

Volume 46, Number 20
Pages 1825–1902
October 15, 2021

SALUS POPULI SUPREMA LEX ESTO

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



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015 and 536.033, RSMo. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or “official” without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

JOHN R. ASHCROFT

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

EDITOR-IN-CHIEF

CURTIS W. TREAT

•

MANAGING EDITOR

STEPHANIE MARTIN

•

PUBLICATION SPECIALIST II

JACQUELINE D. WHITE

•

EDITOR II

VONNE KILBOURN

•

EDITOR

JENNIFER ALEX MOORE

•

ADMINISTRATIVE AIDE III

TAMMY WINKELMAN

ISSN 0149-2942

The *Missouri Register* and *Code of State Regulations* (CSR) are available on the Internet. The Register address is sos.mo.gov/adrules/moreg/moreg and the CSR is sos.mo.gov/adrules/csr/csr. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

EMERGENCY RULES

Department of Agriculture
 Plant Industries1829

Department of Social Services
 MO HealthNet Division1829

Department of Health and Senior Services
 Office of the Director1835

Department of Commerce and Insurance
 State Board of Registration for the Healing Arts1837

PROPOSED RULES

Department of Elementary and Secondary Education
 Office of Childhood1838

Department of Labor and Industrial Relations
 Missouri Commission on Human Rights1838

Department of Natural Resources
 Air Conservation Commission1840

Department of Social Services
 MO HealthNet Division1858

Department of Commerce and Insurance
 Missouri Board for Architects, Professional Engineers,
 Professional Land Surveyors, and Professional
 Landscape Architects1874

ORDERS OF RULEMAKING

Department of Agriculture
 Plant Industries1875

Department of Social Services
 Children’s Division1875
 MO HealthNet Division1875

Department of Commerce and Insurance

State Board of Embalmers and Funeral Directors1881
 Real Estate Appraisers1881

DISSOLUTIONS

.1882

SOURCE GUIDES

RULE CHANGES SINCE UPDATE1885
EMERGENCY RULES IN EFFECT1891
EXECUTIVE ORDERS1893
REGISTER INDEX1895

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
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
November 1, 2021 November 15, 2021	December 1, 2021 December 15, 2021	December 31, 2021 December 31, 2021	January 30, 2022 January 30, 2022
December 1, 2021 December 15, 2021	January 3, 2022 January 18, 2022	January 29, 2022 January 29, 2022	February 28, 2022 February 28, 2022
January 3, 2022 January 18, 2022	February 1, 2022 February 15, 2022	February 28, 2022 February 28, 2022	March 30, 2022 March 30, 2022

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 Department	<i>Code of State Regulations</i>	10- Agency division	4 General area regulated	.115 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 2—DEPARTMENT OF AGRICULTURE Division 70—Plant Industries Chapter 17—Industrial Hemp

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the Missouri Department of Agriculture under section 195.773, RSMo Supp. 2021, the Missouri Department of Agriculture hereby terminates an emergency amendment effective November 30, 2021, as follows:

2 CSR 70-17.010 Definitions is terminated.

A notice of emergency rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1039).

Title 2—DEPARTMENT OF AGRICULTURE Division 70—Plant Industries Chapter 17—Industrial Hemp

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the Missouri Department of Agriculture under section 195.773, RSMo Supp. 2021, the Missouri Department of Agriculture hereby terminates an emergency amendment effective November 30, 2021, as follows:

2 CSR 70-17.100 Sampling Requirements and Results of Analysis is terminated.

A notice of emergency rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1039-1040).

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates. The division is adding paragraph (3)(A)25.

PURPOSE: This emergency amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of ten dollars and eighteen cents (\$10.18), effective for dates of service July 1, 2021 through June 30, 2022, for increases in costs associated with staffing, supplies, social distancing standards, and other factors due to the COVID-19 national emergency. This per diem adjustment corresponds to the state fiscal year (SFY) 2022 appropriation for nursing facilities and is approved by the Centers for Medicare and Medicaid Services (CMS).

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance provided to MO HealthNet participants. The General Assembly included additional funds to nursing facilities' and HIV nursing facilities' reimbursements to account for a Covid-19 National Emergency adjustment for State Fiscal Year (SFY) 2022. The MO HealthNet Division is carrying out the General Assembly's intent by providing for a per diem increase to nursing facility and HIV nursing facility reimbursement rates by implementing an adjustment of ten dollars and eighteen cents (\$10.18) effective for dates of service July 1, 2021 through June 30, 2022. The per diem increase will not be included in the per diem rate for dates of service after June 30, 2022. A per diem adjustment of ten dollars and eighteen cents (\$10.18) shall be deducted from the facility's rate as of June 30, 2022, which includes the ten dollars and eighteen cents (\$10.18) increase, and is effective for dates of service beginning July 1, 2022. The per diem adjustment is necessary to ensure that payments for nursing facility and HIV nursing facility per diem rates are in line with the funds appropriated for that purpose. There are a total of five hundred three (503) nursing facilities and HIV nursing facilities currently enrolled in MO HealthNet that will receive a per diem increase to its reimbursement rate effective for dates of service beginning July 1, 2021 through June 30, 2022. This emergency amendment will ensure payment for nursing facility and HIV nursing facility services to approximately twenty-one thousand (21,000) MO HealthNet participants in accordance with the appropriation authority. For the SFY 2022 payment to be made, the MO HealthNet Division was required to submit a Medicaid State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS). CMS approved the SPA on August 27, 2021. This emergency amendment is necessary to protect the public health and welfare of MO HealthNet participants in nursing facilities and HIV nursing facilities. This emergency amendment is necessary to protect a government interest to reimburse nursing facilities and HIV nursing facilities as required by the General Assembly, and to provide MO HealthNet participants with quality nursing facility services. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental

interest, which requires emergency action. The MO HealthNet Division has a compelling government interest in providing continued cash flow for nursing facility and HIV nursing facility services. 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 MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material is published in this issue Missouri Register. This emergency amendment was filed September 13, 2021, becomes effective September 27, 2021, and expires March 25, 2022.

(3) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed in 13 CSR 70-10.015, a nursing facility's reimbursement rate may be adjusted as described in this section. Subject to the limitations prescribed in 13 CSR 70-10.080, an HIV nursing facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of four and six-tenths percent (4.6%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of three and seven-tenths percent (3.7%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

3. Nursing Facility Reimbursement Allowance (NFRA). Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents (\$2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category, and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents (\$1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category, and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the

related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of three and four-tenths percent (3.4%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of two and one-tenth percent (2.1%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of one and ninety-four hundredths percent (1.94%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003, through June 30, 2004, of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78); and

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003, and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006, of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents; and

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006, and is effective for dates of service beginning July 1, 2006, and after.

11. FY-2007 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007, of three dollars and zero cents (\$3.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007, and is effective for dates of service beginning February 1, 2007, for payment dates after March 1, 2007.

12. FY-2008 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007, and is effective for dates of service beginning July 1, 2007.

13. FY-2009 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2008, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2008, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2008, and is effective for dates of service beginning July 1, 2008.

14. FY-2010 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2009, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2009, of five dollars and fifty cents (\$5.50) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2009, and is effective for dates of service beginning July 1, 2009.

15. FY-2012 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on October 1, 2011, shall be granted an increase to their per diem rate effective for dates of service beginning October 1, 2011, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of September 30, 2011, and is effective for dates of service beginning October 1, 2011; and

C. This increase is contingent upon the federal assessment rate limit increasing to six percent (6%) and is subject to approval by the Centers for Medicare and Medicaid Services.

16. FY-2013 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2012, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2012, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2012, and is effective for dates of service beginning July 1, 2012; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

17. FY-2014 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2013, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2013, of three percent (3.0%) of their current rate, less certain fixed cost items. The fixed cost items are the per diem amounts included in the facility's current rate from the following: subsection (2)(O) of 13 CSR 70-10.110, paragraphs (11)(D)1., (11)(D)2., (11)(D)3., (11)(D)4., (13)(B)3., and (13)(B)10. of 13 CSR 70-10.015;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2013, and is effective for dates of service beginning July 1, 2013; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

18. FY-2015 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2014, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2014, of one dollar and twenty-five cents (\$1.25) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2014, and is effective for dates of service beginning July 1, 2014; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

19. January 1, 2016 – June 30, 2016 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on January 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning January 1, 2016, of two dollars and nine cents (\$2.09) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment will not be added to the facility's rate after June 30, 2016; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services and sufficient funding available through the Tax Amnesty Fund.

20. Continuation of FY-2016 trend adjustment and FY-2017 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall continue to be granted an increase to their per diem rate effective for dates of service beginning July 1, 2016, of two dollars and nine cents (\$2.09);

B. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2016, of two dollars and eighty-three cents (\$2.83) to allow for a trend adjustment to ensure quality nursing facility services;

C. The trend adjustment of two dollars and eighty-three cents (\$2.83) shall be added to the facility's rate as of June 30, 2016, which includes the two dollars and nine cents (\$2.09) increase, and is effective for dates of service beginning July 1, 2016; and

D. These increases are contingent upon approval by the Centers for Medicare and Medicaid Services.

21. FY-2018 per diem adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2017, shall be subject to a decrease in their per diem rate effective for dates of services August 1, 2017 through June 30, 2018, of five dollars and thirty-seven cents (\$5.37);

B. The per diem adjustment of five dollars and thirty-seven cents (\$5.37) shall be deducted from the facility's current rate as of July 31, 2017, and is effective for dates of service beginning August 1, 2017;

C. Effective for dates of service beginning July 1, 2018, the per diem decrease shall be reduced to four dollars and eighty-three cents (\$4.83). A per diem adjustment of fifty-four cents (\$0.54) shall be added to the facilities current rate as of June 30, 2018, which includes the five dollars and thirty-seven cents (\$5.37) decrease, and is effective for dates of service beginning July 1, 2018; and

D. This decrease is contingent upon approval by the Centers for Medicare and Medicaid Services.

22. FY-2019 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2018, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2018, of seven dollars and seventy-six cents (\$7.76) to allow for a trend adjustment to ensure quality nursing facility services;

B. The rate to which the FY-2019 trend adjustment of seven dollars and seventy-six cents (\$7.76) shall be added is the facility's rate as of June 30, 2018 plus the fifty-four cents (\$0.54) per diem adjustment effective July 1, 2018 set forth in subparagraph (3)(A)21.C.;

C. This increase is contingent upon approval by the Centers

for Medicare and Medicaid Services.

23. FY-2019 additional trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2019, shall be granted an increase to their per diem rate effective for dates of service February 1, 2019 through June 30, 2019, of one dollar and twenty-nine cents (\$1.29) to allow for a trend adjustment to ensure quality nursing facility services;

B. The per diem adjustment of one dollar and twenty-nine cents (\$1.29) shall be added to the facility's rate as of January 31, 2019, and is effective for dates of service beginning February 1, 2019 through June 30, 2019;

C. Effective for dates of service beginning July 1, 2019, the per diem increase shall be reduced to fifty-four cents (\$0.54). A per diem adjustment of seventy-five cents (\$0.75) shall be deducted from the facility's rate as of June 30, 2019, which includes the one dollar and twenty-nine cents (\$1.29) increase, and is effective for dates of service beginning July 1, 2019.

D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services.

24. FY-2020 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2019, shall be granted an increase to their per diem rate effective for dates of service August 1, 2019 through June 30, 2020, of one dollar and sixty-one cents (\$1.61) to allow for a trend adjustment to ensure quality nursing facility services;

B. The rate to which the FY-2020 trend adjustment of one dollar and sixty-one cents (\$1.61) shall be added is the facility's rate as of July 31, 2019 set forth in subparagraph (13)(A)23.C. The FY-2020 trend adjustment shall be effective for dates of service beginning August 1, 2019 through June 30, 2020.

C. Effective for dates of service beginning July 1, 2020, the per diem increase shall be reduced to one dollar and forty-nine cents (\$1.49). A per diem adjustment of twelve cents (\$0.12) shall be deducted from the facility's rate as of June 30, 2020, which includes the one dollar and sixty-one cents (\$1.61) increase, and is effective for dates of service beginning July 1, 2020.

D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services

25. FY-2022 COVID-19 National Emergency adjustment—

A. **Facilities with either an interim rate or a prospective rate in effect on July 1, 2021, shall be granted an increase to their per diem rate effective for dates of service July 1, 2021 through June 30, 2022, of ten dollars and eighteen cents (\$10.18) to allow for an adjustment for increases in costs associated with staffing, supplies, social distancing standards, and other factors due to the COVID-19 national emergency;**

B. **The rate to which the FY-2022 adjustment of ten dollars and eighteen cents (\$10.18) shall be added is the facility's rate as of June 30, 2021 set forth in subparagraph (13)(A)24.C. The FY-2022 adjustment shall be effective for dates of service beginning July 1, 2021 through June 30, 2022.**

C. **The FY-2022 adjustment will not be included in the per diem rate for dates of service after June 30, 2022. A per diem adjustment of ten dollars and eighteen cents (\$10.18) shall be deducted from the facility's rate as of June 30, 2022, which includes the ten dollars and eighteen cents (\$10.18) increase, and is effective for dates of service beginning July 1, 2022.**

AUTHORITY: sections 208.153, 208.159, 208.201, and 660.017, RSMo 2016. Original rule filed July 1, 2008, effective Jan. 30, 2009. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 13, 2021, effective Sept. 27, 2021, expires March 25, 2022. A proposed amendment covering this same material is published in this issue Missouri Register.

PUBLIC COST: This emergency amendment will cost state agencies or political subdivisions approximately \$71.3 million 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 aggregate 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 10 - Nursing Home Program

Rule Number and Name:	13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services MO HealthNet Division	Estimated Cost in the time the Emergency is effective = \$71.3 million
Non-State Government Owned Nursing Facilities (42)	No estimated cost of compliance.

III. WORKSHEET

Description	Nursing Facility Rate Increase	Hospice Nursing Home Room & Board	Total Impact
Total Annual Estimated Cost:			
Estimated Paid Days – SFY 2022	8,670,064	708,981	
Per Diem Increase – Effective July 1, 2021	\$10.18	\$9.67	
Estimated Impact – SFY 2022	\$88,261,252	\$ 6,855,846	\$95,117,098
State Share (33.99%)	\$30,000,000	\$ 2,330,302	\$32,330,302
Federal Share (66.01%)	\$58,261,252	\$ 4,525,544	\$62,786,796
Estimated Cost in the Time the Emergency is Effective:			
Total Annual Cost	\$88,261,252	\$ 6,855,846	
Divided by 12 Months	÷ 12	÷ 12	
Monthly Cost	\$7,355,104	\$571,321	
Months Paid in the Time the Emergency is Effective:			
July 2021 – March 2022	x 9	x 9	
Cost in the Time the Emergency is Effective	\$66,195,936	\$5,141,889	\$71,337,825
State Share (33.99%)	\$22,499,999	\$1,747,728	\$24,247,727
Federal Share (66.01%)	\$43,695,937	\$3,394,161	\$47,090,098

IV. ASSUMPTIONS

Impact to Department of Social Services, MO HealthNet Division: The above impact to DSS, MHD was calculated using the following assumptions:

The months paid in the time the Emergency Amendment is effective is July 2021 – March 2022 so the annual impact has been prorated for 9 months.

Nursing Facilities and HIV Nursing Facilities:

This amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022.

Hospice:

Hospice providers will be impacted by this amendment because reimbursement for hospice services provided in nursing facilities (i.e., Hospice Nursing Home Room and Board) is based on the nursing facility per diem rate. MHD conducted a fiscal analysis using 13 CSR 70-50.010 to estimate the impact to hospice. Please note this is an estimated analysis with the assumption of hospice appropriation authority.

Hospice Nursing Home Room and Board services are reimbursed 95% of the nursing facility per diem rate. The per diem increase to nursing facility rates of \$10.18 computes to a per diem increase to hospice reimbursement rates of \$9.67 ($\$10.18 \times 95\%$).

Estimated Paid Days:

Nursing Facility –

The estimated nursing facility days for SFY 2022 are based on an analysis of the average Medicaid days paid for nursing facility services for the last three SFYs.

Hospice –

The estimated hospice days for SFY 2022 are based on the estimated percentage of hospice days provided in nursing facilities multiplied by the SFY 2022 estimated nursing facility days.

Home and Community Based Services (HCBS):

HCBS provided on a monthly basis are limited to a percentage of the average monthly nursing facility payment (referred to as the HCBS cost cap). The HCBS cost cap for a given SFY is based on the average monthly nursing facility payments for the 12 months ending in April of the previous SFY. Therefore, the per diem increase to nursing facility rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022 will not impact the HCBS cost cap for SFY 2022 but may impact the HCBS cost cap for SFY 2023. For SFY 2023, the HCBS cost cap is estimated to increase by approximately 1.5% as a result of this amendment. This may increase the amount of services, and the payments, for MO HealthNet participants that are at the cap.

Impact to Non-State Government Owned Nursing Facilities (42): The amendment will have no cost of compliance for Medicaid enrolled non-state government owned nursing facilities because it will have a positive fiscal impact. This amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

**Division 10—Office of the Director
Chapter 4—Coordinated Health Care Services**

EMERGENCY AMENDMENT

19 CSR 10-4.020 J-1 Visa Waiver Program. The Department of Health and Senior Services is amending section (2), (3), (4), and (5), adding section (8), and renumbering as necessary.

PURPOSE: This emergency amendment changes the application and selection process for the J-1 Visa Waiver program.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure that there is an equitable, consistent application evaluation process in place on October 1, 2021, which is the date that applications for the Federal J-1 visa waiver recommendation program will start being accepted by the United States Department of State (“DOS”) and the department. A proposed amendment with identical content to this emergency amendment was previously filed by the department on July 20, 2021. Recently, interested parties have indicated that there is some confusion regarding which selection process will be utilized starting on October 1, 2021. The department begins the selection process for J-1 Visa waiver recommendations each year beginning on October 1. Since the proposed amendment does not become effective until October 30, the interested parties are unsure if they should follow the current regulation or the proposed amendment. By filing this emergency amendment to cover October 1 through October 30, any confusion will be eliminated regarding the selection process. If the emergency amendment is not granted, the new application process will not be effective until after the application window is closed. As a result, the department needs this emergency amendment to operate from October 1, 2021 until October 30, 2021. Additionally, the proposed amendment already endured its public comment period and received one letter with three (3) comments from the University of Missouri and four (4) department staff comments. The comments from the University of Missouri did not result in any changes. This would tend to indicate that the decision to promulgate an emergency amendment of identical content for the sole purpose of allowing the content to be activated one (1) month earlier should not cause controversy or undue hardship to any potentially-impacted stakeholders. As a result, the department finds that there is a compelling government interest, which requires this emergency action. A proposed amendment, which covers the same material, was previously published in 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 7, 2021, becomes effective September 21, 2021, and expires October 30, 2021.

(2) A waiver request must come from a Missouri health care facility on behalf of a J-1 Visa physician. All of the required information and documentation, as required by the United States Department of State, J-1 Visa Waiver Program, must be submitted *[in a single application package]* with the documents presented in the order as prescribed in subsections (2)(A)-(H)/(M). Waiver requests that do not comply with these requirements will not be considered. The required documents include:

(A) A completed Form DS-3035, J-1 Visa Waiver Recommendation Application;

(B) An employment contract between the physician and the health care facility employing the physician named in the waiver application that includes the following:

1. The name and address of the health care facility;

2. A statement that the physician agrees to begin employment with the employer within ninety (90) days of receiving the waiver;

3. A statement that indicates the physician’s specialty;

4. The specific geographical area or areas where the physician will practice medicine;

5. A statement by the physician that he or she agrees to meet the requirements set forth in the Immigration and Nationality Action, Section 214(I);

6. An employment period of at least three (3) years in a designated HPSA; and

7. A full-time schedule of at least forty (40) hours per week in direct patient care in the HPSA;

(C) Proof that the location where the physician will practice medicine is in a designated HPSA. **The applicant shall provide a print out of HPSAs from <http://hpsafind.hrsa.gov/HPSASearch.aspx>. If no Missouri HPSA designations exist for the facility’s service area, the applicant shall contact the department to identify other documentation of services to underserved patients;**

(D) Copies of all *[Forms IAP-66 or DS- 2019] DS-2019s/IAP-66s/1-94s*, Certificate of Eligibility for Exchange Visitor (J-1) Status for all programs;

(E) A copy of the physician’s curriculum vitae, **and passport pages;**

(F) *[Proof of eligibility for licensure with]* **A copy of Missouri Licensure, or proof of application and paid fee, from the Missouri Board of Healing Arts;**

(G) A copy of the statement of no objection from the physician’s country of nationality or last residence, if the physician is contractually obligated to return to the home country; *[and]*

(H) *[An original and one (1) unbound copy of the entire application package shall be included.]* **A Notice of Entry of Appearance as Attorney on the Department of Homeland Security (DHS) Form G-28, if an attorney represents the facility or physician;**

(I) **A statement of reason from the applicant regarding the applicant’s reason for not wishing to fulfill the two year county residence to which the International Medical Graduates (IMG) agreed at the time of acceptance of exchange visitor status;**

(J) **A letter from the applicant’s employer to the department indicating their intent to hire the physician;**

(K) **A signed statement from the physician agreeing to the contractual requirements set forth in Section 214 (I) of the Immigration and Nationality Act;**

(L) **The third party barcode page; and**

(M) **The waiver division barcode age.**

(3) Application packages will be accepted between October 1 and October 31 of the current year. **Applications will be accepted via regular mail or electronic submission through the J-1 Visa Waiver Program webpage at <https://health.mo.gov/living/families/primarycare/j1visa/index.php>. All applications are considered submitted on the day received by the department and must be received by October 31. It is the responsibility of the applicant to verify that an application has been received timely by the department.** Each application package received by the department will be reviewed for completeness. **An original copy of the required documents should be included in the application package. For purposes of this regulation, an electronic submission is considered an original copy of the application package.** Complete applications are those which include all required documentation, as listed in subsections (2) (A)-(H). Complete applications will be forwarded for approval by the director or his/her designee in the priority as outlined in sections (4)-(6). Upon approval, the department will send the request to the appropriate federal authorities.

(4) The department’s J-1 Visa Waiver Program will give priority to those physicians in one (1) of the following primary care specialties: Family Medicine, General Pediatrics, General Obstetrics and

Gynecology, General Internal Medicine, or General Psychiatry. Primary Care Physician applications that meet all applicable requirements will always receive an available selection regardless of the location or HPSA score of the application. If the department receives more than thirty (30) completed application packages between October 1 and October 31, application packages will be prioritized in the following order:

(A) Primary Care Physicians will be prioritized before other specialties;

[(B) HPSA score of the health care facility employing the physician. Higher HPSA scores will be prioritized before lower HPSA scores.]

1. In the event that up to six (6) Primary Care Physician applications are received, each Congressional district will be allotted three (3) J-1 Visa Waiver recommendations for specialists. Primary Care Physician applications will not impact other recommendations. If a Congressional district fails to fill its allotted recommendations, those recommendations in excess will be returned to the remaining pool of available recommendations. If a Congressional district has more than three (3) applications, the applications will be recommended based on HPSA score.

2. In the event that seven (7) or more, but no more than fourteen (14), Primary Care Physician applications are received, each Congressional district will be allotted two (2) J-1 Visa Waiver recommendations for specialists. Primary Care Physician applications will not impact other recommendations. If a Congressional district fails to fill its allotted recommendations, those recommendations in excess will be returned to the remaining pool of available recommendations. If a Congressional district has more than two (2) applications, the applications will be recommended based on HPSA score.

3. In the event that fifteen (15) or more, but no more than twenty-two (22), Primary Care Physician applications are received, each Congressional district will be allotted one (1) J-1 Visa Waiver recommendation for a specialist. Primary Care Physician applications will not impact other recommendations. If a Congressional district fails to fill its allotted recommendations, those recommendations in excess will be returned back to the remaining pool of available recommendations. If a Congressional district has more than one (1) application, the application will be recommended based on HPSA score.

4. In the event that more than twenty-two (22) primary care physician applications are received, all remaining applications will be recommended based on the highest HPSA score of the specialist(s).]

(B) In the event that more than thirty (30) Primary Care Physician applications are received, all applications will be recommended based on the highest HPSA score of the location of the health care facility employing the physician. In the event of a tie for the last remaining slot, a lottery will determine the selection.

