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October 1, 2021

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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MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please see 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	CSR	Division	Chapter	Rule
3	*Code of*	10-	4	.115
Department	*State*	Agency	General area	Specific area
	Regulations	division	regulated	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 11—DEPARTMENT OF PUBLIC SAFETY
Division 90—Missouri 911 Service Board
Chapter 2—911 Financial Assistance Program

EMERGENCY AMENDMENT

11 CSR 90-2.010 Definitions. The board is amending subsection (1)(G).

PURPOSE: This amendment changes the definition of eligible applicants to include elected emergency services boards consistent with a change to section 650.335, RSMo that becomes effective on August 28, 2021.

EMERGENCY AMENDMENT: This emergency amendment informs the public that due to a change in section 650.335, RSMo that became effective on August 28, 2021, elected emergency services boards will become eligible to submit applications to the board for financial assistance for all or a portion of costs incurred in implementing a 911 communications service project. This emergency amendment is necessary to make the rule consistent with section 650.335, RSMo, in time for elected emergency services boards to submit applications for funding for 911 communications service projects during the application window of the board's financial assistance program. Absent the emergency amendment, elected emergency services boards, contrary to statute, will be unable to submit applications for funding for 911 communications service projects during the next application window of the board's financial assistance program. As a result, the board finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 31, 2021, becomes effective September 15, 2021, and expires March 13, 2022.*

(1) As used in this chapter, the following terms shall mean:
(G) "Eligible applicants" or "Applicants," counties *[and]***,** cities**, and elected emergency service boards** that sections 650.330 and 655.335, RSMo authorize to submit applications to the board for grants and loans to finance all or a portion of the costs incurred by their 911 services authorities in implementing a 911 communications service project;

AUTHORITY: sections 650.330 and 650.335, RSMo Supp. *[2020]* ***2021****. Emergency rule filed May 6, 2020, effective May 21, 2020, expired Feb. 25, 2021. Original rule filed May 7, 2020, effective Dec. 30, 2020. Emergency amendment filed Aug. 31, 2021, effective Sept. 15, 2021, expires March 13, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 26—Dealer Licensure

EMERGENCY RULE

12 CSR 10-26.230 Dealer Administrative Fees and System Modernization

PURPOSE: Section 301.558, RSMo, requires motor vehicle dealers collecting administrative fees to remit ten-percent (10%) of those fees to the Motor Vehicle Administration Technology Fund for the development of a modernized, integrated system for the Department of Revenue. This rule clarifies the process for declaring whether an administrative fee is charged and if so the amount, the process for remitting payment and reporting sales, disciplinary action that may occur for failure to timely remit payment, and provides other guidelines for modernization efforts.

EMERGENCY STATEMENT: Beginning August 28, 2021 the Department of Revenue will be mandated to implement the provisions of SB 176 which require collection of information from motor vehicle dealers, boat dealers, and powersport dealers licensed pursuant to sections 301.550 to 301.580, RSMo, who collect an administrative fee pursuant to section 301.558, RSMo, and for immediate development and implementation of a process for remittance of ten percent (10%) of administrative fees charged to the Motor Vehicle Administration Technology Fund for the development of a modernized, integrated system for the Department of Revenue. This emergency rule is necessary to ensure public awareness of the requirements and to preserve a compelling governmental interest requiring an early effective date

in that the rule informs the affected businesses of the procedural requirements for remittance of ten percent (10%) of administrative fees charged to the Motor Vehicle Administration Technology Fund and ensures the department will be able to remit the fees as required by law. A proposed rule, which covers the same material, is published in this issue of the ***Missouri Register****. The director has limited the scope of the emergency rule to the circumstances creating the emergency. The director has followed procedures calculated to assure fairness to all interested persons and parties and has complied with protections extended by the* ***Missouri*** *and* ***United States Constitutions****. This emergency rule was filed August 19, 2021, becomes effective September 2, 2021, and expires February 28, 2022.*

(1) Beginning December 1, 2021, all motor vehicle dealers, boat dealers, and powersport dealers licensed pursuant to sections 301.550 to 301.580, RSMo, ("Licensees") who charge an administrative fee as allowed under Section 301.558, RSMo, must remit funds equaling ten-percent (10%) of all administrative fees collected to the Motor Vehicle Administration Technology Fund (the "Fund") for the implementation of the modernized, integrated system described in section 301.558, RSMo. If an administrative fee is charged but is later refunded or credited back to the purchaser of a vehicle or vessel, no credit or refund will be permitted on any fees remitted to the Fund.

(A) Beginning on January 20, 2022 for motor vehicle, boat, and powersport sales in December 2021, and on or about the 20th of each month thereafter for sales occurring the month prior, an electronic notification will be generated and issued to each Licensee which charges an administrative fee in compliance with 301.558 RSMo. The electronic notification will indicate the amount due and payable to the Fund and the Licensee must authorize the Department of Revenue to initiate an automated clearing house (ACH) transaction with the Licensee's financial institution to credit/debit the amount due and payable to the Fund. The amount due and payable will be ten-percent (10%) of each administrative fee charged by the Licensee based upon the total number of sales reported in the previous month, as well as any additional or amended sales in prior monthly sales reports, less any sales exempted pursuant to subsection 5 of section 301.558.

1. Any Licensee charging administrative fees must provide the following information to the Department of Revenue:

A. Name of the bank or other financial institution;

B. Banking or other financial institution account number;

C. Banking or other financial institution routing number;

D. Whether or not the account is a checking or savings account;

E. Signature of an authorized person on the bank or other financial institution account; and

F. Any other information necessary to complete the monthly ACH transaction.

(2) Effective January 1, 2022, all Licensees will be required to apply for licensure or license renewal through the Department of Revenue's electronic online business licensing portal.

(3) All current Licensees in existence when this rule becomes effective must, prior to December 1, 2021, in a manner prescribed by the Department of Revenue, declare whether they are charging an administrative fee in their current licensure period, and if so the amount of the administrative fee being charged in accordance with Section 301.558, RSMo. In addition, all current Licensees must provide the information required by Paragraph (1)(A)1. above.

(4) Effective January 1, 2022, as part of an initial application for licensure or a Licensee's renewal application for licensure, any applicant or Licensee must declare whether it intends to collect an administrative fee under Section 301.558, RSMo, and if so, at what dollar amount that fee will be established. The applicant or Licensee must charge the declared administrative fee to all retail customers for the entire licensure period on all sales not exempted pursuant to subsection 5 of section 301.558. In addition, all applicants desiring to collect an administrative fee and renewal Licensees must provide the information required by Paragraph (1)(A)1. above.

