

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

CSR 80-800.200] **5 CSR 20-400.500**, an initial four- (4-)[-] year certificate shall be issued to an applicant who has successfully obtained certification through the American Board for Certification of Teacher Excellence (ABCTE) and upon verification by *[the school principal]* **the designated district official at a public school or accredited non-public school** of sixty (60) contact hours in any one (1) of the following areas:

(2) Upon completion of the requirements listed in section (1) of this rule and completion of the requirements listed herein, an applicant shall be eligible to apply for a career continuous professional certificate:

(D) Completion of two (2) years in a **department-approved** district mentoring program *[approved by the state board of education or the ABCTE]*;

(E) *[Participate]* **Participation** in the district's Performance-Based Teacher Evaluations (PBTEs); and

(3) Certification authorized under this rule shall not be granted for the areas of early childhood education*[, elementary education,]* or special education.

AUTHORITY: section 161.092, RSMo [Supp. 2007] 2016. This rule previously filed as 5 CSR 80-800.285. Original rule filed April 9, 2008, effective Oct. 30, 2008. Moved to 5 CSR 20-400.210, effective Aug. 16, 2011. Amended: Filed Sept. 22, 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 Elementary and Secondary Education, ATTN: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

PROPOSED AMENDMENT

5 CSR 20-400.210 Application for Certificates of License to Teach on the Basis of Certification by the American Board for Certification of Teacher Excellence (ABCTE). The State Board of Education (board) is amending sections (1)–(3).

PURPOSE: This proposed amendment will update the rule's references and clarify language for the Application for Certificates of License to Teach on the Basis of Certification by the American Board for Certification of Teacher Excellence (ABCTE).

(1) In addition to all the criteria for application provided under 15

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

PROPOSED AMENDMENT

5 CSR 20-400.260 Certificate of License to Teach Classifications. The State Board of Education (board) is amending section (1), deleting sections (2) and (9), renumbering as necessary, and amending renumbered sections (2), (5), (6), (8), and (11)–(18).

PURPOSE: This amendment will update the rule references and clarify language for the classification of certificates of license to teach.

(1) Certificates of license to teach are issued and renewed by the State Board of Education (board) pursuant to the certification requirements found in *[the Compendium of Missouri Certification Requirements (compendium), which is incorporated by reference and made a part of this rule, and the rules promulgated by the board. Anyone interested in viewing or requesting a copy of the compendium, published by the Department of*

Elementary and Secondary Education (revised February 2012), may contact the Educator Certification Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions] 5 CSR 20-400.500-5 CSR 20-400.700.

[(2) Effective dates for initial certificates of license to teach, except for substitutes certificates of license to teach, are as follows:

(A) June 1, when the application is received from May 1 through July 31;

(B) August 15, when the application is received from August 1 through November 30; or

(C) January 1, when the application is received from December 1 through April 30.]

*[(3)](2) If a certificate of license to teach is renewed, except for a substitute, **provisional, or temporary authorization** certificate of license to teach, the effective date of renewal will be the date of expiration of the certificate of license to teach, providing that the application for renewal and supporting materials are received by the Department of Elementary and Secondary Education [(DESE)] (**department**) prior to or on the expiration date.*

(A) If the renewal of the certificate of license to teach is received by [DESE] the department within eleven (11) months of the expiration date of the certificate or a shorter time if specified in the rules promulgated by the board, the effective date of renewal will be the certificate's expiration date.

[(B) If an individual's certificate of license to teach renewal is received after the certificate has expired for more than eleven (11) months or a shorter time if specified in the rules promulgated by the board, the individual must meet the current certification requirements as set forth in the compendium unless extenuating circumstances exist and the individual obtains the approval of the commissioner of education.]

[(4)](3) Certificates of license to teach may be issued pursuant to the rules promulgated by the board, to individuals in the following classifications:

(A) Initial Professional Classification (IPC); and/or

(B) Career Continuous Professional Classification (CCPC) (doctoral applicants are ineligible to advance to the CCPC level).

[(5)](4) For the purpose of this rule, one (1) contact hour for professional development is defined as—

(A) Sixty (60) minutes of professional development; or

(B) One (1) hour college credit equals fifteen (15) contact hours of professional development.

[(6)](5) Initial Professional Classification (IPC)—

(A) A four (4) year IPC classification will be issued to applicants who meet the certification requirements and possess less than four (4) years of state-approved teaching experience;

(B) During the valid dates of the IPC classification, the certificate holder shall complete the following requirements:

1. Verification of four (4) years of state-approved teaching experience;

2. Develop and implement a professional development plan of at least thirty (30) contact hours, approved by the employing school district, to include clearly stated goals for improvement and enrichment;

3. Participate in a mentoring program for a minimum of two (2) school years as defined in 5 CSR 20-400.380, the guidelines for which shall be established by the local board of education;

4. Participate in a beginning teacher assistance program [designed in cooperation with a Missouri teacher education program] as defined in 5 CSR 20-400.385 to include, but not be

limited to, assistance in classroom management, instructional strategies, and ongoing support; and

5. Participate in the district's Performance-Based Teacher Evaluations (PBTEs) as defined in 5 CSR 20-400.375; and/or

(C) Individuals who have not been employed in a school setting may renew their certificate upon [a showing of good cause and] completion of the following:

1. [Written request for renewal] Submission of an application; and

2. Employment by a Missouri public school district and [D]documentation of completion of a plan to complete twenty-four (24) contact hours of professional development within six (6) months prior to or after returning to an educational position or completion of a two or three semester hour course relevant to the individuals growth as a professional educator.

[(7)](6) Career Continuous Professional Classification (CCPC)—

(A) A CCPC classification will be issued to an applicant upon completion and verification of the following:

1. Four (4) years of state-approved teaching experience;

2. The development and implementation of a professional development plan of at least thirty (30) contact hours approved by the employing school district to include clearly stated goals for improvement and enrichment;

3. Participation in a mentoring program for a minimum of two (2) school years as defined in 5 CSR 20-400.380, the guidelines for which shall be established by the local board of education;

4. Participation in a beginning teacher assistance program [designed in cooperation with a Missouri teacher education program] as defined in 5 CSR 20-400.385, to include, but not be limited to, assistance in classroom management, instructional strategies, and ongoing support; and

5. Participation in the district's PBTEs as defined in 5 CSR 20-400.375;

(B) The CCPC classification is continuous upon verification by the employing school district that the certificate holder has completed fifteen (15) contact hours of professional development per school year; and

[1. Individuals possessing a CCPC who do not complete fifteen (15) contact hours of professional development each school year, may within two (2) school years make up the missing hours. The individual must first meet the fifteen-(15-) hour requirement for the current school year and then count the excess hours as makeup hours;

2. A CCPC becomes inactive if the individual does not make up the requisite hours within two (2) school years; and/or

3. A CCPC may be reactivated by the individual completing twenty-four (24) contact hours of professional development within six (6) months prior to or after the reactivation of the certificate. Failure of the individual to complete the twenty-four (24) contact hours within six (6) months will result in the certificate becoming inactive; and]

(C) The CCPC holder is exempt from the fifteen (15) contact hours of professional development, if the holder has a local professional development plan in place with the school and at least two (2) of the following:

1. Ten (10) years of state-approved teaching experience;

2. A master's degree from an accredited college or university; and/or

3. Certification from the National Board for Professional Teaching Standards, or for school psychologists, the certificate of nationally certified school psychologist issued by the National Association of School Psychologists (NASP), or for speech-language pathologists, the certificate of clinical competence in speech-language pathology issued by the American Speech-Language-Hearing Association (ASHA)].

[(8)](7) Any level of a Missouri professional classification shall be extended for a teacher whose service is interrupted due to a reduction in force (RIF) or military service.

[(9)] *Individuals who have not been employed in a school setting for three (3) or more school years may reactivate the appropriate level of professional classification certificate of license to teach by completing twenty-four (24) contact hours of professional development within six (6) months prior to or after returning to an educational position.]*

[(10)](8) The local district and teacher shall submit, on an upgrade application form provided by *[DESE] the department*, a request for renewal and/or continuation of a particular classification level; verification that the teacher has completed the requirements of a particular classification level and/or the request for advancement to the next classification level.

[(11)](9) Any certificate holder denied certification by the board pursuant to this rule may appeal the decision pursuant to the rules promulgated by the board.

[(12)](10) Any certificate holder's disagreement with the school district's verification of requirements for the classification levels shall be dealt with through an appeal process developed by the school district's local board of education.

[(13)](11) Approved teaching experience, as described in the rules promulgated by the board, must be in Missouri public schools, schools approved or accredited by the state education agency in states other than Missouri, or in nonpublic schools accredited by *[an affiliate of the National Federation of Nonpublic School State Accrediting Associations, or]* one (1) of the six (6) regional accrediting associations for schools and colleges, *[or by the University of Missouri-Columbia,]* or other schools accredited by a *[DESE]department*-approved accrediting agency which incorporate standards that include *[an entry-year mentor program]* a two- (2-) year mentoring program as defined in 5 CSR 20-400.380, professional development plans for faculty, in-service training for faculty, beginning teacher assistance program as defined in 5 CSR 20-400.385, and PBTEs as defined in 5 CSR 20-400.375. Teaching experience must be contracted and at least half-time. Substitute teaching or serving as a teacher's aide, **paraprofessional**, or assistant will not be counted as teaching experience.

[(14)](12) Provisional certificates of license to teach may be issued to an individual for two (2) years and may be extended upon a showing of good cause. Provisional certificates of license to teach may be issued in the following situations:

(A) A two- (2-) year provisional certificate of license to teach may be issued to an individual who has completed the academic requirements for a certificate of license to teach, but has not taken or passed the exit assessment(s) designated by the board; or

(B) A two- (2-) year provisional certificate of license to teach may be issued to an individual who has been admitted into a state-approved post-baccalaureate or alternative professional education program at a Missouri institution of higher education and is actively engaged in coursework to satisfy the requirements of the program; or

(C) A two- (2-) year provisional certificate of license to teach may be issued to an individual who has completed a teacher preparation program and is generally within twelve (12) semester hours of completion of the certification requirements as set forth in *[the compendium]* 5 CSR 20-400.500–5 CSR 20-400.600.

[(15)](13) Administrator certificates of license to teach may be issued to an individual and renewed pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.610–5 CSR 20-400.630.

[(16)](14) Student services certificates of license to teach may be issued to an individual and renewed pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.640–5 CSR 20-400.650.

[(17)](15) Substitute certificates of license to teach may be issued to an individual for four (4) years pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.220.

[(18)](16) Career education certificates of license to teach may be issued to an individual and renewed pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.660–5 CSR 20-400.690.

[(19)](17) Adult education and literacy certificates of license to teach may be issued to an individual and may be renewed pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.700.

[(20)](18) Temporary authorization certificates of license to teach may be issued to an individual for one (1) year and may be renewed pursuant to *[the requirements found in the compendium and the rules promulgated by the board]* 5 CSR 20-400.180.

AUTHORITY: sections [161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. 2011, and sections 168.011, 168.128, 168.405, and 168.409, RSMo 2000] 161.092, 168.011, 168.071, 168.081, 168.128, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2021. Original rule filed April 26, 2000, effective Nov. 30, 2000. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 22, 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 Elementary and Secondary Education, AITN: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 6—DEPARTMENT OF HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

Division 10—Commissioner of Higher Education *[and Workforce Development]*

Chapter 14—*[Limit on]* Tuition Increases

PROPOSED AMENDMENT

6 CSR 10-14.010 *[Limit on]* Tuition Increases. The Department of Higher Education and Workforce Development is amending the chapter and rule title, sections (1)–(3), and removing sections (4) and (5).

PURPOSE: This rule amendment changes the administrative rule to comply with statutory changes to section 173.1003, RSMo due to the passage of HB 297 in 2021.

(1) Definitions.

(A) Academic year means the fall and spring semesters between August 1 and July 31 of one (1) three hundred sixty-five- (365-) day period.

[(B)] Average tuition means the sum of all included institutions' tuition for the current academic year divided by the number of included institutions. This figure will be determined by adding the tuition of each public four- (4-) year institution and State Technical College, then dividing by the number of included institutions. If any community college has tuition that is equal to or exceeds the aforementioned average tuition, the average tuition shall be recalculated to include that community college's tuition.

(C) Booked tuition means the amount of tuition and required fees an institution records with Missouri Department of Higher Education (MDHE) as permitted under this rule, but not actually charged during an academic year. Booked tuition is included in an institution's allowable annual increase and the average tuition, but is waived for students in the year that it is initially booked. Booked tuition may be charged in future years without counting further towards an institution's allowable increase when charged.]

[(D)](B) CBHE means the Coordinating Board for Higher Education.

[(E)](C) Commissioner means the Commissioner of Higher Education.

(D) Course fees means those fees in addition to tuition charged to full-time undergraduate students for enrollment in specific courses, excluding student approved fees and required fees.

[(F)] Consumer price index or CPI means the consumer price index for all urban consumers, 1982-1984 = 100, not seasonally adjusted, as defined and officially recorded by the United States Department of Labor or its successor agency, for December of the current year compared to December of the previous year.]

(E) Differential tuition or differentiated tuition means a system of charging tuition in which Missouri resident undergraduate students enrolled full-time in certain undergraduate degree programs designated by the institution are charged tuition at additional rates or amounts greater than what is charged to each Missouri resident undergraduate student for courses required for that degree program. The additional rates or amounts of tuition in a differentiated tuition system must be based on enrollment in the designated degree program and not based on enrollment in specific courses.

(F) Elective means a course or class taken by a student which does not satisfy any required component of a degree program, including required general education courses, for which an institution is charging differentiated tuition.

(G) [Fee established by the student body of the institution or s/Student approved fee means any fee the amount of which has been approved by a majority of students who vote in a campus-wide election or by a majority of members of an officially recognized student government organization popularly elected by the students of an institution or a campus within a multi-campus system.

[(H)] FTE means full time equivalent.]

[(I)](H) Included institution means all institutions that offer four- (4-) year degree programs, State Technical College, and any community college that charges out-of-district Missouri residents tuition that is equal to or exceeds the average tuition.

[(J)](I) Institution means an approved public institution of higher education, as defined in section 173.1102, RSMo. An institution that is comprised of more than one (1) campus at which the same level of degree is offered shall constitute one (1) institution for purposes of this rule.