(5) In addition to the eligible physicians set forth in section (4), waivers may be recommended for other specialties and subspecialties.

(B) The number of specialty recommendations in any given program year will be determined by the number of available recommendation slots after all application packages for primary care physicians as outlined in section (4) are reviewed. If more application packages are received for specialists than the department has recommendations available, priority will be determined *[by the HPSA score of the location of the health care facility employing the physician. (i.e. higher Primary Care HPSA scores will be assigned higher priority.)]* as follows:

1. The department divided the state of Missouri into three (3) regions for distribution purposes under this regulation. The specialist slots will be divided evenly among the regions. Region

A consists of counties of Warren, St. Charles, Franklin, Jefferson, St. Louis, and St. Louis City. Region C consists of counties of Jackson, Lafayette, Cass, Johnson, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Dade, Greene, Webster, Wright, Texas, Jasper, Lawrence, Newton, McDonald, Christian, Barry, Stone, Taney, Ozark, Howell, and Douglas. Region B consists of all of the remaining Missouri counties not included in Region A and C;

2. The first four (4) remaining vacant slots for specialists will be identified as reserved slots;

3. Any remaining vacant slots after excluding the reserved slots, will be divided evenly into three (3) with each region receiving the same number of vacant slots. If the remaining vacant slots cannot be evenly divided into three (3), then the remainder slots will be identified as a reserved slot;

4. The vacant slots for each region may receive waiver recommendations from the department prioritized by highest HPSA score of the location of the health care facility employing the physician;

5. If any health care facility or institution within a specific region would receive more than fifty percent (50%) of the specialty slots assigned to that region, then the number of slots over fifty percent (50%) will be reviewed by the department director to ensure appropriate distribution of specialists based on the needs of each Region. The department director shall have the authority to award one (1) or more recommendations to the next highest HPSA score of the location of the health care facility employing the physician, excluding the institution that received more than fifty percent (50%) of the slots. If such distribution shall be in the best interest of the state or region;

6. The remaining reserved slots will be distributed, irrespective of region, to the applicants with the highest remaining HPSA scores of the location of the health care facility employing the physicians; and

7. In the event that there are fewer remaining slots than qualified applicants, or a tie for the last remaining slot, and with all of those applicants having equal status in priority, the remaining slots will be recommended by lottery.

[(C) In the event that there are fewer remaining J-1 Visa Waiver recommendations available than applicants, and with all of those applications having equal status in priority, remaining J-1 Visa Waiver(s) will be recommended by lottery.]

(8) A physician with a Missouri J-1 Visa Waiver must provide employment verification within thirty (30) days from a request by the department. The department will make employment verification requests at least once per calendar year.

[(8)](9) A physician who is practicing under a J-1 Visa in another state who wishes to practice in a HPSA in Missouri and obtain a J-1 Visa Waiver may do so only under the following conditions:

(A) The physician must complete the J-1 Visa Waiver Application process in Missouri and obtain a Missouri medical license prior to commencing practice;

(B) The physician should make no plans for the transfer or to move personal possessions until the department has approved the request. The physician retains sole responsibility for notifying the employer of the intent to transfer, and payment of any financial penalty caused by a breach of contract, as determined by the employer; and

(C) All other J-1 Visa Waiver requirements remain in effect.

[(9)](10) A physician with a J-1 Visa Waiver who is practicing in Missouri and who wishes to transfer to another HPSA in Missouri may do so under the following conditions:

(A) At least sixty (60) days in advance of the proposed change, the physician must notify the department of the new practice site address, telephone number, site director, and the effective date of the proposed change;

(B) The reason for the transfer must be explained in the written notice;

(C) A new J-1 Visa Waiver employer contract must be submitted to the department prior to approval of the transfer; and

(D) The physician should make no plans for the transfer or moving of personal possessions until the department has issued written approval of the transfer. The physician retains sole responsibility for notifying the employer of the intent to transfer and payment of any financial penalty caused by a breach of contract, as determined by the original employer.

[(10)](11) The department is not responsible for exceptions to or interpretations of these policies which have occurred without the written approval of the director of the department or his/her designee.

[(11)](12) The department is not responsible for any practice arrangements or contractual obligations entered into by the physician prior to approval of a J-1 Visa Waiver request.

AUTHORITY: section 191.411.1, RSMo 2016. This rule was previously filed as 19 CSR 50-4.020. Emergency rule filed April 17, 1995, effective April 27, 1995, expired Aug. 24, 1995. Original rule filed April 17, 1995, effective Oct. 30, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 15, 2021, effective Oct. 30, 2021. Emergency amendment filed Sept. 7, 2021, effective Sept. 21, 2021, expires Oct. 30, 2021.

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 20—DEPARTMENT OF COMMERCE AND INSURANCE

Division 2150—State Board of Registration for the Healing Arts

Chapter 2—Licensing of Physicians and Surgeons

EMERGENCY AMENDMENT

20 CSR 2150-2.200 Assistant Physician—Application for Licensure. The board is amending section (2).

PURPOSE: This emergency amendment establishes an avenue for medical students to seek assistant physician licensure by accepting alternative methods of competency verification during the State of Emergency declared in Executive Orders 20-02 (2020) and 20-04 (2020).

EMERGENCY STATEMENT: On January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency to aid the nation's healthcare community in responding to COVID-19. The Governor of Missouri declared a similar State of Emergency on March 13, 2020, finding that COVID-19 poses a serious health risk for Missouri residents and visitors. In response to the state and federal public health emergencies, the Missouri State Board of Registration for the Healing Arts (Board) received a call to action for graduates of medical programs to provide care to Missouri citizens during this State of Emergency. Emergency action is needed to ensure access to the untapped resources of medical graduates who completed an accredited medical college or osteopathic but not yet received their diploma or transcript. The board has determined this emergency amendment is needed to ensure appropriate licensure and practice requirements for these individuals during a limited period of

time; absent an emergency amendment, medical graduates will not be able to assist with the medical needs of Missouri citizens during this State of Emergency. As a result, the Missouri State Board of Registration for the Healing Arts finds there is an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest that requires this emergency action. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri State Board of Registration for the Healing Arts believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 15, 2021, becomes effective September 29, 2021, and expires December 31, 2021.

(2) Applicants applying for licensure shall submit the following:

(F) Proof of competency as an assistant physician, which shall include, but not be limited to:

1. A self-query from the National Practitioner's Databank, or its successor agency;

2. Proof of graduation from an approved medical school in the form of either a copy of the diploma or an official transcript **or a letter from the applicants graduating medical school declaring the student has: completed graduation requirements and is scheduled to graduate in May 2022; that the student is in academic good standing; and that the student fulfills the intendments of section 334.031, RSMo.**

3. Examination and Board Action History Report (EBAHR) from the Federation of State Medical Boards. This may be obtained by contacting the Federation of State Medical Boards (FSMB) at fsmb.org. FSMB will make the report available to the board;

4. If not contained in the EBAHR, the applicant shall cause a certified copy of his or her exam scores demonstrating passage of step 2 of a board-approved medical licensing exam to be submitted to the board;

5. If the applicant has participated in any post-graduate training program, a post-graduate reference letter signed by the current director of that program submitted directly to the board and on the form provided by the board, if applicable; and

6. Proof of hospital affiliation from each hospital where the applicant has held admitting privileges in the last ten (10) years on a form approved by the board or by causing the hospital to send a letter to the board containing the dates the applicant had admitting privileges at that hospital and whether there was ever any adverse action taken against those privileges, including, but not limited to, revocation, suspension, or limitation of privileges or if the applicant ever resigned privileges while under investigation;

AUTHORITY: section 334.036, RSMo Supp. [2018] 2021, and section 334.125, RSMo 2016. Original rule filed June 29, 2016, effective Jan. 30, 2017. Amended: Filed March 14, 2019, effective Sept. 30, 2019. Emergency amendment filed Sept. 15, 2021, effective Sept. 29, 2021, expires Dec. 31, 2021.

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.

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

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

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

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

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

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

AUTHORITY: sections 161.092 and 313.835, RSMo Supp. 2012. This rule previously filed as 5 CSR 20-600.130. Original rule filed Aug. 30, 2012, effective March 30, 2013. Moved to 5 CSR 20-100.310, effective Sept. 18, 2018. Moved to 5 CSR 25-100.310, effective Aug. 30, 2021. Rescinded: Filed Sept. 8, 2021.

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

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

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

**Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED AMENDMENT

8 CSR 60-2.025 Complaint, Investigation, and Conciliation Processes. The commission is amending sections (7), (8), and (10).

PURPOSE: This proposed amendment is to modernize this rule by allowing the commission to communicate with parties by digital transmission or fax.

(7) Dismissal of Complaint.

(C) The parties shall be notified by mail, **digital transmission, facsimile, or personal service** of the commission's dismissal or administrative closure and of complainant's right of appeal.

(E) Any person aggrieved by dismissal of a complaint may obtain judicial review by filing a petition in the circuit court of the county of proper venue *[within thirty (30) days after the mailing or delivery of the notice of dismissal. Judicial review shall be] in the manner provided by [Chapter] section 536.150, RSMo [for noncontested cases].*

(8) Service of Complaint upon Respondent. A copy of the complaint shall be served by the commission upon the respondent by mail, **digital transmission, facsimile, or personal service**, not more than thirty (30) calendar days after a verified complaint has been received by the commission. This requirement shall not apply to any complaint *[which] that* has been dismissed prior to the time the service is required. This requirement shall not apply to any complaint filed originally with the EEOC or other federal agencies *[which] that* have work-sharing or deferral agreements with the commission or a local commission *[which] that* has been certified as substantially equivalent by the commission *[which shall] that will* be deemed properly served if service is effected according to the requirements of the agency with which the complaint is originally filed. This requirement shall not apply to any complaint *[which] that* is under jurisdictional determination prior to docketing or in which a housing or public accommodations test is being conducted; however, the complaint shall be served within thirty (30) days of the conclusion of the jurisdictional determination or of the test. In complaints alleging a

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 100—Early Childhood Development**

PROPOSED RESCISSION

5 CSR 25-100.310 General Provisions Governing Programs Authorized Under Early Childhood Development, Education, and Care. This rule administered a program of competitive grants to governmental entities, public schools, or private agencies for voluntary, early childhood development, education, and care programs serving children in every region of the state not yet enrolled in kindergarten.

PURPOSE: The Department of Elementary and Secondary Education is rescinding this rule because the legislature did not authorize funding for this program.

violation of sections 213.040, 213.045, 213.050, or 213.070, RSMo, to the extent that the alleged violation of 213.070, RSMo, relates to or involves a violation of one (1) or more of such other sections or relates to or involves the encouraging, aiding, or abetting of a violation of such other sections, when the complainant and respondent are served copies of the complaint, the complainant shall be advised of the time limits and choice of forums provided under the law and respondent shall be notified of *[his/her]* respondent's procedural rights and obligations under the law.

(10) Service of the Finding of Probable Cause. If, after investigation, the executive director shall find probable cause to credit the allegations of the complaint, that finding of probable cause shall be filed with the secretary to the commission. Not more than fifteen (15) calendar days after the filing, the commission shall serve, by certified mail, *[email with delivery receipt, facsimile with fax received report]* digital transmission, facsimile, or personal service upon the complainant and the respondent, a copy of the complaint and all amendments to the complaint, a copy of the finding of probable cause, a copy of the commission's procedural regulations, and notice that conciliation shall be attempted.

AUTHORITY: sections 213.030, 213.077, and 213.085, RSMo 2016, and sections 213.075 and 213.III, RSMo Supp. [2019] 2021. Original rule filed April 15, 1988, effective July 11, 1988. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 13, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission on Human Rights, Attn: Dr. Alisa Warren, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED AMENDMENT

8 CSR 60-2.100 Prehearing Discovery. The commission is removing sections (2)–(7) and amending section (1).

PURPOSE: This proposed amendment provides that discovery before the commission may be obtained in the same manner, upon or under the same conditions as discovery in civil actions by rule of the Supreme Court of Missouri, and as further provided by section 536.073, RSMo.

[(1) General Provisions Governing Discovery. The presiding officer shall follow the procedural rules as set out in these rules as well as the Missouri Rules of Civil Procedure and Chapters 213 and 536, RSMo. Any party may take and use written interrogatories, requests for production of documents and other materials, and requests for admissions and all other forms of discovery authorized by rules of civil procedure in civil actions in the circuit court.

(2) Depositions. Any party to a hearing may take and use depositions in the same manner, upon the same notice as is or may be hereafter provided in Chapter 536, RSMo and the Missouri Rules of Civil Procedure. No part of a deposition shall constitute a part of the record in a proceeding, unless received as evidence by the presiding officer. Objection may be made at the hearing in the proceeding to receiving in evidence any deposition or part of the deposition for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

(3) Use of Interrogatories.

(A) Interrogatories. Any party may serve upon any other party written interrogatories to be answered by the party or an agent of the party. The party serving the interrogatories also shall file copies of the interrogatories with the presiding officer. No party shall serve on any other party more than thirty-five (35) interrogatories in the aggregate (including subsections) without leave of the presiding officer or the consent of opposing counsel. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if the written consent of counsel for the party to which interrogatories are directed is attached to the interrogatories.

(B) Responses and Objections. Responses and objections to interrogatories shall be filed with the presiding officer according to the same provisions as stated in the Missouri Rules of Civil Procedure.

(4) Use of Admissions.

(A) Request for Admissions. After a case is set for hearing, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant and material matter of fact set forth in the request. Copies of the documents shall be served with the request unless copies have already been furnished. Each matter of which an admission is requested shall be separately set forth.

(B) Responses and Objections. The matter is admitted unless, within twenty (20) days after service of the request, or within a shorter or longer time as the presiding officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(C) Effect of Admissions. Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission.

(5) Use of Requests to Produce.

(A) Requests to Produce. Any party may serve on any other party a request 1) to produce and permit the party making the request to inspect and copy, any designated documents or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or 2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying and photographing, testing or sampling the property or any designated object or operation on the property within the scope of discovery. The request shall set forth the items to be inspected either by individual item or by category and

describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

(B) Response or Objection to Requests to Produce. The party upon whom the request is served shall serve a written response within twenty (20) days after the service of the request except as the presiding officer may allow. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(6) Discovery subpoenas and subpoenas duces tecum shall be issued in the same manner and under the conditions as stated in 8 CSR 60-2.110.

(7) The panel or hearing examiner shall have the authority to impose sanctions in the same manner as set forth in the rules of civil procedure, except that they shall not have the authority to issue an order treating as a contempt of court the failure to obey.]

(1) Any party may obtain discovery in the same manner, upon or under the same conditions and upon the same notice and other requirements as is or may be provided for with respect to discovery in civil actions by rule of the Supreme Court of Missouri for use in the circuit court, as provided by section 536.073, RSMo.

AUTHORITY: section[s] 213.030, **RSMo 2016**, and section 213.075, **RSMo [(Cum. Supp. 1992)] Supp. 2021**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Sept. 13, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission on Human Rights, Attn: Dr. Alisa Warren, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution
Control Rules Specific to the St. Louis Metropolitan
Area

PROPOSED AMENDMENT

10 CSR 10-5.381 Onboard Diagnostics Motor Vehicle Emissions Inspection. The commission proposes to amend the purpose, sections (1)–(3), subsections (4)(B), (4)(F)–(H), and (4)(L), and subsections (5)(A) and (5)(B). If the commission adopts this rule action, the department intends to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control

Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Proposed Rules website at www.dnr.mo.gov/proposed-rules.

PURPOSE: The purpose of this proposed amendment is to remove Franklin County from the rule applicability under the motor vehicle inspection and maintenance requirements included in the Gateway Vehicle Inspection Program (GVIP) for the St. Louis area. The evidence supporting the need for this proposed rulemaking per section 536.016, **RSMo**, is the necessity for the rule to correspond with recent State Implementation Plan (SIP) revisions addressing changes in designations to the St. Louis area of Missouri for the 2015 eight-(8-) hour ozone National Ambient Air Quality Standards (NAAQS).

PURPOSE: This rule enacts the provisions of sections 643.300–643.355, **RSMo**, and meets the 1990 Federal Clean Air Act Amendments requirement that the ozone state implementation plan contains necessary enforceable measures to maintain the mandatory vehicle emissions inspection and maintenance program. The purpose of the inspection and maintenance program is to reduce vehicle emissions in the St. Louis **2015 eight- (8-) hour ozone nonattainment area**.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule, subject vehicles include all vehicles operated on public roadways in the geographical area containing the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis, and which are—

1. Registered in the area with the [state of] Missouri Department of Revenue (MDOR);

2. Leased, rented, or privately owned and are not registered in the geographical area but are primarily operated in the area. A vehicle is primarily operated in the area if at least fifty-one percent (51%) of the vehicle's annual miles are in the area;

3. Owned or leased by federal, state, or local government agencies, and are primarily operated in the geographical area, but are not required to be registered by the state of Missouri. **A vehicle is primarily operated in the area if at least fifty-one percent (51%) of the vehicle's annual miles are in the area;** or

4. Owned, leased, or operated by civilian and military personnel on federal installations located within the geographical area, regardless of where the vehicles are registered.

(B) The following vehicles are exempt from this rule:

1. Heavy-duty gasoline-powered and heavy-duty diesel-powered vehicles that receive a gross vehicle weight rating (GVWR) exemption described in subsection (4)(I) of this rule;

2. Light-duty gasoline-powered vehicles and trucks manufactured prior to the 1996 model year and light-duty diesel-powered vehicles and trucks manufactured prior to the 1997 model year;

3. Motorcycles and motortricycles;

4. Vehicles powered exclusively by electric or hydrogen power or by fuels other than gasoline, ethanol (E10 and E85), or diesel;

5. Motor vehicles registered in an area subject to the inspection requirements of sections 643.300–643.355, **RSMo**, that are domiciled and operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300–643.355, **RSMo**, that receive an out-of-area exemption described in subsection (4)(J) of this rule;

6. New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two (2) years of such calendar year, that have an odometer reading of fewer than six thousand (6,000) miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user;

7. New motor vehicles that have not been previously titled and registered for the four- (4-)/-/ year period following their model year of manufacture that have an odometer reading of fewer than forty thousand (40,000) miles [showing at the first required biennial

safety inspection]. These vehicles qualify for a mileage-based exemption described in subsection (4)(H) of this rule. Otherwise, such motor vehicles shall be subject to the emissions inspection requirements of subsection (3)(B) of this rule *[during the same period that the biennial safety inspection is conducted]*;

8. Motor vehicles driven fewer than twelve thousand (12,000) miles *[between]* biennially *[safety inspections]* that receive a mileage-based exemption described in subsection (4)(H) of this rule*[/]*;

[A. Prior to October 1, 2009, handwritten MVI-2 safety inspection forms or printed safety Vehicle Inspection Reports (VIRs) shall be provided by the owner to the department.

[I] The proof of exemption from the emissions inspection requirement shall consist of two (2) vehicle safety inspection reports issued to the owner of the vehicle being exempted.

[II] The first safety inspection report shall have been issued during the vehicle's previous biennial safety inspection. The second safety inspection report shall have been issued during the current biennial inspection cycle, performed within sixty (60) days of the owner's registration request.

[III] Each vehicle safety inspection report must document the odometer reading at the time of the vehicle's biennial safety inspections, and the difference between these two (2) odometer readings shall be no greater than eleven thousand nine hundred ninety-nine (11,999).

B. Beginning October 1, 2009, this exemption shall be issued automatically by licensed emissions inspection stations using the contractor's Missouri Decentralized Analyzer System (MDAS) equipment and lane software;

9. Historic motor vehicles registered pursuant to section 301.131, RSMo;

10. School buses;

11. Tactical military vehicles;

12. Visitor, employee, or military personnel vehicles on federal installations provided appointments do not exceed sixty (60) calendar days;

13. Specially constructed vehicles; *[and]*

14. Plug-in hybrid electric vehicles (PHEVs)*[/]*; and

15. Vehicles subject to subsection (1)(A) of this rule operated on public roadways in the geographical area of Franklin County are exempt upon incorporation of this rule into Missouri's federally approved State Implementation Plan or July 1, 2022, whichever is earlier.

(2) Definitions.

[(A) Plug-in hybrid electric vehicle (PHEV)—A plug-in hybrid electric drive vehicle that is made by a manufacturer, has not been modified from original manufacturer specifications, and can operate solely on electric power and is capable of recharging its battery from an on-board generation source and an off-board electricity source.

[(B) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10- 6.020.]

(A) Business day—All days, excluding Saturdays, Sundays, and state holidays, that an inspection station is open to the public.

(B) Clean scanning—The illegal act of connecting the On-Board Diagnostics (OBD) cable or wireless transmitter to the data link connector of a vehicle other than the vehicle photographed and identified on the emissions VIR for the purpose of bypassing the required OBD test procedure.

(C) Compliance Cycle—The two- (2-) year duration during which a subject vehicle in the enhanced emissions inspection program area is required to comply with sections 643.300-643.355, RSMo.

1. For private entity vehicles, the compliance cycle begins sixty (60) days prior to the subject vehicle's registration and biennial license plate tab expiration.

2. For public entity vehicles, the compliance cycle begins on January 1 of each even-numbered calendar year. The compliance cycle ends on December 31 of each odd-numbered calendar year.

(D) Contractor—The state contracted company who shall implement the decentralized motor vehicle emissions inspection program as specified in sections 643.300-643.355, RSMo, and the state contracted company who shall implement the acceptance test procedure.

(E) Department—The Missouri Department of Natural Resources, the state agency responsible for oversight of the vehicle emissions and maintenance program that is required by the federal 1990 Clean Air Act Amendments.

(F) Data Link Connector (DLC)—The terminal required to be installed on all On-Board Diagnostics (OBD) equipped vehicles that allows communication with a vehicle's OBD system.

(G) Diagnostic Trouble Code (DTC)—An alphanumeric code consisting of five (5) characters which is stored by a vehicle's OBD system if a vehicle malfunctions or deteriorates in such a way as to potentially raise the vehicle's tailpipe or evaporative emissions more than one and one half (1.5) times the federal test procedure certification limits. The code indicates the system or component that is in need of diagnosis and repair to prevent the vehicle's emissions from increasing further.

(H) Emissions inspection—Tests performed on a vehicle in order to evaluate whether the vehicles emissions control components are present and properly functioning.

(I) Gross Vehicle Weight Rating—The value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(J) Ground-level ozone—A colorless, odorless gas formed by mixing of volatile organic compounds and oxides of nitrogen from stationary and mobile pollution sources in the presence of heat and sunlight.

(K) Heavy Duty Vehicle (HDV)—Any motor vehicle rated at eight thousand five hundred one (8,501) pounds GVWR or more.

(L) Initial emissions inspection—An emissions inspection consisting of the inspection series that occurs the first time a vehicle is inspected in a compliance cycle.

(M) Licensed emissions inspection station—Any business that has met the licensing requirements in this rule and been licensed to conduct vehicle emissions inspections on behalf of the department.

(N) Licensed emissions inspector—Any individual that has met the licensing requirements described in this rule and been licensed to conduct vehicle emissions inspections on behalf of the department.

(O) Light Duty Truck (LDT)—Any motor vehicle rated at eight thousand five hundred pounds (8,500) GVWR or less which has a vehicle curb weight of six thousand (6,000) pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less which is—

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle;

2. Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or

3. Available with special features enabling off-street or off-highway operation and use.

(P) Light Duty Vehicle (LDV)—A passenger car or passenger car derivative capable of seating twelve (12) or less that is rated at six thousand (6,000) pounds GVWR or less.

(Q) Malfunction Indicator Lamp (MIL)—A colored warning light located on the dashboard of vehicles equipped with OBD systems indicating to the vehicle operator that the vehicle either has a malfunction or has deteriorated enough to cause a potential increase in the vehicle's tailpipe or evaporative emissions.

(R) Missouri Decentralized Analyzer System (MDAS)—The emissions inspection equipment that is sold by the state's contractor to licensed emissions inspection stations. The MDAS consists of all hardware and software necessary to perform an emissions inspection, to print vehicle inspection reports, and to print windshield stickers.

(S) Missouri Department of Revenue—The state agency responsible for the oversight of vehicle registration at contract offices and via the internet. MDOR is also responsible for the registration denial method of enforcement for the vehicle emissions inspection and maintenance program.