(A) Licensees shall be authorized to charge an administrative fee of up to five hundred dollars ($500), and the maximum fee permitted to be charged shall be increased annually as described in subsection 4 of section 301.558, RSMo. The Director of the Department of Revenue shall base any maximum fee increase identified on an annual review of the prior calendar year, and shall furnish the maximum annual fee determined to the Secretary of State on January 15th of each year, or as soon as is practicable thereafter.

(B) The table outlined in 12 CSR 10-26.231 provides calendar year adjustments to the administrative fee in accordance with section 301.558, RSMo.

(C) Franchised new motor vehicle dealers limited by a franchise agreement, or documents incorporated by the franchise agreement, may exempt certain classes of customers clearly identified in the franchise agreement or incorporated documents from being required to charge the declared administrative fee. New motor vehicle dealers seeking licensure or renewal shall indicate whether any classes of customers are exempted under the terms of its franchise agreement or incorporated documents and must report any exempted sales in its monthly electronic sales reporting required by section 301.280, RSMo, and this rule.

1. The Licensee must maintain monthly documentation in a table or worksheet of all sales which are exempted and include in the table or worksheet the purchaser's name, date of sale, class of customer, as well as the year, make, and VIN of the purchased vehicle.

2. The required documentation must be provided to the Department of Revenue upon a request to inspect such documentation, and the documentation must be maintained for a minimum of three years after the year in which the sale occurred.

3. Upon implementation of updates to the electronic dealer sales reporting system incorporating a means to report exempted sales, the Department may notify Licensees that they no longer need to meet the requirements of paragraphs (4)(C)1.-2. above.

(5) Any Licensee who fails to meet its obligation relating to section 301.558, RSMo, or this rule shall be subject to disciplinary action for violation of Section 301.562.2(8), including but not limited to suspension; revocation; non-renewal of the Licensee's license to operate a motor vehicle dealership; and revocation of the ability to issue temporary registrations upon the sale of vehicles. If appropriate, the Department of Revenue may enter into a settlement with the Licensee consistent with subsection 7 of section 501.562, RSMo, to resolve a disciplinary action arising under this provision. Any such settlement will only be entered into upon full payment of monies owed and payable to the Fund, and any other amounts assessed as a result of disciplinary action shall be separate and distinct from monies owed to the Fund. An employee with the Department of Revenue, as well as any other duly authorized law enforcement agency, may audit any Licensee in similar manner and scope as is allowed under section 301.564, RSMo, to ensure compliance with the requirements of section 301.558, RSMo, and this rule.

(6) To ensure the timely remittance of all dealer fees required to be paid pursuant to sections 301.550 to 301.580, RSMo, all sales required to be reported pursuant to section 301.280, RSMo, must be filed electronically with the Department of Revenue for the 2022 licensure year and every year thereafter. However, any dealer which has been previously licensed prior to January 1, 2022, and who is not charging an administrative fee may choose to file sales reports electronically or by paper process until the next license renewal.

AUTHORITY: sections 301.553 and 301.558, RSMo Supp. 2021. Emergency rule filed Aug. 19, 2021, effective Sept. 2, 2021, expires

*Feb. 28, 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, as any costs associated with the emergency rule are not a product of the rule itself but incident to the statutory changes included in SB 176 (2021).

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars ($500) in the time the emergency is effective, as any costs associated with the emergency rule are not a product of the rule itself but incident to the statutory changes included in SB 176 (2021).

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement, and Procedure of General Applicability

EMERGENCY AMENDMENT

13 CSR 70-3.200 Ambulance Service Reimbursement Allowance. The division is amending the purpose and paragraph (1)(A)5.

PURPOSE: This emergency amendment excludes certain revenues from the definition of "gross receipts" when used to calculate the Ambulance Service Reimbursement Allowance.

*PURPOSE: This rule establishes the formula for determining the Ambulance Service Reimbursement Allowance **that** each ground emergency ambulance service must pay, except for any ambulance service owned and operated by an entity owned or operated by the board of curators, as defined in Chapter 172, RSMo, or any department of the state, in addition to all other fees and taxes now required or paid, for the privilege of engaging in the business of providing ground emergency ambulance services in Missouri.*

*EMERGENCY STATEMENT: This emergency amendment excludes certain revenues from the definition of "gross receipts." This emergency amendment is necessary to maintain the state's federal funding for the MO HealthNet (Medicaid) Program. The MO HealthNet program is critically important to the health, safety, and welfare of Missourians. By excluding certain revenues from the definition of "gross receipts" in calculating the Ambulance Service Reimbursement Allowance, it allows the Department of Social Services to maintain the ambulance provider tax that contributes to the state's share of Medicaid funding without jeopardizing federal funding through a reduction. This exemption is needed immediately because MHD will be unable to draw in federal matching funds from the Ambulance Service Reimbursement Allowance, which will result in a budget shortfall of approximately ten million dollars ($10,000,000.00). The shortfall would, in turn, result in a reduction of rates, which may affect Missourians' access to MO HealthNet services. Every year, the MO HealthNet Division (MHD) provides a federally-prescribed formula (see 42 CFR 433.68) to the Center for Medicare and Medicaid Services (CMS) to determine whether the Ambulance Service Reimbursement Allowance meets federal requirements that provider taxes must meet in order to maintain Missouri's federal Medicaid funding. MHD has determined that the addition to the definition of "gross receipts" under this emergency amendment is urgently needed in order to accomplish this. As a result, the Department of Social Services finds a compelling governmental interest requiring this emergency action. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Department of Social Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 24, 2021, becomes effective September 8, 2021, and expires March 6, 2022.*

(1) Ambulance Service Reimbursement Allowance shall be assessed as described in this section.

(A) Definitions.

1. Ambulance. Ambulance shall have the same meaning as such term is defined in section 190.100, RSMo.
2. Department. Department of Social Services.
3. Director. Director of the Department of Social Services.
4. Division. MO HealthNet Division.
5. Gross receipts. Emergency ambulance revenue from Medicare, Medicaid, insurance, and private payments received by an ambulance service licensed under section 190.109, RSMo (or by its predecessor in interest following a change of ownership). Revenue from CPT Code A0427/A0425 ambulance service, advanced life support, emergency transport, level 1 (ALS1–emergency), and associated ground mileage; CPT Code A0429/A0425 ambulance services, basic life support, emergency transport (BLS–emergency), and associated ground mileage; and CPT Code A0433/A0425 advanced life support, level 2 (ALS2), and associated ground mileage.

A. Starting on October 1, 2021, "gross receipts" shall not include revenue from taxes collected under law, grants, subsidies received from governmental agencies, the value of charity care, or revenue received from supplemental reimbursement for ground emergency medical transportation under section 208.1030, RSMo.

6. Engaging in the business of providing ambulance services. Accepting payment for ambulance services as such term is defined in section 190.100, RSMo.