[(K)] Institutional aid means the aid awarded to the student by the student's institution of higher education only from such institution's funds. It does not include the following: Pell Grants; state awards such as the Missouri higher educa-

tion academic scholarship program, the A+ schools program, and the access Missouri financial aid program; foundation scholarships; third-party scholarships; employee and dependent fee waivers; and student loans.]

[(L)](J) MDHEWD means the Missouri Department of Higher Education and Workforce Development.

[(M)] Mid-year tuition increase means any ongoing increase in tuition that occurs after an institution has submitted its initial notice of tuition change to the MDHE, or any amended notices of tuition change related to the initial notice of tuition change, the duration of which extends beyond the end of the academic year in which it is initially imposed.]

[(N)](K) Notice of tuition change means written documentation in a format prescribed by MDHEWD, the accuracy of which is attested by the institution's president or chancellor, indicating the tuition for the current academic year, the tuition for the upcoming academic year, and the percentage change between the two (2).

[(O)] Net tuition revenue means the net amount of tuition and required fees collected from resident degree-seeking undergraduates reduced by institutional aid only during the fiscal year in which the increase is charged.]

[(P)](L) Required fees means those fees charged to all full-time undergraduate students and excludes course [- and program-specific] fees and any student approved fee established after August 27, 2007.

[(Q)] State appropriations means the state operating appropriation for the prior year per FTE student for the prior year compared to the state operating appropriation for the current year per FTE student for the prior year.

(R) State operating appropriation means the total dollar amount appropriated by the Missouri Legislature for an institution's core operating appropriation for the fiscal year, exclusive of capital appropriations and any amount withheld by the governor or legislature.

(S) State operating support means the funding actually disbursed from state operating appropriations to approved public institutions and does not include appropriations or disbursement for special initiatives or specific program additions or expansions. To qualify as special initiatives or specific program additions or expansions, it must be separated out in its own line item. Performance funding will be considered as a part of an institution's state operating support regardless of if the legislature decides to appropriate it as a separate line item(s).

(T) Temporary tuition surcharge means any temporary increase in tuition that is assessed in addition to the amount indicated by an institution in its initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change. The time period during which a temporary tuition surcharge is assessed shall not extend beyond the end of the academic year in which the surcharge is initially imposed.]

[(U)](M) Tuition means the dollar amount an institution charges each Missouri resident undergraduate student enrolled in thirty (30) credit hours plus the required fees for the academic year. In the community college context, "tuition" means out-of-taxing-district Missouri resident tuition plus the required fees for the academic year.

[(2) Limits on Tuition Increases.

(A) Any institution with tuition that is greater than the average tuition shall not increase tuition for the next academic year at a percentage rate that exceeds the percentage increase in the CPI or zero, whichever is greater, plus a percentage of not more than five percent (5%) that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution's allowable increase and the average tuition in the year it is initially booked.

(B) Any institution with tuition that is less than the average tuition shall not increase tuition for the next academic year in a dollar amount that exceeds the product of either zero or the percentage change in the CPI, whichever is greater, times the average tuition, plus a percentage of not more than five percent (5%) that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution's allowable increase and the average tuition in the year it is initially booked.

(C) A community college shall be required to abide by the limitations and procedures set forth in this rule only if its tuition is greater than or equal to the average tuition.

(D) Any institution that exceeds the limits set forth in subsection (A) or (B) of this section shall remit five percent (5%) of its state operating appropriation during the fiscal year in which the tuition increase will take place to the state's general revenue fund or request a waiver of the five percent (5%) penalty pursuant to section (4) of this rule.

(3) Notification Procedure.

(A) By December 1 of each year, MDHE will notify all institutions of the average tuition. This notice will also indicate which institutions have higher than average tuition, which institutions have lower than average tuition, and which institutions will be exempt from the requirements of this rule for the upcoming academic year.

(B) By January 31st of each year, MDHE will notify all institutions of the prior year's CPI and their allowable increase.

(C) By July 1 of each year, each institution must submit its notice of tuition change to the CBHE, via MDHE. If the notice of tuition change is discovered to be inaccurate or becomes inaccurate due to changes in underlying data or assumptions, the institution shall notify MDHE immediately and submit a corrected notice of tuition change as soon as practicable.

(D) Any institution that imposes a mid-year tuition increase and/or temporary tuition surcharge must provide a notice of tuition change reflecting the increase as soon as it is practically possible to do so and will submit to the following:

1. If the mid-year tuition increase and/or temporary tuition surcharge plus the tuition initially indicated in the institution's notice of tuition change exceed the increase permitted by this rule, the institution must abide by the terms of this rule.

2. Because any mid-year tuition increase and/or temporary tuition surcharge will likely be associated with exigent circumstances, the Commissioner and the CBHE recognize that the timeline this rule sets forth for the normal appeals process may be too lengthy for mid-year appeals. The Commissioner and the CBHE will address mid-year appeals in as expeditious a manner as possible, and any institution seeking a waiver under this rule is expected to provide all required information in a like manner. All parties will honor the intent of the timeline this rule sets forth for the normal appeals process, and adequate time for public comment, preparation of responses, consideration of arguments, and deliberation will be afforded.

3. If an institution imposes a mid-year tuition increase, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase.

4. If an institution imposes a temporary tuition sur-

charge, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase, but shall not include any amount attributable to a temporary tuition surcharge.

(E) Within 15 calendar days of receiving the institution's notice of tuition change, MDHE will notify the institution that its notice of tuition change has been received and whether its tuition increase triggers the penalty described in subsection (2)(D) of this rule.

(4) Penalty Waiver Process.

(A) No later than thirty (30) calendar days after receiving MDHE's notification that the tuition increase triggers the penalty, an institution may submit a request for a waiver of the penalty. The waiver request must set forth each factor the institution contends supports its decision to increase tuition in excess of the limits set forth in this rule.

(B) No later than forty-five (45) calendar days after the institution submits its waiver request, the commissioner will meet with the institution at a time and place agreeable to all parties.

(C) The commissioner may ask an institution to submit additional or clarifying written material to supplement the institution's waiver request before or after the meeting. Such requests from the commissioner may include, among others, information regarding the areas of inquiry listed in section (5) of this rule.

(D) An institution requesting a waiver must provide all information requested by the commissioner in a timely manner.

(E) All written materials, including, but not limited to, notices of tuition change and waiver requests, submitted to the commissioner in connection with this rule will be considered public information and will be posted on MDHE's website. The MDHE website will specifically advise members of the public that they may submit written comments about any of the posted material to the commissioner at any time before the meeting of the commissioner and the institution requesting a waiver takes place. The commissioner may determine the weight each comment should be afforded and may consider the comments in determining whether to grant a waiver. Copies of all comments must be provided to the institution requesting a waiver within three (3) calendar days of the date the comment is received.

(F) Unless otherwise agreed, the meeting of the commissioner and the institution requesting a waiver will be led by the commissioner and may include other individuals as requested by the commissioner. The institution will have an opportunity to present its rationale for seeking a waiver and to address any comments received from the public. The commissioner and/or his/her staff will have an opportunity to ask questions of the institution.

(G) The commissioner will notify the institution whether he/she has determined that its tuition increase is sufficiently warranted within twenty (20) calendar days of the meeting or within twenty (20) calendar days after the institution has provided all information requested by the commissioner, whichever is later. If the commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund.

(H) If the commissioner determines that the tuition increase is not sufficiently warranted, the institution shall have ten (10) calendar days to submit an amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change, to agree to increase tuition only at the level permitted by section (2) of this rule, or to maintain its original position. In any case, the institution shall notify the commissioner of its decision in writing within ten (10) calendar days after the commissioner notifies the institution that the initial tuition increase is not sufficiently warranted.

(I) If the institution submits an amended notice of tuition change—

1. The commissioner shall consider the amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change and shall meet with the institution if deemed necessary by the commissioner;

2. The commissioner will notify the institution whether he/she has determined that the tuition increase set forth in the amended notice of tuition change is sufficiently warranted within twenty (20) calendar days of the meeting or within twenty (20) calendar days after the institution has provided all information requested by the commissioner, whichever is later;

3. If the commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund;

4. If the commissioner determines that the tuition increase set forth in the institution's amended notice of tuition change is not sufficiently warranted, the institution shall have ten (10) calendar days within which to either agree to increase tuition only at the level permitted by section (2) of this rule or to maintain the position indicated in its amended notice of tuition change. In either case, the institution shall notify the commissioner of its decision in writing within ten (10) calendar days after the commissioner notifies the institution that the amended tuition increase is not sufficiently warranted; and

5. An institution may not submit more than one (1) amended notice of tuition change per academic year unless requested by the commissioner.

(J) If the commissioner determines that the tuition increase is not sufficiently warranted and the institution decides to maintain its original and/or amended position rather than to increase tuition only at the level permitted by section (2) of this rule, the commissioner must notify the CBHE of his/her determination and recommendation as to what percentage of the institution's state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund.

(K) If the commissioner determines that the tuition increase is not sufficiently warranted, the CBHE will determine what, if any, percentage of the institution's state operating appropriation must be remitted to the state's general revenue fund at its next regularly scheduled meeting or at a specially called meeting, by means of a majority vote of all CBHE members present at the meeting, whether present in person or by electronic means; provided, however, that no vote will be made on the matter unless a quorum is established. The institution will have an opportunity to present each factor it believes supports its decision to increase tuition to the CBHE. The CBHE's decision will be binding and final.

(L) If the CBHE votes to impose a penalty, the penalty shall be up to five percent (5%) of the institution's state operating appropriation during the fiscal year in which the tuition increase will take place. The penalty shall be a one- (1-) time penalty only. The institution shall remit the penalty to the state's general revenue fund no more than thirty (30) calendar days after the date the CBHE votes to impose the penalty.

(M) All written material submitted by an institution in connection with this rule shall be submitted in electronic form.

(N) The commissioner, at his/her discretion, may agree to extend any deadline described in this rule.

(O) Throughout his/her tenure, the commissioner will be committed to addressing waiver requests in a timely manner. Failure by the commissioner to meet any deadline described in this rule shall not, however, invalidate the process.

(P) This rule is not intended to inhibit institutions' ability to engage in conversations with the commissioner, MDHE staff, or the CBHE about issues of interest to members of the higher education community, including tuition.

(5) Penalty Waiver Decision Criteria.

(A) The commissioner shall consider all written and verbal information provided by an institution and through public comments in the waiver request process when determining whether the tuition increase is sufficiently warranted. The commissioner may request the institutions to provide information about the number of students enrolled at satellite or branch campuses, in online classes, or in distance education programs at each institution, and the tuition charged for each such type of education. The commissioner may evaluate information outside the institution-provided material to the extent necessary to ensure a fair and complete decision, though any attempt to do so will not relieve the institution of its burden to produce a complete and accurate decision-making record.

(B) The determination of whether an institution's tuition increase is sufficiently warranted will be based on the relationship between state appropriations and the consumer price index. The commissioner may also consider extraordinary circumstances, including, but not limited to:

1. Mandatory costs that have increased at a rate that exceeds the CPI, including but not limited to increased costs incurred in connection with the implementation of state or federal mandates or legal requirements;

2. Historical trends in state operating appropriations, tuition policy, and other financial issues and relationships;

3. Costs related to the institution's mission that justify growth in revenues in excess of the CPI;

4. Costs related to initiatives designed to meet specific needs or strategic goals of the state of Missouri that justify growth in revenues in excess of the CPI;

5. The current and/or historical structure of the institution's total budget, including the institution's allocations for faculty and non-faculty salaries, institutional financial aid, student support, research, physical plant maintenance, and other operational activities;

6. Damage, destruction, or deterioration of facilities, infrastructure, property, or other physical assets of an institution for which there are insufficient funds from state appropriations or insurance proceeds to repair or replace;

7. Public comments about the material posted on MDHE's website pertaining to the institution's waiver request; and

8. Magnitude of tuition increase and the likely impact on the students the institution serves.]

(2) Notice of Tuition Increases.

(A) By July 1 of each year, beginning July 1, 2022, each included institution must submit its notice of tuition change to the CBHE, via MDHEWD. If the notice of tuition change is discovered to be inaccurate or becomes inaccurate due to changes in underlying data or assumptions, the institution shall notify MDHEWD immediately and submit a corrected notice of tuition change as soon as practicable.

(B) Any institution that imposes a mid-year tuition increase and/or switches to differential tuition mid-year must provide a notice of tuition change reflecting the increase as soon as it is practically possible to do so.

(3) Differentiated Tuition.

(A) An institution may utilize differentiated tuition. An institution that is comprised of more than one (1) campus at which the same level of degree is offered may decide to use differentiated tuition at all of its campuses or only at designated campuses.

(B) If an institution decides to utilize differentiated tuition, it must notify MDHEWD of that decision no later than thirty (30) days before the differentiated tuition is implemented. An institution that is comprised of more than one (1) campus at which the same level of degree is offered must provide such notification to MDHEWD for each campus at which differentiated tuition is to be implemented.

(C) When charging differentiated tuition, an institution must discontinue charging course fees for courses taken towards the degree program for which the institution is charging differentiated tuition. Institutions may continue charging course fees for electives. Course fees can be charged until differentiated tuition is implemented and an institution may collect any course fees that were charged prior to implementation of differentiated tuition.

AUTHORITY: section 173.1000, RSMo 2016, and section 173.1003, RSMo Supp. [2018] 2021. Original rule filed April 30, 2019, effective Oct. 30, 2019. Amended: Filed Sept. 24, 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 or in opposition to this proposed amendment with the Department of Higher Education and Workforce Development, General Counsel, PO Box 1469, Jefferson City, MO 65102-1469. 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 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 7—Security and Surveillance

PROPOSED AMENDMENT

11 CSR 45-7.130 Non-[g]Gambling Hours. The commission is amending the purpose statement and section (1).

PURPOSE: This amendment modifies staffing requirements during non-gambling hours.

PURPOSE: This rule establishes required surveillance [coverage] staffing during non-gambling hours.