(T) Missouri State Highway Patrol (MSHP)—The state agency responsible for the oversight of the vehicle safety inspection program and joint oversight with the department of the vehicle emissions inspection and maintenance program.

(U) Offline Inspection—An emissions inspection performed while the emissions inspection equipment is not connected to the Vehicle Inspection Database (VID).

(V) On-Board Diagnostics—A vehicle emissions early-warning system required by federal law to be installed on all light-duty 1996 and newer model year gasoline vehicles and 1997 and newer model year diesel vehicles for sale in the United States. The OBD system monitors sensors attached to all emissions-control related components on a vehicle to ensure that the emissions control system operates properly throughout a vehicle's lifetime. If one (1) or more components of the emissions control system malfunctions or deteriorates, the OBD system will illuminate the Malfunction Indicator Lamp and store one (1) or more DTCs.

(W) On-Board Diagnostics test—A test in which a vehicle's OBD system is connected to a hand-held tool or computer that an inspector uses to determine and/or collect and record—

1. The status of the OBD system's MIL when the vehicle engine is off and when the vehicle engine is running;
2. DLC access and functionality and OBD communication;
3. Vehicle signature information, including, but not limited to, the electronic vehicle identification number (VIN) and other unique parameter identifiers;
4. The status of all of the OBD system's readiness monitors;
5. The OBD system's MIL command status; and
6. Any DTCs, including those that are commanding the MIL to be illuminated.

(X) Plug-in hybrid electric vehicle—A plug-in hybrid electric drive vehicle that is made by a manufacturer, has not been modified from original manufacturer specifications, and can operate solely on electric power and is capable of recharging its battery from an on-board generation source and an off-board electricity source.

(Y) Qualifying repair—Any repair or adjustment performed on a vehicle's emissions control system after failing an initial emissions inspection, that is reasonable to the test method failure. A qualifying repair is submitted as part of a cost-based waiver application and must document, to the department's satisfaction, the diagnostic testing or analysis method used by the person performing the repair. Repairs performed by a repair technician that were not authorized by the vehicle owner's signature or verbal consent may not be considered a qualifying repair. The qualifying repair must be performed within ninety (90) days after the date of initial emissions inspection. The initial or subsequent emissions reinspection should support the necessity of the qualifying repair. The qualifying repair may consist of either—

1. The parts costs, spent by a vehicle owner or charged to a vehicle owner by a repair technician, that are appropriate for the type of emissions inspection failure; or
2. The parts and recognized labor costs, charged to a vehicle owner by a recognized repair technician, that are appropriate for the type of emissions inspection failure.

(Z) Readiness monitor—A design feature of OBD systems. If a readiness monitor has been set, then the OBD system has com-

pleted a diagnostic check on that component. If a readiness monitor has not been set, then the OBD system has not completed a diagnostic check on that component.

(AA) Recognized labor costs—The labor costs that a recognized repair technician charges for emissions repair services rendered to a vehicle that fails its emissions inspection. Labor costs not tied to an emissions repair or solely for the purposes of setting readiness monitors may not be considered qualifying repairs.

(BB) Recognized Repair Technician—Any person who—

1. Is professionally engaged full-time in vehicle repair or employed by an ongoing business whose purpose is vehicle repair. A recognized repair technician may only be recognized by the department at one (1) place of employment;

2. Has valid certifications from the National Institute for Automotive Service Excellence (ASE) in Electrical Systems (A6), Engine Performance (A8), and Advanced Engine Performance Specialist (L1) that have not expired; and

3. Has not been reported by the department to the attorney general for unlawful merchandising practices according to subsection 643.330.5, RSMo.

(CC) Specially constructed vehicle—A motor vehicle that has not been originally constructed under a distinctive name, make, model, or type by a manufacturer of motor vehicles, that has been issued a specially constructed VIN number from the MDOR, and that has had the specially constructed VIN installed by the MSHP. The term specially constructed vehicle includes kit vehicles that are motor vehicles assembled by a person other than a generally recognized manufacturer of motor vehicles by the use of a glider kit or replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin.

(DD) Vehicle Inspection Database—The vehicle inspection database, operated and maintained by the department's contractor. All vehicle emissions inspection information is uploaded by the MDAS inspection equipment to the VID on a real time basis as soon as each inspection is complete.

(EE) Vehicle Inspection Report (VIR)—The vehicle inspection report printed by the MDAS inspection equipment at the conclusion of each vehicle's emissions inspection. The VIR is designed solely to provide information regarding the emissions inspection results to motorists, and may not be valid for vehicle registration purposes.

(3) General Provisions.

(A) Subject Vehicle Compliance.

1. Private entity vehicle compliance.

A. Motor vehicles subject to this rule shall demonstrate compliance with emissions standards in this rule. Such demonstration shall be made through the test methods specified in section (5) of this rule and be completed according to the compliance cycle [as defined in 10 CSR 10-6.020], the inspection intervals specified in subsection (3)(B) of this rule, and the inspection periods specified in subsection (3)(C) of this rule.

B. Completion of the emissions inspection requirements is necessary for vehicle registration renewal or registration transfer.

C. Failure to complete a vehicle emissions inspection during the compliance cycle or before vehicle registration shall be a violation of this rule. These violations are subject to penalties specified in subsection 643.355.5., RSMo.

2. Public entity vehicle compliance.

A. All subject vehicles owned by federal, state, and local governments shall be emissions inspected according to the compliance cycle as defined in [10 CSR 10-6.020 and] paragraph (2)(C)2. of this rule, the inspection intervals specified in subsection (3)(B) of this rule, and the test methods specified in section (5) of this rule.

B. All federal agencies shall ensure employee and military personnel vehicles meet the requirements of paragraph (3)(A)2. of this rule according to the December 1999 *Interim Guidance for*

Federal Facility Compliance With Clean Air Act Sections 118(c) and 118(d) and Applicable Provisions of State Vehicle Inspection and Maintenance Programs. This guidance document is incorporated by reference in this rule, as published by the U.S. Environmental Protection Agency (EPA), Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105. This rule does not incorporate any subsequent amendments or additions to this guidance document.

C. Failure to complete a vehicle emissions inspection within the compliance cycle as defined in [10 CSR 10-6.020,] **paragraph (2)(C)2. of this rule** shall be a violation of this rule. These violations are subject to penalties specified in **subsection 643.355.5., RSMo.**

3. Vehicle fleets.

A. Vehicle fleets of any size may be emissions inspected by the fleet operator, provided the owners or operators of such vehicle fleets acquire the state contractor's equipment to conduct the emissions inspections.

B. Vehicle fleets using such equipment shall be subject to the same inspection requirements as non-fleet vehicles.

C. Fleet inspection facilities shall be subject to quality assurance evaluations at least as stringent as those performed at public inspection stations.

D. Fleet owners or operators may make repairs to fleet vehicles on-site.

(B) Emissions Inspection Intervals.

1. Subject vehicles manufactured as odd-numbered model year vehicles are required to be inspected in each odd-numbered calendar year. Subject vehicles manufactured as even-numbered model year vehicles are required to be inspected in each even-numbered calendar year.

2. At the time of registration transfer, subject vehicles are required by **subsection 643.315.1., RSMo,** to be inspected regardless of the vehicle model year. At the time of registration transfer, prior to the sale of a vehicle, [private] sellers of vehicles are required to provide the purchaser with an emissions inspection compliance certificate or compliance waiver that is valid for registering the vehicle according to inspection period requirements of **subsection (3)(C) of this rule.**

(C) Emissions Inspection Periods.

1. An emissions inspection performed on a subject vehicle via the vehicle inspection process described in subsections (3)(H)–(K) of this rule is valid, for the purposes of obtaining registration or registration renewal, for a duration of sixty (60) days from the date of passing inspection or waiver issuance. An emissions inspection provided by a licensed motor vehicle dealer to the purchaser of a used vehicle being sold by the licensed motor vehicle dealer is valid for registration purposes for one hundred twenty (120) days after the date of inspection. Vehicles being sold shall not be subject to another emissions inspection for ninety (90) days after the date of sale or transfer of such vehicle.

2. Reinspections occurring fewer than ninety (90) days after the initial emissions inspection are subject to subsections (3)(J) and (3)(K) of this rule.

3. Reinspections occurring more than ninety (90) days after the initial emissions inspection shall be considered to be an initial emissions inspection as defined in [10 CSR 10-6.020] **subsection (2)(L) of this rule** and are subject to subsection (3)(H) of this rule.

(D) Emissions Inspection Fees.

1. Initial vehicle emissions inspection fee. At the time of **completion of an initial emissions inspection,** the vehicle owner or driver shall pay no more than twenty-four dollars (\$24) to the licensed emissions inspection station. The inspection station shall determine the forms of payment accepted. *[Fleet operators inspecting their own fleet vehicles at their own inspection facility are exempt from initial vehicle emissions inspection fees.]*

2. Vehicle emissions reinspection fee. Each initial vehicle emissions inspection fee shall include one (1) free reinspection, provided that the reinspection is conducted within twenty (20) business days of

the initial emissions inspection at the same inspection station that performed the initial inspection.

[A. To qualify for one (1) free reinspection, the vehicle owner or driver shall present the previous VIR and the completed repair data sheet described in subsection (4)(D) of this rule to the emissions inspection station that conducted the initial emissions inspection, within twenty (20) business days of the initial emissions inspection. The emissions inspector shall return the previous VIR to the vehicle owner.]

B. At the emissions inspection station's discretion, reinspections occurring more than twenty (20) business days after the initial emissions inspection may be performed upon payment of the initial emissions inspection fee to the emissions inspection station.]

C. Fleet operators reinspecting their own fleet vehicles at their own inspection facility are exempt from vehicle emissions reinspection fees.]

3. Emissions inspection oversight fee.

A. Licensed emissions inspection stations shall pre-pay the state two dollars and fifty cents (\$2.50) for each passing emissions inspection that they intend to perform. The fee shall be paid to the [Director of Revenue] MDOR and submitted to the [Missouri State Highway Patrol (MSHP)]. The MSHP shall deposit the fee into the "Missouri Air Emissions Reduction Fund" as established by **section 643.350, RSMo.** The MSHP will then use the contractor's [vehicle inspection database (VID)] to credit the number of pre-paid emissions inspections to the licensed emissions inspection station's MDAS. The MDAS shall deduct one (1) emissions credit authorization for each passing emissions inspection. **Public entities inspecting their own vehicles at their own inspection facility are exempt from vehicle emissions oversight fees.**

B. Licensed inspection stations are required to maintain a sufficient positive quantity of emissions credits on their analyzer(s) to prevent having to turn away motorists who have requested an inspection.

C. At the time that a licensed emissions inspection station discontinues operation or chooses not to renew its emissions inspection license, the department will issue the licensed emissions inspection station a full refund of two dollars and fifty cents (\$2.50) for each paid emissions inspection credit authorization that remains on the licensed emissions inspection station's MDAS. The department shall withdraw the pre-paid fees from the "Missouri Air Emissions Reduction Fund" as established by **section 643.350, RSMo,** and send the existing balance of the pre-paid fees to the licensed inspection station. The MSHP will then delete all pre-paid emissions inspections from the inspection equipment.

4. [Vehicle inspection database (VID)] service fee. Licensed emissions inspection stations shall pay the contractor up to three dollars and forty-five cents (\$3.45) for each [paid] completed emissions inspection that they perform **that is not a reinspection as defined in paragraph (3)(D)2. of this rule.** **Public entities inspecting their own vehicles at their own inspection facility are exempt from VID service fees.** The fee shall be made payable to the contractor and submitted monthly according to the terms of the contract between the contractor and the licensed emissions inspection stations. The contractor shall reimburse any VID service fee overcharges to an inspection station within sixty (60) days of the date of notification by the emissions inspection station manager. **The VID service fee will be evaluated and established as a part of the contractor selection process under sections 643.300–643.355, RSMo.**

(E) Emissions Inspection Equipment.

1. Performance features of emissions inspection equipment. The MDAS is required for performing any emissions inspections on subject vehicles. The MDAS shall meet or exceed all applicable EPA requirements.

A. The MDAS shall be capable of testing all subject vehicles as required by paragraph (3)(E)3. of this rule. The emissions inspection equipment shall be updated as needed to accommodate new

technology vehicles. The updates shall be provided by the state's contractor without cost to the state or the licensed emissions inspection stations.

B. At a minimum, the MDAS shall be—

- (I) Automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;
- (II) Secure from tampering and/or abuse; and
- (III) Based upon written specifications.

2. Functional characteristics of emissions inspection equipment. The MDAS shall be composed of vehicle inspection equipment controlled by a computer.

A. The MDAS shall automatically—

(I) Make pass/fail decisions for all computer-determined aspects of the emissions inspection as described in paragraphs (5)(B)3. through (5)(B)5. of this rule;

(II) Record tests *[data to]* on the MDAS hard drive and the contractor's VID;

(III) Conduct regular self-testing of recording accuracy;

(IV) Perform electrical calibration and system integrity checks before each test, as applicable; and

(V) Initiate immediate system lockouts for—

(a) Tampering with security aspects of the MDAS;

(b) Fraudulent inspection activity;

(c) Exceeding the limit of offline emissions inspections *[established by the department and the MSHP]* as specified in the contract between the department and the contractor; or

(d) Failing the *[onboard diagnostics (OBD)]* verification tool self-check.

B. The MDAS shall include a telecommunications data link to the contractor's VID as specified in the contract between the department and the contractor. Emissions inspection information shall be uploaded immediately to the VID via this telecommunications data link according to subparagraphs (3)(F)2.C. and (3)(F)5.D. of this rule so that all inspection information can be electronically verified by the department, the MSHP, and the MDOR using the contractor-provided internet solution.

C. The MDAS shall ensure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

3. OBD test equipment. OBD test equipment shall meet the standards specified in 40 CFR 85.2231, *which is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001*. **The provisions of 40 CFR 85.2231 as promulgated by the EPA on April 28, 2014, are hereby incorporated by reference in this rule, as published by the U.S. Government Publishing Office available at <https://bookstore.gpo.gov/> or for mail orders print and fill out order form online and mail to: U.S. Government Publishing Office, PO Box 979050, St. Louis, MO 63197-9000.** This rule does not incorporate any subsequent amendments or additions to 40 CFR 85.2231. The OBD test equipment shall be able to communicate with all known OBD protocols and connect to and communicate with a minimum of ninety-eight percent (98%) of all subject vehicles.

4. All emissions inspection equipment shall meet the quality control requirements described in paragraph (3)(L)5. of this rule. Newly acquired emissions inspection equipment and all applicable MDAS software updates shall be subject to the acceptance test procedures administered by the department's contractor to ensure compliance with the emissions inspection program specifications.

(F) Emissions Inspection Station Requirements.

1. Premises.

A. Each licensed emissions inspection station shall have an emissions inspection area within an enclosed building of sufficient length, width, and height to accommodate a full size light-duty vehicle or light-duty truck.

[B. The licensed emissions inspection station shall be in compliance with applicable city, county, and state regulations relating to zoning, merchant licensing, fictitious names,

and retail sales tax numbers.]

[C.B. The emissions inspection area shall be sufficiently lighted, adequately heated and cooled, and properly ventilated to conduct an emissions inspection.

2. Equipment. Each licensed emissions inspection station shall have the following equipment located at or near the inspection area:

A. Scraper. The scraper may be used to remove old windshield stickers;

B. Emissions inspection equipment, including hardware, software, forms, and windshield stickers. The MDAS equipment hardware, as described under the definition for *Missouri Decentralized Analyzer System found in 10 CSR 10-6.020,* shall be purchased or leased by the inspection station from the state's contractor. All of the equipment must be present and functional. The equipment software shall be provided with the MDAS equipment purchase or lease and updated periodically at no cost to the licensed inspection stations. The forms described in section (4) of this rule shall be provided by the MDAS software. The windshield stickers described in section (4) of this rule shall be provided by the contractor at no cost to licensed emissions inspection stations; and

C. Telecommunications. The station shall provide dedicated *[data transmission capabilities for the emissions inspection equipment to stay online with the contractor's VID. The telecommunications capabilities may be either high-speed or low-speed]* telecommunication service with appropriate bandwidth for up-to-date VID data transmission to the MDAS. The cost of this telecommunications service, including initial installation and ongoing maintenance, is the responsibility of the licensed emissions inspection station.

3. Personnel.

A. Each licensed emissions inspection station shall have a minimum of one (1) licensed emissions inspector on duty during all business days during the station's hours of inspection, except for short periods *[of time]* due to illness or *[annual]* vacation.

B. Each licensed emissions inspection station will designate, on the station license application, the emissions inspection station manager who will be in charge of emissions inspections. The emissions inspection station manager shall be responsible for the daily operation of the station and will ensure that complete and proper emissions inspections are being performed. The emissions inspection station manager shall be present at the licensed emissions inspection station during all business days during the station's hours of inspection, except for short periods *[of time]* due to illness or *[annual]* vacation.

C. If the station is without at least one (1) emissions inspector or one (1) emissions inspection station manager, then the station shall be prohibited from conducting emissions inspections.

4. Licensing.

A. Any person, firm, corporation, partnership, or governmental entity requesting an emissions inspection station license shall submit a completed emissions inspection station application to the department or to the MSHP.

B. A vehicle emissions inspection station license shall be valid for twelve (12) months from the date of issuance. A completed emissions inspection station license application shall be accompanied by a check or money order for one hundred dollars (\$100) made payable to the *[Director of Revenue]* MDOR and submitted to either the Missouri Department of Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP. Under no circumstances will cash be accepted for the license fee.

[C. For the purposes of emissions and safety inspection license synchronization, a vehicle emissions inspection station license may be valid for fewer than twelve (12) months from the date of issuance. A completed emissions inspection station license application shall be accompanied by a check or money order made payable to the Director of Revenue and submitted to either the Missouri Department of

Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP. The check or money order shall submit the pro-rated fee of eight dollars and thirty-three cents (\$8.33) times the number of months between the month of the application, including the month of application, for the emissions inspection license and the month that the safety inspection license will be renewed. Under no circumstances will cash be accepted for the license fee.

D. Except as provided by subparagraph (3)(F)4.C. of this rule, station licenses are valid for a period of one (1) year from the date of issuance, unless the license is suspended or revoked by the department or the MSHP.]

C. The department or MSHP may suspend or revoke a station license as provided by subsection (3)(N) of this rule. The owners of licensed emissions inspection stations that are renewing their emissions inspection license shall complete the requirements of subparagraph (3)(F)4.B. of this rule.

[E./D. Along with the application fee, applicants shall submit the following information on a form provided by either the department or the MSHP:

- (I) Proof of liability insurance;
- (II) The business's federal and state taxpayer identification number;
- (III) The physical address of the inspection station;
- (IV) The mailing address, if different from physical address, of the inspection station;
- (V) The phone number and, if available, fax number of the inspection station;
- (VI) The last name, first initial, and, if already licensed by the MSHP, the inspector number of the licensed emissions inspector(s) employed by that station; and
- (VII) The first and last name of the emissions inspection station manager(s) employed by that station.

[F./E. No license issued to an emissions inspection station may be transferred or used at any other location. Any change in ownership or location shall void the current station license. The department must be notified immediately when a change of ownership or location occurs or when a station discontinues operation. Businesses that change locations will be charged another license fee for the cost of the new license. Businesses that change owners will be treated as new licensees and charged another license fee for the new license.

[G./F. When an emissions inspection station license has been suspended or revoked, or when a station discontinues operation, all emissions inspection *[supplies including, but not limited to, blank windshield stickers described in section (4) of this rule and the emissions inspection station sign described in subparagraph (3)(F)7.C., shall be released on demand to the department or the MSHP. The failure to account for all emissions inspection supplies will be sufficient cause for the department or the MSHP to not reinstate an emissions inspection station license] related supplies shall be surrendered to the department or the MSHP. The failure to account for all emissions inspection supplies will be sufficient cause for the department or the MSHP to deny the reinstatement of an emissions inspection station license.*

[H./G. No emissions inspection station license will be issued to a spouse, child or children, son/daughter-in-law, employee, or any person having an interest in the business for the privilege to conduct emissions inspections at the same location or in close proximity to the location of an emissions inspection station whose license is under suspension or revocation, unless the applicant can provide reasonable assurance that the licensee under suspension or revocation will not be employed, manage, assist in the station operation, or otherwise benefit financially from the operation of the business in any way.

5. Operations.

A. All emissions inspections must be conducted at the licensed emissions inspection station in the approved emissions

inspection area described in paragraph (3)(F)1. of this rule.

B. The **entire** inspection of a vehicle shall be made only by an individual who has a current, valid emissions inspector license. No person without a current, valid emissions inspector license shall issue an emissions VIR or a windshield sticker. No owner, operator, or employee of an inspection station shall furnish, loan, give, or sell an emissions VIR or windshield sticker to any person except those entitled to receive it because their vehicle has passed the emissions inspection.

C. If an emissions inspector or an emissions inspection station manager or owner resigns or is dismissed, the emissions inspection station manager or station owner shall report these changes to the department and the MSHP immediately *[or within two (2) business days]*. The emissions inspection station manager or station owner shall complete an amendment form to inform the department and the MSHP of these changes in personnel.

D. All current manuals, bulletins, or other rules issued by the department must be read by the station owner or operator and each emissions inspector. These resources must be available, either in printed or electronic form, at all times for ready reference by emissions inspectors, department, and MSHP staff.

E. If the department is asked to settle a difference of opinion between a vehicle owner and an emissions inspection station manager or emissions inspector concerning the inspection standards and procedures, the decisions of the department concerning emissions inspection standards and procedures will be final.

F. Emissions inspection station operators are permitted to advertise as official emissions inspection stations.

6. Hours of operation.

A. The normal business hours and business days of every public inspection station shall be at least eight (8) continuous hours per day, five (5) days per week, excluding all state holidays.

B. Emissions inspectors are obligated to conduct emissions inspections and reinspections of vehicles during normal business hours.

(I) A vehicle shall be emissions inspected within a two-~~(2)-~~/- hour period after being presented unless other vehicles are already being emissions inspected.

(II) A reinspection must begin within one (1) hour when a vehicle is presented during the twenty (20) consecutive-day period for reinspections excluding Saturdays, Sundays, and state holidays.

7. Display of inspection station and inspector licenses, sign, and poster.

A. The department or the department's designee shall provide each licensed emissions inspection station with one (1) station license certificate. The station license certificate shall be *[framed under clean glass or plastic and]* displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections.

B. The department or the department's designee shall provide each licensed emissions inspector with one (1) inspector license certificate. The emissions inspector licenses must be *[framed under clean glass or plastic and]* displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections.

C. The department or the department's designee shall provide each licensed emissions inspection station one (1) official sign, made of metal or other durable material, to designate the station as an official emissions inspection station. The sign designating the station as an emissions inspection station shall be displayed in a location visible to motorists driving past the inspection station. Additional signs may be purchased for a fee equal to the cost to the state for each additional sign.

[D. The department or the department's designee shall provide each licensed emissions inspection station with one (1) poster that informs the public that required repairs or corrections need not be made at that inspection station. The poster must be displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections.

Additional posters may be purchased for a fee equal to the cost to the state for each additional poster.]

(G) Emissions Inspector Requirements.

1. Every person requesting a vehicle emissions inspector license shall submit a completed vehicle emissions inspector application to the department or the department's designee. The emissions inspector application shall include a facial photograph with dimensions of two inches (2") in length and two inches (2") in width.

2. All vehicle emissions inspectors must be at least eighteen (18) years of age and able to read and understand documents written in English. *[The emissions inspector written exam may include an oral component to evaluate the applicant's ability to read and understand documents written in English.]*

3. Emissions inspectors must pass a written test that demonstrates their knowledge of the fundamentals of OBD testing and repairs and the procedures of the emissions inspection program. **The emissions inspector written exam may include an oral component to evaluate the applicant's ability to read and understand documents written in English.** A minimum grade of eighty percent (80%) is required to pass the written examination or reexamination.

A. The contractor shall design the training material and corresponding written exam and have the training material and written exam certified by the department prior to issuing the training material and written exam to potential emissions inspectors.

B. After emissions inspectors have passed the contractor's written exam, if they wish to also be licensed to conduct vehicle safety inspections, they must submit an application to the MSHP to take the safety inspection exam.