*AUTHORITY: sections **190.803, 190.815,** 190.836, [and] 208.201, **and 660.017,** RSMo [Supp. 2013] **2016**. Original rule filed March 19, 2010, effective Nov. 30, 2010. Amended: Filed Oct. 10, 2013, effective April 30, 2014. Amended: Filed Aug. 24, 2021. Emergency amendment filed Aug. 24, 2021, effective Sept. 8, 2021, expires March 6, 2022. A proposed amendment covering the 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 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.015 Direct Medicaid Payments. The division is amending subsections (1)(A) and (2)(B).

PURPOSE: This emergency amendment removes outdated language and updates the criteria used to determine safety net hospitals.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division (MHD) finds that this emergency amendment is necessary to preserve a compelling governmental interest as it allows the State Medicaid Agency to pay hospital providers the Direct Medicaid Payment. These payments provide hospitals the ability to

*provide sufficient medical care to Medicaid participants and the uninsured. An early effective date is required because this emergency amendment establishes the Federal Reimbursement Allowance (FRA) funded hospital payments for dates of service beginning July 1, 2021 in regulation to ensure that quality health care continues to be provided to MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The division must analyze hospital data, which are not complete until near the end of the state fiscal year, in conjunction with the funding to determine the appropriate level of payments. Therefore, due to timing of the receipt of this information and the necessary July 1, 2021 effective date, an emergency regulation is necessary. As a result, the MHD finds it necessary to preserve its compelling governmental interest in providing these payments to hospital providers, which requires an early effective date. If this emergency amendment is not enacted, there will be significant cash flow shortages causing a financial strain on Missouri hospitals which serve approximately nine hundred seventy-one thousand (971,000) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MHD believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed August 26, 2021, becomes effective September 10, 2021, and expires March 8, 2022.*

(1) Direct Medicaid Qualifying Criteria.

(A) An inpatient hospital provider may qualify as a Disproportionate Share Hospital (DSH) based on the following criteria. Hospitals shall qualify as a Disproportionate Share Hospital for a period of only one (1) state fiscal year (SFY) and must requalify at the beginning of each SFY to continue their DSH classification—

1. If the facility offered nonemergency obstetric services as of December 21, 1987, there must be at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to these services under the Missouri Medicaid plan. In the case of a hospital located in a rural area (area outside of a metropolitan statistical area, as defined by the federal Executive Office of Management and Budget), the term obstetrician includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. This section does not apply to hospitals either with inpatients predominantly under eighteen (18) years of age or which did not offer nonemergency obstetric services as of December 21, 1987;

2. As determined from the fourth prior year **audited** *[desk-reviewed]* cost report, the facility must have either—

A. A Medicaid inpatient utilization rate (MIUR) at least one (1) standard deviation above the state's mean MIUR for all Missouri hospitals. The MIUR will be expressed as the ratio of total Medicaid days (TMD) provided under a state plan divided by the provider's total number of inpatient days (TNID). The state's mean MIUR will be expressed as the ratio of the sum of the total number of the Medicaid days for all Missouri hospitals divided by the sum of the total patient days for the same Missouri hospitals. Data for hospitals no longer participating in the program will be excluded;

$$[MIUR = \frac{TMD}{TNID}]$$

MIUR = TMD / TNID

or

B. A low-income utilization rate (LIUR) in excess of twenty-five percent (25%). The LIUR shall be the sum (expressed as a percentage) of the fractions, calculated as follows:

(I) Total MO HealthNet patient revenues (TMPR) paid to the hospital for patient services under a state plan plus the amount of the cash subsidies (CS) directly received from state and local governments, divided by the total net revenues (TNR) (charges, minus contractual allowances, discounts, and the like) for patient services plus the CS; and

(II) The total amount of the hospital's charges for patient services attributable to charity care (CC) (care provided to individuals who have no source of payment, third-party, or personal resources) less CS directly received from state and local governments in the same period, divided by the total amount of the hospital's charges (THC) for patient services. The total patient charges attributed to CC shall not include any contractual allowances and discounts other than for indigent patients not eligible for MO HealthNet under a state plan;

$$[LIUR = \frac{TMPR + CS}{TNR + CS} + \frac{CC - CS}{THC}]$$

LIUR = ((TMPR + CS) / (TNR + CS)) + ((CC – CS) / (THC))

3. As determined from the fourth prior year **audited** *[desk-reviewed]* cost report, the hospital—

A. Has an unsponsored care ratio of at least ten percent (10%). The unsponsored care ratio is determined as the sum of bad debts and CC divided by TNR and also meets either of the criteria in paragraph (1)(A)2.; or

B. Ranks in the top fifteen (15) in the number of Medicaid inpatient days provided by that hospital compared to Medicaid patient days provided by all hospitals, and the hospitals also have a Medicaid nursery utilization ratio greater than thirty-five percent (35%) as computed by dividing Title XIX nursery and neonatal days by total nursery and neonatal days; or

C. Operated a neonatal intensive care unit with a ratio of Missouri Medicaid neonatal patient days to Missouri Medicaid total patient days in excess of nine percent (9%) reported or verified by the division from the fourth prior year cost report;

4. As determined from the fourth prior year **audited** *[desk-reviewed]* cost report—

A. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for less than fifty (50) inpatient beds; or

B. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of more than forty percent (40%); or

C. A public non-state governmental acute care hospital with a low income utilization rate (LIUR) of at least fifty percent (50%) and a Medicaid inpatient utilization rate (MIUR) greater than one standard deviation from the mean, and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of at least forty percent (40%); or

*[C.]***D.** The hospital is owned or operated by the Board of Curators as defined in Chapter 172, RSMo, or their successors; or

*[D.]***E.** The hospital is a public hospital operated by the Department of Mental Health primarily for the care and treatment of mental disorders; and

5. As determined from the fourth prior year **audited** *[desk-reviewed]* cost report, hospitals which annually provide more than five thousand (5,000) Title XIX days of care and whose Title XIX nursery days represent more than fifty percent (50%) of the hospital's total nursery days.

(2) Direct Medicaid Payments.

(B) The MO HealthNet Division will calculate the Direct

Medicaid payment as follows:

1. The MO HealthNet share of the inpatient FRA assessment will be calculated by dividing the hospital's inpatient Medicaid patient days by the total inpatient hospital patient days from the hospital's base cost report to arrive at the inpatient Medicaid utilization percentage. This percentage is then multiplied by the inpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the inpatient FRA assessment. The MO HealthNet share of the outpatient FRA assessment will be calculated by dividing the hospital's outpatient MO HealthNet charges by the total outpatient hospital charges from the base cost report to arrive at the MO HealthNet utilization percentage. This percentage is then multiplied by the outpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the outpatient FRA assessment.