(1) At least [two (2)] one (1) trained surveillance operator[s] must be on duty in the casino surveillance room actively monitoring activities during non-gambling hours when no drops and counts are being conducted. **Additional personnel shall be available to allow for meals and breaks.**

AUTHORITY: sections 313.004I, 313.800, 313.805J and 313.824, RSMo 2016, and section 313.805, RSMo Supp. 2021. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Feb. 26, 2001, effective Sept. 30, 2001. Amended: Filed Nov. 1, 2018, effective June 30, 2019. Amended: Filed Sept. 30, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment via email to MGCPolicy@mgc.dps.mo.gov, or by mail to the Missouri Gaming Commission, Policy Section, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for December 2, 2021, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 9—Internal Control System

PROPOSED AMENDMENT

11 CSR 45-9.113 Minimum Internal Control Standards (MICS)—Chapter M. The commission is amending section (1).

PURPOSE: This amendment requires surveillance coverage to ensure the outcome of electronic table games and hybrid table games as well as transactions at a table game that affect Adjusted Gross Revenue are sufficiently recorded and modifies staffing requirements.

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards (MICS) Chapter M—Surveillance*, which [has been] is incorporated by reference [herein, as] and made part of this rule as adopted by the commission on September 29, 2021, and published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102 and which may be accessed at <http://www.mgc.dps.mo.gov>. [Chapter M] This rule does not incorporate any subsequent amendments or additions [as adopted by the commission on May 25, 2016].

AUTHORITY: sections 313.004 and 313.824, RSMo [Supp. 2014, section 313.800, RSMo Supp.] 2016, and sections 313.800 and 313.805, RSMo Supp. [2013] 2021. Original rule filed June 30, 2010, effective Jan. 30, 2011. Amended: Filed Dec. 5, 2013, effective Aug. 30, 2014. Amended: Filed May 26, 2016, effective Jan. 30, 2017. Amended: Filed Sept. 30, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment via email to MGCPolicy@mgc.dps.mo.gov, or by mail to the Missouri Gaming Commission, Policy Section, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for December 2, 2021, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 25—Motor Vehicle Financial Responsibility

PROPOSED AMENDMENT

12 CSR 10-25.120 Application for Certificate of Self-Insurance from Religious Denominations. This proposal amends the purpose and sections (1) and (4)-(7).

PURPOSE: This amendment makes several technical changes and clarifies the requirements to obtain a Certificate of Self-Insurance.

PURPOSE: This rule establishes [the prerequisites necessary to] how certain religious denominations may apply for a self-insurance certificate pursuant to the provisions of section 303.220, RSMo [(Senate Bill 424, 83rd General Assembly, Second Regular Session)].

(1) [The application] Applicants for self-insurance authorization [shall include] will complete an application in a form prescribed by the director of revenue which will include the following:

[(A) The request for self-insurance on the letterhead of the religious denomination signed by the head of the denomination;]

(A) A notarized affidavit, as prescribed by the director of revenue, on which the affiant swears or affirms to the following:

1. That the religious denomination and all its members are discouraged from purchasing insurance, of any form, as being contrary to the religious denomination's tenets; and

2. That there are at least twenty-six (26) members in the religious denomination who own motor vehicles;

(B) A list, which is attached to the affidavit required by subsection (1)(A), of all members in the [church organization] religious denomination who own motor vehicles. There must be at least twenty-six (26) members in the [church] religious denomination who own motor vehicles. The list must include the following information:

1. The full name of the [church] member as shown on the motor vehicle application for registration;

2. The [church] member's [most] current address; and

3. A description of each motor vehicle owned by the [church] member which is registered in Missouri. The description of each motor vehicle must include the vehicle year, make, model, vehicle identification number (VIN), and current registration plate number;

[(C) A notarized affidavit from the church organization specifying that it prohibits its members from purchasing insurance, of any form, as being contrary to its religious tenets;]

[(D)](C) A written explanation of how the [church organization] religious denomination intends to settle damages[/] or personal

injuries caused in a motor vehicle accident by a member [of the church], and documentation of all vehicle claims made against the religious denomination in the past twelve (12) months, and those claims' resolutions, or an attestation that no such claims have been made in the past twelve (12) months;

[(E) Examples (statements) of how the church organization has settled or paid for motor vehicle accident claims in the past; and]

(D) A statement indicating any limits of liability of coverage by members of the religious denomination, but in no case may the self-insurance provided by the religious denomination be less than the minimum financial responsibility requirements established in Chapter 303, RSMo; and

[(F)](E) If applicable, [A/a] copy of a membership charter showing affiliation with a larger [church organization] religious denomination is required when the [church] applicant has fewer than twenty-six (26) members owning motor vehicles in Missouri.

(4) Renewal of self-insurance authorization may be granted if the religious denomination maintains membership of at least twenty-six (26) [church] members owning motor vehicles. [A list of] Any addition or removal of members [and] or vehicles as described in, and required by, subsection (1)(B) shall be provided [annually] to the director prior to the member or vehicle being self-insured.

(A) The affidavit prescribed by the director in subsection (1)(A) must be completed by all religious denominations every three (3) years.

(B) A list of members and vehicles as described in subsection (1)(B) shall be provided to the director annually.

(5) The director [shall] will issue a Certificate of Self-Insurance to a religious denomination qualifying for self-insurance authorization.

(6) The director [shall] will issue [a sufficient number of identification cards] a Certificate of Self-Insurance for the organization to print and distribute for [the self-insurance religious denomination] vehicles [as provided in section 303.220, RSMo] identified by the religious denomination.

(7) The director may request documentary proof from an applicant for self-insurance authorization or a religious denomination issued a Certificate of Self-Insurance to demonstrate that the religious denomination has unencumbered assets equal to at least the minimum financial responsibility requirements established in Chapter 303, RSMo. The religious denomination will have thirty (30) days from the date the request is made to provide the proof required by this section. Failure to timely respond or to provide adequate proof may be considered reasonable grounds to cancel a Certificate of Self-Insurance in accordance with section (8).

[(7)](8) The director, upon reasonable grounds and after giving ten (10) days[/] notice, shall cancel a Certificate of Self-Insurance. Reasonable grounds may include, but not be limited to, failure of the self-insured to settle a claim or satisfy a court judgment [or], receipt of notice of bankruptcy proceedings by the self-insured, failure to provide documentary proof as required by section (7), or evidence establishing the falsity of any information on which the department relies in issuing a Certificate of Self-Insurance. The director shall notify the [self-insured] religious denomination in writing of [his/her] their decision and provide the [self-insured] religious denomination an opportunity [to have an] for a contested administrative hearing. The administrative hearing shall be conducted in accordance with section 303.290, RSMo, and Chapter 536, RSMo.

AUTHORITY: section 303.290, RSMo [1986] 2016. Original rule find Sept. 8, 1989, effective Jan. 26, 1990. Amended: Filed Nov. 26, 1991, effective April 9, 1992. Amended: Filed Sept. 24, 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 Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 71—[Licensing] Rules for Residential Treatment
Agencies for Children and Youth**

PROPOSED AMENDMENT

13 CSR 35-71.010 Definitions and Principles Generally Applicable to this Chapter. The division is amending the chapter title and title of the rule, adding a new section (1) and (2), deleting sections (2), (3), (4), (11), (16), (18), and (21), and is moving the remaining sections into subsections under the new section (2).

PURPOSE: The amendment to this rule establishes the general principles that DSS will apply in implementing Chapter 71. It also defines words and phrases used in the process that License-Exempt Residential Care Facilities must use to notify DSS of their operations in Missouri. Finally the amendment defines words and phrases used in the rules for residential treatment agencies for children and youth in Chapter 71 and amends the title of the rule.

[(1)] Chemical restraints are drugs which are prescribed or administered to temporarily restrain a child who presents a likelihood of serious physical harm to him/herself or others.

(2) Child is any individual under eighteen (18) years of age as defined in section 210.481(1), RSMo.

(3) Child abuse/neglect background check is, at a minimum, a search of the family care safety registry for residential treatment agencies for children and youth staff child abuse/neglect history pursuant to sections 210.903 through 210.936, RSMo.

(4) Criminal background check is, at a minimum, a search of the family care safety registry for residential treatment agencies for children and youth staff criminal history pursuant to sections 210.903 through 210.936, RSMo.]

(1) The following principles shall apply to all decisions made pursuant to this chapter:

(A) The safety and welfare of children is paramount;

(B) All providers of direct services to children and their families will be evaluated in a uniform, transparent, objective, and consistent basis;

(C) Services to children and their families which are provided by the division and licensed residential care facilities shall be provided in a timely manner to maximize the opportunity for successful outcomes, and such services shall be tracked and routinely evaluated through a quality assurance program;

(D) Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which

shall be consistent with federal and state standards;

(E) Resources and efforts of the division and licensed residential care facilities shall be committed to pursue the best possible opportunity for a successful outcome for each child. In the case of children and youth who are in the foster care system, successful outcomes may include preparing youth for a productive and successful life as an adult outside the foster care system, such as independent living. For those providers that work with children requiring intensive twenty-four- (24-) hour treatment services, successful outcomes shall be based on the least restrictive alternative possible based on the child's needs as well as the quality of care received; and

(F) All licensed service providers shall prioritize methods of reducing or eliminating a child's need for residential treatment through community-based services and supports.

(2) For the purpose of all regulations in 13 CSR Chapter 71, unless otherwise specified or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481, 210.1253, RSMo, and 13 CSR 35-71.015 shall apply to all of the regulations in this chapter. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) "Agency" in the context of regulations governing licensed residential care facilities shall mean the same as licensed residential care facility or LRCF;

(B) "Background check" means a background check which complies with the requirements of 210.493, RSMo, and 13 CSR 35-71.015;

(C) "Chemical restraints" are drugs which are prescribed or administered to temporarily restrain a child who presents a likelihood of serious physical harm to him/herself or others;

[(5)](D) A "critical incident" is an incident involving a child in the care of the agency, in which the child or another person directly involved with the child is placed at significant risk of death, serious physical, mental, or sexual harm. A critical incident may involve conduct of the child, other children, and/or acts or omissions of staff of the agency. Examples of critical incidents include, but are not limited to: injury of a child during physical restraint; serious physical or sexual aggression by or toward the child; significant physical injuries requiring medical attention; allegations of sexual abuse; criminal conduct involving the child; elopement; attempted suicide; fire setting; child death; and information which must be reported to the child abuse and neglect hotline pursuant to 210.115, RSMo. A "critical incident report" is a report documenting a critical incident./;

[(6)](E) "Director" is the director of the Children's Division./;

[(7)](F) "Division" is the Children's Division of the Department of Social Services of Missouri as defined in section 210.481(3), RSMo./;

(G) "Elopement" is when a child leaves a facility or designated area off the campus of a LRCF without permission and places the child out of sight and sound of direct supervision;

[(8)](H) "Family [c]/Care [s]/Safety [r]/Registry" [pursuant to sections 210.903 through 210.936, RSMo, is established to protect children, the elderly, and disabled individuals in the state and to promote community safety by providing information concerning family caregivers as established within the Department of Health and Senior Services. The registry contains information on child-care workers' and personal-care workers' background and child-care, elder-care, and personal-care providers as specified in section 210.903.2(1)-(8), RSMo.] means the family care safety registry administered by the Department of Health and Senior Services;

[(9)](I) "Good standing" refers to a licensed residential treatment agency for children and youth in substantial compliance with Chapter 71 of the Children's Division residential treatment agencies for children and youth rules and is not under involuntary intake suspension, license denial, license suspension, and/or license revocation./;

[(10)](J) "Intensive residential treatment" for children and youth is provided in a living unit of an agency for gravely, emotionally dysregulated youth that has the capability of providing a highly structured and secure environment to prevent runaway behavior, address the likelihood of rage and physical aggression, and minimize the likelihood of youth injuring themselves or others. Intensive residential treatment for children and youth may be achieved through a combination of staffing patterns, architectural design of the operating site, electronic monitoring of the operating site and its exits, or other means necessary to assure safety[.];

[(11) License is the legal document issued to an agency by the division for a period not to exceed two (2) years which authorizes the agency to provide twenty-four- (24-) hour care for children, subject to compliance with sections 210.481 - 210.536, RSMo, and the applicable rules promulgated by the division (section 210.481(6), RSMo).

(12) "Mechanical restraints" are any device, instrument, or physical object used to confine or limit a child's freedom of movement, except when necessary for orthopedic, surgical, and other medical purposes, or when necessary, to transport a child that may abscond or cause injury during transportation. Support devices used in normal situations to achieve proper body position and balance are not mechanical restraints.

(13) "Medical examination" is a thorough physical examination conducted by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician. It may include a variety of tests, depending on the age, sex, and health of the person being examined, that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis, when recommended by a licensed physician. It should also include a statement of the patient's mental state as determined by a licensed physician.

(14) Operating site is any building of a licensed agency in which children reside.

(15) Physical restraint is physical holding involving restriction of a child's voluntary movement to temporarily restrain an agitated, violent, or aggressive child who presents a likelihood of serious physical harm to him/herself or others.

(16) Residential treatment agency for children and youth is an agency providing twenty-four-(24-) hour care and treatment to children who are unrelated to the person operating the agency and who are unattended by a parent or guardian (as defined in section 210.481(10), RSMo, as residential care facility).

(17) Social services are planned psycho-social interventions that are intended to lead to increased individual and family self-sufficiency, and empowerment, and will support the child's transition from the placement into the family or community. Social services shall include, but shall not necessarily be limited to, individual, family, or group therapy, provided in conjunction with other age and developmentally appropriate expressive, experiential, and adjunct activities.

(18) Staff are persons employed by an agency.

(19) Transitional living services are services provided to older adolescents that combine life skills training with opportunities to practice same. The goal of such services is to prepare

the youth for successful adult living in the community upon their discharge from residential treatment for children and youth.

(20) Variance is a minor, time limited, deviation from a rule that may be requested by a licensed residential treatment for children and youth agency on a form prescribed by the division and approved or denied by the division. Approval may be granted by the division when a variance does not negatively impact child health and safety and is not under the purview of another regulatory entity. Examples include, but are not limited to, time limited deviations in licensed capacity and age range.

(21) Volunteer is any person who provides direct services to children within an agency, either on or off the premises, without financial compensation.

(22) Well-known religious order, church, and religious organization" are defined as follows:

(A) A church, synagogue, or mosque;

(B) An entity that would qualify for federal tax exempt status as a not-for-profit religious organization under section 501(c) of the Internal Revenue Code of 1954; or

(C) An entity where the real property on which the residential treatment for children and youth operating site is located is exempt from local taxation because it is used for religious purposes.]