C. *[Currently licensed]* A safety inspector/s] with a **current license** working at a newly/- licensed emissions inspection station/s will only have to] **must pass only** the written emissions exam conducted by the contractor.

4. Emissions inspectors must *[be thoroughly familiar]* **also pass a practical exam that demonstrates competency** with the emissions inspection equipment and demonstrate competency to either the department or the MSHP while performing an emissions inspection on a vehicle prior to the issuance of the inspector's license. A minimum grade of eighty percent (80%) is required to pass the practical examination or reexamination.

5. If the applicant meets the requirements of paragraphs (3)(G)1.- (3)(G)4. of this rule, an emissions inspector license will be issued without charge. Licenses are valid for a period of three (3) years from the date of issuance, or *[until]* **unless** suspended or revoked by the department or the MSHP. An emissions inspector whose license has been suspended or revoked **per items listed in subsection (3)(N) of this rule** shall be required to successfully complete the contractor's training program and pass the written and practical exams described in paragraphs (3)(G)3. and (3)(G)4. of this rule before the emissions license will be reinstated.

6. If the emissions inspector leaves the employment of one licensed emissions inspection station and enters the employment of another licensed emissions inspection station, the emissions inspection station manager of the station that the inspector is transferring to shall follow the procedures described in subparagraph (3)(F)5.K. of this rule. The emissions inspector's license is transferable with the licensed emissions inspector, provided the emissions inspector's license has not expired.

7. An emissions inspector may be reexamined at any time, and if s/he fails the reexamination or refuses to be reexamined, the license issued to him/her shall be suspended. If a vehicle emissions inspector fails a reexamination, s/he cannot again be tested until a period of thirty (30) days has elapsed.

8. An emissions inspector license may be renewed before the expiration date or sixty (60) days after expiration without a reexamination. If the license has expired more than sixty (60) days before the license renewal application is submitted, a reexamination will be required. A vehicle emissions inspector does not have authority to conduct any inspections during the sixty- (60-)[- day grace period

unless the license has been properly renewed.

(H) Emissions Inspection Procedures. The emissions inspection procedure shall meet the following requirements:

1. Every emissions inspection must be performed according to the procedures described in this rule. Once an emissions inspection has begun, it shall be completed **by the initiating inspector** and shall not be terminated. A vehicle may not be passed or failed based upon a partial inspection;

2. A proper and complete emissions inspection shall consist of the OBD test method described in section (5) of this rule, the immediate printing and subsequent issuance of a VIR to the motorist, and the immediate uploading of the emissions inspection data to the contractor's VID;

3. All emissions inspection records shall be transmitted to the state's contractor as soon as an inspection is complete for the purpose of real time registration verification by the MDOR and program oversight by the department or the MSHP;

4. The emissions inspection fees shall be charged for each inspection performed as described in subsection (3)(D) of this rule;

5. Emissions inspection windshield stickers will be issued to an emissions inspection station by the MSHP and can be printed by only that station. Emissions inspection windshield stickers shall be kept secure to prevent them from being lost, damaged, or stolen. If windshield stickers are lost, damaged, or stolen, the incident shall be reported immediately to the MSHP;

6. The emissions inspector will ensure that all required information is properly and accurately entered into the MDAS. This includes *[three (3) mandatory photos,]* a vehicle description including the license plate number at the time of inspection, *[vehicle identification number (VIN)],* vehicle make, vehicle model, vehicle model year, fuel type, GVWR range, odometer reading at the time of the emissions inspection, and the complete mailing address (street address, city, and zip code) of the vehicle owner;

7. Using the MDAS digital camera, the emissions inspector shall take three (3) readily identifiable digital pictures showing the current license plate, VIN, and odometer reading. The picture of the license plate, VIN, and odometer must match the plate, VIN, and odometer reading that is printed on the VIR. These pictures shall then be immediately uploaded to the VID *[via the docking station provided with the MDAS].*

A. License plate pictures. Pictures of the rear license plate shall be of the entire rear portion of the vehicle from taillight to taillight. If the vehicle license plate is located only on the front of the vehicle, then the license plate picture shall be of the entire front of the vehicle. License plate pictures must be clearly legible.

B. VIN pictures. *[The camera should be set to the macro picture-taking mode.]* VIN pictures should be of the dashboard VIN plate. *[It may be helpful to illuminate the VIN plate with supplemental lighting, block overhead lighting with a solid object, or take the photo at an angle so that the camera flash or overhead lights are not reflected by the windshield glass.]* VIN pictures must be clearly legible. **When VIN pictures are unclear, a supporting photo of the door VIN may be included in the record.**

C. Odometer pictures. *[The camera should be set to the macro picture-taking mode.]* In the case of digital odometers, the ignition switch must be on to illuminate the odometer reading. Trip odometer photos are not permissible. *[It may be helpful to turn on the dashboard lights to help illuminate the odometer without the use of the camera's flash.]* Odometer pictures must be clearly legible;

[8. Inspection stations shall ensure that the station analyzer universal serial bus (USB) digital camera is mounted on top of the station analyzer monitor and aimed, with a clear line of sight, towards the emissions inspection bay every time a vehicle emissions inspection is performed so that the inspection process can be remotely observed by state agencies throughout the entire vehicle emissions inspection;]

[9.]8. Vehicles shall be inspected in as-received condition, including vehicles whose [malfunction indicator lamp (MIL)] is lit or whose readiness monitors are unset. The inspector shall connect the OBD cable or wireless transmitter to the [data link connector (DLC)] of the actual vehicle submitted for emissions testing. The connection shall remain intact and functioning during the entire test procedure. Clean scanning [as defined in 10 CSR 10-6.020] is prohibited. An official inspection, once initiated, should be performed in its entirety regardless of immediate outcome, except in the case of an invalid test condition or determination by the emissions inspector;

[10.]9. The initial emissions inspection shall be performed according to the test method described in section (5) of this rule without repair or adjustment at the emission inspection station prior to commencement of any tests. Emissions inspections performed within ninety (90) days of the initial emissions inspection shall be considered a reinspection and are subject to provisions of subsection (3)(J) of this rule;

[11.]10. If a subject vehicle passes the emissions test method described in section (5) of this rule, according to the standards described in subsection (3)(I) of this rule, the emissions inspection station shall issue the vehicle owner or driver a passing VIR described in subsection (4)(A) of this rule, certifying that the vehicle has passed the emissions inspection, and provide a windshield sticker for the windshield of the subject vehicle according to subsection (4)(A) of this rule. The positioning of the windshield sticker on the windshield of the vehicle shall take place on the premises of the emissions inspection station;

[12.]11. If a subject vehicle fails the emissions test method described in section (5) of this rule, according to the standards described in subsection (3)(I) of this rule, the emissions inspection station shall provide the vehicle owner or driver with a failing VIR described in subsection (4)(B) of this rule that indicates what parts of the OBD test method the vehicle failed, a repair facility performance report described in subsection (4)(H) of this rule that lists the ten (10) nearest Missouri Recognized Repair Technicians (MRRTs) to the licensed emissions inspection station, **a statement that vehicle repairs do not need to occur at the inspection station where the test was performed**, and a repair data sheet described in subsection (4)(D) of this rule that is used to collect emissions repair data for the repair facility performance report;

[13.]12. If a subject vehicle fails the emissions test method described in section (5) of this rule, the vehicle owner shall have the vehicle repaired. The vehicle shall be reinspected [according to/within] the appropriate inspection period as determined by paragraphs (3)(C)2. and (3)(C)3. of this rule and the reinspection procedures described in subsection (3)(J) of this rule; and

[14.]13. If the emissions inspection is aborted by the MDAS software or the emissions inspector, the emissions inspection station shall provide the vehicle owner or driver with the emissions VIR described in subsection (4)(K) of this rule that indicates that the OBD test was aborted.

(I) Emissions Inspection Standards. Subject vehicles shall fail the emissions inspection if the vehicle does not meet the OBD test standards specified in 40 CFR 85.2207, *which is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001*. **The provisions of 40 CFR 85.2207 as promulgated by the EPA on April 28, 2014, are hereby incorporated by reference in this rule, as published by the U.S. Government Publishing Office available at <https://bookstore.gpo.gov/> or for mail orders print and fill out order form online and mail to: U.S. Government Publishing Office, PO Box 979050, St. Louis, MO 63197-9000.** This rule does not incorporate any subsequent amendments or additions to 40 CFR 85.2207.

(J) Emissions Reinspection Procedures.

1. Vehicles that fail the emissions inspection described in section (5) of this rule shall be reinspected according to the test method

described in section (5) of this rule to determine if the repairs were effective for correcting failures on the previous inspection, *thereby reducing or preventing an increase in present and future tailpipe or evaporative emissions*.

A. The inspector shall enter the data from the repair data sheet described in subsection (4)(D) of this rule in the MDAS prior to initiating [the] reinspection(s), *even if the vehicle receives multiple reinspections*.

B. The inspector shall ensure that the VIN of the reinspected vehicle matches the VIN of the originally inspected vehicle.

C. The inspector shall enter the current odometer reading of the vehicle at the time of the reinspection into the MDAS.

D. The inspector shall take three (3) new photographs following the procedure described in paragraph (3)(H)7. of this rule.

E. The inspector shall connect the OBD cable or wireless transmitter to the data link connector of the actual vehicle submitted for emissions testing. The connection shall remain intact and functioning during the entire test procedure. Clean scanning [as defined in 10 CSR 10-6.020] is prohibited.

2. If the subject vehicle passes a reinspection, then the procedures in paragraph (3)(H)11.10. of this rule shall be followed.

3. If the subject vehicle fails a reinspection, the vehicle owner may either:—

A. Have more repairs performed on the vehicle and have the vehicle reinspected; or

B. Apply for a cost-based waiver according to the requirements in paragraphs (3)(K)1.–(3)(K)5. of this rule.

(K) Emissions Inspection Waivers and Exemptions.

1. Cost-based waivers. Vehicle owners or purchasers shall be issued a cost-based waiver for their vehicle under the following conditions:

A. The subject vehicle has failed the initial emissions inspection, has had qualifying repairs, and has failed an emissions reinspection;

B. The vehicle has passed the **following**:

(I) **The** bulb check test described in subparagraph (5)(B)2.A. of this rule/;

(II) [t/The data link connector test described in subparagraph (5)(B)3.A. of this rule/;

(III) [t/The communications test described in subparagraph (5)(B)3.B. of this rule/; and

(IV) [t/The readiness monitor test described in paragraph (5)(B)4. of this rule/; and

C. The subject vehicle has all of its emissions control components correctly installed and operating as designed by the vehicle manufacturer.

(I) To the extent practical, the department representative shall use the MSHP air pollution control device inspection method described in 11 CSR 50-2.280 to fulfill the requirement of this subparagraph.

(II) If the vehicle fails the visual inspection described in 11 CSR 50-2.280, then the vehicle will be denied a cost-based waiver;

D. The vehicle operator has submitted to the department the appropriate waiver application with all required information and necessary signatures completed, along with all itemized receipts of qualifying repairs. The qualifying repairs must meet the requirements of paragraph (3)(K)2. of this rule. The itemized receipts must meet the requirements of paragraph (3)(K)3. of this rule;

E. At the discretion of the department, the vehicle owner or operator may be required to make arrangements to bring the vehicle to the department or the department's designee for visual verification of the vehicle's repairs or estimated repairs in the case of a cost-based estimate waiver application; and

F. To the extent practical, the department representative has verified that the repairs indicated on the itemized receipts for qualifying repairs were made and that the parts were repaired/replaced as claimed.

2. The minimum amount spent on qualifying repairs for cost-based waivers shall—

A. Exceed four hundred fifty dollars (\$450) for vehicles not fully repaired solely by the owner of the failed vehicle;

B. Exceed four hundred dollars (\$400) for all vehicles repaired solely by the owner of the failed vehicle. Only qualified repairs that include the part costs for the purchase and installation of the following parts listed in 40 CFR 51.360(a)(5) will be accepted:

- (I) Oxygen sensors;
- (II) Catalytic converters;
- (III) Exhaust gas recirculation (EGR) valves;
- (IV) Evaporative canisters;
- (V) Positive crankcase ventilation (PCV) valves;
- (VI) Air pumps;
- (VII) Distributors;
- (VIII) Ignition wires;
- (IX) Coils;
- (X) Spark plugs; and

(XI) Any hoses, gaskets, belts, clamps, brackets, or other accessories directly associated with these parts. If the emissions failure is not related to the parts listed in this subparagraph, the cost of replacing such parts will not count towards the waiver minimum;

C. Exceed two hundred dollars (\$200) for all motorists who provide the department representative with reasonable and reliable proof that the owner is financially dependent on state and federal disability benefits and other public assistance programs. The proof shall consist of government issued documentation providing explanation of the motorist's disability and financial assistance with regard to personal income. The motorist must also submit the appropriate cost-based waiver application with their "Financial Eligibility Waiver Request";

D. Be inclusive of part costs paid by motorists performing qualified vehicle repairs by themselves or for qualified emissions repair services performed by any repair technician. Labor costs shall only be applied toward a cost-based waiver if the qualified repair work was performed by a *[R]recognized [R]repair [T]technician*;

E. Not include the fee for an emissions inspection or reinspection;

F. Not include the fee for a safety inspection or reinspection;

G. Not include charges for obtaining a written estimate of needed repairs;

H. Not include the charges for repairs necessary for the vehicle to pass a safety inspection;

I. Not include costs for repairs performed on the vehicle before the initial emissions inspection failure *[or more than ninety (90) days after the initial emissions inspection failure]*;

J. Not include expenses that are incurred for the repair of—

(I) Emissions control devices or data link connectors that have been found during either a safety or an emissions inspection to be tampered with, rendered inoperative, or removed;

(II) The MIL; or

(III) For OBD communications failures;

K. Not include the state sales tax for the following motor vehicle parts that are air pollution control devices:

(I) Air injection parts, air pumps, check valves, and smog pumps;

(II) Catalytic converters (universal converters, direct fit converters, converter kits);

(III) EGR valves;

(IV) Evaporative canisters and canister purge valves;

(V) PCV valves; and

(VI) Any vehicle parts that serve the equivalent functions of the parts listed in parts (3)(K)2.K.(I)–(3)(K)2.K.(V) of this rule;

L. Not include costs and expenses associated with aftermarket catalytic converter replacements that do not conform to the EPA's Aftermarket Catalytic Converter (AMCC) enforcement policy. The EPA's AMCC enforcement policy, which includes the following three (3) documents, is hereby incorporated by reference in this rule. **This**

rule does not incorporate any subsequent amendments or additions to the EPA's AMCC enforcement policy:

(I) The Notice of Proposed Enforcement Policy regarding the "Sale and Use of Aftermarket Catalytic Converters," published on August 5, 1986, by 51 FR 28114 as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408;

(II) The publication "What You Should Know About Using, Installing Or Buying Aftermarket Catalytic Converters" published in September 2000 by the U.S. Environmental Protection Agency (EPA), Office of Air and Radiation, Office of Transportation and Air Quality, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and

(III) The letter "Sale and Use of Aftermarket Catalytic Converters for Vehicles Equipped with Onboard Diagnostic (OBD-II) Systems" sent on September 30, 2004, by the U.S. Environmental Protection Agency (EPA), Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue NW, Washington, DC 20460 to the Manufacturers of Emission Control Association/. *This rule does not incorporate any subsequent amendments or additions to the EPA's AMCC enforcement policy*;

M. Not include expenses that are incurred for the restoration of the vehicle manufacturer's emissions control system due to the installation of sensor simulators, engine control module upgrades, or other aftermarket components that disable readiness monitors or in any way bypass or compromise the vehicle manufacturer's emissions control system; and

N. Not include costs for emissions repairs or adjustments covered by a vehicle manufacturer's warranty, including the minimum federal catalytic converter warranty period of eight (8) years or eighty thousand (80,000) miles, insurance policy, or contractual maintenance agreement. The emissions repair costs covered by warranty, insurance, or maintenance agreements shall be separated from other emissions repair costs and shall not be applied toward the cost-based waiver minimum amount. The operator of a vehicle within the statutory age and mileage coverage under subsection 207(b) of the federal Clean Air Act shall present a written denial of warranty coverage, with a complete explanation, from the manufacturer or authorized dealer in order for this provision to be waived.

3. The vehicle operator shall present *[the original of]* all itemized repair receipts to the department representative to demonstrate compliance with paragraph (3)(K)2. of this rule. The itemized repair receipt(s) shall—

A. Include the name, physical address, and phone number of the repair facility and the model year, make, model, and VIN of the vehicle being repaired;

B. Describe the diagnostic test(s) performed to identify the reason the vehicle failed an emissions inspection;

C. Describe the emissions repair(s) that were indicated by the diagnostic test(s);

D. Document the emissions repairs performed were authorized by the vehicle owner or operator;

E. Describe the emissions repairs that were performed by the repair technician or vehicle owner;

F. For catalytic converter replacements, include, as a separate attachment, the documentation that the EPA's AMCC enforcement policy requires of the catalytic converter retail seller, vehicle owner, and/or installer. Catalytic converter replacements will only be accepted towards a cost-based waiver if they are installed on gasoline-powered vehicles that have failed the most recent OBD test with at least one (1) catalytic converter *[Diagnostic Trouble Code (DTC)]* (P0420–P0439) as recorded on a failing VIR described in subsection (4)(B) of this rule;

G. Describe the vehicle part(s) and the quantity or each type of part(s) that were serviced or replaced;

H. Describe the readiness monitors that were either set to ready or left unset;

I. Describe the diagnostic test(s) performed after the repairs

were completed to verify that the vehicle's emissions control system is now operating as it was designed to operate by the manufacturer;

J. Clearly list the labor costs, if the vehicle was repaired by a repair technician, and the part(s) costs separately for each repair item;

K. Include the repair technician's name (printed or typed), signature and, if applicable, the unique identification number of the *[R]*recognized *[R]*repair *[T]*technician that performed the repair work; and

L. Confirm that payment was collected or financed for the services rendered and/or parts replaced as listed on the itemized repair receipt(s).

4. *[Cost]* Estimate-based *[estimate]* waivers. Vehicles shall be issued an *[cost]* estimate-based *[estimate]* waiver under the following conditions:

A. The subject vehicle has failed the initial emissions inspection or reinspection after repair(s) with a single DTC;

B. The vehicle has passed the following:

(I) The bulb check test described in subparagraph (5)(B)2.A. of this rule¹;

(II) *[t]*The data link connector test described in subparagraph (5)(B)3.A. of this rule¹;

(III) *[t]*The communications test described in subparagraph (5)(B)3.B. of this rule¹; and

(IV) *[t]*The readiness monitor test described in paragraph (5)(B)4. of this rule;

C. The subject vehicle cannot have received either a cost-based waiver or an *[cost]* estimate-based *[estimate]* waiver during a previous biennial inspection cycle for the same single DTC;

D. The vehicle owner has paid for a diagnostic test of that DTC by a *[R]*recognized *[R]*repair *[T]*technician or a vehicle repair business that specializes in a particular make of vehicle or type of repair (e.g., transmission repairs), with the items tested and the results described on the repair estimate; and

E. The diagnostic test results and parts required for the repair of the single DTC are documented by the shop to exceed four hundred fifty dollars (\$450).

5. The department reserves the right to investigate all cost- and estimate-based waiver requests and submitted receipts. Cost-based waiver requests with incomplete information and/or receipts that do not identify the vehicle that was repaired, do not itemize the actual cost of the parts that were serviced, do not list the labor costs separately from the part costs, indicate that state sales tax was charged on air pollution control parts exempted from state sales tax as defined in paragraph (3)(K)2. of this rule, or contain fraudulent information or part costs as determined by department representatives will not be accepted by the department. If the conditions of paragraphs (3)(K)1.–(3)(K)4. of this rule have been met, the department representative shall issue a *[cost]* estimate-based waiver and provide the windshield sticker to be affixed to the vehicle by the vehicle owner. The windshield sticker shall meet the requirements of paragraph (4)(F)2. of this rule.

6. The contractor shall provide the means to issue cost-based waivers, VIRs, and windshield stickers from either the department's offices or from a portable solution as required by the contract. **The contractor shall provide the means to issue out-of-area, reciprocity, mileage, and GVWR waivers, exemptions, and VIRs, from either the department's offices or from a portable solution as required by the contract.**

7. Out-of-area exemptions. Provided the vehicle owner or driver submits a completed, signed out-of-area affidavit to the department indicating that the vehicle will be operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300–643.355, RSMo, for the next twenty-four (24) months, the department shall issue an emissions inspection VIR, with an indicator to show that the vehicle has received an out-of-area exemption to the vehicle owner or driver, and a windshield sticker shall be affixed to the subject vehicle.

8. Reciprocity waivers. Provided the vehicle owner or driver presents proof, acceptable to the department, that the subject vehicle has successfully passed an OBD emissions inspection in another state within the previous sixty (60) calendar days, the department shall issue an emissions inspection VIR with an indicator to show that the vehicle has received a reciprocity waiver to the vehicle owner or driver, and a windshield sticker shall be affixed to the subject vehicle.

[A.] Reciprocity waivers shall be issued if the motorist submits proof of a passing OBD emissions inspection from *[one (1) of the following states: Alaska, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Louisiana, Maine, Massachusetts, Maryland, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee unless tested in Shelby County (Memphis), Rhode Island, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin]* a state or jurisdiction participating in pass/fail OBD inspections.

[B.] Should any of these states or jurisdictions discontinue the use of pass/fail OBD inspections, the reciprocity waiver shall not be granted.

9. Mileage exemptions. Provided the vehicle owner or driver submits the required information described in subsection (4)(H) of this rule, the department or the MDAS shall issue an emissions inspection VIR, with an indicator to show that the vehicle has received a mileage-based exemption to the vehicle owner or driver.

10. GVWR exemptions. Provided the emissions inspector verifies that the vehicle is over eight thousand five hundred pounds (8,500 lbs.) GVWR, the MDAS shall issue an emissions inspection VIR, with an indicator to show that the vehicle has received a GVWR exemption to the vehicle owner or driver.

[11. The contractor shall provide the means to issue out-of-area, reciprocity, mileage, and GVWR waivers, exemptions, and VIRs, from either the department's offices or from a portable solution as required by the contract.]

(L) Quality Control Requirements.

1. Quality control for the contractor(s). *[The department shall appoint entities under contractual agreement with the department to facilitate the operating of decentralized emissions inspection stations that will conduct vehicle emissions for the purpose of reducing or preventing vehicle pollution that contributes to ground-level ozone formation.]* **The State of Missouri shall appoint a contractor to perform the outlined duties of the inspection maintenance program through vehicle emissions inspections.**

2. Quality control for emissions inspection stations. **Licensed emissions stations shall conduct emissions inspections in accordance with this rule and failure to do so may result in civil, criminal, and/or monetary penalties as described in paragraphs (3)(N)2.–(3)(N)5. of this rule.**

[A. Licensed emissions inspection stations shall conduct their business in such a way that it satisfies the intent of the vehicle emissions inspection program, which is to accurately identify the vehicles that fail to meet the OBD emissions test standards so that these vehicles may be effectively repaired.

B. Failure to comply with the provisions of this rule and the purposes stated in subparagraph (3)(L)2.A. of this rule shall be considered a violation of this rule and will result in the penalties described in paragraphs (3)(N)2.–(3)(N)5. of this rule.

C. Licensed emissions inspection stations shall be financially responsible for all vehicles that are being inspected.]

3. Quality control for emissions inspectors. **Emissions inspectors shall conduct vehicle emissions inspections in accordance with this rule, failure to comply may result in civil, criminal, and/or monetary penalties as described in paragraphs (3)(N)2.–(3)(N)5. of this rule.**

A. The contractor shall provide to the department an education and training plan, to be approved by the department prior to implementation, for licensed emissions inspectors. Inspectors shall not be licensed unless they have passed all training requirements.

B. Failure to comply with the provisions of this rule and the contract shall be considered a violation of this rule and will result in the penalties described in paragraphs (3)(N)2.–(3)(N)5. of this rule.

C. As specified in the contract, the contractor shall maintain for the department an electronic database of licensed emissions inspector information that, at a minimum, includes the inspector's name, unique identification number, date of license issuance, stations of employment, date of any license suspensions or revocations, and a list of inspection results by date and by model year, make, model, and VIN.]