A. Effective for payments made on or after May 1, 2017, only the Fee-for-Service **(FFS)** and Out-of-State **(OOS)** components of the MO HealthNet share of both the inpatient and outpatient FRA assessment will be included in the Direct Medicaid add-on payment.

2. The unreimbursed MO HealthNet costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated MO HealthNet patient days for the current SFY plus the out-of-state days from the fourth prior year cost report trended to the current SFY. The FFS days are determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior SFY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

[A. Effective for payments made on or after May 1, 2017, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2017, second prior CY would be 2015) by—

(I) The trend determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY; and

(II) The days estimated to shift from FFS to managed care effective May 1, 2017. The estimated managed care days for populations added to managed care beginning May 1, 2017 will be subtracted from the trended FFS days to yield the estimated MO HealthNet patient days.

B. Effective for payments made on or after July 1, 2018, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2019, second prior CY would be 2017) by—

(I) The trend determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) A percentage adjustment shall be applied to the regression due to statewide managed care;

(III) The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(IV) From the total estimated MO HealthNet patient days, remove the SFY 2019 estimated managed care days to yield the estimated MO HealthNet FFS patient days.

C. Effective for payments made on or after July 1, 2019, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2020, second prior CY would be 2018) by—

(I) The trend determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) A percentage adjustment shall be applied to the regression due to statewide managed care;

(III) The FFS days are factored up by one (1) of the following:

(a) For hospitals that are in a managed care extension region or a Psychiatric hospital, the lower of the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report or from the hospital's second prior year cost report to yield the estimated MO HealthNet patient days; or

(b) For hospitals that are not in a managed care extension region or a Psychiatric hospital, the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(IV) The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.]

*[D.]***A.** Effective for payments made on or after July 1, 2020, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2021, second prior CY would be 2019) by—

(I) The trend determined from a quadratic regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) The FFS days are factored up by one (1) of the following:

(a) For hospitals that are in a managed care extension region or a Psychiatric hospital, the lower of the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report or from the hospital's third prior year cost report to yield the estimated MO HealthNet patient days; or

(b) For hospitals that are not in a managed care extension region or a Psychiatric hospital, the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(III) The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

*[E.]***B.** The trended cost per day is calculated by trending the base year costs per day by the trend indices as defined in 13 CSR 70-15.010(3)(B), using the rate calculation in 13 CSR 70-15.010(3)(A).

*[F.]***C.** For hospitals that meet the requirements in paragraphs (1)(A)1., (1)(A)2., and (1)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third *[prior year]*, *[the]* fourth *[prior year]*, or *[the]* fifth prior year. For hospitals that meet the requirements in paragraphs (1)(A)1. and (1)(A)3. of this rule (first tier *[Disproportionate Share Hospitals]* **DSH**), the base year cost report may be from the third *[prior year]*, or *[the]* fourth prior year. The MO HealthNet Division shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year cost report is the fourth prior year. For any hospital that has both a twelve- (12-) month cost report and a partial year cost report, its base period cost report for that year will be the twelve- (12-) month cost report.

*[G.]***D.** The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment, and the poison control costs computed in paragraphs (2)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization, as identified in 13 CSR 70-15.010(5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated

MO HealthNet patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of MO HealthNet inpatient days the hospital will not provide as a result of the managed care health plans limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated MO HealthNet days for the current SFY to arrive at the MO HealthNet utilization adjustment.

A. Effective July 1, 2011, the utilization adjustment will no longer apply to any hospital other than safety net hospitals as defined in subsection (1)(B), children's hospitals as defined in 13 CSR 70-15.010(2)(Q), and specialty pediatric hospitals as defined in 13 CSR 70-15.010(2)(O). Children's hospitals and specialty pediatric hospitals will continue to receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (2)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (2)(B)4.;

5. The poison control cost shall reimburse the hospital for the prorated MO HealthNet managed care cost. It will be calculated by multiplying the estimated MO HealthNet share of the poison control costs by the percentage of managed care participants to total MO HealthNet participants; and

6. Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.

*AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. [2020] **2021**. This rule was previously filed as part of 13 CSR 70-15.010. Emergency rule filed April 30, 2020, effective May 15, 2020, expired Feb. 24, 2021. Original rule filed April 30, 2020, effective Nov. 30, 2020. Emergency amendment filed Aug. 26, 2021, effective Sept. 10, 2021, expires March 8, 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 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is amending subparagraph (1)(A)13.G., removing sections (2) through (4), renumbering, and adding a new section (4).

PURPOSE: This emergency amendment provides for the State Fiscal Year (SFY) 2022 trend factor to be applied to the inpatient and outpatient adjusted net revenues determined from the Federal Reimbursement Allowance (FRA) fiscal year cost report to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment. Additionally, this emergency amendment establishes the FRA assessment effective July 1, 2021. Lastly, this emergency amendment is removing outdated language regarding the FRA Assessment.

*EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division (MHD) finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Federal Reimbursement Allowance (FRA) assessment rate effective for dates of service beginning July 1, 2021 in regulation in order to collect the state revenue to ensure access to hospital services for MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The Missouri Partnership Plan between the Centers for Medicare and Medicaid Services (CMS) and the Missouri Department of Social Services (DSS), which establishes a process whereby CMS and DSS determine the permissibility of the funding source used by Missouri to fund its share of the MO HealthNet program, is based on a state fiscal year. In order to determine the trends for State Fiscal Year (SFY) 2021, all relevant information from the necessary sources must be available to MHD. The division uses the best information available when it starts calculating the assessment so it uses the trend published in the Fourth Quarter Healthcare Cost Review publication which is generally not available until January. The division must also analyze hospital revenue data, which is not complete until near the end of the state fiscal year, in conjunction with the trend and hospital FRA-funded payments to determine the appropriate level of assessment. Without this information, the trends cannot be determined. Therefore, due to the timing of the receipt of this information and the necessary July 1, 2021 effective date, an emergency regulation is necessary. The MHD also finds an immediate danger to public health and welfare which requires emergency action. If this emergency amendment is not enacted, hospitals will be over-assessed, causing a financial strain on Missouri hospitals which serve approximately nine hundred seventy-one thousand (971,000) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. This emergency amendment will result in an increase of FRA Assessment of approximately $12.5 million to the hospital industry. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The MHD believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed August 26, 2021, becomes effective September 10, 2021, and expires March 8, 2022.*

(1) Federal Reimbursement Allowance (FRA). FRA shall be assessed as described in this section.

(A) Definitions.

1. Bad debts—Amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. Allowable bad debts include the costs of caring for patients who have insurance, but their insurance does not cover the particular service procedures or treatment rendered.