(K) "Mechanical restraints" are any device, instrument, or physical object used to confine or limit a child's freedom of movement, except when necessary for orthopedic, surgical, and other medical purposes, or when necessary, to transport a child that may abscond or cause injury during transportation. Support devices used in normal situations to achieve proper body position and balance are not mechanical restraints;

(L) "Medical examination" is a thorough physical examination conducted by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician. It may include a variety of tests, depending on the age, sex, and health of the person being examined, that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis, when recommended by a licensed physician. It should also include a statement of the patient's mental state as determined by a licensed physician;

(M) "Operating site" is any building or campus of a licensed agency in which children receive care;

(N) "Physical restraint" is physical holding involving restriction of a child's voluntary movement to temporarily restrain an agitated, violent, or aggressive child who presents a likelihood of serious physical harm to him/herself or others;

(O) "Professional staff" of residential care facility are staff or contractors of the residential care facility who are qualified and required by law to be licensed in good standing to provide services for children to provide the services which they are providing. Examples of professional staff include, but are not limited to, physicians, nurses, physician assistants, teachers, licensed professional counselors, physical therapists, and occupational therapists;

(P) "Social services" are planned psycho-social interventions that are intended to lead to increased individual and family self-sufficiency and empowerment, and will support the child's transition from the placement into the family or community. Social services shall include, but shall not necessarily be limited to, individual, family, or group therapy that is provided in conjunction with other age and developmentally appropriate expressive, experiential, and adjunct activities;

(Q) “Transitional living services” are services provided to older adolescents that combine life skills training with opportunities to practice same. The goal of such services is to prepare the youth for successful adult living in the community upon their discharge from residential treatment for children and youth;

(R) “Variance” is a minor, time limited, deviation from a rule that may be requested by a licensed residential treatment for children and youth agency on a form prescribed by the division and approved or denied by the division. Approval may be granted by the division when a variance does not negatively impact child health and safety and is not under the purview of another regulatory entity. Examples include, but are not limited to, time limited deviations in licensed capacity and age range; and

(S) “Well-known religious order, church, and religious organization” are defined as follows:

1. A church, synagogue, or mosque;
2. An entity that would qualify for federal tax exempt status as a not-for-profit religious organization under section 501(c) of the Internal Revenue Code of 1954; or
3. An entity where the real property on which the residential treatment for children and youth operating site is located is exempt from local taxation because it is used for religious purposes.

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo [2000] 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.010. Original rule filed May 9, 1956, effective May 19, 1956. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 35—Children’s Division
Chapter 71—Rules for Residential Treatment Agencies
for Children and Youth

PROPOSED RULE

13 CSR 35-71.015 Background Checks for Personnel of Residential Care Facilities and Child Placing Agencies

PURPOSE: This rule establishes the processes and procedures for conducting background checks for personnel of child placing agencies, licensed residential care facilities, and residential care facilities subject to the notification requirements under sections 210.1250 to 210.1286, RSMo, as provided and authorized by section 210.493, RSMo.

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) Definitions. For the purpose of this regulation, unless otherwise specified in this section or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481 and 210.1253, RSMo, shall apply to this regulation. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) “Applicant” means any individual who applies or is required to successfully complete the background check requirements for employment or presence at the Licensed Residential Care Facility (LRCF), License-Exempt Residential Care Facility (LERCF), or Child Placing Agency (CPA) by section 210.493, RSMo. For the purposes of background checks conducted by the Missouri State Highway Patrol of the Missouri Department of Public Safety, the term “applicant” is further defined as specified in section 43.539, RSMo.

1. Except as otherwise provided in this regulation, applicants for LRCFs, LERCFs, and CPAs who are required to complete the background check process include officers; managers; contractors with unsupervised access to children; volunteers with unsupervised access to children; employees; other support staff; owners of LRCFs and LERCFs that will have access to the facilities; and owners of LERCF, LRCF, and CPA that will have access to children.

2. Except as otherwise provided in this regulation, applicants for LERCFs who are required to complete a background check also include any applicant as defined in section 43.539, RSMo, who has unsupervised contact with a resident of the LERCF. The following individuals or classes of individuals who may have unsupervised contact with a child who is a resident of an LERCF are not deemed to be applicants and are not required to submit to background checks as provided in this subsection unless otherwise required by law or court order:

A. Legal parents, step-parents, grandparents, siblings, legal guardians, and prospective adoptive parents who do not reside on or at the LERCF but who have contact or visits with a child who resides on the property of an LERCF;

B. Licensed or other lawfully qualified individuals who do not reside at or on the property of an LERCF, who are not employees, officers, volunteers, staff, support staff of the LERCF, and who provide occasional emergency professional services within the scope of their employment pertaining to a child who resides at or on the property of the LERCF; such as licensed physicians, licensed nurses, licensed emergency medical technicians, POST certified law enforcement officers, juvenile officers, division employees, prosecuting attorneys, court appointed special advocates (CASA) assigned by a court to a child who resides at an LERCF, attorneys and court appointed guardians *ad litem* for children who reside at an LERCF; and/or

C. Licensed or other lawfully qualified individuals who do not reside at or on the property of an LERCF, who are not employees, officers, volunteers, staff, support staff of the LERCF, and who provide reasonably necessary, professional services, maintenance in an emergency when it is necessary to protect the health and safety of individuals at the facility and background checks are not reasonably possible under the circumstances, or government inspections on the premises of an LERCF to ensure the health and safety of the residents such as fire, health, and safety inspectors, and nationally recognized accrediting agencies, heating, construction, electrical, and plumbing contractors;

(B) “Boarding school” includes any educational institution in which some or all of the children who attend the institution reside during their attendance at the institution. Boarding schools include

facilities where the children lodge in dorms, in private homes whose owners are contracted with, associated or affiliated with the institution, or in homes owned or operated by the institution regardless of whether or not the child's residence is located on or off the institution's campus;

(C) The "department" or the "division" shall refer to the Children's Division of the Missouri Department of Social Services;

(D) "Employee" is any individual who works in the service of a LERCF, LRCF, or Child Placing Agency under an express or implied contract for hire, whether written or unwritten, full time or part time, under which the LERCF, LRCF, or Child Placing Agency has the right to control the details of work performance in whole or in part. Staff can be employees and employees can be staff;

(E) "Licensed Residential Care Facility" or "LRCF" means a facility providing twenty-four- (24-) hour care in a group setting to children who are unrelated to the person operating the facility and who are unattended by a parent or guardian, and which is required to have a license to operate as a Residential Care Facility under section 210.516, RSMo. LRCFs do not include licensed foster family homes or unlicensed kinship placements made pursuant to a juvenile or family court order;

(F) "License-Exempt Residential Care Facility" or "LERCF" means any place, facility, or home operated by any person who receives children who are not related to the operator and whose parent or guardian is not a resident of the same facility and that provides such children with supervision, care, lodging, and maintenance for twenty-four (24) hours a day, with or without transfer of custody; and that is not required to be licensed under section 210.516, RSMo. Unless exempted as provided below, LERCFs include, but are not limited to, boarding schools, juvenile detention facilities, license-exempt foster homes as defined in section 210.516, RSMo, and other congregate care facilities. LERCFs do not include:

1. Hospitals, sanitariums, and clinics operated to provide medical care and treatment and operating pursuant to a valid license issued by the Missouri Department of Health and Senior Services (DHSS), the Missouri Department of Mental Health (DMH), the United States (such as Veterans' Administration Hospitals and hospitals administered by the armed forces of the United States);

2. Boarding schools operated by the Missouri Department of Elementary and Secondary Education (DESE), provided that DESE requires background checks equivalent or more stringent than the requirements of section 210.493, RSMo;

3. Foster homes and congregate care facilities or homes licensed or certified by the DMH, provided that DMH requires background checks equivalent or more stringent than the requirements of section 210.493, RSMo;

4. Juvenile corrections programs operated by the Department of Social Services, Division of Youth Services or juvenile detention facilities operated by juvenile officers or juvenile courts which are subject to the Prison Rape Elimination Act (PREA) standards and auditing;

5. Facilities operated by the Missouri Department of Corrections and county or local jails;

6. Any individual (but not a corporation, partnership, organization, or association) who receives on a voluntary basis, the child of close, personal friends or relatives as an occasional and personal guest in their personal home or the home of the child's parent, guardian, or legal custodian, who is otherwise unaffiliated with an LRCF or LERCF and who receives custody of or provides care of no other child unrelated by consanguinity, adoption, or affinity;

7. Any individual (but not a corporation, partnership, organization, or association) who is otherwise unaffiliated with an LRCF or LERCF who receives legal custody or guardianship of a child or sibling group pursuant to a judgment or order of a court of competent jurisdiction in cases where a state or local government is not a party and in cases where the judgment or order is entered by a court outside the state of Missouri, all of the requirements of the Uniform Child Custody and Jurisdiction Act, the Interstate Compact for the

Placement of Children (ICPC), or the Interstate Compact for the Placement of Juveniles (ICJ) have been fully satisfied; and

8. Any camp which is not a boarding school, which is operated solely during certain months of the year, not to exceed four (4) months, which is conducted in good faith primarily to provide recreation or religious instruction for children, in which the children do not spend more than thirty (30) consecutive overnight periods during any twelve (12) month period, and not for ongoing residential or treatment purposes;

(G) "Manager" is any individual who administers or supervises the affairs of the LERCF, LRCF, or Child Placing Agency, including, but not limited to any individual who supervises any employees, staff, or volunteers of the LERCF, LRCF, or Child Placing Agency;

(H) "Missouri State Highway Patrol" or "MSHP" shall mean the Missouri State Highway Patrol of the Missouri Department of Public Safety;

(I) "Officer" is any individual who holds an executive position with the LERCF, LRCF, or Child Placing Agency, including, but not limited to Chairperson of the Board, President, Director, Vice President, Secretary, General Counsel, Headmaster, Principal, Head Teacher, Treasurer, or any other individual listed as an officer of the LERCF, LRCF, or Child Placing Agency;

(J) "Owner" of an LERCF, LRCF, or Child Placing Agency is any individual who holds an equity interest in the LERCF, LRCF, or Child Placing Agency;

(K) "Sponsoring Organization" shall mean the entity that sponsors the LERCF, LRCF, or Child Placing agency, including, but not limited to, the sponsoring church or religious organization;

(L) "Support Staff" or "Staff" of an LERCF, LRCF, or Child Placing Agency include any individual who works for or performs services, including professional services, for the LERCF, LRCF, or Child Placing Agency, whether compensated or not. Staff can be employees and employees can be staff; and

(M) "Volunteer" of an LERCF, LRCF, or Child Placing Agency is any individual who performs a service for or on behalf of the LERCF, LRCF, or Child Placing Agency of their own free will without obligation, or without any expectation of reward or compensation.

(2) The background checks conducted pursuant to this regulation shall consist of the following:

(A) A fingerprint-based background check of open and closed criminal history conducted in conjunction with the MSHP pursuant to section (3) of this regulation; and

(B) A search of the national offender registry conducted by the division; and

(C) A search of the following registries, repositories, or databases in Missouri, the state where the applicant resides, and each state where the applicant resided during the preceding five (5) years conducted by the division:

1. The state sex offender registry or repository (in Missouri this is a search of the MSHP Sex Offender Registry); and

2. The state family care safety registry (in Missouri this is a search of the family care safety registry); and

3. The state-based child abuse and neglect registry and database (in Missouri this is a search of the Central Registry of the division).

(3) All of the fingerprint-based background checks of closed criminal history conducted under this regulation shall be performed in conjunction with the MSHP solely through the authority of the Missouri Volunteer and Employee Criminal History Service (MOVECHS) and the National Child Protection Act, Public Law 103-209, as amended. No fingerprint-based, criminal background checks of federal records or closed criminal history shall be conducted under this regulation on clients, patients, and students of the LERCF or LRCF unless the fingerprint-based background check of closed criminal history is authorized by federal and state law and that individual is also an employee, staff, or volunteer of the LERCF or LRCF. The

background checks conducted in conjunction with the MSHP will be conducted pursuant to the law, statutes, regulations, and policies governing the MSHP and will include a fingerprint background check and a state open records check as provided in this section.

(A) Fingerprint background check is a state and FBI background check is required for any person who is actively employed by or seeks employment with, actively licensed or seeks licensure with, actively volunteers or seeks to volunteer with, actively contracted with or seeks to contract with, an owner or operator of a Licensed Residential Care Facility, a License-Exempt Residential Care Facility, or a Child Placing Agency, prior to having access to children.

1. The fingerprint background check will be conducted through the Missouri VECHS Program, pursuant to the National Child Protection Act, as amended.

2. Criminal history record information will consist of complete Missouri criminal history (open and closed) records, and criminal history from the Federal Bureau of Investigation. Criminal history will include convictions, arrests within thirty (30) days, pending charges and suspended imposition of sentence (SIS) during probation, not guilty findings, charges *nolle prossed*, or dismissed cases, SIS cases after probation is completed, and arrests after thirty (30) days where no charges have yet been filed or reported by the prosecuting attorney, and will include a search of the state sex offender registry.

(B) State open records check is required for any person that is not an employee, volunteer, contractor, or owner/operator, who is eighteen years of age or older, who resides at or on the property, or who has or may have unsupervised access to children for whom a Licensed-Exempt Residential Care Facility provides care. A state open record check consists of convictions, arrests within thirty (30) days, pending charges, suspended imposition of sentence (SIS) during probation, and will include a search of the state sex offender registry.

(4) Application of this Regulation. This regulation applies to CPAs, LRCFs, and LERCFs which are subject to the notification requirements of sections 210.1250 to 210.1286, RSMo.

(A) Phase-in Period. Every LRCF, LERCF, and Child Placing Agency operating on the date that section 210.493, RSMo, and this regulation became effective shall have until December 31, 2021, for all applicants to complete background checks. The division may extend this deadline for any individual LRCF, LERCF, and Child Placing Agency, due to unusual, compelling, and extenuating circumstances beyond the control of the LRCF, LERCF, or Child Placing Agency. The request for an extension shall be in writing and shall explain the reasons for the request for an extension. Any applicant who does not complete the background check process as specified in this regulation by the deadline shall be ineligible for employment or service with an LRCF, LERCF, or Child Placing Agency until the background check process has been successfully completed.

(B) Any applicant who begins employment or service after the effective date of this regulation shall complete the background check process before beginning employment or service with an LRCF, LERCF, or Child Placing Agency.

(5) Designation of Authority. The Department of Social Services hereby designates the Children's Division of the Department of Social Services to be the division within the Department of Social Services to administer background checks as required by section 210.493, RSMo. The Department of Social Services hereby designates the Administrative Hearings Unit within the Division of Legal Services of the Department of Social Services to process and decide all appeals of applicants as provided in this regulation.