4. Quality control for emissions inspection records.

A. All inspection records, calibration records, and control charts shall be accurately created, recorded, maintained, and secured by the contractor.

B. The contractor shall make available all records and information requested by the department and shall fully cooperate with the department, MSHP, and other state agency representatives who are authorized to conduct audits and other quality assurance procedures.

C. The contractor shall maintain emissions inspection records, including all inspection results and repair information.

(I) These records shall be kept readily available to the department and the MSHP for at least three (3) years after the date of an initial emissions inspection.

(II) These records shall be made available to the department and the MSHP on a real time continual basis through the use of the contractor's VID as specified in the contract.

(III) These records shall also be made available immediately upon request for review by department and MSHP personnel.

5. Quality control for all emissions inspection equipment.

A. At a minimum, the practices described in this section and in the contract shall be followed.

B. Preventive maintenance on all emissions inspection equipment shall be performed on a periodic basis, as provided by the contract between the department and the contractor and consistent with the EPA's and the equipment manufacturer's requirements.

C. To assure quality control, computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any circumstances which require a service representative to work on the equipment.

D. To assure test accuracy, equipment shall be maintained by the contractor according to demonstrated good engineering procedures.

E. Computer control of quality assurance checks shall be used whenever possible. The emissions inspection equipment shall transmit the quality control results to the department's contractor as prescribed in the contract between the department and the contractor.

(M) Vehicle Registration. After a subject vehicle has passed the emissions inspection according to either paragraphs (3)(H)11.]10. or (3)(J)2. of this rule, or received an **exemption or waiver** according to subsection (3)(K) of this rule, the contractor shall make electronically available to the MDOR on a real time basis the emissions [and any associated safety inspection compliance] records to enable vehicle registration and compliance enforcement. Paper VIRs may not be used for registration purposes, unless the contractor's real time vehicle inspection database is not providing inspection information to the MDOR on a real time basis. **In the event the MDOR does not have access to real time emissions inspection records, [T]the department shall expressly authorize, either in writing or by voice authorization, the use of the paper VIRs by the MDOR and/or**

its contract offices.

(N) Violations and Penalties.

1. Criminal penalties. Persons violating this rule shall be subject to the criminal penalties contained in **section 643.355, RSMo.**

2. Procedural penalties. Fraudulent emissions inspections or repairs are a violation of this rule. All emissions inspection station operators and emissions inspectors shall comply with the emissions inspection law, **sections 643.300–643.355, RSMo,** and this emissions inspection rule. All emissions inspections and repairs shall be conducted in accordance with this emissions inspection rule. The department shall cause unannounced tests of facilities that inspect, repair, service, or maintain motor vehicle emissions components and equipment, including submitting known high-emissions vehicles with known defects for inspection and repair without prior disclosure to the repair facility. Failure to comply with the emissions inspection law or the emissions inspection rule will subject the emissions inspection station manager and emissions inspector(s) to one (1) or more of the following procedural penalties:

A. Warning;

B. Lockouts as described in paragraph (3)(N)3. of this rule;

C. **[Fines] Penalties** as described in paragraph (3)(N)4. of this rule;

D. Suspension or revocation of emissions inspection station and/or inspector licenses as described in paragraph (3)(N)5. of this rule;

E. The department's refusal to accept repair receipts from an inspection station or repair facility for the purpose of issuing cost- or estimate-based waivers;

F. The department's revocation of */R/*recognized */R/*repair */T/*technician status if the repair technician is reported by the department to the attorney general for unlawful merchandising practices according to **subsection 643.330.4., RSMo;**

G. Reporting of unlawful merchandising practices as defined in Chapter 407, RSMo, by the department to the attorney general for appropriate legal proceedings under **sections 407.095 and 407.100, RSMo; and**

H. Department or MSHP requests for investigation and/or criminal and civil penalties by the U.S. Environmental Protection Agency.

3. Lockouts. The department or MSHP may electronically lock-out any emissions inspector, station, MRRT, or equipment if the department or MSHP identifies any irregularities within the emissions inspection database or any irregularities identified during either overt or covert audits. The lockout may precede warnings, license suspensions or revocations, or arrests. The state's contractor shall display a lockout warning on the monitor of any inspection equipment that is locked out by the department or MSHP. Lockouts shall prevent the performing of emissions inspections by the locked out party. Lockouts shall be cleared when the department or MSHP is satisfied that there is no longer a need for the lockout. Irregularities include, but are not limited to:

A. Failure to enter all required information properly and accurately as described in paragraph (3)(H)6. of this rule;

B. Uploading unclear pictures, uploading license plate pictures that do not match the license plate recorded on the VIR, or failing to upload pictures as described in paragraph (3)(H)7. of this rule;

[C. Disconnecting or misdirecting the view of the USB lane camera described in paragraph (3)(H)8. of this rule;]

[D.]C. Clean scanning as described in paragraph (3)(H)9.]8. of this rule [and defined in 10 CSR 10-6.020];

[E.]D. Performing more inspections than are physically possible for a given time duration;

[F.]E. Performing emissions inspections using another emissions inspector's fingerprint or password;

[G.]F. Conducting off-line inspections while the MDAS is not connected to the VID, unless the VID is off-line;

[H.]G. Conducting improper safety inspection of the air pollution control devices described in 11 CSR 50-2.280;

I./H. Bad faith or fraudulent repairs performed at the emissions inspection station or MRRT repair facility where—

(I) Vehicles repeatedly fail reinspections for the same reasons that they initially failed the OBD test;

(II) Vehicle repairs are not qualifying repairs [*as defined in 10 CSR 10-6.020*]; or

(III) Physical visual inspection of the repaired vehicles determines that the repairs were not performed as described on the submitted repair receipts;

J./I. Installing or assisting motorists with the installation of aftermarket catalytic converters that do not conform to EPA's AMCC enforcement policy, which is incorporated by reference in subparagraph (3)(K)2.L. of this rule;

K./J. Installing or assisting motorists with the installation of aftermarket components that disable or compromise the capabilities of the vehicle manufacturer's EPA-certified emissions control system;

L./K. Failure to maintain a positive balance of emissions inspection credit authorizations described in subparagraph (3)(D)3.B. of this rule;

M./L. Failure to upload the emissions inspection results to the VID immediately upon completion of the inspection per paragraph (3)(H)2. of this rule;

N./M. Failure to properly reinspect vehicles that failed an initial emissions test per paragraph (3)(J)1. of this rule;

O./N. Failure to pay the VID Service Fees according to the terms of the contract between the contractor and licensed emissions inspection stations as described in paragraph (3)(D)4. of this rule;

P./O. Failure to download and install the latest version of lane software to the MDAS; and

Q./P. Failure to maintain dedicated data transmission capabilities for the emissions inspection equipment to stay online with the contractor's VID.

4. *[Fines] Penalties.* If anyone is found to have committed an intentional procedural violation of this rule or that anyone's procedural violation involved gross negligence of this rule, they are subject to a fine, and such fine shall be not less than five (5) times the amount of the fee described in paragraph (3)(D)1. of this rule.

5. Emissions inspection license suspension and revocation. Before any emissions inspection station license or emissions inspector license is suspended or revoked by the department or the MSHP, the license holder will be notified, either in writing by certified mail or by personal service at the station's address of record, and given the opportunity to have an administrative hearing as provided by **subsection 643.320.3., RSMo.**

A. Suspension of emissions inspection station and/or inspector licenses shall be for a period no less than thirty (30) days and not more than one (1) year.

B. Revocation of emissions inspection station and/or inspector licenses shall be for a period no less than one (1) year and not more than three (3) years.

6. Civil penalties. Installing catalytic converters that do not conform to EPA's AMCC enforcement policy, which is incorporated by reference in subparagraph (3)(K)2.L. of this rule, or installing aftermarket components that in any way bypass or compromise the vehicle manufacturer's emissions control system on a vehicle operated in the ozone nonattainment area is a violation of this rule and the federal Clean Air Act section 203(a)(3) (42 U.S.C. 7522 (a)(3)) and may result in the penalties described in the federal Clean Air Act section 205(a) (42 U.S.C. 7524 (a)).

A. Any manufacturer or new vehicle dealer who violates section 203(a)(3)(A) (42 U.S.C. 7522 (a)(3)(A)) of the federal Clean Air Act shall be subject to a civil penalty of not more than thirty-seven thousand five hundred dollars (\$37,500), as promulgated on December 11, 2008, by 73 FR 75340 by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408, which is hereby incorporated by reference in this rule. This rule does not incorporate any subsequent amendments or additions to the *Federal Register*. Any viola-

tion of section 203(a)(3)(A) (42 U.S.C. 7522 (a)(3)(A)) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

B. Any person other than a manufacturer or new vehicle dealer who violates section 203(a)(3)(A) of the federal Clean Air Act (42 U.S.C. 7522 (a)(3)(A)) or any person who violates section 203(a)(3)(B) of the federal Clean Air Act (42 U.S.C. 7522 (a)(3)(B)) shall be subject to a civil penalty of not more than three thousand seven hundred fifty dollars (\$3,750), as promulgated on December 11, 2008 by 73 FR 75340, which is incorporated by reference in paragraph (3)(N)6.A. of this rule. Any violation of section 203(a)(3)(A) (42 U.S.C. 7522 (a)(3)(A)) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any violation of section 203(a)(3)(B) (42 U.S.C. 7522 (a)(3)(B)) shall constitute a separate offense with respect to each part or component.

(4) Reporting and Record Keeping.

(B) Failing Vehicles. The VIR for the failing vehicle shall include:

1. A vehicle description, including the license plate number at the time of inspection, VIN, vehicle make, vehicle model, vehicle model year, fuel type, GVWR range, odometer reading at the time of the vehicle's OBD test, county of registration, and the complete mailing address (street address, city, and zip code) of the vehicle owner;

2. The date and time of inspection;

3. The unique identification number of the licensed emissions inspector performing the test, the unique identification number and location of the inspection station, and the unique identification number of the inspection equipment;

4. The applicable inspection standards;

5. The passing and failing OBD test results according to 40 CFR 85.2223/, *which is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001*. **The provisions of 40 CFR 85.2223 as promulgated by the EPA on April 28, 2014, are hereby incorporated by reference in this rule, as published by the U.S. Government Publishing Office available at <https://bookstore.gpo.gov/> or for mail orders print and fill out order form online and mail to: U.S. Government Publishing Office, PO Box 979050, St. Louis, MO 63197-9000.** This rule does not incorporate any subsequent amendments or additions to 40 CFR 85.2223;

6. The results of the recall provisions check, if applicable, including the recall campaign;

7. A statement that the emissions inspection was performed in accordance with this state regulation;

8. The statement: "This inspection is mandated by your United States Congress";

9. A statement that the vehicle may be reinspected for free according to paragraph (3)(D)2. of this rule;

10. An off-line test indicator if the MDAS was not connected to the VID when the inspection was performed;

11. If the vehicle fails the DLC test described in subparagraph (5)(B)3.A. of this rule, the DLC failure reason as determined by the emissions inspector; and

12. If the vehicle fails the communications test described in subparagraph (5)(B)3.B. of this rule, the non-communications reason as determined by the MDAS.

(F) Cost- and Estimate-Based Waivers.

1. The cost- or estimate-based waiver VIR shall include:

A. A vehicle description, including the license plate number at the time of inspection, VIN, vehicle make, vehicle model, vehicle model year, fuel type, GVWR range, odometer reading at the time of the most recent emissions inspection, county of registration, and the complete mailing address (street address, city, and zip code) of the vehicle owner;

B. The amount of money accepted by the department toward

the cost- **or estimate**-based waiver and the date and time that the cost- **or estimate**-based waiver is issued;

C. The unique identification number of the department staff issuing the cost- **or estimate**-based waiver, the location of the department staff person issuing the cost- **or estimate**-based waiver, and the unique identification number of the inspection equipment used to issue the cost- **or estimate**-based waiver;

D. A statement that the results have been transmitted directly to the MDOR, and that the paper VIR may not be used for vehicle registration purposes; and

E. The statement: "This inspection is mandated by your United States Congress."

2. The front of the cost- **or estimate**-based waiver windshield sticker shall ~~/—/~~ **meet the same criteria as listed in paragraph (4)(A)2. of this rule.**

[A. Be affixed on the inside of the vehicle's front windshield in the lower left-hand corner by the motorist. A waiver indicator shall be clearly visible on the sticker. Previous windshield stickers affixed to the windshield shall be removed;

B. Be as fraud resistant as required by the contract between the department and the contractor;

C. Be valid until the next emissions inspection is required as defined in subsection (3)(B) of this rule; and

D. Contain the statement: "This inspection is mandated by your United States Congress."

(G) Reciprocity Waivers.

1. The reciprocity waiver VIR shall include:

A. A vehicle description, including the license plate number at the time of inspection, VIN, vehicle make, vehicle model, vehicle model year, fuel type, GVWR range, odometer reading at the time of the vehicle's passing the OBD test, county of registration, and the complete name and address of the vehicle owner;

B. The reciprocity waiver determination;

C. The date and time that the reciprocity waiver is issued;

D. The unique identification number of the department staff person issuing the reciprocity waiver, the location of the department staff person, and the unique identification number of the inspection equipment used to issue the reciprocity waiver;

E. The state where the vehicle passed its OBD test;

F. A statement that the results have been transmitted directly to the MDOR, and that the paper VIR may not be used for vehicle registration purposes; and

G. The statement: "This inspection is mandated by your United States Congress."

2. The reciprocity waiver windshield sticker shall ~~/—/~~ **meet the same criteria as listed in paragraph (4)(A)2. of this rule.**

[A. Be affixed on the inside of the vehicle's front windshield in the lower left-hand corner by the motorist. A waiver indicator shall be clearly visible on the sticker. Previous windshield stickers affixed to the windshield shall be removed;

B. Be as fraud resistant as required by the contract between the department and the contractor;

C. Be valid until the next emissions inspection is required as defined in subsection (3)(B) of this rule; and

D. Contain the statement: "This inspection is mandated by your United States Congress."

(H) Mileage-Based Emissions-Exempt Vehicles. The VIR for the mileage-based emissions-exempt vehicle shall include:

1. A vehicle description, including the license plate number at the time of inspection, VIN, vehicle make, vehicle model, vehicle model year, fuel type, GVWR range, odometer reading *[at the time of the most recent safety inspection]* by a motor vehicle service station registered with the Missouri Secretary of State or an odometer reading verified by the department, county of registration, and the complete mailing address (street address, city, and zip code) of the vehicle owner;

2. The date that the exemption is applied for and/or the date and time that the exemption was issued;

3. The unique identification number of the licensed emissions inspector performing the safety inspection, the unique identification number and location of the inspection station, and the unique identification number of the inspection equipment;

4. The type of mileage exemption, as described in paragraphs (1)(B)7. and (1)(B)8. of this rule;

5. A statement that the results have been transmitted directly to the MDOR, and that the paper VIR may not be used for vehicle registration purposes; and

6. The statement: "This inspection is mandated by your United States Congress."

(L) Beginning January 1, 2008, using a method provided by the contractor, federal, state, and local government agencies shall submit a list of vehicles, by VIN, that are operated by the government agencies and that are required to be inspected during each calendar year. Submittals are due by February 1 of each calendar year. If the first is not a business day or is a state holiday, the list shall be submitted to the contractor by the following business day. The contractor will audit these submittals by comparing the list of submitted vehicles to the database of inspected vehicles to track *[government fleet]* public entity compliance. The contractor shall provide the department with the results of this audit by April 1 of each calendar year.

(5) Test Methods.

(A) To the extent possible, an OBD test *[, as defined in 10 CSR 10-6.020]* and the contract *[,]* shall be performed on all 1996 and later model year light-duty vehicles and light-duty trucks powered by gasoline and all 1997 and later model year light-duty vehicles and light-duty trucks powered by diesel.

(B) The OBD test shall follow the procedures described in 40 CFR 85.2222 *[, which is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001]*. **The provisions of 40 CFR 85.2222 as promulgated by the EPA on April 28, 2014, are hereby incorporated by reference in this rule, as published by the U.S. Government Publishing Office available at <https://bookstore.gpo.gov/> or for mail orders print and fill out order form online and mail to: U.S. Government Publishing Office, PO Box 979050, St. Louis, MO 63197-9000.** This rule does not incorporate any subsequent amendments or additions to 40 CFR 85.2222.

1. If the subject vehicle cannot be tested with the OBD test due to manufacturer design, then the subject vehicle shall be tested with only a bulb check test described in paragraph (5)(B)2. of this rule.

2. Bulb check test.

A. Vehicles will fail the bulb check portion of the OBD test if the MIL is not illuminated while the key is in the on position and the engine is off (KOEO).

B. Vehicles will fail the bulb check portion of the OBD test if the MIL is illuminated while the key is in the on position and the engine is running (KOER).

C. Vehicles with keyless ignitions shall be subject to a bulb check test.

D. Vehicles that fail the KOEO bulb check portion of the OBD test described in subparagraph (5)(B)2.A. of this rule shall fail the OBD test. Repairs made to correct bulb check failures shall not be eligible for cost-based or estimate-based waivers.

3. Data link connector and communications tests.

A. Data link connector test. Vehicles will fail the data link connector portion of the OBD test if the DLC is inaccessible due to manufacturer design, tampered with, blocked, or not located where the manufacturer located the DLC. The emissions inspector shall determine and record the reason for this failure in the MDAS for printing on the emissions VIR.

B. Communications test. Vehicles will fail the communications portion of the OBD test if the vehicle does not maintain sufficient voltage to the DLC during OBD communication or transmit the necessary information to the inspection equipment after three (3) thirty- (30-)/[-] second attempts.

(I) If the vehicle does not communicate after two (2) thirty- (30-)/[-] second communication attempts, inspectors shall verify [that a valid communications failure exists by] **the communication failure according to the lane software procedures** using the MDAS OBD verification tool [to verify the communication failure according to the lane software procedures].

(II) If the OBD verification tool determines that the equipment is not capable of communicating with the vehicle, the MDAS shall automatically abort the OBD test and generate the emissions VIR described in subsection (4)(K) of this rule.

(III) If the OBD verification tool determines that the equipment is capable of communicating with the vehicle, inspectors shall make one (1) additional thirty- (30-)/[-] second communication attempt. If the vehicle does not communicate with the MDAS, the MDAS shall determine and record the reason for this failure and print this reason on the emissions VIR.

C. Vehicles that fail the DLC or communications portion of the OBD test shall fail the OBD test.

D. Repairs made to correct failures for DLCs that have been tampered with, rendered inoperative, or removed, or failures for OBD communications as described in subparagraphs (5)(B)3.A. and (5)(B)3.B. of this rule, shall not be eligible for cost-based or estimate-based waivers.

4. Readiness monitor test.

A. 1996–2000 model year gasoline-powered vehicles may pass the readiness monitor portion of the OBD test if they have no more than two (2) unset non-continuous readiness monitors.

B. 2001 and newer model year gasoline-powered vehicles may pass the readiness monitor portion of the test if they have no more than one (1) unset non-continuous readiness monitor.

C. Gasoline-powered vehicles that fail the OBD test with a catalytic converter DTC (P0420–P0439) present must have the catalyst monitor reset to pass the readiness monitor portion of the OBD retest.

D. Gasoline-powered vehicles will fail the readiness monitor portion of the OBD test if the following non-continuous monitors are not supported:

- (I) Oxygen sensor; and
- (II) Catalyst.

E. Vehicles that are on the readiness exemption table maintained by the contractor and authorized by the department shall be exempt from the readiness monitor portion of the OBD test.

F. Vehicles that fail the readiness monitor portion of the OBD test shall fail the OBD test. Vehicles must pass the readiness monitor portion of the OBD test to be eligible for a cost-based or estimate-based waiver.

G. Repairs made to correct failures for readiness monitor tampering caused by the installation of aftermarket components shall not be eligible for cost-based or estimate-based waivers.

5. Diagnostic trouble code test.

A. Vehicles will fail the diagnostic trouble code test if the OBD system has stored at least one (1) mature (non-pending, non-historic) DTC that commands the MIL to be illuminated.

B. Vehicles will fail the diagnostic trouble code test if the vehicle commands the MIL to be illuminated but the OBD system has no mature (non-pending, non-historic) DTCs stored in the system.

C. The contractor shall ensure that their inspection equipment's request for DTCs does not cause the MIL to be illuminated.

D. Vehicles that fail the DTC portion of the OBD test shall fail the OBD test.

Original rule filed Jan. 16, 2007, effective Aug. 30, 2007. Amended: Filed Oct. 1, 2008, effective May 30, 2009. Amended: Filed May 15, 2012, effective Dec. 30, 2012. Amended: Filed Sept. 15, 2021.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions twenty-eight thousand two hundred forty-three dollars (\$28,243) in FY 2022. For the years after FY 2022, the total annual aggregate cost is two hundred eighty-two thousand four hundred thirty dollars (\$282,430) for the life of the rule. Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed amendment will save private entities thirty thousand forty-four dollars (\$30,044) in FY 2022. For the years after FY 2022, the total annual aggregate savings is three hundred thousand four hundred forty dollars (\$300,440) for the life of the rule. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., December 2, 2021. The public hearing will be held at the Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri, and online with live video conferencing during the Missouri Air Conservation Commission meeting. Meeting participants can join the video meeting by signing into Webex at www.webex.com and joining the meeting using the meeting number (access code) 1334037216, and password MACC. For assistance joining the meeting, call the Missouri Department of Natural Resources' Air Pollution Control Program at 573-751-4817 or 800-361-4827. A recording of the public hearing meeting will be available at <https://dnr.mo.gov/env/apcp/macc.htm>. Opportunity to be sworn in by the court reporter in person or over video conference to give testimony at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a statement of their views until 5:00 p.m., December 9, 2021. Send online comments via the proposed rules web page <https://apps5.mo.gov/proposed-rules/welcome.action#OPEN>, email comments to apcprule-spn@dnr.mo.gov, or mail written comments to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	<i>10 CSR 10-5.381 Onboard Diagnostics Motor Vehicle Emissions Inspection</i>
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Yearly Cost of Compliance	Estimated Cost of Compliance in the Aggregate (10 years)
Department of Natural Resources – portion of \$24.00 inspection fee	(\$25,543) ¹	(\$255,430)
Department of Natural Resources – annual \$100 licensing fee ⁴	(\$4,500) ¹	(\$45,000)
YEARLY TOTAL FEES LOST:¹	(\$30,043)	
AGGREGATE TOTAL FEES LOST:		(\$300,430)
Government vehicle fleet – 75 vehicles	\$1,800 ²	\$18,000
YEARLY TOTAL SAVINGS:²	\$1,800	
AGGREGATE TOTAL SAVINGS:		\$18,000
YEARLY NET CHANGE:³	(\$28,243)	
AGGREGATE NET CHANGE:		(\$282,430)

¹Value listed are yearly fees lost to the classification type because of removing Gateway Vehicle Inspection Program (GVIP) testing from Franklin County from the rule.

²Value listed is a yearly savings to the classification type because of removing GVIP testing from Franklin County from the rule.

³The net change from subtracting the cost of government vehicle-emissions tests from the fees lost by those that administer the emission tests.

⁴From 10 CSR 10-5.381, subparagraph (3)(F)4.B. A vehicle-emissions inspection-station license shall be valid for twelve (12) months from the date of issuance. A completed license application shall be accompanied by a check or money order for one hundred dollars (\$100) made payable to the MDOR and submitted to either the Missouri Department of Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP.