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report. The Medicare/Medicaid Cost Report version 2552-96 (CMS 2552-96) shall be used for fiscal years ending on or after September 30, 1996. The Medicare/Medicaid Cost Report version 2552-10 (CMS 2552-10) shall be used for fiscal years beginning on and after May 1, 2010. When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve- (12-) month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve- (12-) month period, the data shall be adjusted, based on the number of months reflected in the base cost report, to a twelve- (12-) month

period.

3. Charity care—Those charges written off by a hospital based on the hospital's policy to provide health care services free of charge or at a reduced charge because of the indigence or medical indigence of the patient.

4. Contractual allowances—Difference between established rates for covered services and the amount paid by third-party payers under contractual agreements. The Federal Reimbursement Allowance (FRA) is a cost to the hospital, regardless of how the FRA is remitted to the MO HealthNet Division, and shall not be included in contractual allowances for determining revenues. Any redistributions of MO HealthNet payments by private entities acting at the request of participating health care providers shall not be included in contractual allowances or determining revenues or cost of patient care.

5. Department—Department of Social Services.

6. Director—Director of the Department of Social Services.

7. Division—MO HealthNet Division, Department of Social Services.

8. Engaging in the business of providing inpatient health care—Accepting payment for inpatient services rendered.

9. Federal Reimbursement Allowance (FRA)—The fee assessed to hospitals for the privilege of engaging in the business of providing inpatient health care in Missouri. The FRA is an allowable cost to the hospital.

10. Fiscal period—Twelve- (12-) month reporting period determined by each hospital.

11. Gross hospital service charges—Total charges made by the hospital for inpatient and outpatient hospital services that are covered under 13 CSR 70-15.010.

12. Hospital—A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not fewer than twenty-four (24) hours in any week of three (3) or more nonrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide, for not fewer than twenty-four (24) hours in any week, medical or nursing care for three (3) or more nonrelated individuals. The term hospital does not include convalescent, nursing, shelter, or boarding homes as defined in Chapter 198, RSMo.

13. Hospital revenues subject to FRA assessment effective July 1, 2008—Each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues subject to the FRA assessment will be determined as follows:

A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3 from CMS 2552-96, or Worksheet G-2, Line 28, Column 3 from CMS 2552-10, of the third prior year cost report (i.e., FRA fiscal year cost report) for the hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:

(I) "Nursing Facility Charges" from Worksheet C, Part I, Line 35, Column 6 from CMS 2552-96, or Worksheet C, Part I, Line 45, Column 6 from CMS 2552-10;

(II) "Swing Bed Nursing Facility Charges" from Worksheet G-2, Line 5, Column 1 from CMS 2552-96, or Worksheet G-2, Line 6, Column 1 from CMS 2552-10;

(III) "Nursing Facility Ancillary Charges" as determined from the Department of Social Services, MO HealthNet Division, nursing home cost report. (Note: To the extent that the gross hospital charges, as specified in subparagraph (1)(A)13.A. above, include long-term care charges, the charges to be excluded through this step shall include all long-term care ancillary charges including skilled nursing facility, nursing facility, and other long-term care providers based at the hospital that are subject to the state's provider tax on nursing facility services.);

(IV) "Distinct Part Ambulatory Surgical Center Charges" from Worksheet G-2, Line 22, Column 2 from CMS 2552-96, or Worksheet G-2, Line 25, Column 2 from CMS 2552-10;

(V) "Ambulance Charges" from Worksheet C, Part I, Line 65, Column 7 from CMS 2552-96, or Worksheet C, Part I, Line 95, Column 7 from CMS 2552-10;

(VI) "Home Health Charges" from Worksheet G-2, Line 19, Column 2 from CMS 2552-96, or Worksheet G-2, Line 22, Column 2 from CMS 2552-10;

(VII) "Total Rural Health Clinic Charges" from Worksheet C, Part I, Column 7, Lines 63.50–63.59 from CMS 2552-96, or Worksheet C, Part I, Column 7, Line 88 and subsets from CMS 2552-10; and

(VIII) "Other Non-Hospital Component Charges" from Worksheet G-2, Lines 6, 8, 21, 21.02, 23, and 24 from CMS 2552-96, or Worksheet G-2, Lines 5, 7, 9, 21, 24, 26, and 27 from CMS 2552-10;

B. Obtain "Net Revenue" from Worksheet G-3, Line 3, Column 1. The state will ensure this amount is net of bad debts and other uncollectible charges by survey methodology;

C. "Adjusted Gross Total Charges" (the result of the computations in subparagraph (1)(A)13.A.) will then be further adjusted by a hospital-specific collection-to-charge ratio determined as follows:

(I) Divide "Net Revenue" by "Gross Total Charges"; and

(II) "Adjusted Gross Total Charges" will be multiplied by the result of part (1)(A)13.C.(I) to yield "Adjusted Net Revenue";

D. Obtain "Gross Inpatient Charges" from Worksheet G-2, Line 25, Column 1 from CMS 2552-96, or Worksheet G-2, Line 28, Column 1 from CMS 2552-10, of the most recent cost report that is available for a hospital;

E. Obtain "Gross Outpatient Charges" from Worksheet G-2, Line 25, Column 2 from CMS 2552-96, or Worksheet G-2, Line 28, Column 2 from CMS 2552-10, of the most recent cost report that is available for a hospital;

F. Total "Adjusted Net Revenue" will be allocated between "Net Inpatient Revenue" and "Net Outpatient Revenue" as follows:

(I) "Gross Inpatient Charges" will be divided by "Gross Total Charges";

(II) "Adjusted Net Revenue" will then be multiplied by the result to yield "Net Inpatient Revenue"; and

(III) The remainder will be allocated to "Net Outpatient Revenue"; and

G. The trend indices, if greater than 0%, will be determined based on the Health Care Costs index as published in *Healthcare Cost Review* by Institute of Health Systems (IHS), or equivalent publication, regardless of any changes in the name of the publication or publisher, for each State Fiscal Year (SFY). The trend indices listed below will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted net revenue in order to inflate or trend forward the adjusted net revenues from the FRA fiscal year cost report to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.