(6) Application Process.

(A) The applicant shall apply for background screening through the division's online portal on forms promulgated by the division.

The application forms and instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>, October 1, 2021. This rule does not incorporate any subsequent amendments or additions. The applicant shall submit the completed application form and upload any supporting or supplemental forms and documentation through the division's online portal. The application must be signed by the applicant (e-signature is acceptable).

1. The applicant may apply to the division for permission to file the application and supporting documentation by mail or private delivery service rather than through the online portal when there are unusual, compelling, and extenuating circumstances which make filing the application through the online portal impossible. The applicant shall apply for permission to file the application form, supporting, or supplemental materials with the division in writing, and shall explain the circumstances why the applicant cannot submit the application through the online portal. A copy of the application forms for use in submitting application by mail is incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>, October 1, 2021. This rule does not incorporate any subsequent amendments or additions. Applicants may download a copy of the forms. The applicant shall attach all documentation that may be necessary to complete the required application. If the division grants permission under this section, the applicant may submit the form with supporting materials by mail, by private delivery service, or in person to the offices of the division at Children's Division, Attn: Background Screening Team, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65102; or by email at CDScreen@dss.mo.gov.

(B) The application shall contain all of the following information:

1. The applicant's current, full legal name, residence address, mailing address, business address, telephone number, and email address. The applicant's mailing address and email addresses shall be the applicant's address of record for purposes of this regulation;

2. The applicant's date of birth and full Social Security number;

3. Any other names or aliases that the applicant has used or been known by during the five- (5-) year period preceding the application;

4. Any other residence address, mailing address, county and state of residence, business address, telephone number, and email address that the applicant has had during the five- (5-) year period preceding the application;

5. Whether the applicant is registered, or is required to be registered, on a state sex offender registry or repository or in the National Sex Offender Registry. If the applicant is so registered or required to be registered, the applicant shall provide the following additional information:

A. The national, federal, state, or local jurisdiction in which the applicant is registered or required to be registered;

B. The specific crime or offense for which the applicant is registered or required to be registered including:

(I) The date or approximate date that the crime or offense was committed;

(II) The statute or section number of the crime or offense;

(III) The name and address of the court where the case was adjudicated;

(IV) The case number; and

(V) The date of the plea, finding, judgment, or sentence;

6. Whether the applicant is listed as a perpetrator of child abuse or neglect under sections 210.109 to 210.183, RSMo, or any other finding of child abuse or neglect based on any other state's registry or database. In states where the official registry of substantiated findings

of child abuse or neglect are made or kept by a county, this information must also be disclosed. If the applicant is listed, the applicant shall also provide:

A. The state or county registry or database in which the applicant is listed;

B. The specific finding(s) of the state or county agency and the conduct for which the applicant is listed, including:

(I) The date(s) of the conduct;

(II) The date the applicant was listed;

(III) The name and address of the state or local government entity that maintains the list;

7. Whether the applicant has ever been found guilty of or pled guilty or *nolo contendere* to any crime or offense listed in section 210.493.3(5), RSMo. If the applicant has ever been found guilty of or pled guilty or *nolo contendere* to any such crime or offense, the applicant shall also provide—

A. The national, federal, state, or local jurisdiction where the applicant was found guilty of or pled guilty or *nolo contendere*;

B. The specific crime or offense for which the applicant is registered or required to be registered, including:

(I) The date or approximate date that the crime or offense was committed;

(II) The statute or section number of the crime or offense;

(III) The name and address of the court where the case was adjudicated;

(IV) The case number; and

(V) The date of the plea, finding, judgment, or sentence;

8. Whether the applicant consents to the division notifying the LRCF, LERCF, or Child Placing Agency of its decision on eligibility or ineligibility and/or sending a copy of its eligibility or ineligibility finding to the LRCF, LERCF, or Child Placing Agency;

9. Whether the person is requesting a response and notice of final decision by first class mail or by email;

10. The name and address of any LRCF, LERCF, or Child Placing Agency that the applicant wishes the division to send a finding of eligibility or ineligibility to upon the completion of the background check process. The applicant shall further provide the name and address of the sponsoring organization, when applicable;

11. A fully completed and signed MOVECHS Waiver Agreement and Statement (SHP-981G) form. The completed and signed waiver form must be submitted with the application;

12. Acknowledgement and certification by the applicant, under penalty of perjury that all submitted information is true, accurate, and complete to the best of the applicant's knowledge; and the applicant understands that a knowing violation of section 210.493, RSMo, may constitute a criminal offense and knowingly making a materially false statement in connection with a background check shall render the applicant ineligible;

13. Any other information and documents that the applicant wishes the division to consider in making its decision about eligibility;

14. An explanation of why the applicant is unable to provide any of the information that must be provided to support the application.

(C) The applicant shall register with the Family Care Safety Registry and execute any documents necessary for the division to access the applicant's results in the Family Care Safety Registry.

(D) The applicant shall execute any authorizations necessary to obtain information from state, local, and federal registries.

(E) The applicant shall submit fingerprint cards and any required fees to the Missouri State Highway Patrol's central repository and follow all of the Missouri State Highway Patrol's procedures for requesting a fingerprint-based criminal background check. The applicant shall further execute any documents and consents necessary for the Missouri State Highway Patrol to complete the fingerprint-based criminal background check and to notify the division of any criminal history record, or lack of criminal history record information discovered on the applicant as required by law.

(F) The applicant must submit a completed MOVECHS Waiver

Agreement and Statement (SHP-981G) to the division with the application form to the division before reporting to be fingerprinted.

(G) The application will not be complete until the division receives a fully completed application form, MOVECHS Waiver Agreement and Statement (SHP-981G), form and the results of the fingerprint-based criminal background check from the Missouri State Highway Patrol, and the applicant is registered for the Family Care Safety Registry and executed any authorizations necessary to obtain information from any registries.

(H) Upon receipt of a complete application, and MOVECHS Waiver Agreement and Statement (SHP-981G), and consideration of the application, the division will notify the applicant of eligibility or ineligibility based on the background check by mailing a notice to the applicant's address of record, and send a copy to the LRCF, LERCF, or Child Placing Agency as indicated on the application.

1. The notice will indicate whether the applicant is eligible or ineligible for employment or presence at the LRCF, LERCF, or Child Placing Agency.

2. The notice will advise the applicant of the applicant's right to request administrative review and appeal the decision and the process for requesting administrative review or appeal.

3. The notice will advise the applicant of the applicant's responsibility to notify the division, LRCF, LERCF, or Child Placing Agency of any event which would impact the applicant's eligibility as provided in section 210.493, RSMo, and this regulation.

4. The notice will advise the applicant that the finding of eligibility or ineligibility was based on a background check of records through the date of the notice and for the particular LRCF, LERCF, or Child Placing Agency for which the background check was requested.

(I) If the division finds the applicant eligible, the division shall forward a copy of the finding to any LRCF, LERCF, or Child Placing Agency indicated by the applicant. If the division finds the applicant ineligible, the division shall not send a copy of the notice to any indicated LRCF, LERCF, or Child Placing Agency, until the division determines the applicant has exhausted the applicant's administrative remedies and the division has received a written consent from the applicant authorizing the division to disclose such information.

(7) Fees and Costs. The applicant, LRCF, LERCF, or Child Placing Agency shall be responsible for the payment of any and all required fees for processing the application, including any fees for the fingerprint-based background check and the Family Care Safety Registry.

(8) Notice and Communications. The division will send all communications and notices pertaining to an application and request for administrative review or appeal by first-class mail unless the applicant or entity requesting administrative review or appeal affirmatively notifies the division, in writing, that the applicant or person would like to receive communications by email and provides the division with the email address. It is the responsibility of the applicant or person to notify the division of any change in the applicant's or person's contact information. All notices shall be sent to the address or email address of record, and all correspondence sent to that address shall be deemed received and sufficient service for all purposes.

(9) The division shall not reveal any information pertaining to any disqualifying crime, offense, or other related information regarding the applicant to the LRCF, LERCF, or Child Placing Agency except as may be otherwise required by law.

(10) Continuing Obligation to Notify and Expiration of Determination.

(A) The division's decision of eligibility or ineligibility shall be based upon the information that the division receives through the background check process, and any additional information that may be made available to the division during administrative review and appeal.

(B) The division's finding is only valid through the date of the decision and only for the LRCF, LERCF, or Child Placing Agency indicated by the applicant on the application. The applicant may designate more than one LRCF, LERCF, or Child Placing Agency on a single application.

(C) The applicant shall be responsible for notifying the division of any change in circumstance which may render the applicant ineligible and shall submit a new application based upon the subsequent information.

(D) The applicant's fingerprint-based background check is valid for five (5) years from the date the fingerprints were taken, or until there is any change in the circumstances of the applicant which would render the applicant ineligible under the statute, whichever occurs first. It is the responsibility of the applicant to track the expiration date of the fingerprints and submit an application for a new background check.

(E) The division's finding automatically expires thirty (30) days from the date of the division's decision. It is the responsibility of the applicant to submit a new application for a new determination and fingerprint-based criminal background check following the procedures specified in this regulation.

(11) In making a decision whether an applicant is eligible or ineligible under section 210.493, RSMo, and this regulation, the division shall not consider the manner, content or the religious curriculum of the program, or ministry of a school or of a facility sponsored by a church or religious organization.

(12) Administrative Review and Appeal Procedure.

(A) The decision of the division shall be final unless the applicant or person who is aggrieved by a decision of the division under this regulation files a request for administrative review of the decision within fourteen (14) days of the mailing of the decision. Any request for administrative review that the division receives after the deadline is untimely and will not be subject to further administrative review or appeal.

(B) Administrative Review.

1. A request for administrative review shall be made in writing, either on a form provided by the division or by letter. The division will publish a form on its website. The request for administrative review shall—

A. Include the name, address, telephone number, and email address of the person requesting administrative review;

B. State whether the division should provide the response and notice of final decision by first-class mail or by email;

C. Identify the decision the requestor wishes to be reviewed, the specific reasons the requestor believes the division's decision is erroneous, and why the requestor is aggrieved by the decision;

D. Include copies of any relevant documents, materials, or information that the requestor wishes to submit in support of the administrative review request; and

E. State whether the person requests that the review be considered on the basis of the materials submitted or whether the person requests an in-person review conference. If the person requests a review conference, then the person shall also provide dates and times within the next thirty (30) days when the person may be available and the reasons why the administrative review cannot be processed on the basis of the materials presented.

2. The request for administrative review shall be submitted to the division by certified first-class mail through the United States Postal Service return receipt requested to the address specified on the notice of ineligibility or submitted electronically by email to the division to the email address specified in the notice of ineligibility.

3. The administrative review shall be conducted and decided based upon the written materials submitted to the division and any information and materials presented at a review conference. The division will provide an in-person conference upon written request.

4. The review conference may take place by telephone confer-

ence call, video conference, or in-person meeting.

5. The administrative review process shall be informal. The rules of evidence shall not apply. There is no right to conduct discovery. There shall be no right to compel the production of witnesses or evidence by subpoena or otherwise.

6. The administrative review shall be conducted by an individual designated by the director of the department or the division, who may be an employee of the division or the department. However, the individual shall not have been involved in making the decision which is subject to review.

7. The individual conducting the administrative review shall conduct the administrative review and render a written decision no later than thirty (30) days from the date that the division received the request for administrative review.

8. The decision upon administrative review shall be the final decision of the department as to any person that is not an applicant.

(C) Appeal.

1. Any applicant who is aggrieved by a decision upon administrative review shall have the right to appeal the decision to the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The applicant shall submit a notice of appeal to the division, within fourteen (14) days of the date of the administrative review decision, by certified first-class mail through the United States Postal Service return receipt requested to the address specified on the notice of ineligibility or submitted electronically by email to the division to the email address specified in the notice of decision upon administrative review. The division must receive the notice of appeal within fourteen (14) days of the date of the decision. Any notice of appeal that is received after the deadline is untimely and the appeal will be dismissed. Completion of the administrative review process is a condition precedent to the applicant's right to appeal.

2. The parties to the appeal shall be the division and the applicant.

3. All appeals shall be processed and decided by a hearing officer from the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The decision of the hearing officer shall be the final decision of the department.

4. The following evidence shall be admitted and considered by the hearing officer on appeal as provided in this section without further foundation:

A. A copy of the application form and all supporting documentation;

B. A copy of the record of the court establishing that the applicant pled guilty or *nolo contendere* or has been found guilty of a crime or offense listed in 210.493, RSMo;

C. A copy of a letter or official communication from the applicable state, county, or local government agency stating that the applicant is listed as a perpetrator of child abuse or neglect in the state, county, or local government agency's registry or database of perpetrators of child abuse or neglect;

D. A copy of the report of the fingerprint-based background check conducted pursuant to section (3) of this regulation; and

E. A copy of a letter, official communication, or a print out of the applicable page of the National Sex Offender Registry or state sex offender registry.

5. The applicant or division may object to the hearing officer considering the information outlined in this regulation. The burden shall be on the objecting party to establish that the items of evidence shall not be considered by the hearing officer.

6. The hearings held under this section shall be informal, but they shall be held on the record and testimony will be adduced under oath. The rules of evidence do not apply. The applicant may be represented by an attorney.

7. Upon written request the division will provide the applicant with a copy of the fingerprint-based state and FBI background check.

8. The hearing is and shall not be an opportunity to collaterally attack or re-litigate the validity of the underlying plea of guilt, plea

of *nolo contendere*, or the underlying finding of child abuse, neglect, or maltreatment by the applicable state or local agency, or the accuracy of information in the federal, state, or local registry or repository.

9. The hearing shall be based upon the written submissions of the parties unless the applicant or the division request a hearing by video or teleconference. The hearing officer may hold an in-person hearing only upon a showing that an in-person hearing is necessary to accommodate a special need of an applicant or the division.

10. The hearing officer shall issue a decision in writing, which will be sent by first-class mail (or by email at the election of the applicant) to the applicant at the applicant's address of record. If the applicant is represented by an attorney the decision will be sent to the applicant's attorney. The written decision of the hearing officer shall be the final decision of the department.

(D) Judicial Review.

1. Any applicant aggrieved by the final decision of the department after appeal may seek judicial review as provided in section 536.150, RSMo.