III. Worksheet

Licensed Emissions Stations revenue (Franklin County)
 21,647 vehicles per year x \$24.00 (inspection fee) = \$519,528
 21,647 vehicles per year x \$21.50 (stays with station) = \$465,410
 21,647 vehicles per year x \$1.32 (goes to WEP contractor) = \$28,574
 31,647 vehicles per year x \$1.18 (goes to DNR for GVIP staff) = \$25,543

Emission stations annual licensing fee to operate (Franklin County)
 45 stations x \$100 (annual fee) = \$4,500

Government vehicle fleet savings by not having to get inspection (Franklin County)

75 vehicles x \$24.00 (inspection fee) = \$1,800

IV. Assumptions

1. The statutory \$24 emissions testing fee cap remains constant.
2. The number of entities and the number of vehicles are based on GVIP records collected by the Department of Natural Resources (the Department). The number of governmental agencies and vehicles remains constant for the duration of the rule. The government vehicles fleet is an estimate based on the number of vehicles reported to EPA in the Department's 2016 annual report on the Inspection and Maintenance Program per 40 CFR 51.366. The estimate of government vehicles in the report is approximately 3,000 for the entire GVIP. Franklin County's portion is calculated at five percent (5%) of 3,000 and then divided by two due to the odd/even year testing requirement $[(3,000)(0.05)/2 = 75]$.
3. Vehicles typically are inspected every two years.
4. All future costs are estimated using 2020 actual figures.
5. Franklin County will be exempt from 10 CSR 10-5.381 effective July 1, 2022.
6. The estimated lifetime of this rule is ten years.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 10-5.381 Onboard Diagnostics Motor Vehicle Emissions Inspection</i>
Type of Rulemaking	Proposed 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 action:	Classification by types of the business entities which would likely be affected:	Yearly estimate as to the cost of compliance with the proposed rule action by the affected entities:	Estimate in the aggregate as to the cost of compliance with the proposed rule action by the affected entities (10 years):
21,647	Franklin County – privately owned vehicles 1996/1997 to 2020 gasoline and diesel	\$519,528 ¹	\$5,195,280
520	2.4% failure rate for vehicle inspections – typical repair cost	\$182,000 ¹	\$1,820,000
45	Licensed Emission Stations Annual \$100 Licensing Fee ⁴ – Franklin county	\$4,500 ¹	\$45,000
YEARLY TOTAL SAVINGS:¹		\$706,028	
AGGREGATE TOTAL SAVINGS:			\$7,060,280
45	Licensed Emissions Stations – revenue decrease (Franklin County)	(\$465,410) ²	(\$4,654,100)
5	Repair stations located in Franklin County	(\$182,000) ²	(\$1,820,000)
1	Worldwide Environmental Products Inc. (WEP) – contractor	(\$28,574) ²	(\$285,740)
YEARLY TOTAL REVENUE LOST:²		(\$675,984)	
AGGREGATE TOTAL REVENUE LOST:			(\$6,759,840)
YEARLY NET CHANGE:³		\$30,044	
AGGREGATE NET CHANGE:			\$300,440

¹Value listed is a yearly savings to the classification type because of removing Gateway Vehicle Inspection Program (GVIP) testing from Franklin County from the rule.

²Value listed is yearly revenue lost to the classification type because of removing GVIP testing from Franklin County from the rule.

³The net change from subtracting the revenue lost by those that provide the emission tests from those that pay for the emissions tests.

⁴From 10 CSR 10-5.381, subparagraph (3)(F)4.B. A vehicle-emissions inspection-station license shall be valid for twelve (12) months from the date of issuance. A completed emissions inspection station license application shall be accompanied by a check or money order for one hundred dollars (\$100) made payable to the MDOR and submitted to either the Missouri Department of Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP.

III. Worksheet

Even/odd year Franklin County vehicles X \$ inspection fee (inspection done typically every other year based on model year)

$$21,647 \times \$24.00 = \$519,528$$

(Yearly number of vehicles X 2.4% failure rate for initial vehicle emission inspection) X \$ typical repair cost
(21,647 x 0.024 %) = 520 vehicles that fail initial emission inspection

$$520 \times \$350.00 = \$182,000$$

Licensed Emissions Stations yearly emission inspection revenue (Franklin County)

$$21,647 \text{ vehicles} \times \$24.00 \text{ (inspection fee)} = \$519,528$$

$$21,647 \text{ vehicles} \times \$21.50 \text{ (stays with station)} = \$465,410$$

$$21,647 \text{ vehicles} \times \$1.32 \text{ (goes to WEP-- contractor)} = \$28,574$$

$$21,647 \text{ vehicles} \times \$1.18 \text{ (goes to DNR for GVIP staff)} = \$25,543$$

Licensed Emissions Stations (Franklin County) X \$ yearly licensing fee

$$45 \times \$100.00 = \$4,500$$

IV. Assumptions

1. The statutory \$24 emissions testing fee cap remains constant.
2. The number of entities and the number of vehicles are based on GVIP records collected by the Department of Natural Resources (the Department).
3. The failure rate for vehicle inspections and typical repair costs are based upon data collected by the Department.
4. Vehicles are inspected typically every two years.
5. All future costs are estimated using 2020 actual figures.
6. Franklin County will be exempt from 10 CSR 10-5.381 effective July 1, 2022.
7. The estimated lifetime of this rule is ten years.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 1—Organization

PROPOSED AMENDMENT

13 CSR 70-1.010 Organization and Description. The division is amending the purpose and sections (1) and (2).

PURPOSE: This amendment corrects outdated language and updates the function and general organization of the MO HealthNet Division to comply with the requirements of section 536.023, RSMo.

PURPOSE: This rule states the function and general organization of the [Division of Medical Services] MO HealthNet Division to comply with the requirements of section 536.023, RSMo.

(1) General Authority and Purpose.

(A) The [Missouri Division of Medical Services] **MO HealthNet Division (MHD)** was created within the Department of Social Services by executive order of the governor on February 27, 1985. The Missouri General Assembly granted statutory authority to the division by adding section 208.201, RSMo, effective September 28, 1987. [The Division of Medical Services] **MHD** operates under the provisions of Chapter 208, RSMo, and Title XIX of the federal Social Security Act.

(B) [The Division of Medical Services] **MHD** is responsible for the administration of the medical assistance program in Missouri except for the determination of [recipient] **participant** eligibility for the program, which shall be the responsibility of the Family Support Division.

(2) Organization and Operations. The [Division of Medical Services] **MHD** is located in Jefferson City at 615 Howerton Court. [Contact] **MHD** can be [made] **contacted** by writing to the division at PO Box 6500, Jefferson City, MO 65102-6500. [The Division of Medical Services] **MHD** is divided into [six (6)] **five (5)** major organizational components—administration and [five (5)] **four (4)** sections—[management services,] finance, information services, [program management] **operations**, and [pharmacy and clinical services] **clinical review, development and performance**.

(A) **Administration.** The Director's Office provides the overall guidance and direction for the division and is responsible for establishing the agency's goals, objectives, policies, and procedures. The Director's Office is also responsible for providing legislative guidance on Medicaid and health care related issues, overseeing the distribution of federal and state resources, planning, analyzing and evaluating the provision of Medicaid services for eligible Missourians, and final review of the budget. **In Missouri, "MO HealthNet" can be described as "Medicaid," "Title XIX," or "medical assistance."**

[1. Office Services. This unit is responsible for processing invoices for all expenses incurred by the division and preparing purchase requests for all administrative supplies, equipment, and services. The unit is responsible for the internal allocation and financial monitoring of all of the division's operating expenses including all professional service consultant contracts. The unit oversees the division's reception area, processes and distributes all incoming and outgoing mail, and is responsible for the division's copy center.

(B) The Management Services section is divided into the following units:

1. **Medicare Unit.** This unit is responsible for ensuring that Medicare funds are utilized whenever possible in providing medical services to Medicaid clients. This is accomplished by the identification of those recipients who are, or who might be, Medicare eligible, the recovery of funds paid

as Medicaid services for these clients, and the administration of Medicare Part B premiums.

2. **Third Party Liability (TPL) Unit.** This unit ensures that all potential, legally liable payers of medical services pay up to their liability to offset Medicaid expenditures. This is accomplished through cost avoidance and post-payment recovery (pay-and-chase or cash recovery).

A. **Cost avoidance** occurs when it is known that a third-party payer is responsible for payment prior to Medicaid payment. The TPL unit verifies commercial health insurance that is received from multiple sources. The insurance data is entered into the recipient eligibility file, which is also connected to the Medicaid claims payment processing system, and serves as a source of editing to determine claim payment or denial. Cost avoidance also occurs through the Health Insurance Premium Payment (HIPPP) program. If a recipient has access to employer-sponsored health insurance, Medicaid will purchase the commercial health insurance if it is determined to be cost effective.

B. **Post-payment recovery** occurs when it is determined that a third party payer is potentially responsible for payment when a recipient receives medical services. Data matches and the Medicaid claims processing system determine potential recovery sources. TPL staff are responsible for the following recovery activities: burial plans, personal funds, estates, and trauma (includes personal injury, product liability, malpractice, traffic accidents, worker's compensation, and wrongful death). A contractor is primarily responsible for recovery of commercial health insurance payments.

C. These activities ensure that Medicaid funds are used only after all other potential resources available to pay have been exhausted.

(C) **Finance.** The Finance section is divided into the following units:

1. **Managed Care Rate Setting.** This unit is responsible for developing the capitation rates for the Medicaid Managed Care Program, the Nonemergency Medical Transportation Program, and the Program of All-Inclusive Care for the Elderly (PACE). The unit works closely with the contracted actuary in evaluating Medicaid fee-for-service expenditures to determine the financial impact of implementing policy alternatives and evaluating the cost effectiveness of Managed Care and PACE.

2. **Institutional Reimbursement Unit.** This unit is divided into the following groups:

A. **Outpatient and Federally Qualified Health Center (FQHC)/Rural Health Clinic (RHC) Reimbursements.** This group is responsible for audit of the FQHC and independent RHC cost reports, the calculation of final settlements for Outpatient Hospitals, FQHCs and RHCs, the calculation of MC+ interim payment adjustments for FQHCs and RHCs, the calculation of outlier payments for hospitals and the calculation of the prospective outpatient payment rates for outpatient hospital services. The group is also responsible for the administration of state regulations, state plan amendments, and responses to inquiries regarding reimbursement issues.

B. **Nursing Home Policy and Reimbursement.** This group is responsible for determining and carrying out the policy and reimbursement functions of the Medicaid program for nursing facilities. This includes auditing rate setting cost reports and determining reimbursement rates, auditing annual cost reports, analyzing nursing facility data, determining and establishing reimbursement methodologies, determining the Nursing Facility Reimbursement Allowance, and representing the division in litigation relating to nursing facility issues. The group is also responsible for the administration of state regulations, state plan amendments, and responses

to inquiries regarding nursing facility reimbursement issues.

C. *Hospital Policy and Reimbursement.* This group is responsible for determining and carrying out the policy and reimbursement function of the Medicaid program for hospitals. This includes the day-to-day activities of hospital reimbursement such as auditing hospital cost reports, determining hospital per diem rates, determining hospital disproportionate share payments, determining Direct Medicaid add-on payments and other special payments, determining Federal Reimbursement Allowance (FRA) provider tax, providing litigation support, conducting FRA program tracking, and hospital rate adjustment requests. The group is also responsible for the administration of state regulations, state plan amendments, and responses to inquiries regarding hospital reimbursement issues.

3. *Budget.* This unit is responsible for developing and tracking the division's annual budget request and subsequent appropriations. The unit is responsible for preparation of quarterly estimates and expenditure reports required by the Centers for Medicare and Medicaid Services (CMS). During the legislative session, the unit is also responsible for reviewing all bills affecting the division, preparing fiscal notes, and attending hearings as assigned.

4. *Financial Services.* This unit is responsible for managing the financial procedures and reporting of the Medicaid claims processing system, creating expenditure reports for management and budget purposes, coordinating the production and mailing of provider remittance advices, checks and automatic deposits, and reviewing and approving provider 1099 information. The unit is also responsible for processing adjustments to Medicaid claims, receiving and depositing payments, and managing provider account receivables.

5. *Premium Collections.* This unit is responsible for managing the lock box, automatic withdrawals, and cash deposits for the State Children's Health Insurance Program premium cases and Spenddown pay-in cases. The unit manages the financial procedures and reporting for these programs in the state's computer system and in the Medicaid Management Information System (MMIS) to ensure the collection accurately establishes the Medicaid eligibility record and to ensure that client notices are accurate and timely.

6. *Revenue Maximization.* This unit is responsible for the identification and collection of revenue sources to displace general revenue. The unit is responsible for the collection of the Federal Reimbursement Allowance and the Nursing Facility Reimbursement Allowance provider taxes and reconciliation of the fund balances. The unit computes the hospital and nursing facility Upper Payment Limit used to generate additional funds through the Intergovernmental Transfer (IGT) programs. The unit is also the primary source for bill review and fiscal note analysis related to institutional reimbursement.

(D) *The Information Services section is divided into the following units:*

1. *Payment Systems.* This unit is responsible for coordinating and implementing the more advanced modifications to the Medicaid Management Information System (MMIS). The implementation of the requirements of the Health Insurance Portability and Accountability Act (HIPAA) is an example of an advanced modification to the MMIS. The unit ensures that a structured approach is used so as not to disrupt any of the automated Medicaid claims processing and the information retrieval system currently in place.

2. *Medicaid Management Information System.* This unit is responsible for oversight and monitoring of the fiscal agent (Infocrossing Healthcare Services, Inc.) contract and acts as liaison between the division and Infocrossing. The unit is responsible for maintaining the claims processing sys-

tem by reviewing claims payment issues, establishing corrective action plans and designating specific tasks to Infocrossing. This unit is also responsible for processing ad hoc requests from other units within the division.

3. *Provider Enrollment.* This unit is responsible for enrolling and disenrolling providers. The unit maintains all updates and changes to the provider enrollment files and processes direct deposit applications. The unit responds to provider inquiries and notifies providers when their application is processed and when a provider number is issued. The unit is also responsible for entering rate changes for providers and developing a system whereby much of the provider enrollment process can be completed electronically.

4. *Program Integrity Unit.* This unit is primarily responsible for monitoring statewide utilization and program compliance of Medicaid fee-for-service providers and recipients. The unit conducts post-payment audits/reviews and researches complaints. Following an audit/review, the unit may, among other actions: issue educational letters; recover improperly paid funds; refer cases of suspected fraudulent activities to the Attorney General's Medicaid Fraud Control Unit or other appropriate licensing bodies; request a corrective action plan; and/or recommend internal policy changes to improve and/or clarify program policy. Other responsibilities of the unit include, but are not limited to, the Recipient Lock-In Program and monitoring the Medstat Fraud and Abuse Detection System.

(E) *The Program Management section is divided into the following units:*

1. *Managed Care.* This unit is responsible for administration of the MC+ Managed Care Program which operates under a 1915(b) Freedom of Choice Waiver. This program provides Medicaid Managed Care services to recipients in four (4) broad groups: Medical Assistance for Families, Medicaid for Children, Medicaid for Pregnant Women, and children in state custody. This unit is also responsible for developing new policies and procedures for the MC+ Managed Care Program. This unit is divided into the following groups:

A. *Managed Care Contract Compliance.* This group is responsible for monitoring contracts. Staff monitor the Managed Care contracts to ensure providers are adhering to the terms and conditions of their agreements. The group ensures that the Managed Care Organizations (MCOs) adhere to service access guidelines, verify provider networks, and handle complaints against MCOs. The group also works with the Department of Insurance to assure MCOs are in compliance with state insurance rules and regulations.

B. *Quality Assessment.* This group performs research and data analysis to address monitoring and oversight requirements established by the Centers for Medicare and Medicaid Services. The group utilizes a collaborative process to develop and implement strategies to improve the health status of Medicaid recipients. This process entails coordination with advisory groups, other state agencies, managed care organizations, providers, and the public. The group is also responsible for researching, assessing, evaluating, and reporting information regarding the quality of care provided to MC+ Managed Care members and Fee-For-Service recipients.

2. *Program Relations.* The unit is divided into the following groups:

A. *Provider Education.* This group is responsible for training and educating providers on the division's policies and procedures. The group also assists providers with the submission of Medicaid claims through provider workshops and individual provider training sessions.

B. *Provider Communication.* This group is responsible

for responding to provider inquiries and concerns. Much of this communication is handled via a provider hotline. Written responses to provider inquiries are also handled by this group. The group interprets and explains difficult and complex Medicaid rules, regulations, policies, and procedures to providers.

C. *Recipient Services.* This group aids the fiscal agent's Recipient Services Unit by acting as liaison with other groups within the division and handling more complex inquiries from recipients. The division maintains a toll-free hotline for recipients and is responsible for the Medicaid Recipient Reimbursement program and handles all prior authorizations of out-of-state services.

D. *Premium Collections.* This group is responsible for answering phones and correspondence regarding the State Children's Health Insurance Program premium cases and Spenddown pay-in cases. Staff explain program rules and answer questions regarding receipt of payments.

3. *Fee-For-Service Program.* This unit is responsible for research, analysis, development, implementation, and monitoring various benefit programs within the division, including the prior authorization process for approval of medically necessary items and services which are not typically reimbursed by Medicaid. Staff in this unit also interact with advisory committees to obtain guidance in complicated health care issues, coordinate and assist in the development of training packages, write and revise program manuals and bulletins pertaining to program policy, procedure and operations, and monitor and evaluate program effectiveness by tracking utilization patterns.

A. *Program Development.* This group is responsible for researching state and federal regulations, Centers for Medicare and Medicaid Services directives and rulings, and reviewing Medicaid programs implemented by other states. The group analyzes data and legislation, coordinates special projects, and works with other state agencies and groups within the division to implement new Medicaid programs including the development of new manuals and procedures. Staff in this group also aid in the implementation of major changes to existing Medicaid programs.

(F) The Pharmacy and Clinical Services section is divided into the following units:

1. *Pharmacy Exceptions.* This unit operates a toll-free hotline for providers to request overrides on drug products with restricted access due to clinical or fiscal edits and prior authorization. The hotline staff in this unit operate an Internet-based system to process requests for drug products which have been denied through the usual claims processing system. This unit is also responsible for responding to requests for certain prior authorized services, such as insulin pumps and supplies, as well as those through the Exception Process for essential medical items or services which are not typically reimbursed through the Medicaid program.

2. *Pharmacy Enhancement (Fiscal).* This unit is responsible for performing fiscal analyses on proposed cost-containment initiatives, maintaining existing reporting systems, overseeing payments for contracted services, and tracking fiscal data for the program. It assists in the preparation of fiscal notes, budget preparation, and bill reviews on pharmacy related issues. In addition, the unit is responsible for administering the pharmacy tax program and nursing facility returns. This unit is also responsible for the collection of rebates from pharmaceutical manufacturers contracted with Centers for Medicare and Medicaid Services to participate in the federal Drug Rebate Program, and for collection of supplemental rebates from manufacturers participating in the state's Supplemental Rebate Program. Manufacturers are invoiced quarterly by the unit for products dispensed during

the period. As payments are received, disputes are identified and the unit researches any product disputed by the manufacturer. Disputes are resolved with the manufacturer to collect the greatest rebate possible. This unit is also responsible for collecting rebates for the Missouri Rx Program. The federal and state rebate programs operate in much the same way.

3. *Pharmacy Enhancement (Clinical).* This unit is responsible for the implementation and maintenance of clinical pharmacy cost saving initiatives. This unit is responsible for the review, implementation and maintenance of the Preferred Drug List (PDL). It also oversees the prior authorization of all new drug products and conducts drug pricing research. All clinical drug information and pharmacoeconomic evidence-based reviews are organized for presentation to the Drug Prior Authorization Committee and the Drug Use Review Board (DUR). Online point of sale clinical edits are established to assure cost effective and appropriate drug usage, and override requests for medically necessary over-the-counter drugs or non-reference diabetic supplies are reviewed. This unit provides manual pricing for certain exceptions claims, assists providers with exceptions claim inquiries, and updates spreadsheets for reference by the Exceptions Unit help desk. Provider education is provided for the Medicaid pharmacy program as well as for Medicare D and Missouri Rx claims inquiries. Emergency overrides are reviewed for patients unable to access benefits through Medicare D. This unit updates the listing of drug products on the Maximum Acquisition Cost (MAC)/Federal Upper Limit (FUL) lists. In addition, pharmacy prior authorizations are reviewed for recipients enrolled in Hospice to determine whether the medication is related to the terminal illness. Internal clinical management and coordination of care for Fee-For-Service patients is performed, including identification and monitoring of drug regimens outside normal parameters, and working with patients' healthcare providers to reach desired outcomes.

4. *Program Operations and Policy.* This unit is responsible for policy implementation, program communications, oversight of contracts with outside vendors for pharmacy and certain clinical program enhancement activities, and implementation of those program enhancements. Program and policy documents such as state plan amendments and state regulations are drafted to reflect program changes. Provider bulletins and announcements are posted on the Internet and program manuals are updated. This unit researches and gathers information for program development, and provides procedural support for systems changes and claims processing issues such as behavioral health prior authorization, medical procedures and equipment prior authorization, and durable medical equipment special pricing and rebates. This unit serves as the liaison with MMIS and other units within the division to facilitate program enhancement activities. Special retrospective audits are conducted to detect incorrect billings, make appropriate claims adjustments, and provide billing education. In addition, the unit provides administrative support for the Drug Use Review (DUR) Board and Regional DUR Committee, as well as assistance with enrolling providers in the Disease Management Program.

5. *Missouri Rx Plan.* This unit is responsible for the ongoing operations of the Missouri Rx Plan, which provides certain pharmaceutical benefits to certain elderly and disabled residents of the state, facilitates coordination of benefits between the Missouri Rx Plan and the federal Medicare D drug benefit program established by the Medicare Modernization Act of 2003, and enrolls such individuals into the plan. This unit also facilitates the Missouri Rx Plan

Advisory Commission, with members including the lieutenant governor and members of the legislature, which is tasked with providing advice on guidelines, policies, and procedures necessary to establish the Missouri Rx Plan, educating Missouri residents on quality prescription drug programs and cost-containment strategies in medication therapy; and assisting Missouri residents in enrolling or accessing prescription drug assistance programs for which they are eligible. As a component of these duties, this unit oversees the production, maintenance, and regular updates of an Internet listing of prescription drug cost information for easy access by all members of the public.

6. *Psychology Program. This unit is responsible for the implementation and maintenance of the Psychology/Counseling Program. This unit oversees the prior authorization of psychological services as required for enrolled populations. Clinical guidelines are reviewed by the Medicaid Non-Pharmaceutical Mental Health Services Prior Authorization Advisory Committee for clinical recommendations and input. The unit is also responsible for policy implementation, program communications, and consultation with provider education activities regarding psychological services. Consultation with the Program Operations and Policy Unit insures policy documents such as bulletins, state plan amendments and state regulations are drafted to reflect program changes. Quality Improvement reviews of provider practice patterns and patient utilization are conducted to insure best practice approaches are implemented. Clinical oversight and consultation based upon evidence based approaches is offered to other state agencies and units, as well as professional boards and organizations.*

(B) **Finance.** The Finance section is divided into the following units:

1. **Budget, Financial Services, and Rate Development.**

A. **Budget.** This unit is responsible for developing and tracking the division's annual budget request and subsequent appropriations. The unit is responsible for preparation of quarterly estimates and expenditure reports required by the Centers for Medicare and Medicaid Services (CMS). During the legislative session, the unit is also responsible for reviewing all bills affecting the division, preparing fiscal notes, and attending hearings as assigned.

B. **Financial Services.** This unit is responsible for managing the financial procedures and reporting of the Medicaid claims processing system, creating expenditure reports for management and budget purposes, coordinating the production and mailing of provider remittance advices, checks and automatic deposits, and reviewing and approving provider 1099 information. The unit is also responsible for processing adjustments to Medicaid claims, receiving and depositing payments, and managing provider account receivables.

C. **Rate Development.** This unit is responsible for developing the capitation rates for the Medicaid Managed Care Program, the Nonemergency Medical Transportation Program, and the Program of All Inclusive Care for the Elderly (PACE). The group works closely with the contracted actuary in evaluating Medicaid fee-for-service expenditures to determine the financial impact of implementing policy alternatives and evaluating the cost effectiveness of Managed Care and PACE.