[(I) SFY 2016 =

(a) Inpatient Adjusted Net Revenues—0%

(b) Outpatient Adjusted Net Revenues—3.90%

(II) SFY 2017 =

(a) Inpatient Adjusted Net Revenues—0%

(b) Outpatient Adjusted Net Revenues—4.10%

(III) SFY 2018 =

(a) Inpatient Adjusted Net Revenues—0%

(b) Outpatient Adjusted Net Revenues—0%

(IV) SFY 2019 =

(a) Inpatient Adjusted Net Revenues—0%

(b) Outpatient Adjusted Net Revenues—0%]

*[V]***(I)** SFY 2020 =

(a) Inpatient Adjusted Net Revenues—0%

(b) Outpatient Adjusted Net Revenues—2.9%

*[VI]***(II)** SFY 2021 =

(a) Inpatient Adjusted Net Revenues—3.2%

(b) Outpatient Adjusted Net Revenues—0%

(III) SFY 2022 =

(a) Inpatient Adjusted Net Revenues—4.2%
(b) Outpatient Adjusted Net Revenues—0%

[(2) Beginning July 1, 2010, the FRA assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(3) Beginning October 1, 2011, the FRA assessment shall be determined at the rate of five and ninety-five hundredths percent (5.95%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and ninety-five hundredths percent (5.95%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(4) Beginning July 1, 2017, the FRA assessment shall be determined at the rate of five and seventy hundredths percent (5.70%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and seventy hundredths percent (5.70%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(A) If the reduction of disproportionate share hospital allotments for federal fiscal year 2018 is implemented as provided in section 1923(f)(7) of the Social Security Act, the FRA assessment shall be set, effective on the date of such reduction, at the rate of five and fifty hundredths percent (5.50%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and fifty hundredths percent (5.50%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.]

*[(5)]***(2)** Beginning July 1, 2018, the FRA assessment shall be determined at the rate of five and sixty hundredths percent (5.60%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and sixty hundredths percent (5.60%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

*[(6)]***(3)** Beginning July 1, 2020, the FRA assessment shall be determined at a rate of five and seventy-five hundredths percent (5.75%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(4) Beginning July 1, 2021, the FRA assessment shall be determined at a rate of five and forty-eight hundredths percent (5.48%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

*AUTHORITY: sections 208.201, 208.453, 208.455, and 660.017, RSMo 2016. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 26, 2021, effective Sept. 10, 2021, expires March 8, 2022. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

PUBLIC COST: For SFY 2022, this emergency amendment will result in an FRA Assessment cost to state agencies or political subdivisions of approximately one million nine hundred thousand dollars ($1,900,000) in the time the emergency is effective.

PRIVATE COST: For SFY 2022, this emergency amendment will result in an FRA Assessment cost to private entities of approximately ten million six hundred thousand dollars ($10,600,000) in the time the emergency is effective.

FISCAL NOTE
PUBLIC COST

I. Department Title: Title 13–Department of Social Services
Division Title: Division 70–MO HealthNet Division
Chapter Title: Chapter 15–Hospital Program

Rule Number and Title:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	**Estimated Cost of Compliance in the Aggregate**
Other Government (Public) & State Hospitals - 38	Estimated cost for: SFY 2022 - $1.9 million

III. WORKSHEET

Estimated Assessment at 5.48% for SFY 2022:

	No. of Facilities	Inpatient Revenues	Outpatient Revenues	Total
Public Facilities Revenues	38	$812,434,611	$963,634,862	$1,776,069,473
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment without Trend		$44,521,417	$52,807,190	$97,328,607
Revenue Trend for SFY 2022		4.20%	0.00%	
Total Revenues Trended		$846,556,865	$963,634,862	$1,810,191,727
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment with Trend		$46,391,316	$52,807,190	$99,198,507
Impact of Trend (Assessment with trend less Assessment without trend)				$1,869,900
Prior SFY Total Assessment using Prior Year Methodology				$100,963,319
Increase of Total Assessment over Prior SFY				($1,764,812)

IV. ASSUMPTIONS

This fiscal note reflects the total FRA Assessment of 5.48% for July 1, 2021 through June 30, 2022. The FRA Assessment to be collected during SFY 2022 is estimated at approximately $99.2 million, which is an FRA Assessment decrease to the public facilities of approximately $1.8 million as compared to the SFY 2020 FRA Assessment.

The fiscal note is based on establishing the FRA Assessment rate as noted above and a trend of 4.2% on inpatient revenues and 0% on outpatient revenues beginning July 1, 2021. The FRA Assessment rate is levied upon Missouri hospitals' trended inpatient and outpatient net adjusted revenues in accordance with the Missouri Partnership Plan.

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 13–Department of Social Services
Division Title: Division 70–MO HealthNet Division
Chapter Title: Chapter 15–Hospital Program

Rule Number and Title:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
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 proposed 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:
99	Hospitals	Estimated cost for: SFY 2022 - $10.6 million

III. WORKSHEET

Estimated Assessment at 5.48% for SFY 2022:

	No. of Facilities	Inpatient Revenues	Outpatient Revenues	Total
Private Facilities Revenues	99	$4,608,844,692	$5,088,822,553	$9,697,667,245
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment without Trend		$252,564,689	$278,867,476	$531,432,165
Revenue Trend for SFY 2022		4.20%	0.00%	
Total Revenues Trended		$4,802,416,169	$5,088,822,553	$9,891,238,722
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment with Trend		$263,172,406	$278,867,476	$542,039,882
Impact of Trend (Assessment with trend less Assessment without trend)				$10,607,717
Prior SFY Total Assessment using Prior Year Methodology				$539,034,087
Increase of Total Assessment over Prior SFY				$3,005,795

IV. ASSUMPTIONS

This fiscal note reflects the total FRA Assessment of 5.48% for July 1, 2021 through June 30, 2022. The FRA Assessment to be collected during SFY 2022 is estimated at approximately $542 million, which is an FRA Assessment increase to the private facilities of approximately $3 million as compared to the SFY 2020 FRA Assessment.

The fiscal note is based on establishing the FRA Assessment rate as noted above and a trend of 4.2% on inpatient revenues and 0% on outpatient revenues beginning July 1, 2021. The FRA Assessment rate is levied upon Missouri hospitals' trended inpatient and outpatient net adjusted revenues in accordance with the Missouri Partnership Plan.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 82—General Licensure Requirements

EMERGENCY AMENDMENT

19 CSR 30-82.050 Transfer and Discharge Procedures. The department is amending sections (4), (6), (7), and (8).

PURPOSE: This emergency amendment transitions transfer and discharge hearings from the Department of Social Services to the Department of Health and Senior Services, updates the mailing address and adds a fax number, a phone number and email address about where to send transfer or discharge appeals and motions and where to contact the Department of Health and Senior Services.