2. Any person who is not an applicant who is aggrieved by the final decision of the department after administrative review may seek judicial review as provided in section 536.150, RSMo.

AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Original rule filed Sept. 17, 2021.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions an estimated four hundred sixty-four thousand three hundred twenty-one dollars (\$464,321) in FY 22 and four hundred ninety-four thousand four hundred thirty-nine dollars (\$494,439) in FY 23.

PRIVATE COST: This proposed rule will cost private entities an estimated two hundred eighty-two thousand two hundred sixty-four dollars (\$282,264) in the aggregate.

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

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13–Social Services
- Division Title:** Division 35–Children’s Division
- Chapter Title:** Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

Rule Number and Name:	13 CSR 35-71.015 Background Check Regulation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services-Children’s Division	The cost is estimated to be \$464,321 in FY 22 and \$494,439 in FY 23.

III. WORKSHEET

There are seven FTE needed to complete the background checks.
 5 Administrative Support Assistants
 1 Administrative Support Professional
 1 Social Services Unit Supervisor

Cost breakout FY 22	
Salaries	\$212,021
Fringe	\$152,168
Equipment and Expense (including initial cube set-up)	<u>\$100,132</u>
TOTAL	\$464,321

Cost breakout FY 23	
Salaries	\$256,970
Fringe	\$183,444
Equipment and Expense	<u>\$ 54,025</u>
TOTAL	\$494,439

IV. ASSUMPTIONS

In the original fiscal note, the Department requested Children’s Service Workers to complete these tasks. On further discussion, the classification of the people needed are Administrative Support Assistants, and an Administrative Support Professional. These positions cost less than the original estimate in the fiscal note, resulting in less cost than originally estimated.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 13–Social Services
Division Title: Division 35–Children’s Division
Chapter Title: Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

Rule Number and Name:	13 CSR 35-71.015 Background Check Regulation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
114	Licensed Residential Treatment Facilities	\$228,000
69	Child Placing Agencies	\$14,250
20	License Exempt Residential Treatment Facilities	\$40,014

III. WORKSHEET

Classification	Estimate number of employees	Background cost \$41.75 fingerprints \$15.25 FCSR \$57.00 Total
Licensed Residential Treatment Facilities	4000	\$228,000
Child Placing Agencies	250	\$14,250
License Exempt Residential Treatment Facilities	702	\$40,014
		\$282,264 (Total estimate)

IV. ASSUMPTIONS

The estimated cost of compliance is based on the need to complete the full process of a background screening process, including the onetime registration fees for the Family Safe Care Registry.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71—[Licensing] Rules for Residential Treatment
Agencies for Children and Youth

PROPOSED AMENDMENT

13 CSR 35-71.020 Basic Residential Treatment for Children and Youth Core Requirements (Applicable To All Agencies)—Basis for Licensure and Licensing Procedures. The division is amending the chapter title and sections (1)-(6).

PURPOSE: The purpose of this amendment is to update the requirements for applying for an application to operate a licensed residential care facility in Missouri and to implement the new requirements of HB 557 (2021).

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

(1) Licensing Authority.

(A) Any person who desires to develop, establish, maintain or operate, or both, a residential treatment agency for children and youth, except for those persons exempt from licensing pursuant to section 210.516, RSMo, must file an application for licensure form with the division and must receive a license prior to accepting any child for care.

(B) Before a license may be granted, an agency must be in compliance with sections 210.481–210.536, RSMo, sections 210.1250–210.1286, RSMo, and these rules.

(2) Application [for Licensure] Procedures.

[(A) An agency shall submit the following documents in duplicate to the division—

1. Application for licensure signed and dated by the applicant;]

(A) To apply for a license to operate a Licensed Residential Care Facility (LRCF) in Missouri the person, or the persons legally authorized designee, shall file an application with the division on forms provided by the division.

1. The application forms are published on the division’s website and are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children’s Division, PO Box 88, Jefferson City, MO 65102, and available at: <https://www.dss.mo.gov/provider-services/children/residential-program/licensed.htm>, October 1, 2021. This rule does not incorporate any subsequent amendments or additions. The person shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The person shall submit the form with supplementary materials to the division by e-mail at the following e-mail address: CDaskRPU@dss.mo.gov.

2. The application form shall be signed by the person or the person’s legally authorized designee. The division will accept e-signatures.

(B) The application shall contain the following information:

1. The name, street address, mailing address, fax number, and phone number of the residential care facility;

2. The name, street address, mailing address, e-mail address, and phone number of the director, owner, and operator of the LRCF;

3. The name, street address, mailing address, e-mail

address, phone number, and job title of the individual or individuals who are designated to submit the application on behalf of the residential care facility. This individual shall be an individual who is legally authorized to act on behalf of the residential care facility and to legally bind the residential care facility to the statements made and information provided in support of the application;

4. The name and description of the person operating the residential care facility, including a statement as to whether the person operating the residential care facility is a firm, corporation, benevolent association, partnership, association, agency, or an incorporated or unincorporated organization, regardless of the name used. If the owner or operator of the residential care facility is incorporated, a corporation shall state the type of corporation, the state in which the corporation was incorporated, and the date of incorporation;

5. The name and address of the sponsoring organization of the residential care facility, if applicable;

6. The name and address of every school attended by, or to be attended by, the children served by the residential care facility;

7. A certification that officers, managers, contractors, volunteers with access to children, employees, and other support staff of the residential care facility, and owners who will have access to the facilities have, or will have, completed background checks and have been found eligible as required in section 210.493, RSMo, and 13 CSR 35-71.015.

(C) The residential care facility shall submit the additional documentation and information in support of the application as provided in this subsection. This information may be submitted on a form or forms provided by the division, or it may be submitted separately as attachment(s) to the application.

1. Local health department inspection certificates.

A. The residential care facility shall successfully complete and obtain any and all local health department inspection certificates required in the jurisdiction in which the facility operates. If the residential care facility operates in more than one county or local jurisdiction, then the residential care facility shall obtain the required certificates for each facility in each location.

B. The residential care facility shall submit a copy of all local health department inspection certificates with the application, and shall indicate the date of the inspection and the date that each certificate expires, if any.

C. If there is no local or county government health department in which the residential care facility is located, or if the local or county health department will not perform a health inspection, the residential care facility shall request that decision in writing and submit that information with the application.

D. If the residential care facility is unable, after exercising diligent efforts, and due to no fault of its own, to obtain a local inspection certificate, then the residential care facility shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the residential care facility was unable to obtain the certificate. The residential care facility shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection.

2. Proof that medical records are maintained for each child. The division will accept copies of the LRCF’s administrative policy regarding the maintenance of medical records as *prima facie* proof that the LRCF is maintaining medical records for purposes of submitting an application. However, proof that the LRCF is maintaining medical records on each child will be the subject of verification and monitoring. The LRCF shall provide the division access to the facility upon request to inspect the medical records maintained by the LRCF on the children served by the LRCF in order to verify that the medical records are being kept.

[2.]3. Evidence of compliance with local building and zoning requirements[;].

[3.]4. A floor plan of the proposed site in which the specific use of each room is identified[;].

[4.]5. A signed and dated copy of the civil rights agreement[;].

[5.]6. A chart depicting the agency's organizational structure and lines of supervision[;].

[6.]7. Written policies and procedures established by the board of directors which clearly set forth the authority and the responsibilities delegated to the executive director[;].

[7.]8. A copy of the articles of incorporation, bylaws, and board roster, including the mailing address and place of employment of each member, and a list of board officers[;].

[8.]9. A proposed budget for a period of not less than one (1) year, including sources of income and/or fund raising methods[;].

[9.]10. Verification of availability of not less than three (3) months' operating capital[;].

[10.]11. A copy of the residential care facility's written intake policy[;].

[11.]12. Written identification of specific program models or designs which shall include the methods of care and treatment to be provided[;].

[12.]13. The [J/]job title, job description, and minimum qualifications for all staff[;].

[13.]14. A projected staffing plan for the anticipated capacity[;].

[14.]15. Written child abuse and neglect reporting policy[;].

[15.]16. Written personnel practices, including staff training and orientation[;].

[16.]17. Written discipline policy[;].

[17.]18. Written visitation policy[;].

[18.]19. Written health care policy[;].

[19.]20. Written restraint policy utilizing a recognized and approved physical restraint program[;].

[20.]21. A needs assessment conducted and submitted as evidence of need for the type and scope of program proposed. This written assessment shall include, but is not limited to:

A. An identification and survey of potential referral sources, existing resources, and unmet community needs;

B. A business plan that details the agency's proposed venture explaining the vision, mission, current status, expected needs, defined markets, and projected results;

C. A description of how treatment will be provided and documented and how the proposed operating site meets therapeutic needs;

D. A description of how the agency will be financed and how fiscal viability will be maintained; and

E. A description of the results of a meeting planned and hosted by the agency with key community participants with the intent of enhancing communication, gathering information for the needs assessment, addressing interaction with community resources, and addressing community questions and comments regarding the proposed residential treatment agency for children and youth[;].

[21.]22. Evidence of compliance with fire safety requirements of the State Fire Marshal[;].

[22. Documentation that the agency's water supply and sewage disposal system is currently in compliance with the requirements of the Department of Health and Senior Services if not an approved public source;]

23. Verification of a medical examination that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician for all staff, completed by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician, shall be submitted within thirty (30) days of initial licensure using the form prescribed by the division[;].

24. [Results of a check of the family care safety registry for all staff, as well as interns, volunteers, and contractors. Any employee who resides in another state and works in the

state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of child abuse/neglect and criminal background screening check(s) from those states. When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screening check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. Results of employee medical examinations and background screenings, along with family care safety registry documentation may be viewed by division licensing staff on site during routine record reviews] **A certification that all individuals who are required to complete a background check and be found eligible for employment or presence at the LRCF as provided in section 210.493, RSMo, and 13 CSR 35-71.015[;].**

25. Verification of the education, licensing credentials, and experience for all professional staff[;].

26. A copy of the resume for all professional and administrative staff[;].

27. Written description of the recreational program, and the manner in which staff are qualified and prepared to create, organize, and supervise them[;].

28. A copy of the annual written staff training plan[;].

29. A copy of the personnel manual for the agency[;].

30. A copy of the program manual for the agency[;].

31. For any agency operating a swimming pool on grounds, documentation that the pool is operated and maintained in accordance with all applicable ordinances and/or state guidelines[;].

32. Documentation that each operating site's food service is in compliance with the requirements of the Department of Health and Senior Services and/or any local applicable ordinances[;].

33. Written volunteer policies[;].

34. Written policy for the use of visiting resources[;].

35. Written confidentiality policy[;].

36. Written policy for the use of locked isolation[;].

37. Written instructions for fire, severe weather, and other emergency evacuations[;].

38. Written description of the agency's religious requirements and practices[;].

39. Written policy governing the use of medications, including psychotropic medications[;].

40. A copy of any newsletter, brochure, or flyer used by the agency for fundraising or marketing purposes[;].

41. Documentation of insurance for the agency for professional and commercial liability, worker's compensation insurance, fire and disaster insurance, and agency vehicle insurance[; and].

[42. A completed, signed, and dated copy of the agency self-study on a form prescribed by the division.]

(D) Upon receipt of the application form and supporting documentation, the division will send a request to the State Fire Marshal to conduct a fire and safety inspection and provide the LRCF and the division with a copy of the approved fire and safety certificate.

(E) The application will be complete when the residential care facility submits a completed application with all of the required supporting documents and information to include all required inspection certificates.

(3) Licensing Assessment.

(A) When the application is complete the division will conduct [A/a thorough assessment of the [agency shall be made by the division, including a review of the documents required in this rule and visits to the agency] residential care facility to determine whether the residential care facility meets all of the requirements for licensure in compliance with the licensing law and applicable rules.

(B) If an applicant for licensure is determined not to be in compliance with the licensing law and applicable rules, *[and/or if the division issues a provisional license and the residential care facility does not achieve full compliance [is not achieved] within [a] six[-] (6[-]) months of the date of the issuance of the provisional license [period], the application [may] will be denied. A new application for licensure must be filed if the agency desires to pursue licensure.*

(4) The License.

(F) An *[licensed residential treatment agency] LRCF* for children and youth may request a temporary variance from one (1) or more of the licensing requirements for a specified period of time on a form prescribed by the division that is approved or denied by the division. Approval may be granted by the division only in unusual situations when the division determines that the variance will not negatively impact child health and safety and is not under the purview of another regulatory entity. Examples may include, but are not limited to, time limited deviations in licensed capacity and age range. No variance will be granted for any licensing requirements which involve the health, safety, and welfare of children. Examples include, but are not limited to, compliance with fire and sanitary codes, food safety, building occupancy requirements, and other requirements imposed by law. In the event the licensed residential treatment agency for children and youth does not agree with the decision of the division, it may request administrative review pursuant to 13 CSR 35-71.030.

(5) License Amendment.

(A) An *[agency] LRCF* shall file an application for amendment with the division on a form prescribed by the division at least sixty (60) days prior to—

1. Relocation and/or address change;
2. Change in the name of the *[agency] LRCF*;
3. Change in the capacity, gender served, and/or age range of children; or
4. Any major change in the program.

(6) Licensing Renewal.

[(A)] An application for licensure shall be mailed by the division to the agency.]

[(B)](A) The [agency] LRCF shall complete and return the application for license renewal to the division at least ninety (90) days prior to the expiration of the current license. The LRCF shall utilize the forms indicated in paragraph (2)(A)1. of this regulation to initiate the license renewal process. The LRCF shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The LRCF shall submit the form with supplementary materials by email to the LRCF's designated division license consultant. The application form shall be signed by the director of the LRCF or the director's legally authorized designee. The division will accept e-signatures.

[(C)](B) The division shall initiate action on the completed application packet prior to the expiration of the existing licensure period.