2. **Institutional Reimbursement.** This unit is divided into the following groups:

A. **Federally Qualified Health Center (FQHC) and Independent Rural Health Clinic (IRHC) Reimbursements.** This group is responsible for the audit of the FQHC and IRHC cost reports including the calculation of final settlements relating to those cost reports and the review and processing of Managed Care Supplemental Interim Payments for FQHCs and IRHCs. The group is also responsible for the administration of state reg-

ulations, state plan amendments, and responses to inquiries regarding reimbursement issues relative to these programs; and

B. **Nursing Home Policy and Reimbursement.** This group is responsible for determining and carrying out the policy and reimbursement functions of the MO HealthNet nursing facility program and the Nursing Facility Reimbursement Allowance (NFRA) provider tax program. The nursing facility duties include overseeing audits of nursing facility cost reports, determining reimbursement rates, analyzing nursing facility data, determining and establishing reimbursement methodologies, and overseeing the preparation of the nursing facility Upper Payment Limit (UPL) demonstration. The NFRA duties include determining and collecting the NFRA, preparing various NFRA reports, and reconciling the NFRA fund balance. The group is also responsible for the review and analysis of proposed bills and preparation of fiscal notes, the administration of state regulations and state plan amendments, representing the division in litigation, and responding to inquiries regarding nursing facility reimbursement and NFRA issues. The group oversees and monitors contractors to ensure nursing facility cost report audits and the nursing facility UPL Demonstration are completed in a timely manner and in accordance with state and federal rules. The group works closely with the contractors in developing audit plans, evaluating nursing facility reimbursement issues, collecting and preparing data for the UPL Demonstration, and implementing any changes to these processes.

3. **Hospital Reimbursement Unit.** This unit is divided into the following groups:

A. **Hospital Policy and Reimbursement.** This group is responsible for determining and carrying out the policy and reimbursement function of the MO HealthNet program for hospitals. This includes the day-to-day activities of hospital reimbursement such as auditing hospital cost reports, calculating hospital per diem rates, calculating hospital payments (i.e., Direct Medicaid, Disproportionate Share Hospital (DSH), Graduate Medical Education (GME) payments), calculating Federal Reimbursement Allowance (FRA) provider tax, calculating final settlements or Outpatient Settlements, providing litigation support, conducting FRA program tracking, and handling hospital rate adjustment requests. The group is also responsible for the administration of state regulations, state plan amendments, and responses to inquiries regarding hospital reimbursement issues;

B. **Children's Outliers and Provider Based Rural Health Clinic (PBRHC) Reimbursements and Settlements.** This group is responsible for calculating children's outlier payments for hospitals, updating the PBRHC reimbursement payment rate in electronic Medicaid Management Information System (eMMIS), calculating the final settlements for PBRHCs, calculating the MC+ interim payment adjustments for PBRHCs. The group is also responsible for the administration of state regulations, state plan amendments, and responses to inquiries regarding reimbursement and settlement issues; and

C. **Premium Collections.** This group is responsible for managing the lock box, automatic withdrawals, and cash deposits for the State Children's Health Insurance Program premium cases and Spenddown pay-in cases. The group manages the financial procedures and reporting for these programs in the state's computer system and in the eMMIS to ensure the collection accurately establishes the Medicaid eligibility record and to ensure that client notices are accurate and timely.

4. **The Cost Containment and Audit Compliance unit** is divided into the following groups: Medicare, Recoveries, and Pharmacy Rebate.

A. **Medicare:** This group is responsible for ensuring that Medicare funds are utilized whenever possible in providing medical services to Medicaid clients. This is accomplished by the identification of those recipients who are, or who might be,

Medicare eligible, the recovery of funds paid as Medicaid services for these clients, and the administration of Medicare Part B premiums.

B. Recoveries: This group ensures that all potential, legally liable payers of medical services pay up to their liability to offset Medicaid expenditures. This is accomplished through cost avoidance and post-payment recovery (pay-and-chase or cash recovery).

(I) Cost avoidance occurs when the group receives information that a third-party payer is responsible for payment prior to Medicaid payment. The Third Party Liability (TPL) unit verifies commercial health insurance after receiving the information from multiple sources. The insurance data is entered into participant eligibility files, which are connected to the Medicaid claims payment processing system, and serve as a source of editing to determine claim payment or denial. Cost avoidance also occurs through the Health Insurance Premium Payment (HIPP) program. If a participant has access to employer-sponsored health insurance, Medicaid will purchase the commercial health insurance if it is determined to be cost effective.

(II) Post-payment recovery occurs when the unit determines that a third-party payer is potentially responsible for payment when a participant receives medical services. Data matches and the Medicaid claims processing system determine potential recovery sources. TPL personnel are responsible for the following recovery activities: burial plans, personal funds, estates, and trauma (includes personal injury, product liability, malpractice, traffic accidents, worker's compensation, and wrongful death). A contractor is primarily responsible for recovery of commercial health insurance payments.

(III) These activities ensure that Medicaid funds are used only after all other potential resources available to pay have been exhausted.

C. Pharmacy Rebate: This group is responsible for the collection of rebates from pharmaceutical manufacturers contracted with CMS to participate in the Medicaid Drug Rebate Program, and for collection of supplemental rebates from manufacturers participating in the state's Supplemental Rebate Program. The group invoices manufacturers quarterly for products dispensed during the period. As payments are received, disputes are identified and the unit researches any product disputed by the manufacturer. Disputes are resolved with the manufacturer to collect the greatest rebate possible. This unit is also responsible for collecting rebates for the Missouri Rx Program.

(C) **Information Services.** This section is responsible for managing the operations, development, and implementation of the information system that the division uses to administer MO HealthNet Programs. This includes the various components of the eMMIS which are hosted, developed, operated, and maintained by multiple information technology vendors and multiple vendor systems and services related to health information exchange. The Information Services Unit is also responsible for managing quality, integrity, and use of the MO HealthNet program data. The information services unit is also responsible for securing enhanced federal funding related to allowable system implementation and operation costs. The Information Services section is divided into the following units: Project Management Office, Business Systems, Data Management Office, Information Services Funding, and Health Information Technology Programs.

1. **Project Management Office.** This unit is responsible for managing procurement and implementation of the more advanced modifications to the eMMIS and of new eMMIS solutions. The implementation of a replacement enterprise data warehouse and business intelligence solutions is an example of a new eMMIS solution. The unit ensures that a structured approach is used so as not to disrupt the automated Medicaid claims processing and the information retrieval system currently in place.

2. **Business Systems.** This unit is responsible for oversight and monitoring of the operations of the eMMIS and management of the contracts with the information technology vendors responsible for hosting, developing, operating and maintaining the eMMIS systems. The unit is responsible for maintaining the claims processing system by reviewing claims payment issues, establishing corrective action plans, and designating specific tasks to the system vendors.

3. **Data Management Office.** This unit is responsible for managing the quality of the data contained in the enterprise data warehouse and establishing governance over the MO HealthNet data by determining information ownership, establishing data standard option processes, establishing and enforcing data integrity, and managing the data architecture and usage. This unit is also responsible for managing all data requests and data reporting and analysis.

4. **Information Services Funding.** This unit is responsible for creating and managing requests for federal funding related to eMMIS system operations, enhancements, and implementations, and maximizing federal participation in system costs. This unit is also responsible for processing invoices received from information technology vendors, ensuring the invoices are coded to the correct federal funding request, and tracking the budget to actual system costs.

5. **Health Information Technology Programs.** This unit is responsible for managing all federal programs and projects related to Health Information Technology and Health Information Exchange. This unit is also responsible for managing contracts with health information networks providing health information exchange services for MO HealthNet.

(D) **Operations.** The Operations section is divided into the following units: Home and Community-Based, School-Based, and Waiver Services, Medical Programs and Policy, and Managed Care, Constituent Services, and Strategic Initiatives.

1. **Home and Community-Based, School-Based, and Waiver Services:** This unit has the following three groups:

A. **Home and Community-Based In-Home Services Group.** This group works closely with the Department of Health and Senior Services (DHSS) and CMS regarding several Home and Community-Based Services (HCBS) 1915(c) waivers and State Plan programs to ensure state and federal requirements are met. This group develops, amends, and renews HCBS waiver applications, and performs quality oversight activities, analysis and reporting for those programs. This group is also responsible for administration of state regulations and state plan amendments, along with research, program development, policy implementation, and program communications.

B. **Home and Community-Based and School-Based Services Group.** This group works closely with the Department of Mental Health (DMH) and CMS regarding several HCBS 1915(c) waivers and State Plan programs to ensure state and federal requirements are met. The group develops, amends, and renews HCBS waiver applications, and performs quality oversight activities, analysis, and reporting for those programs. This group is responsible for coordination of state plan amendments, policy implementation, and regulations drafted to reflect program changes. In addition, this group administers the School-Based Service programs including invoice processing, program compliance activities, federal reporting, and contract oversight.

C. **Money Follows the Person (MFP) Group:** The MFP program was designed to reduce reliance on Skilled Nursing Facilities (SNF) and Intermediate Care Facilities (ICF/MR) for individuals who are aged or those who have a disability, while providing resources for individuals wishing to transition to a quality community-based long-term care setting. The MFP group works closely with DHSS, DMH, and CMS to ensure that federal MFP program requirements are met. This group is responsible for oversight and coordination of MFP program implementation

across the three (3) state agencies, formulating a program budget each calendar year, evaluating the program on a semi-annual basis, marketing, and continually looking for best practices for improvement.

2. **Medical Programs and Policy:** This unit divides the responsibilities for MHD's medical programs and their policies among three (3) areas dedicated to each's assigned programs. The first group focuses primarily on hospital providers, the second group focuses primarily on physicians, clinics, and hospice providers, and the third group focuses primarily on nursing facilities, durable medical equipment, and non-emergency medical transportation. Programs and policies regarding all other enrolled medical providers are also managed by one (1) of the three (3) groups.

A. The unit is responsible for research, analysis, development, implementation, and monitoring various benefit programs within the division, including the prior authorization process for approval of medically necessary items. Personnel in this unit also interact with advisory committees to obtain guidance regarding complicated health care issues, coordinate and assist in the development of training packages, write and revise program manuals and bulletins pertaining to program policy, procedure, and operations, and monitor and evaluate program effectiveness by tracking utilization patterns.

B. The unit is responsible for researching state and federal regulations, CMS directives and rulings, and reviewing Medicaid programs implemented by other states. The group analyzes data and legislation, coordinates special projects, and works with other state agencies and groups within the division to implement new Medicaid programs including the development of new manuals and procedures. The group also aids in the implementation of major changes to existing MHD programs. This unit is also responsible for policy implementation, program communication, oversight of contracts with outside vendors, certain clinical program enhancement activities, and implementation of those program enhancements. Documents such as state plan amendments and state regulations are drafted to reflect program changes.

C. This unit also researches and gathers information for program development and provides procedural support for systems changes and claims processing issues such as medical procedures and equipment prior authorization, and durable medical equipment special pricing. The unit serves as the liaison with MMIS and other units within the division to facilitate program enhancement activities.

3. **Managed Care, Constituent Services, and Strategic Initiatives Unit.**

A. **Managed Care.** Managed Care is responsible for administration of the Managed Care Program which operates under a 1915(b) Freedom of Choice Waiver. This program provides Medicaid Managed Care services to participants in four (4) broad groups: Medical Assistance for Families, Medicaid for Children, Medicaid for Pregnant Women, and children in state custody. This group is also responsible for developing new policies and procedures for the Managed Care Program. This unit is divided into the following groups: Managed Care Policy, Contract Development, and Compliance, and Quality Assessment.

(I) **Managed Care Policy, Contract Development, and Compliance.** This group is responsible for monitoring contracts. Personnel monitor the Managed Care and the Beneficiary Support System contracts to ensure providers are adhering to the terms and conditions of their agreements. The group ensures that the Managed Care Organizations (MCOs) adhere to service access guidelines, verify provider networks, and handle complaints against MCOs. The group also works with the Department of Insurance to assure MCOs are in compliance with state insurance rules and regulations. Premium Collections is also a responsibility of this group. The group is responsible for

answering phones and correspondence regarding the State Children's Health Insurance Program (CHIP) premium cases and Spend-down pay-in cases, answering questions regarding program rules and receipt of payments.

(II) **Quality Assessment.** This group performs research and data analysis to address monitoring and oversight requirements established by the CMS. The group utilizes a collaborative process to develop and implement strategies to improve the health status of Medicaid participants. This process entails coordination with advisory groups, other state agencies, managed care organizations, providers, and the public. The group is also responsible for researching, assessing, evaluating, and reporting information regarding the quality of care provided to Managed Care members.

B. **Constituent Services and Education.** The unit is divided into the following groups: Provider and Member Educations, Provider Communication, and Participant Services.

(I) **Provider and Member Education.** This group is responsible for training and educating providers regarding the division's policies and procedures. The group also assists providers with the submission of Medicaid claims through provider workshops and individual provider training sessions. Additionally, this group assists with outreach to members and oversees a member forum for input.

(II) **Provider Communication.** This group is responsible for responding to provider inquiries and concerns. Much of this communication is handled via a provider hotline. Written responses to provider inquiries are also handled by this group. The group explains difficult and complex Medicaid rules, regulations, policies, and procedures to providers.

(III) **Participant Services.** This group aids the fiscal agent's Participant Services Unit by acting as liaison with other groups within the division and handling more complex inquiries from participants. The division maintains a toll-free hotline for participants and is responsible for the Medicaid Participant Reimbursement program and handles all prior authorizations of out-of-state services. This group also handles requests for appeals from MHD participants who have had adverse actions regarding service denials or closures.

(E) **Clinical Review, Development, and Performance:** This section includes the offices of the Medical Director and Assistant Medical Director; and Registered Nurse Specialists; Durable Medical Equipment Review and Approval; Medical Program Development, Support, and Evaluation; Exceptions Management and Review; Primary Care Health Home Management; the Quality Program; the Behavioral Health Program; and the Pharmacy Program.

1. **Medical Director, Assistant Medical Director, and Registered Nurse Specialists.** The Medical Director oversees the unit, approves decisions, reviews medical documentation for clinical accuracy and appropriateness, participates in state fair hearings, and reviews transplant requests and prior authorization requests.

2. **Medical Program Development, Support, and Evaluation.** The unit provides support for both the Fee-for-Service and Managed Care programs, including the PACE program, and provides recommendations to develop evidence-based clinical guidelines to advance quality in the programs. The unit assists contractors with their medical reviews and decision-making when necessary, and reviews individual medical decisions that have been referred for state fair hearings. The unit also provides responses to legislative and other external inquiries and provides medical subject-matter support to MHD personnel.

A. **Subject-matter support for the Fee-for-Service program** includes, but is not limited to, determining medical necessity of requested equipment or services, making program recommendations that follow best practices and evidence-based

approaches, and providing guidance regarding federal and state program requirements.

B. Subject-matter support for the Managed Care program includes, but is not limited to, determining medical necessity of requested equipment or services, making program recommendations that follow best practices and evidence-based approaches, providing guidance regarding federal and state program requirements, reviewing clinical information related to quality outcomes, reviewing the health plans' care management programs, reviewing claims and benefit denials as needed, and coordinating with other state agencies regarding shared population health mandates.

3. Exceptions Management and Review. An administrative exception may be made on a case-by-case basis to limitations and restrictions. The unit provides oversight of these reviews which may be of a routine or an emergency nature.

4. Primary Care Health Home Management. The unit is responsible for oversight of all aspects of this program including internal systems, program expansion, collaboration with the managed care unit and the contracted health plans, data collection, and analysis.

5. Durable Medical Equipment (DME) Review and Approval. This group evaluates all requests and has a call center for DME, optical, and alternative therapies for pain management and approves or denies these requests. It also responds to inquiries from providers, medical consultants, and public officials related to MHD policies and procedures. It also evaluates possible program abuse, suspected fraud, dual services, and helps to improved program efficiency.

6. Quality Program. This group is responsible for a variety of data analyses relating to various grants and initiatives throughout MHD, including those related to Health Home, women and infant health, and asthma. Annual and quarterly quality data from the Managed Care Organizations are processed by this group, which also produces a series of reports and graphs from that data, and it also prepares and disseminates reports for distribution to the MCOs regarding immunizations, members with special needs, lead screenings, etc. Annual CMS Core Set measures are calculated and reported by this group. It also responds to numerous ad hoc data requests throughout the year from administrators, managers, the legislature, and assorted outside interests.

7. Behavioral Health Program. This group is responsible for overseeing the purchase and delivery of behavioral health services on behalf of MHD fee-for-service and managed care participants. It is responsible for research, analysis, development, implementation, and monitoring of behavioral health services covered by MHD, including the precertification process for approval of individual, family, and group psychotherapy for fee-for-service participants. This unit researches evidence-based and best practices to inform policy revision. Personnel in this unit participate in annual clinical reviews of managed care health plans and monitor compliance with mental health and substance use disorder parity standards. They also interact with community advisors for input on complex behavioral health care issues, coordinate and assist in the development of provider training, and provide clinical and policy consultation to other Department of Social Services (DSS) divisions and to other state agencies. This unit is responsible for provider bulletins and manuals as well as state plan amendments and state regulations related to behavioral health services changes. This unit is responsible for providing clinical input regarding behavioral health conditions and services as related to various MHD and managed care initiatives. It is responsible for researching state and federal regulations, CMS directives and rulings, and other state Medicaid programs and services.

8. Pharmacy Program. The Pharmacy Program includes Pharmacy Operations, Pharmacy Reviews and Hearings, and the

Pharmacy Clinical group.

A. Pharmacy Operations. The pharmacy operations group maintains the listing of payable drug products and management of the drug pricing methodology for the pharmacy department to ensure proper drug claim payment. The group houses the pharmacy administration helpdesk which communicates with providers on issues processing drug claims, including drug pricing. Pharmacy Operations also processes pharmacy provider bulletins, hot tips, regulations, provider manuals, and State Plan Amendments. In addition, the unit reviews requests for compounded prescriptions, medically necessary over-the-counter drugs, non-reference diabetic supplies, and medication requests for participants enrolled in Hospice to determine whether the medication is related to the terminal illness.

B. Pharmacy Reviews and Hearings. The unit provides clinical review for pharmacy prior authorizations when necessary and utilizes physician consultants when additional clinical review or peer-to-peer consultation is needed or requested.

C. Pharmacy Clinical Group. This group operates a toll-free hotline for providers to request overrides on drug products with restricted access due to clinical or fiscal edits and prior authorization. The hotline staff in this unit process requests for drug products which have been denied through the usual claims processing system.

(I) The group is responsible for the implementation and maintenance of clinical pharmacy cost saving initiatives. This unit is responsible for the review, implementation, and maintenance of the Preferred Drug List (PDL) and all clinical and fiscal edits. It also oversees the prior authorization of all new drug products and monitoring of the drug pipeline. All clinical drug information and pharmacoeconomic evidence-based reviews are organized for presentation to the Drug Use Review Board (DUR). Online point-of-sale clinical edits are established to assure cost effective and appropriate drug usage.

(II) Internal clinical management for fee-for-service patients is performed, including identification and monitoring of drug regimens outside normal parameters, and working with patients' healthcare providers to reach desired outcomes.

D. Missouri Rx Plan. This group is responsible for the ongoing operations of the Missouri Rx Plan, which pays fifty percent (50%) of the member's out-of-pocket cost for prescription drugs covered by the Medicare Prescription Drug Program and by the member's Medicare Part D Plan formulary for dual eligible participants.

AUTHORITY: sections 208.201 and 660.017, RSMo [2000] 2016. This rule was previously filed as 13 CSR 40-81.005. Emergency rule filed Sept. 15, 1987, effective Sept. 28, 1987, expired Jan. 25, 1988. Original rule filed Oct. 1, 1987, effective Jan. 29, 1988. Amended: Filed July 2, 1992, effective Feb. 26, 1993. Amended: Filed April 14, 2006, effective Oct. 30, 2006. Amended: Filed Aug. 23, 2021.

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

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

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

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
[Chapter 3—Conditions of Provider Participation,
Reimbursement, and Procedure of General
Applicability]
Chapter 25—Physician Program

PROPOSED AMENDMENT

13 CSR 70-[3.260]25.150 Payment Policy for Asthma Education and In-Home Environmental Assessments. The division is moving the rule to Chapter 25, is amending the purpose, and is amending sections (1), (2), (3), (4), and newly numbered (6). The division is also removing sections (5), (7), (8), and (9), and is renumbering accordingly.

PURPOSE: [This rule establishes the MO HealthNet payment policy for asthma education and in-home environmental assessments. To improve the health of MO HealthNet’s participants with asthma and to reduce MO HealthNet’s costs associated with participants with uncontrolled asthma, MO HealthNet will implement a statewide asthma education and home assessment program focusing on youth participants who are most at risk of having uncontrolled asthma.] This rule establishes the MO HealthNet payment policy for Asthma Education and In-Home Environmental Assessments to improve the health of MO HealthNet’s youth participants that have uncontrolled asthma.

PUBLISHER’S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Administration. Asthma Education and In-Home Environmental Assessment services shall be administered by the MO HealthNet Division. Asthma education and in-home environmental assessments services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the MO HealthNet Division and shall be included in the MO HealthNet Physician Provider Manual, which is incorporated by reference and made part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at <http://manuals.momed.com/manuals/>, May 14, 2021. This rule does not incorporate any subsequent amendments or additions. Asthma Education and In-Home Environmental Assessment services covered by the MO HealthNet program shall include only those which are clearly shown to be medically necessary.

[(1)](A) The following definition(s) will be used in administering this rule:

[(A)]1. “Asthma Education[-]” means direct training of the patient and family by qualified asthma education provider in areas including, but not limited to, avoiding triggers, medication compliance, proper use of inhalers, and use of durable medical equipment;

[(B)]2. “In-Home Environmental Assessment[-]” means thorough and detailed analysis of the home environment by a qualified environmental assessment provider evaluating for asthma triggers including, but not limited to, rodent excrement, mites, animal dander, insects, dust, mold with recommendations for remedial actions[.];

[(C)] Uncontrolled Asthma-those with a primary diagnosis of asthma with one (1) or more asthma-related hospitaliza-

tion in a twelve- (12-) month period, two (2) asthma-related emergency department visits in a twelve- (12-) month period, or three (3) or more urgent care visits in a twelve- (12-) month period, and over use of rescue inhalers and/or under use of inhaled corticosteroids;

(D) Qualified Academic University-Based Centers.

1. The academic university-based center responsible for tracking asthma educators must meet the following criteria:

A. Serve as a contractor for the Centers for Disease Control (CDC) National Asthma Control Program (NACP) funded by Missouri Asthma Prevention and Control Program (MAPCP);

B. Maintain a comprehensive database that contains information on individuals trained receiving Expert Panel Report 3 (EPR-3) compliant asthma training;

C. Staff providing the training must be a Certified Asthma Educator as recognized by the National Association of Asthma Educators; and

D. Provide training that focuses on educational/behavioral objectives in four (4) key areas—

(I) Inhaled corticosteroid adherence;

(II) Inhaled technique;

(III) Environmental trigger reduction; and

(IV) Regular check-ups with control measures.

2. The academic university-based center responsible for tracking asthma in-home environmental assessors must meet the following criteria:

A. Serve as the contractor for the CDC NACP funded MAPCP;

B. Provide a vital linkage between health care providers and public health resources through a Central Access Point (CAP);

C. Maintain a comprehensive database that contains information on individuals trained specific to Home Environmental Assessments (HEAs) for asthma trigger identification and reduction in the home setting; and

D. Track quality indicators and collect required outcomes data;

(E) Qualified providers (asthma education and environmental assessment)-a professional with appropriate training, as defined in section (4) of this regulation, in asthma education or environmental/home assessment, as evidenced by a national and/or state certification from an accepted program; and

(F) Youth participants-any individual younger than the age of twenty-one (21).]

(2) [Definition and Description of Medical Services.] Asthma Education and In-Home Environmental Assessment Services. Asthma Education and In-Home Environmental Assessment Services are interventions for increasing control of asthma symptoms in high risk youth.

(A) A prescribing provider’s referral is required as part of a normal office visit for evaluation and management for both asthma education and in-home environmental assessment. The prescribing provider will need to prescribe the service in the participant’s plan of care.

(B) As part of the referral, the prescribing provider determines and specifies the level and type of asthma education and in-home environmental assessment based on available history and in consultation with asthma educators and in-home environmental assessors, as needed.

(C) A prescribing provider is defined as a licensed practitioner authorized to prescribe within their scope of practice either directly or by protocol consistent with their scope of practice under state law.

[(A)](D) Asthma education[-]. Asthma educators may bill for—

1. Asthma education non-physician, (thirty- (30-) minute sessions, twice per year); or
 2. Preventive medicine counseling, individual, (fifteen- (15-) minute sessions four (4) times per year); or
 3. Preventive medicine counseling, individual, (thirty- (30-) minute sessions twice per year); or
 4. Self-Management Education using standardized effective curriculum, individually, either incident to a clinical encounter or as preventative service, (ninety- (90-) minute session once per year).
5. The annual limit for asthma education visits will be dependent on the codes used, but shall not exceed one (1) hour per year with the exception of one (1) ninety- (90-) minute self-management session.