*EMERGENCY STATEMENT: In September of 2021, the Department of Health and Senior Services is transitioning transfer and discharge hearings from the Department of Social Services to the Department of Health and Senior Services. This emergency amendment is necessary to inform the public about how and where to file an appeal of a written notice from a facility to transfer or discharge a resident. The emergency amendment provides the new information about where to file appeals and motions by updating the state agency name, the mailing address, the fax number and the email address. The emergency amendment also adds a phone number where the public can contact the Department of Health and Senior services about transfer and discharge hearings. 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 States Constitutions**. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 1, 2021, becomes effective September 16, 2021, and expires March 14, 2022.*

(4) Before a facility transfers or discharges a resident, the facility shall:

(A) Send written notice to the resident in a language and manner reasonably calculated to be understood by the resident. The notice must also be sent to any legally authorized representative of the resident and to at least one family member. In the event that there is no family member known to the facility, the facility shall send a copy of the notice to the appropriate regional coordinator of the Missouri State Ombudsman's office;

(B) Include in the written notice the following information:

1. The reason for the transfer or discharge;
2. The effective date of transfer or discharge;
3. The resident's right to appeal the transfer or discharge notice to the director of the *[Division of Aging]* **Department of Health and Senior Services** or his/her designated hearing official within thirty (30) days of the receipt of the notice;
4. *[The address to which the]* **That a** request for a hearing should be sent **to** *[:Administrative Hearings Unit, Division of Legal Services, P.O. Box 1527, Jefferson City, MO 65102-1527]* **Department of Health and Senior Services Appeals Unit, P.O. Box 570, 912 Wildwood Drive 3rd floor, Jefferson City, Missouri 65102-0570; by fax to (573) 751-0247 or by email to DHSS.Appeals@health.mo.gov and the phone number for the appeals unit is (573) 522-1699**;
5. That filing an appeal will allow a resident to remain in the facility until the hearing is held unless a hearing official finds otherwise;
6. The location to which the resident is being transferred or discharged;
7. The name, address, and telephone number of the designated regional long-term care ombudsman office;
8. For Medicare and Medicaid certified facility residents with developmental disabilities, the mailing address, and telephone number of the Missouri Protection and Advocacy Agency, 925 South Country Club Drive, Jefferson City, MO 65109, (573) 893-3333, or the current address and telephone number of the protection advocacy agency if it has changed. The protection and advocacy agency is responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act. For Medicare and Medicaid certified facility residents with mental illness, the address and telephone number of Missouri Protection and Advocacy Agency, the agency responsible for persons with mental illness under the Protection and Advocacy for Mentally Ill Individuals Act; and

(C) Record and document in detail in each affected resident's record the reason for the transfer or discharge. The recording of the reason for the transfer or discharge shall be entered into the resident's record prior to the date the resident receives notice of the transfer or discharge, or prior to the time when the transferring or discharging facility decides to transfer or discharge the resident.

(6) Any resident of a facility who receives notice of discharge from the facility in which he/she resides may file an appeal of the notice with the *[Administrative Hearings Section, Division of Legal Services, P.O. Box 1527, Jefferson City, MO 65102-1527]* **Department of Health and Senior Services Appeals Unit, P.O. Box 570, 912 Wildwood Drive 3rd floor, Jefferson City, Missouri 65102-0570; by fax to (573) 751-0247 or by email to DHSS.Appeals@health.mo.gov** within thirty (30) days of the date the resident received the discharge notice from the facility. The resident's legal guardian, the resident's attorney-in-fact appointed under sections 404.700–404.725, RSMo (Durable Power of Attorney Law of Missouri) or pursuant to sections 404.800–404.865, RSMo (Durable Power of Attorney for Health Care Act) or any other individual may file an appeal on the resident's behalf. A Nursing Facility Transfer or Discharge Hearing Request form (MO Form 886-3245) to request a hearing may be obtained from the *[Division of Aging]* **Department of Health and Senior Services** or the regional ombudsman. However, the use of a form is not required in order to file a request for a hearing. The request for a hearing shall be verified in writing by the resident, his/her legal guardian, attorney-in-fact, or any other party requesting a hearing on the resident's behalf by attesting to the truth of the resident's request for a hearing.

(7) The director of the Department of *[Social Services]* **Health and Senior Services** shall designate a hearing official to hear and decide the resident's appeal.

(A) The designated hearing official shall notify the resident, the state long-term care ombudsman and the facility that the request for a hearing has been received and that a hearing has been scheduled.

(B) The hearing may be held by telephone conference call or in person at any location the designated hearing official deems reasonably appropriate to accommodate the resident's needs.

(8) The discharge of the resident shall be stayed at the time the request for a hearing was filed unless the facility can show good cause why the resident should not remain in the facility until a written hearing decision has been issued by the designated hearing official. Good cause shall include, but is not limited to, those exceptions when the facility may notify the resident of a discharge from the facility with less than thirty (30) days notice as set forth in section (5) of this rule.

(A) The facility may show good cause for discharging the resident prior to a hearing decision being issued by the designated hearing official by filing a written Motion to Set Aside the Stay with the *[Administrative Hearings Unit]* **Department of Health and Senior Services Appeals Unit** at the address**, fax number or email**

address in paragraph (4)(B)4. The facility must provide a copy of the Motion to Set Aside the Stay to the resident, or to the resident's legally authorized representative and to at least one (1) family member, if one is known. In the event that a resident has no legally authorized representative and no known family members, then a copy of the Motion to Set Aside the Stay must be provided to the Missouri State Long-Term Care Ombudsman's Office.

(B) Within five (5) days after a written Motion to Set Aside the Stay has been filed with the *[Administrative Hearings Unit,]* **Department of Health and Senior Services Appeals Unit,** the designated hearing official shall schedule a hearing to determine whether the facility has good cause to discharge the resident prior to a written hearing decision being issued. Notice of the good cause hearing need not be in writing. All parties and representatives who received a copy of the Motion to Set Aside the Stay under subsection (8)(A) of this rule shall also be notified of the good cause hearing.

1.The designated hearing official shall have the discretion to consolidate the facility's good cause hearing with the discharge hearing requested by the resident. In the case of an emergency discharge, an expedited hearing shall be held upon the request of the resident, legally authorized representative, family member, and in a case where notice was required to be sent to the regional ombudsman, to the state long-term care ombudsman, so long as the parties waive the ten (10)- day notice requirement specified in section (9).

2. Subsequent to the good cause hearing, the designated hearing official shall issue an order granting or denying the facility's Motion to Set Aside the Stay. If the facility's good cause hearing and the resident's discharge hearing were consolidated, the order shall also set forth whether the facility may discharge the resident.

*AUTHORITY: sections **192.2000, 198.009, and** 198.088, [RSMo 1994 and 660.050,] RSMo [Supp. 1997] **2016**. This rule was originally filed as 13 CSR 15-10.050. Original rule filed Feb. 13, 1998, effective Sept. 30, 1998. Moved to 19 CSR 30-82.050, effective Aug. 28, 2001. Emergency amendment filed Sept. 1, 2021, effective Sept. 16, 2021, expires March 14, 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.