[(D)](C) In addition to the completed application form, the residential care facility shall submit the following documents [shall be submitted] with the application for license renewal:

1. Verification of a medical examination that includes tests for communicable diseases including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician, completed by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician, for all staff working directly with children shall be submitted utilizing the form prescribed by the division;
2. A current board roster, including the mailing address and place of employment of each member and a list of board officers;
3. A summary of any significant changes to programs and

copies of any resulting policies or policy changes;

4. A copy of a current organizational chart;

5. **Certification that all individuals who are required to submit to a background check have completed their background checks and have been found eligible by the division for employment or presence at the LRCF as provided in section 210.493, RSMo, and 13 CSR 35-71.015;**

[5.]6. Annual results of a check of the family care safety registry for all staff, as well as interns, volunteers, and contractors/. Any employee who resides in another state and works in the state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of child abuse/neglect and criminal background screening check(s) from those states. When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screening check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. Results of employee medical examinations and background screenings, along with family care safety registry documentation may be viewed by division licensing staff on site during routine record reviews];

[6.]7. Evidence of current compliance with the fire and safety requirements of the State Fire Marshal;

[7.]8. A record of monthly drills for fire and emergency evacuations which are held at different times of the day and night;

[8.]9. Documentation that each operating site's water supply and sewage disposal system is currently in compliance with the requirements of the Department of Health and Senior Services if not an approved public source;

[9.]10. A copy of the most recent financial audit and/or financial review [pursuant to 13 CSR 35-71.040(5)(B)];

[10.]11. A copy of the annual written staff training plan;

[11.]12. Documentation that each operating site food service is currently in compliance with requirements of the Department of Health and Senior Services or any local applicable ordinance;

[12.]13. A copy of the current personnel and/or program manual for the agency if there have been changes since last submitted to the licensing unit;

[13.]14. For any agency operating a swimming pool on grounds, documentation that the pool is operated and maintained in accordance with all applicable local ordinances and/or state guidelines;

[14.]15. A copy of the resume of all administrative and professional staff, if not previously submitted to the licensing unit;

[15.]16. Documentation of insurance for the agency for professional liability and commercial liability, worker's compensation insurance, fire and disaster insurance, and agency vehicle insurance; and

[16.]17. Documentation of [f]Form 990 for all non-profit agencies and Internal Revenue Service return for for-profit agencies and self-disclosure of tax liabilities, including but not limited to, all employee withholding taxes.

(D) Division staff may review the results of employee medical examinations and background screenings, along with family care safety registry during routine record reviews.

(E) Upon determination of compliance with the licensing law and applicable rules, the director shall issue a license for a period not to exceed two (2) years.

AUTHORITY: sections [210.516] 207.020, 210.506, and 660.017, RSMo [2000] 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.020. Original rule filed Nov. 9, 1978, effective Feb. 11, 1979. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires

March 29, 2022. Amended: Filed Sept. 17, 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 35—Children’s Division
Chapter 71—[Licensing] Rules for Residential Treatment
Agencies for Children and Youth

PROPOSED AMENDMENT

13 CSR 35-71.030 Hearings and Judicial Review. The division is amending the chapter title and sections (1), (2), and (3).

PURPOSE: This amendment is necessary to update the regulation to reflect current practice and to implement the requirements of HB 557 (2021).

(1) License Denial or License Revocation.

(A) The division may refuse to issue a license to an applicant, or may deny or revoke the license of a licensee, who—

1. Fails consistently to comply with the applicable provisions of sections 210.481–210.536, and **210.1250–210.1286**, RSMo, and the applicable corresponding rules;

2. Violates any of the provisions of its license;

3. Violates **federal or** state laws or rules relating to the protection of children;

4. Abuses or neglects children, or is the subject of multiple or serious reports of child abuse or neglect which upon investigation results in a [court adjudicated, probable cause, and/or preponderance of evidence finding, or (effective August 4, 2008) are] **substantiated finding of child abuse or neglect; or is** found guilty, pleads guilty, or pleads no contest to [felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on

the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section] **any crime which would render an individual ineligible for employment or presence at the Licensed Residential Care Facility (LRCF) pursuant to section 210.493, RSMo;**

5. Employs persons who the division has found ineligible for employment or presence at the LRCF pursuant to section 210.493, RSMo, and 13 CSR 35-71.015, or who abuses or neglects children/, persons who are the subjects of multiple or serious reports of child abuse or child neglect which upon investigation results in a court adjudicated, probable cause, and/or preponderance of evidence finding or (effective August 4, 2008) are found guilty, plead guilty, or plead no contest to are found guilty, plead guilty, or plead no contest to felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section];

6. Furnishes or makes any misleading or false statements or reports to the division;

7. Refuses to submit any reports or refuses to make available to

the division any records required in making an investigation;

8. Fails or refuses to submit to an investigation by an authorized and identified representative of the division at any reasonable time;

9. Fails to provide, maintain, equip, and keep in safe and sanitary condition the premises established or used for the care of children as required by law, rule, or ordinance applicable to the location of a facility;

10. Fails to provide adequate financial resources for the satisfactory care of children being served, or the upkeep of the premises, or both; *lor*

11. *[When a potential employee of a licensed residential treatment agency for children and youth is excluded from employment pursuant to paragraphs 13 CSR 35-71.030(1)(A)4. and 5. above, the Children's Division may grant an informal meeting only if the potential employee and the licensed residential treatment agency for children and youth request the informal meeting in writing and explain, based on the specified criteria, the reason the employee would be hired and how children in residence at the operating site would be protected. When the written request is received, the division shall schedule an informal meeting as soon as practicable. The meeting shall take place before the division director/designee. The division shall notify the agency of the date and time of the meeting. The meeting may be continued at the request of the agency, but the employment exclusion shall remain in effect pending the meeting. The meeting shall be informal, the rules of evidence shall not apply and both the agency and the division may submit any information relevant to the employment issues. The purpose of the meeting will be to determine the potential employee's suitability for employment based on the criteria listed in paragraphs 13 CSR 35-71.030(1)(A)4. and 5. above. Upon receipt of the final decision of the division, the agency may decide to accept the final decision or file petition for a hearing on administrative review pursuant to section (5) of this rule.] Fails to satisfactorily comply with all fire, safety, health, and sanitation inspections as may be required by state law or local ordinance and required under section 210.252, RSMo; or*

12. Is a health or safety concern for the children at the LRCF.

(2) License Suspension.

(A) The division shall have the authority to suspend the license of an agency when—

1. The division determines that the suspension of the license is necessary to protect the health, safety, and welfare of children who are or may be placed at the operating site; and

2. The division determines that one (1) or more of the criteria set out in sections 210.496/,/ and 210.1250–210.1286, RSMo, and/or subsection (1)(A) of this rule may exist; and

3. The division has reasonable cause to believe that the agency will be able to develop and effectively implement a corrective action plan to resolve the concerns which gave rise to the suspension of the license.

(3) Suspension of Intake.

(A) The division shall have the authority to suspend the authorization of the agency to admit additional children into placement during time periods proscribed by the division when the division determines that the agency is not in compliance with the requirements of sections 210.493, 210.496, and 210.1250–210.1286, RSMo, and/or subsection (1)(A) of this rule and—

1. The addition of additional children to the agency is not in the best interests of the children already placed within the agency or who may be placed with the agency; and

2. Allowing the placement of additional children with the agency may pose a risk to the health, safety, and welfare of children

already placed with the agency or who may be placed with the agency.

AUTHORITY: sections 207.020, 210.506 [and], 210.526, and 660.017, RSMo [2000] 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.030. Original rule filed Nov. 9, 1978, effective Feb. 11, 1979. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 is anticipated to cost private entities approximately sixty thousand dollars (\$60,000) 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.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 13--Department of Social Services
Division Title: Title 35--Children's Division
Chapter Title: Chapter 71--Licensing Rules for Residential Treatment Agencies for Children and Youth

Rule Number and Title:	13 CSR 35-71.030 Hearing and Judicial Review
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 rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
60	Licensed Residential Agencies	\$1,000 x 60 = \$60,000.00

III. WORKSHEET

Average of 1 employees x \$1,000 for hiring and training cost = \$1,000 average per residential agency for 60 agencies equals \$60,000.00

IV. ASSUMPTIONS

This new regulation contains new exclusionary criteria for residential agency employment in HB 557 and 560, residential agencies will have to terminate an estimated 1 employees per agency. An estimate of \$1,000 per employee for job posting, hiring, orientation and training cost for new staff.

This estimate is based on an average of 1 employees per agency and an estimated cost to hire and train new employees.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71—[Licensing] Rules for Residential Treatment
Agencies for Children and Youth

PROPOSED AMENDMENT

13 CSR 35-71.045 Personnel. The Department of Social Services is amending the chapter title and sections (1)–(3).

PURPOSE: This amendment implements new requirements for background checks of officers, managers, contractors, volunteers with access to children, employees, other support staff, and owners of Licensed Residential Care Facilities (LRCF); License-Exempt Residential Care Facilities (LERCFs); and Licensed Child Placing Agencies (CPAs). It adds the requirement that the Department conduct background checks on any person who has unsupervised contact with children and any adult who resides at a LERCF.

(1) General Requirements.

(A) The [agency] Licensed Residential Care Facility (LRCF) shall have a written statement of personnel practices which are approved by the governing body and provided to all staff at the time of employment.

(B) The [agency] LRCF shall evaluate and investigate application information carefully to determine whether employment or service of an applicant with the LRCF is in the best interests of the children in care.

(C) [The agency shall require that each employee, intern, volunteer, and any contracted personnel secure and provide to the agency upon initial employment and annually thereafter, a child abuse/neglect and criminal background screening utilizing the family care safety registry from the Department of Health and Senior Services.] All officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of such LRCF who will have access to the facilities of the LRCF shall submit to a background check and shall be found eligible for employment or presence at the LRCF as provided in section 210.493, RSMo, and 13 CSR 35-71.015 before commencing service or being afforded access to the facilities of the LRCF. These individuals shall notify the LRCF and the division of any change in circumstances which would render them ineligible for employment or presence at the LRCF. After the individual completes the background check, the LRCF shall further require all officers, managers, contractors, volunteers with access to children, employees, other support staff, and owners of the LRCF who will have access to the facilities of the LRCF to successfully complete an annual check of the Family Care Safety Registry. The LRCF shall maintain documentation of the Family Care Safety Registry checks in its personnel records.

(D) [Any employee who resides in another state and works in the state of Missouri, or who has relocated to the state of Missouri within the last five (5) years, shall provide documentation of background screening(s) from those states to include, but not limited to, child abuse/neglect and criminal background screening check(s). When an employee who lived in another state or states within the last five (5) years now resides in the state of Missouri, the documentation of child abuse/neglect and criminal background screenings check(s) from the previous state(s) only needs to be completed upon initial employment. If the employee continues to reside in another state, the out-of-state check shall be done annually. An agency shall exclude from employment (effective August 4, 2008) staff who are found guilty, plead guilty, or plead no contest to felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony posses-

sion, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure.] After the individual completes the background check, the LRCF shall require all officers, managers, contractors, volunteers with access to children, employees, other support staff, and owners of the LRCF who will have access to the facilities of the LRCF, and who reside outside of the state of Missouri, to successfully complete an annual background screening which shall consist of a check of the child abuse and neglect registry and a criminal background check of the state or jurisdiction in which the individual resides. LRCFs shall further implement and apply policies which require all personnel who are otherwise required to submit to a background check pursuant to section 210.493, RSMo, to immediately notify the LRCF if they are listed in a state or local government registry as a perpetrator of child abuse or neglect, or if they were arrested or charged with any crime listed in section 210.493, RSMo.

(E) [If an employee is hired with a child abuse/neglect/criminal history that does not otherwise exclude the employee from employment, the agency administrator/executive director shall document in writing in the employee’s file the reason for hiring the employee and how children in residence at the operating site will be protected.] Any person who makes a materially false statement in connection with an application for licensure or relicensure as a LRCF shall be ineligible for employment or presence at the LRCF.

(F) Prior to the employment of any person for a position requiring credit hours, a degree, or both from an accredited college or university, a resume and an official college transcript, or a copy of the diploma, shall be on file at the [agency] LRCF. Any person employed in a position requiring general educational development certificate or high school diploma shall provide documentation of such within thirty (30) days of employment.

(G) An [agency] LRCF shall require the names of at least three (3) persons for each employee, volunteer, or staff person, who are unrelated to the [staff member] individual, who can provide character references. At least two (2) of the three (3) persons shall be professional references from a previous employer, internship, or volunteer position. If the individual is a student then this requirement may be satisfied by providing the references from the individual’s professor, guidance counselor, teacher, or academic advisor.

[[H] An agency shall require references for each staff person from all previous employers within the last five (5) years and a history of any previous employment in child care settings.]

[[I]](H) [All references shall be] The LRCF shall contact[ed] all references and [documented by the agency with letters or verification in the record of verbal contacts, providing the date, person making the contact, and the content of the contact] maintain documentation of the reference checks in the LRCF’s employee records.

[[J]](I) The [agency] LRCF shall require an annual driver record check for any staff, employee, intern, volunteer, or contract personnel who transport residents. No [staff] individual with a suspended or revoked driver’s license or record of driving while under the influence of alcohol or any other intoxicating substance within the last five (5) years shall transport residents.

(2) [Medical Examinations] Health Verification.

(A) All **staff**, employees, interns, volunteers, and contracted personnel shall be free of *[signs]* symptoms of *[highly]* communicable disease or other evidence of ill health which poses a threat to children. *[This shall be verified by a medical examination by a licensed physician, certified nurse practitioner, advanced practice nurse in a collaborative practice agreement with a licensed physician, or a registered nurse who is under the supervision of a licensed physician before employment, or within ten (10) days following employment, and biennially thereafter.]*

[(B) Medical examinations shall include tests and/or procedures that indicate they are free from communicable disease including, but not limited to, tuberculosis and hepatitis when recommended by a licensed physician.]

[(C)](B) Staff, interns, volunteers, and contracted personnel shall be free of any conditions which would adversely affect their ability to care for[,] or pose a threat to children.

[(D)](C) If the division has reason to question the capabilities of any [person] individual working directly with children served by the LRCF, the division may require [additional examinations] the individual to submit to a medical examination and obtain a report of an appropriate medical professional that the individual is medically fit to perform the services for the LRCF without reasonable risk to the children.

