOTE: Because some instructor textbooks and online teaching instruction are free with the purchase of student texts, this will help keep instructor costs more affordable. Also, the department assumes that the training agency keeps the instructor materials, regardless of who instructs the course and instructor materials are only purchased once during the year.

Costs of CNA final examination for individuals

The department is not including costs for approved publicly-owned training agencies regarding the CNA final examination. Certified intermediate care facilities and skilled nursing facilities are reimbursed for costs to train nursing assistants through the Missouri Medicaid CNA reimbursement program, which includes the final examination. The department believes that approved publicly-owned training agencies can recoup costs through tuition fees. Hospitals and Veterans' homes are not required to pay for the CNA final examination; however, they may offer incentives or bonuses such as paying for a CNA final examination to retain them for employment. The fiscal impact would be a private cost for an individual who may have to pay for the CNA exam out of his/her own pocket.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division Title: Division of Regulation and Licensure
Chapter Title: Training Program for Nursing Assistants**

Rule Number and Title:	19 CSR 30-84.010 Nursing Assistant Training Program
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
183	Intermediate Care Facilities (ICFs) and Skilled Nursing Facilities (SNFs)	\$313,891
10	Hospitals	\$17,153
370	Individuals not reimbursed for cost of the CNA final examination	\$46,250
	TOTAL COSTS:	\$377,294

III. WORKSHEET

Costs of Student Manual/Instructional Materials on private entities

ICF/SNFs: (1 student manual @\$51.68) x (10 students per class) x (183 facilities) x 3 classes = \$283,723.20

Hospitals: (1 student manual @\$51.68) x (10 students per class) x (10 hospitals) x 3 classes = \$15,504.00

Total for costs of student manual/instructional materials for private entities: \$299,227.20

Costs of Instructor Materials/Manuals on private entities

ICF/SNFs: (1 instructor manual @\$54.95) x (3 instructors per facility) x (183 facilities) = \$30,167.55

Hospitals: (1 instructor manual @\$54.95) x (3 instructors per hospital) x (10 hospitals) = \$1,648.50

Total for costs of student manual/instructional materials for private entities: \$31,816.05

Costs of CNA final examination for individuals taking the exam

Fee to administer a CNA final examination: \$125.00

The total number of CNA final exams administered was calculated by averaging the number of CNA final examinations sent out for 2019 and 2020: $7,490 + 7,312 = 14,802 / 2 = 7,401$

The department estimates that approximately five percent (5%) of individuals taking the CNA final examination would have to pay for the costs on their own.

The costs for the number of CNAs not receiving reimbursement for the final examination was calculated by the average number of active CNAs (7,401) x .05% = 370 x cost of final examination (\$125.00) = \$46,250.00

Total costs for the number of CNAs who will not receive reimbursement for taking the final examination: \$46,250.00

IV. ASSUMPTIONS

Costs of Student and Instructor Manual/Instructional Materials on private entities

All approved training agencies are required to provide each student and instructor his or her own instruction training material(s) that encompasses the required curricula content found in 19 CSR 30-84.010. A training agency conducting the nursing assistant basic course must purchase material(s) that is published, includes all the curricula content for the basic course listed in 19 CSR 30-84.010, and is no more than ten (10) years old.

The private fiscal note is based on the assumption that all department approved nursing assistant training agencies will purchase the required training material(s) for each student and instructor.

There are two (2) types of approved privately-owned training agencies that will be affected by the emergency amendment period: intermediate care/skilled nursing facilities and hospitals. Currently, there are one hundred eighty-three (183) intermediate/skilled nursing facilities and ten (10) hospitals that are privately-owned. Furthermore, it would only be these entities that would be affected during the emergency amendment period.

For the purposes of this emergency public fiscal note, the department only used the two (2) types of affected training agencies (intermediate/skilled nursing facilities and hospitals) to calculate its determination. The formula for determining the costs an approved training agency would incur to purchase the required nursing assistant training materials for instructors and students would be at least one (1) textbook for each student and one (1) textbook for each instructor. The department estimated that each approved training agency would maintain an average number of instructors per class, conduct a certain number of training classes per year with an average number of students per class. During the emergency amendment period, only a licensed hospital or department licensed

intermediate care or skilled nursing facility will be required to begin using new training materials.

The department reviewed three (3) entities that publish a nursing assistant training textbook for students and instructors to determine an average costs for a training manual/material. Based on the information, the department estimated the average cost for a student nursing assistant training manual/materials to be: \$51.68 and the average cost for an instructor's nursing assistant training manual/materials to be: \$54.95

The department received input from several training agencies on the number of instructor's employed/contracted, number of students per class, and the number of classes held per year. Based on the information provided the estimated number of instructors per class is 3; average students per class is 10; and the number of classes held per year is 3.

The formula for determining the cost to the affected training agencies during the emergency amendment period to purchase the nursing assistant training material for each student is as follows: (Average cost of one (1) student textbook) x (number of students per class) x (number of privately-owned training agency) x (number of classes). NOTE: Because some instructor textbooks and online teaching instruction are free with the purchase of student texts, this will help keep instructor costs more affordable. Also, the department assumes that the training agency keeps the instructor materials, regardless of who instructs the course and instructor materials are only purchased once during the year.

Costs of CNA final examination

Regulation 19 CSR 30-84.010 requires an applicant/student who has taken the nursing assistant training program to successfully pass the final examination (written & skills) in order to become a certified nursing assistant (CNA) and be added to the active Missouri CNA Registry. The department is proposing a new requirement that allows a department approved third party test administrator to set a cost/fec to administer the CNA final examination. The applicant/student is required to register with the department approved third party test administrator to take the final examination.

Current regulation allows examiners to set their own fee to administer the final exam. The Section for Long-Term Regulation (SLCR), Health Education Unit (HEU) made contact with various examiners to obtain an average cost of what an examiner may charge an applicant/student to administer the final examination. The costs an examiner currently charges to administer the final examination has been wide ranging from \$30.00 to \$300.00 per final examination. The new proposed regulation requires a third party test administrator to administer the final examination. The third party test administrator will impose one set fee for the final examination.

The regulation does not require an approved privately-owned training agency to pay for the CNA final examination. The proposed regulation requires the applicant/student to register with the department approved third party test administrator in order to take the final examination and submit payment.

The department is not including costs to approved privately-owned training agencies regarding the CNA final examination. Certified intermediate care facilities and skilled

nursing facilities are reimbursed for costs to train nursing assistants through the Missouri Medicaid CNA reimbursement program, which includes the final examination. The department approved privately-owned training agencies such as vocational technical schools and comprehensive high schools, public community colleges, public colleges and universities, proprietary schools, private agencies, or associations can recoup costs through tuition costs. Hospitals and Veterans' homes are not required to pay for the CNA final examination; however, they may offer incentives or bonuses such as paying for a CNA final examination to retain them for employment. For the purposes of this fiscal note, the department is accounting only for the costs that an applicant/student in an average year would have to pay on their own for the CNA final examination.

The fee that will be imposed by the department approved third party test administrator to administer the CNA final examination is: \$125.00

The department is estimating that during the emergency amendment period the number of individuals that would have to pay out-of-pocket to take the CNA final examination will initially be low. It is estimated at least five percent (5%) of individuals taking the CNA final examination would have to pay for the costs of the test on their own. The department attributes the low percentage to the fact that the emergency amendment requires only two (2) types of training agencies that will be affected.

The formula used to determine the costs to the number of individuals not receiving reimbursement for the final examination was calculated by: (average number of active CNAs) x (.05%) x (cost of final examination).