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

EXECUTIVE ORDER
EO 21-09

WHEREAS, on March 13, 2020, I declared a State of Emergency in the State of Missouri and invoked the provisions in Chapter 44 through Executive Order 20-02, due to the COVID-19 public health threat; and

WHEREAS, I issued Executive Orders 20-09, 20-12, 20-19, and 21-07 extending the State of Emergency until August 31, 2021, and also issued Executive Orders 20-04, 20-06, and 20-14 in response to COVID-19, aimed at protecting the health and safety of Missourians, as well as providing additional resources and flexibility to help Missouri residents and businesses recover from this emergency; and

WHEREAS, the provisions of Executive Orders 20-04, 20-06, and 20-14 were extended in whole or in part by Executive Orders 20-10, 20-12, 20-16, 20-19, and 21-07 until August 31, 2021; and

WHEREAS, the United States Food and Drug Administration (FDA) provided emergency use authorization for a COVID-19 vaccine on December 11, 2020 and on August 23, 2021 the FDA gave full approval of the Pfizer-BioNTech COVID-19 vaccine for individuals 16 years of age and older; and

WHEREAS, the State of Missouri began administering COVID-19 vaccinations in late December 2020 and has administered more than 5,500,000 doses of the COVID-19 vaccine as of the date of this Order; and

WHEREAS, more than 50% of the population of the State of Missouri has initiated the COVID-19 vaccination process and vaccinations are available to all Missourians at no cost; and

WHEREAS, the conditions that placed Missourians at risk of serious infection, death, and hospitalization are overwhelmingly mitigated by the efficacy of the COVID-19 vaccine; and

WHEREAS, despite the improved health and safety of Missourians due to widespread availability of the COVID-19 vaccine, staff shortages continue to hinder the State's healthcare system and the State's recovery efforts from COVID-19; and

WHEREAS, nearly 600 statutory and regulatory waivers were approved at the height of the COVID-19 pandemic and the number of waivers currently in place has decreased to 266, with only 163 waivers approved to continue past August 31, 2021; and

WHEREAS, an invocation of Chapter 44, RSMo, is necessary to ensure the protection, safety, and welfare of the citizens of Missouri relative to staff shortages in the State's healthcare system and will aid the State in recovering from the COVID-19 public health threat.

NOW, THEREFORE, I, MICHAEL L. PARSON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, I hereby terminate the state of emergency declared in Executive Order 20-02, as extended by Executive Orders 20-09, 20-12, 20-19, and 21-07, and terminate Executive Orders 20-04, 20-05, 20-06, and 20-14, as extended by Executive Orders 20-10, 20-12, 20-16, 20-19, and 21-07.

I hereby declare that a state of emergency exists relative to staff shortages in the State's healthcare system and the State's recovery efforts from the COVID-19 public health threat. Therefore, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, including Section 44.100 and 44.110, RSMo, I do hereby order suspension of certain statutory and regulatory provisions related to telemedicine, and I further vest state agencies and executive boards and commissions with authority to waive or suspend statutory or regulatory requirements, subject to my approval, where strict compliance would hinder the State's recovery from COVID-19, and to ease licensing requirements to eliminate barriers to the provision of health care services and other professions. Specifically:

1. The Director of the Department of Health and Senior Services is hereby vested with authority to temporarily waive or suspend the operation of any statutory requirement or administrative rule, upon approval of the Office of the Governor, where strict compliance with such requirements and rules would prevent, hinder, or delay necessary action by the department to respond to staff shortages in the State's healthcare system and the State's ongoing recovery from the COVID-19 health threat, and to best serve public health and safety during the period of the emergency and recovery period.

2. I temporarily suspend the provisions of subsections 1 and 4 of section 334.108, section 191.1146, and 20 CSR 2220-020(11) relating to telemedicine and pharmacology for telemedicine, to decrease the risk of exposure to both healthcare providers and patients.

3. Any executive agency, board, commission, or department, not specifically mentioned herein may submit a written request to the Office of the Governor to temporarily waive any statutory requirement or administrative rule under their purview in order to best serve public health and safety during the period of the emergency and recovery period. Such suspensions shall be effective upon written approval by the Office of the Governor.

All waivers previously authorized under prior Executive Orders 20-04, 20-10, 20–12, 20-19, 21-07, and are currently in effect, are hereby authorized and shall remain in effect until otherwise withdrawn by the agency in coordination with the Governor's Office or the termination of this Executive Order.

I order the temporary suspension of the physical appearance requirements of Chapter 474 and authorize the use of audio-visual technology to the extent that any Missouri statute requires the physical presence of any testator, settlor, principal, witness, notary, or other person for the effective execution of any estate planning document such as a will, trust, or power of attorney, or a self-proving affidavit of the execution of such document, such provisions are suspended or waived, and satisfied if the following conditions are met:

1. The signor must affirmatively represent that he or she is physically situated in the State of Missouri;

2. The notary must be physically located in the State of Missouri and state which county they are physically in for the jurisdiction on the acknowledgement;

3. The notary must identify the signors to their satisfaction and current law;

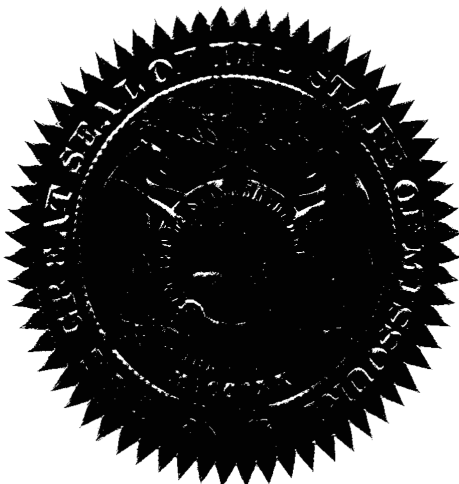
4. Any person whose signature is required may appear via using video conference software where live, interactive audio-visual communication between the principal, notary, and other necessary person which allows for observation, direct interaction, and communication at the time of signing; and

5. The notary shall record in their journal the exact time and means used to perform the notarial act along with all other required information, absent the wet signatures.

I order, pursuant to Sections 41.480 and 41.690, RSMo, the Adjutant General of the State of Missouri, or his designee, to forthwith call and order into active service such portions of the organized militia as he deems necessary to aid the executive officials of Missouri, to protect life and property, and it is further ordered and directed that the Adjutant General or his designee, and through him, the commanding officer of any unit or other organization of such organized militia so called into active service take such action and employ such equipment as may be necessary in support of civilian authorities, and provide such assistance as may be authorized and directed by the Governor of this State. I further direct the members of the National Guard to provide assistance to the Department of Health and Senior Services to ensure on-time reporting of data in electronic records from medical providers relative to COVID-19 testing, and as otherwise needed to help aid the department to respond to staff shortages in the State's healthcare system and the State's ongoing recovery from the COVID-19 health threat.

Nothing in this Executive Order shall be construed to limit the Governor's direct emergency powers as set forth in Chapter 44.

This order shall terminate on December 31, 2021, unless extended in whole or in part.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 27th day of August, 2021.

MICHAEL L. PARSON
GOVERNOR

ATTEST:

JOHN R. ASHCROFT
SECRETARY OF STATE