[(B)](E) Asthma Environmental Assessment[:]. *[Asthma environmental assessments may include, but are not limited to, a thorough assessment of the home including home history and ownership, building occupant behaviors and job history, home cleaning techniques, laundry processes, pets and pests histories, kitchen processes, structure deficiencies, ventilation and moisture conditions, conducting and recording basic air sampling procedures, and examination of the external environment of the home to identify and support the reduction of disease causing agents leading to medical complications of asthma. In-home assessments for asthma triggers do not include remediation of issues identified in the home.]*

1. An asthma environmental assessor may bill for an [A]asthma environmental assessment non-physician, two (2) assessments per year.
2. Asthma environmental assessments may include, but are not limited to, a thorough assessment of the home including home history and ownership, building occupant behaviors and job history, home cleaning techniques, laundry processes, pets and pests histories, kitchen processes, structure deficiencies, ventilation and moisture conditions, conducting and recording basic air sampling procedures, and examination of the external environment of the home to identify and support the reduction of disease causing agents leading to medical complications of asthma.
3. In-home assessments for asthma triggers do not include remediation of issues identified in the home.
4. Annual limit for asthma environmental assessment services shall not exceed two (2) in-home environmental assessments.

(F) The prescribing provider will need to seek prior authorization for asthma education and in-home environmental assessment services from MO HealthNet prior to starting the program.

(G) Any additional asthma education and environmental in-home assessments beyond the initial allocation will need an additional prior authorization and be deemed medically necessary.

(3) *[Recipient] Participant* Criteria. In order to qualify for, and receive, asthma education and/or in-home environmental assessments, the participant must have a primary diagnosis of asthma and meet the MO HealthNet Division's (MHD) definition of a youth participant with uncontrolled asthma or at risk for an *[asthmatic attack. MHD will include the following criteria in defining participant eligibility:]* exacerbation of asthma by meeting the following criteria:

- (A) Be currently enrolled in MO HealthNet;
- [(A)](B) *[Age]* Be twenty (20) years of age or younger; and
- (C) Have had one (1) of the following events related to asthma in the last twelve (12) months:
 - [(B)]1. One (1) or more *[/i>inpatient hospital stays;*
 - [(C)]2. Two (2) or more Emergency *[room and urgent care]* Department (ED) visits;
 3. Three (3) or more urgent care visits; or
 4. One (1) ED visit or one (1) urgent care visit related to asthma with a high rate of short-acting beta-agonist inhaler fills

and/or low rates of inhaled corticosteroid refills.

[(D) *Overuse of rescue inhalers; and*

(E) *Under use of inhaled corticosteroids.]*

(4) *[Qualified Provider Criteria. A qualified provider must meet the minimum education and certification requirements to qualify as a provider of asthma education and/or in-home environmental assessments set forth in this subsection.]* **Provider Participation. To be eligible for participation as a provider in the MO HealthNet Asthma Education and In-Home Environmental Assessment services—**

(A) All asthma education and in-home environmental assessment service providers must be enrolled as MO HealthNet providers; and

(B) A qualified provider must meet the minimum education and certification requirements to qualify as a provider of asthma education and/or in-home environmental assessments set forth in this subsection.

[(A)]1. Asthma Education—

[1.]A. Asthma educators must have the credentials set forth in this subsection[:]—

[A.](I) Shall be certified by a national program or a state program. Eligibility criteria for admission into the certification programs are determined by the administrator of the program;

[(B.)](II) Asthma educators must have one (1) of the following certifications in good standing:

[(I)](a) Current and active National Asthma Educator Certification *[(AEC)/AE-C)]*; or

I. These providers must maintain the national certification determined by The National Asthma Educator Certification Board; and

[(a) *Thirty-five (35) CEU every five (5) years; or*

(b) *Retake AEC asthma educator exam within the timeframes set forth by the AEC;]*

[(II)](b) State certification. The provider must have a current certificate from a Missouri state training program. *[provided by an accredited institute of higher education, such as a university, that provides a training program utilizing asthma education curriculum incorporating similar guidelines to national certification programs. It is preferable that the curriculum is also accredited. Upon successful completion of the training program a certificate must be provided. A certificate means that the student has successfully completed the training program and is competent to provide asthma education services;]*

[(a) *Program may contain a mix of didactics with practicum work in the field; and*

(b) *The graduates are required to maintain the same number of CEUs as the national program—*

I. Thirty-five (35) CEUs every five (5) years; or

II. Retake certification exam every seven (7) years;

2. *Mentor program. A mentee is someone who is working towards a certificate. Once certified, the asthma educator can become a mentor for individuals that are seeking their national certification. Mentors, who must be an enrolled Medicaid provider, can have a maximum of three (3) mentees at a time. Mentors have the capability of billing MHD for their services, while mentees cannot. Services provided by a mentee under the supervision of the mentor can be billed to MHD by the mentor. The asthma education activities and interventions of the mentee shall be performed pursuant to the mentor's order, control, and full professional responsibility. The mentor shall maintain a continuing relationship with the mentee and shall meet with the mentee at a minimum of one (1) hour per month face-to-face. The mentor shall review all patient care, evaluate the quality of care delivered, and terminate any mentee relationship that fails to*

conform to the standard of care. Individuals that qualify for a mentorship are individuals not certified as asthma educators and seeking either national or state certification. These individuals can be mentored for a maximum timeframe of eighteen (18) months to obtain one thousand (1,000) hours of service. Once the one thousand (1,000) hours are obtained, the mentee must attempt to obtain the National AEC or the state certification. In the event the mentee fails the National AEC test or the state certification process, the mentee may no longer provide asthma education services to enrolled MO HealthNet participants.]

[(B)]2. In-Home Environmental Assessments—

A. Asthma In-Home Environmental Assessors must have the credentials set forth in this subsection:

[1.](I) Shall be certified by a national program or a state program. Eligibility criteria for admission into the certification programs are determined by the administrator of the program;

[2.](II) An In-Home Environmental Assessor must have one (1) of the following certifications in good standing:

[A.](a) National Certification; or—

[(I)]I. Renewal of National Environmental Health Association (NEHA) Healthy Home Specialist; or

[(II)]II. Building Performance Institute (BPI) Healthy Home Evaluator Micro-Credential; and

B. State Certification. The provider must have a current certificate from a Missouri state training program. *[provided by an accredited institute of higher education, such as a university, that provides a training program utilizing curriculum incorporating similar guidelines to national certification programs. It is preferable that the curriculum is also accredited. Upon successful completion of the training program a certificate must be provided. A certificate means that the student has successfully completed the training program and is competent to provide in-home environmental assessment.]*

(I) A Missouri state certificate program means a program provided by an accredited institute of higher education, such as a university, that provides a training program utilizing curriculum incorporating similar guidelines to national certification programs. It is preferable that the curriculum is also accredited. Upon successful completion of the training program a certificate must be provided. A certificate means that the student has successfully completed the training program and is competent to provide in-home environmental assessment.

(II) Mentor program for asthma educators. A mentee is someone who is working towards a certificate. Once certified, the asthma educator can become a mentor for individuals that are seeking their national certification. Mentors, who must be an enrolled Medicaid provider, can have a maximum of three (3) mentees at a time. Mentors have the capability of billing MHD for their services, while mentees cannot. Services provided by a mentee under the supervision of the mentor can be billed to MHD by the mentor. The asthma education activities and interventions of the mentee shall be performed pursuant to the mentor's order, control, and full professional responsibility.

[(5)] Process for Enrollment in Asthma Education and In-Home Environmental Assessments.

(A) A physician's referral as part of a normal office visit for evaluation and management is necessary for both asthma education and in-home environmental assessment. The physician must prescribe the service in the participant's plan of care for services to be considered.

(B) As part of the referral, a physician determines and specifies the level and type of asthma education and in-home environmental assessment based on available history and in consultation with asthma educators and in-home environmental assessors, as needed.

(C) The physician must seek prior authorization from

MHD.]

[(6)](5) Qualifying Academic University-**[(B)]**based Centers function to track and ensure current certification of asthma education providers and asthma environmental assessors by providing MHD with the following services:

(A) The qualified academic university-based centers must maintain a website with an up-to-date provider list for physicians and their offices to utilize to consult asthma educators and asthma in-home environmental assessors to provide services to participants once a prior authorization has been approved.

1. The qualified academic university-based center responsible for tracking asthma in-home environmental assessors must maintain an up-to-date list of all certified in-home environmental assessors in the state; and

A. The academic university-based center responsible for tracking asthma in-home environmental assessors must meet the following criteria:

(I) Serve as a contractor for the Centers for Disease Control (CDC) National Asthma Control Program (NACP) funded by Missouri Asthma Prevention and Control Program (MAPCP);

(II) Provide a vital linkage between health care providers and public health resources through a Central Access Point (CAP);

(III) Maintain a comprehensive database that contains information on individuals trained specific to Home Environmental Assessments (HEAs) for asthma trigger identification and reduction in the home setting; and

(IV) Track quality indicators and collect required outcomes data.

2. The qualified academic university-based center responsible for tracking asthma educators must maintain an up-to-date list of all trained asthma educators in the state[;].

A. The academic university-based center responsible for tracking asthma educators must meet the following criteria:

(I) Serve as the contractor for the CDC NACP funded MAPCP;

(II) Maintain a comprehensive database that contains information on individuals trained receiving Expert Panel Report 3 (EPR-3) compliant asthma training;

(III) Staff providing the training must be a Certified Asthma Educator as recognized by the National Association of Asthma Educators; and

(IV) Provide training that focuses on educational/behavioral objectives in four (4) key areas—

(a) Inhaled corticosteroid adherence;

(b) Inhalation technique;

(c) Environmental trigger reduction; and

(d) Importance of regular check-ups with assessment of lung function and asthma control.

[(B)] An up-to-date provider list must also be available to providers on the Department of Social Services' website. <https://dssapp.dss.mo.gov/providerlist/sprovider.asp>.

(7) Model/Algorithm for identifying the eligible population. The youth participant must have a primary diagnosis of asthma and—

(A) One (1) or more inpatient stays related to asthma; or

(B) Two (2) or more emergency department visits related to asthma; or

(C) Three (3) or more urgent care visits related to asthma; or

(D) One (1) emergency department visit or one (1) urgent care visit related to asthma with a high rate of short-acting beta-agonist inhaler fills and/or low rates of inhaled corticosteroid refills; or

(E) Responsible provider prescribes services in the plan of

care.

(8) Authorization Limits.

(A) All services will require a prior authorization.

(B) Annual limit of asthma education visits will be dependent on the codes used, but shall not exceed one (1) hour per year with the exception of one (1) ninety- (90-) minute self-management session and two (2) in-home environmental assessments that are allowed annually. Any additional asthma education and environmental in-home assessments will need to go through the prior authorization process and be deemed medically necessary.

(9) Reimbursement Methodology for Asthma Education and Asthma Environmental Assessments.

(A) MHD shall provide reimbursement for asthma education and in-home environmental assessments to enrolled asthma educators and environmental assessors who are currently certified and in good standing with the state.

(B) Reimbursement for services is made on a fee-for-services basis. The maximum allowable fee for a unit of service has been determined by MHD to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charge (should be the provider's usual and customary charge to the general public for the service), or the maximum allowable per unit of service. Reimbursement shall only be made for services authorized by MHD or its designee.

(C) Except as otherwise noted in the plan, state developed fee schedule rates are the same for both public and private providers of asthma education and asthma environmental assessments. The agency's fee schedule is published at <http://www.dss.mo.gov/mhd/providers/index.htm> and are effective for services provided on or after the effective date of the state plan amendment.]

AUTHORITY: sections 208.201 and 660.017, RSMo 2016. Original rule filed June 23, 2016, effective Jan. 30, 2017. Amended: Filed Aug. 27, 2021.

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

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

PROPOSED AMENDMENT

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates. The division is adding paragraph (3)(A)25.

PURPOSE: This amendment provides for a per diem increase to

nursing facility and HIV nursing facility per diem reimbursement rates of ten dollars and eighteen cents (\$10.18), effective for dates of service July 1, 2021 through June 30, 2022, for increases in costs associated with staffing, supplies, social distancing standards, and other factors due to the COVID-19 national emergency. This per diem adjustment corresponds to the State Fiscal Year (SFY) 2022 appropriation for nursing facilities and is approved by the Centers for Medicare and Medicaid Services (CMS).

(3) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed in 13 CSR 70-10.015, a nursing facility's reimbursement rate may be adjusted as described in this section. Subject to the limitations prescribed in 13 CSR 70-10.080, an HIV nursing facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of four and six-tenths percent (4.6%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of three and seven-tenths percent (3.7%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

3. Nursing Facility Reimbursement Allowance (NFRA). Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents (\$2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category, and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents (\$1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category, and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of three and four-tenths percent (3.4%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of two and one-tenth percent (2.1%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of one and ninety-four hundredths percent (1.94%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003, through June 30, 2004, of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78); and

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003, and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006, of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents; and

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006, and is effective for dates of service beginning July 1, 2006, and after.

11. FY-2007 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007, of three dollars and zero cents (\$3.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007, and is effective for dates of service beginning February 1, 2007, for payment dates after

March 1, 2007.

12. FY-2008 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007, and is effective for dates of service beginning July 1, 2007.

13. FY-2009 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2008, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2008, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2008, and is effective for dates of service beginning July 1, 2008.

14. FY-2010 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2009, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2009, of five dollars and fifty cents (\$5.50) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2009, and is effective for dates of service beginning July 1, 2009.

15. FY-2012 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on October 1, 2011, shall be granted an increase to their per diem rate effective for dates of service beginning October 1, 2011, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of September 30, 2011, and is effective for dates of service beginning October 1, 2011; and

C. This increase is contingent upon the federal assessment rate limit increasing to six percent (6%) and is subject to approval by the Centers for Medicare and Medicaid Services.

16. FY-2013 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2012, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2012, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2012, and is effective for dates of service beginning July 1, 2012; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

17. FY-2014 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2013, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2013, of three percent (3.0%) of their current rate, less certain fixed cost items. The fixed cost items are the per diem amounts included in the facility's current rate from the following: subsection (2)(O) of 13 CSR 70-10.110, paragraphs (11)(D)1., (11)(D)2., (11)(D)3., (11)(D)4., (13)(B)3., and (13)(B)10. of 13 CSR 70-10.015;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2013, and is effective for dates of service beginning July 1, 2013; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

18. FY-2015 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2014, shall be granted an increase to their per

diem rate effective for dates of services beginning July 1, 2014, of one dollar and twenty-five cents (\$1.25) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2014, and is effective for dates of service beginning July 1, 2014; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

19. January 1, 2016 – June 30, 2016 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on January 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning January 1, 2016, of two dollars and nine cents (\$2.09) to allow for a trend adjustment to ensure quality nursing facility services;

B. The trend adjustment will not be added to the facility's rate after June 30, 2016; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services and sufficient funding available through the Tax Amnesty Fund.

20. Continuation of FY-2016 trend adjustment and FY-2017 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall continue to be granted an increase to their per diem rate effective for dates of service beginning July 1, 2016, of two dollars and nine cents (\$2.09);

B. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2016, of two dollars and eighty-three cents (\$2.83) to allow for a trend adjustment to ensure quality nursing facility services;

C. The trend adjustment of two dollars and eighty-three cents (\$2.83) shall be added to the facility's rate as of June 30, 2016, which includes the two dollars and nine cents (\$2.09) increase, and is effective for dates of service beginning July 1, 2016; and

D. These increases are contingent upon approval by the Centers for Medicare and Medicaid Services.

21. FY-2018 per diem adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2017, shall be subject to a decrease in their per diem rate effective for dates of services August 1, 2017 through June 30, 2018, of five dollars and thirty-seven cents (\$5.37);

B. The per diem adjustment of five dollars and thirty-seven cents (\$5.37) shall be deducted from the facility's current rate as of July 31, 2017, and is effective for dates of service beginning August 1, 2017;

C. Effective for dates of service beginning July 1, 2018, the per diem decrease shall be reduced to four dollars and eighty-three cents (\$4.83). A per diem adjustment of fifty-four cents (\$0.54) shall be added to the facilities current rate as of June 30, 2018, which includes the five dollars and thirty-seven cents (\$5.37) decrease, and is effective for dates of service beginning July 1, 2018; and

D. This decrease is contingent upon approval by the Centers for Medicare and Medicaid Services.

22. FY-2019 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2018, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2018, of seven dollars and seventy-six cents (\$7.76) to allow for a trend adjustment to ensure quality nursing facility services;

B. The rate to which the FY-2019 trend adjustment of seven dollars and seventy-six cents (\$7.76) shall be added is the facility's rate as of **June 30, 2018, plus the fifty-four cents (\$0.54) per diem adjustment effective** July 1, 2018, set forth in subparagraph (3)(A)21.C. and is effective for dates of service beginning July 1, 2018. This trend adjustment shall result in a rate no greater than eight dollars and thirty cents (\$8.30) higher than the rate in effect on January 1, 2018; and

C. This increase is contingent upon approval by the Centers

for Medicare and Medicaid Services.

23. FY-2019 additional trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2019, shall be granted an increase to their per diem rate effective for dates of service February 1, 2019 through June 30, 2019, of one dollar and twenty-nine cents (\$1.29) to allow for a trend adjustment to ensure quality nursing facility services;

B. The per diem adjustment of one dollar and twenty-nine cents (\$1.29) shall be added to the facility's rate as of January 31, 2019, and is effective for dates of service beginning February 1, 2019 through June 30, 2019;

C. Effective for dates of service beginning July 1, 2019, the per diem increase shall be reduced to fifty-four cents (\$0.54). A per diem adjustment of seventy-five cents (\$0.75) shall be deducted from the facility's rate as of June 30, 2019, which includes the one dollar and twenty-nine cents (\$1.29) increase, and is effective for dates of service beginning July 1, 2019.

D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services.

24. FY-2020 trend adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2019, shall be granted an increase to their per diem rate effective for dates of service August 1, 2019 through June 30, 2020, of one dollar and sixty-one cents (\$1.61) to allow for a trend adjustment to ensure quality nursing facility services;

B. The rate to which the FY-2020 trend adjustment of one dollar and sixty-one cents (\$1.61) shall be added is the facility's rate as of July 31, 2019 set forth in subparagraph (13)(A)23.C. The FY-2020 trend adjustment shall be effective for dates of service beginning August 1, 2019 through June 30, 2020.

C. Effective for dates of service beginning July 1, 2020, the per diem increase shall be reduced to one dollar and forty-nine cents (\$1.49). A per diem adjustment of twelve cents (\$0.12) shall be deducted from the facility's rate as of June 30, 2020, which includes the one dollar and sixty-one cents (\$1.61) increase, and is effective for dates of service beginning July 1, 2020.

D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services

25. FY-2022 COVID-19 National Emergency adjustment—

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2021, shall be granted an increase to their per diem rate effective for dates of service July 1, 2021 through June 30, 2022, of ten dollars and eighteen cents (\$10.18) to allow for an adjustment for increases in costs associated with staffing, supplies, social distancing standards, and other factors due to the COVID-19 national emergency;

B. The rate to which the FY-2022 adjustment of ten dollars and eighteen cents (\$10.18) shall be added is the facility's rate as of June 30, 2021, set forth in subparagraph (13)(A)24.C. The FY-2022 adjustment shall be effective for dates of service beginning July 1, 2021, through June 30, 2022.

C. The FY-2022 adjustment will not be included in the per diem rate for dates of service after June 30, 2022. A per diem adjustment of ten dollars and eighteen cents (\$10.18) shall be deducted from the facility's rate as of June 30, 2022, which includes the ten dollars and eighteen cents (\$10.18) increase, and is effective for dates of service beginning July 1, 2022.

AUTHORITY: sections 208.153, 208.159, 208.201, and 660.017, RSMo 2016. Original rule filed July 1, 2008, effective Jan. 30, 2009. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 13, 2021, effective Sept. 27, 2021, expires March 25, 2022. Amended: Filed Sept. 13, 2021.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately \$95.1 million in SFY 2022.

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

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

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 10 - Nursing Home Program

Rule Number and Name:	13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services MO HealthNet Division	Estimated Cost for SFY 2022 = \$95.1 million
Non-State Government Owned Nursing Facilities (42)	No estimated cost of compliance for SFY 2022.

III. WORKSHEET

Description	Nursing Facility Rate Increase	Hospice Nursing Home Room & Board	Total Impact
Estimated Paid Days – SFY 2022	8,670,064	708,981	
Per Diem Increase – Effective July 1, 2021	\$10.18	\$9.67	
Estimated Impact – SFY 2022	\$88,261,252	\$ 6,855,846	\$95,117,098
State Share (33.99%)	\$30,000,000	\$ 2,330,302	\$32,330,302
Federal Share (66.01%)	\$58,261,252	\$ 4,525,544	\$62,786,796

IV. ASSUMPTIONS

Impact to Department of Social Services, MO HealthNet Division: The above impact to DSS, MHD was calculated using the following assumptions:

Nursing Facilities and HIV Nursing Facilities:

This amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022.

Hospice:

Hospice providers will be impacted by this amendment because reimbursement for hospice services provided in nursing facilities (i.e., Hospice Nursing Home Room and Board) is based on the nursing facility per diem rate. MHD conducted a fiscal analysis using 13 CSR 70-50.010

to estimate the impact to hospice. Please note this is an estimated analysis with the assumption of hospice appropriation authority.

Hospice Nursing Home Room and Board services are reimbursed 95% of the nursing facility per diem rate. The per diem increase to nursing facility rates of \$10.18 computes to a per diem increase to hospice reimbursement rates of \$9.67 ($\$10.18 \times 95\%$).

Estimated Paid Days:

Nursing Facility –

The estimated nursing facility days for SFY 2022 are based on an analysis of the average Medicaid days paid for nursing facility services for the last three SFYs.

Hospice –

The estimated hospice days for SFY 2022 are based on the estimated percentage of hospice days provided in nursing facilities multiplied by the SFY 2022 estimated nursing facility days.

Home and Community Based Services (HCBS):

HCBS provided on a monthly basis are limited to a percentage of the average monthly nursing facility payment (referred to as the HCBS cost cap). The HCBS cost cap for a given SFY is based on the average monthly nursing facility payments for the 12 months ending in April of the previous SFY. Therefore, the per diem increase to nursing facility rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022 will not impact the HCBS cost cap for SFY 2022 but may impact the HCBS cost cap for SFY 2023. For SFY 2023, the HCBS cost cap is estimated to increase by approximately 1.5% as a result of this amendment. This may increase the amount of services, and the payments, for MO HealthNet participants that are at the cap.

Impact to Non-State Government Owned Nursing Facilities (42): The amendment will have no cost of compliance for Medicaid enrolled non-state government owned nursing facilities because it will have a positive fiscal impact. This amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of \$10.18 effective for dates of service beginning July 1, 2021 through June 30, 2022.

**Title 20—DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2030—Missouri Board for Architects,
Professional Engineers, Professional Land Surveyors,
and Professional Landscape Architects
Chapter 6—Fees**

PROPOSED AMENDMENT

20 CSR 2030-6.020 Reexamination Fees. The board is amending the purpose and section (1).

PURPOSE: Since the National Council of Examiners for Engineers and Surveyors (NCEES) converted all professional engineering and professional land surveying examinations to be computer based, all applicants now apply directly to NCEES for reexamination; therefore, the board no longer charges a reexam fee for the national exams and these fees can be deleted.

PURPOSE: This rule sets reexamination fees for [professional engineers and] professional land surveyors.

(1) The following reexamination/rescheduling application filing fee/s are/ is established by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects:

<i>[(A) Professional Engineer</i>	<i>\$ 50]</i>
<i>[(B)](A) Professional Land Surveyor</i>	
<i>Missouri Specific</i>	<i>\$ 75</i>
<i>[(C) Principles and Practice of Surveying</i>	<i>\$ 50]</i>

AUTHORITY: section 327.041, RSMo 2016. This rule originally filed as 4 CSR 30-6.020. Original rule filed March 16, 1970, effective April 16, 1970. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 13, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects, PO Box 184, Jefferson City, MO 65102, via facsimile at (573) 751-8046, or via email at moapeplspla@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.