(3) Personnel Records. *[Personnel records shall be maintained]* **The LRCF shall maintain personnel records** for each **staff member**, employee, intern, volunteer, and contracted employee as indicated below. **The LRCF shall maintain the staff records on site and shall keep the records for at least five (5) years following the date of separation from the LRCF.**

(A) For *[an employee]* **staff members and employees**, the personnel record shall include—

1. Verification of education and experience, and a copy of professional license, if applicable;

2. Verification of the names of three (3) persons, unrelated to the staff member, who can provide character **and professional** references;

3. Verification of employer references for the past five (5) years and *[a history of any]* previous employment in child care settings;

4. A copy of the job description signed and dated by the employee;

[5. Reports of initial and biennial medical examinations that indicate that they appear to be free from communicable disease;]

[6.]5. Results of annual checks of the family care safety registry;

[7.]6. [Results of background screenings from other states in which employees have resided and/or have lived or worked within the past five (5) years, including an annual out-of-state check if the person resides in another state] **Documentation that the individual has completed the background checks and that the division has found the individual eligible for employment or presence at the LRCF pursuant to section 210.493, RSMo, and 13 CSR 35-71.015;**

[8.]7. The date of employment, date of separation, reason(s) for separation;

[9.]8. Copies of [an initial six (6) months'] annual performance evaluations [and each subsequent annual evaluation];

[10.]9. Results of an annual driver record check for any employee, intern, volunteer, and any contracted personnel who transport residents;

[11.]10. A signed and dated copy of the confidentiality statement;

[12.]11. A signed and dated copy of the discipline policy;

[13.]12. A signed and dated copy of the mandated child abuse/neglect reporting policy;

[14.]13. A signed and dated copy of an acknowledgement of

receipt of program and personnel policies **and manuals;**

[15.]14. A signed and dated copy of the acknowledgment of completed agency orientation;

[16.]15. Documentation [of] that the staff member has successfully completed all training required for the successful performance of the individual's duties;

[17.]16. Documentation of current first aid/cardiopulmonary resuscitation training and certification; and

[18.]17. Documentation of current medical aid certification, when applicable.

(B) **For [I]interns, volunteers, and contracted employees** who have direct contact with children, **the personnel record** shall include—

1. Copy of professional credentials, *[[if applicable]]*;

2. Documentation of initial and *[biennial]* **subsequent** medical examinations *[that indicates that they are free from communicable disease including, but not limited to, tuberculosis and hepatitis];*

3. Results of annual checks of the family care safety registry **and documentation that the individual has completed the background check process and been found eligible for service as provided in section 210.493, RSMo, and 13 CSR 35-71.015;**

[4. Results of background screenings from other states in which interns/volunteers who have direct contact with children have resided and/or have lived or worked within the past five (5) years, including an annual out-of-state check if the person resides in another state;]

[5.]4. A signed and dated copy of the contract or any agreement outlining purpose of presence on site;

[6.]5. A signed and dated copy of the confidentiality policy;

[7.]6. A signed and dated copy of the discipline policy;

*[8.]7. A signed and dated copy of the mandated child abuse/neglect **and critical incident** reporting policies;*

*[9.]8. A signed and dated copy of the acknowledgement of receipt of **manuals and policies** related to *[their]* the agreement/contract; and*

[10.]9. Documentation of staff orientation participation.

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo [2000] 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-71.045. Emergency rule filed Nov. 1, 1993, effective Nov. 12, 1993, expired March 11, 1994. Emergency rule filed March 2, 1994, effective March 12, 1994, expired July 9, 1994. Original rule filed Nov. 1, 1993, effective June 6, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 is estimated to cost private entities sixty thousand dollars (\$60,000) 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
PRIVATE COST**

- I. Department Title:** Title 13–Department of Social Services
- Division Title:** Division 35–Children’s Division
- Chapter Title:** Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

Rule Number and Title:	13 CSR 35-71.045 Personnel
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 rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
60	Licensed Residential Agencies	\$1,000 X 60 = \$60,000.00

III. WORKSHEET

Average of 1 employees x \$1,000 for hiring and training cost = \$1,000 average per residential agency for 60 agencies equals \$60,000.00

IV. ASSUMPTIONS

This new regulation contains new exclusionary criteria for residential agency employment in HB 557 and 560, residential agencies will have to terminate an estimated 1 employees per agency. An estimate of \$1,000 per employee for job posting, hiring, orientation and training cost for new staff.

This estimate is based on an average of 1 employees per agency and an estimated cost to hire and train new employees.

The estimated total of \$60,000.00 is the total assumed impact for both 13 CSR 35-71.030 and 13 CSR 35-71.045.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71—Rules for Residential Treatment Agencies
for Children and Youth

PROPOSED RULE

13 CSR 35-71.300 Notification Requirements for License-Exempt Residential Care Facilities

PURPOSE: This rule implements the notification requirements for License-Exempt Residential Care Facilities in Missouri as required by sections 210.1250 through 210.1286, RSMo, as enacted into law in HB 557 (2021).

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

(1) Definitions. For the purpose of this regulation, unless otherwise specified in this section or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481, 210.1253, RSMo, and 13 CSR 35-71.010 and 13 CSR 35-71.015 shall apply to this regulation. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) “Residential Care Facility Notification Act” or “RCFNA” refers to sections 210.1250–210.1286, RSMo.

(2) Designation of Authority. The Department of Social Services hereby designates the Children’s Division of the Department of Social Services to be the division within the Department of Social Services to administer background checks as required by section 210.493 RSMo, 13 CSR 35-71.015, and the RCFNA.

(3) Application and Purpose of this Regulation. This regulation implements the requirements of the RCFNA. It applies to License-Exempt Residential Care Facilities (LERCFs).

(4) All LERCFs shall notify the division of their operation within Missouri before they accept any children as provided in this regulation and the RCFNA. LERCFs operating in Missouri and providing Residential Care Facility services to children on July 14, 2021, shall register with the division no later than Tuesday, October 12, 2021.

(5) Notification Procedures.

(A) To notify with the division, the Director of the LERCF, or his or her designee, shall file a notification using the division’s online portal, or as may be otherwise provided in this regulation.

1. The online notification form, instructions and filing the notification are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children’s Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/license-exempt.htm>, October 1, 2021. This rule does not incorporate any subsequent amendments or additions. The LERCF shall submit the completed notification form and upload any supporting or supplemental forms and documentation through this online portal. The LERCF shall attach all documentation that may be necessary to complete the required notification and upload the documentation with the notification form.

2. The LERCF may apply to the division for permission to file the notification and supporting documentation by mail or private

delivery services rather than through the online portal when there are unusual, compelling, and extenuating circumstances which make filing the notification through the online portal impossible. The LERCF shall apply for permission to file the notification form, supporting or supplemental materials with the division in writing, and shall explain the circumstances why the LERCF cannot submit the notification through the online portal. A copy of the notification form for use in submitting notification by mail is incorporated by reference and made a part of this rule as published by the Department of Social Services, Children’s Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website <https://www.dss.mo.gov/provider-services/children/residential-program/license-exempt.htm>, October 1, 2021. LERCFs may download a copy of the form. The LERCF shall attach all documentation that may be necessary to complete the required notification. If the division grants permission under this subsection the LERCF may submit the form with supporting materials by mail, by private delivery service, or in person to the offices of the division at Residential Program Unit, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65102; or by email at CD.NotifyRPU@dss.mo.gov.

(B) The notification form shall be signed by the director of the LERCF, or his or her designee, attesting that the information contained in the notice and the supplemental materials are true, accurate, complete, and subject to penalties of perjury. The division will accept e-signatures.

(C) The notification form shall designate the individual within the LERCF to be the point of contact between the LERCF and division. The point of contact between the division and the LERCF shall be the director unless otherwise specified by the LERCF. The notification form shall further indicate whether the LERCF prefers to receive communications by mail through the United States Postal Services or electronically by email.

(D) The notification shall contain the information required in this subsection and otherwise in this regulation.

1. The LERCF shall list its full name, street address, mailing addresses, email address, and phone number. The mailing address and email addresses shall be the addresses of record of the LERCF and all official correspondence to the LERCF will be sent to the mailing or email address on record.

2. The LERCF shall identify the name of the director, owner, operator, all staff members, volunteers, and any individual eighteen years of age or older who resides at or on the property of the LERCF. The LERCF shall provide the name, street address, physical and electronic mailing addresses, and phone number of the director or director’s designee who will serve as the point of contact between the division and the LERCF.

3. The LERCF shall provide a full description of the agency or organization operating the LERCF, including a statement as to whether the agency or organization is incorporated.

A. The description of the agency or organization shall specify the type of agency or organization.

B. If the agency or organization is incorporated then the LERCF shall provide the state in which the LERCF was incorporated and the corporate name of the LERCF.

4. The LERCF shall identify the name and address of the sponsoring organization of the residential care facility, if applicable.

5. The LERCF shall identify the school or schools attended by the children served by the residential care facility. The LERCF shall list the name and address of each school.

6. Fire and safety inspection certificates.

A. The LERCF shall include with the notification a copy of any and all fire and safety inspection certificates required by law in the jurisdiction where the LERCF operates, and shall indicate the date of the inspection and the date that each certificate expires, if any. If the LERCF operates in more than one (1) county or local jurisdiction then the LERCF shall submit the required certificates for each facility at each location. The LERCF shall indicate the date of the

inspection and the date that each certificate expires, if applicable.

B. LERCFs operating in jurisdictions where there are no required fire and safety inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain fire and safety inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection when available.

7. Local health department inspection certificates.

A. The LERCF shall include with the notification a copy of any and all state or local health department inspection certificates required in the jurisdiction in which the facility operates. If the LERCF operates in more than one (1) county or local jurisdiction, then the LERCF shall obtain the required certificates for each facility at each location. The LERCF shall indicate the date of the inspection and the date that each certificate expires, if any.

B. LERCFs operating in jurisdictions where there are no required local or county government health department inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain any required local health department inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection when available.

8. Proof that medical records are maintained for each child.

A. The division will accept a written attestation, made under oath, subject to penalty of perjury, and executed by the director of the LERCF, that the LERCF actually maintains medical records for each child served by the LERCF according to the written policy of the LERCF, which shall be attached to the attestation.

B. The LERCF shall provide the division access to the facility upon request to inspect the medical records maintained by the LERCF on the children served by the LERCF in order to verify that the medical records are being kept. The division will request access to this information only when the division has reasonable basis to believe that the LERCF is not maintaining records for any child as required by law.

9. Background Check completion/eligibility. The director of the LERCF, or his or her authorized designee, shall certify, under oath subject to the penalties of perjury that all individuals who are required to complete a background check have successfully completed the background checks and have been found eligible for employment or presence at the LERCF pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

A. Phase-in period for LERCFs in operation as of July 14, 2021. For all original notifications submitted by LERCFs which were both in operation and had children in its facility as of July 14, 2021, the division will accept a written certification from the director of the LERCF that all individuals who are required to submit to a background check pursuant to section 210.493, RSMo, and 13 CSR 35-71.015 either have completed the background check requirements or will have successfully completed the background check by December 31, 2021. Upon completion of this process the director or the director's designee shall provide written or electronic notice to the division certifying that the background check process for these individuals has been successfully completed. The division may extend this period for up to an additional one hundred twenty (120) days if the LERCF establishes, in writing, that it is unable to successfully complete the process by the deadline.

(E) When the division is satisfied that the LERCF has complied with all of the requirements for notification, the division will issue a letter to the LERCF—

1. Confirming the receipt of the completed notification;

2. Informing the LERCF that the records of the division reflect that the LERCF has successfully completed all of the notification process as of the date of the letter, that the LERCF may accept children pursuant to section 210.1259, RSMo, and that the division will include the LERCF on the list of LERCFs as specified in section 210.1280, RSMo, and section (9) of this regulation; and

3. Notifying the LERCF of the deadlines for submitting any supplemental notifications as provided in subsection (5)(F).

(F) Duty to Supplement. The LERCF shall have a continuing duty to submit a supplemental notification within fifteen (15) calendar days if or when—

1. The LERCF terminates its operations in Missouri;

2. The LERCF has any change in its physical address, mailing address, or email address, or other address on record; or

3. There is a change in the name, mailing address, email address, or other contact information for the director of the LERCF or designated point-of-contact of the LERCF.

4. The supplemental notification form shall be signed by the director of the LERCF or his or her designee attesting that the information contained in the form and the supplemental materials are true, accurate, and complete, and subject to penalties of perjury. The division will accept e-signatures.

(6) Nothing in this regulation shall give the division jurisdiction or authority to regulate or attempt to regulate, control, or influence the form, manner, or content of the religious curriculum, program, or ministry of the LERCF.

(7) When the department or the division is advised or has reason to believe that any LERCF is operating without proper notification in accordance with the RCFNA and the division's implementing regulations, the division shall give the director of the LERCF written notice by certified mail that the director shall file notification in accordance with the RCFNA and the division's implementing regulations, or the department may request a court injunction as provided under section 210.1271, RSMo, or take other action as may be authorized by law. The division shall send its written notice to the address of record of the LERCF when an address has been provided.

(A) The division may extend the time for the LERCF to comply with the notification requirements for up to sixty (60) days upon request of the LERCF and a showing by the LERCF that the LERCF has reasonable cause for the delay in completing the notification requirements and that the health and safety of the children will not be at risk.

(B) The division may further condition an extension of time upon the LERCF submitting a time-limited corrective action plan to complete the notification requirements that is mutually satisfactory to the LERCF and the division.

(8) Administrative Review and Judicial Review.

(A) Any LERCF which is aggrieved by a decision of the department or division under this regulation may file a request for administrative review of the decision within fourteen (14) days of the mailing of the decision as provided in this regulation.

(B) Administrative Review.

1. A request for administrative review shall be made in writing, either on a form provided by the division or by letter or submitted electronically by email to the division to the email address specified in the division's decision. The request for administrative review shall include the following information:

A. The name, address, telephone number, and email address of the LERCF making the request for administrative review;

B. Specify whether the LERCF is requesting a response and notice of final decision by first-class mail or by email;

C. Identify the division's decision to be reviewed, and why the LERCF is aggrieved by the decision;

D. The LERCF shall include copies of any relevant documents, materials, or information that the LERCF wishes to submit in support of the request for administrative review; and

E. Specify whether or not the LERCF requests that the review be considered on the basis of the materials submitted, or whether the LERCF requests an in-person review conference. If the LERCF requests an in-person review conference then the LERCF shall also provide dates and times within the next thirty (30) days when the LERCF will be available and the reasons why the administrative review cannot be processed on the basis of the materials presented.

2. The LERCF may be represented by legal counsel.

3. The administrative review shall be conducted and decided based upon the written materials submitted to the division and any information and materials presented at an in-person review conference. If the LERCF establishes that there is a good reason to hold an in-person review conference then the division will hold an in-person review conference.

4. The in-person review conference may take place by telephone conference call, video conference, or in-person review conference at a date and time during regular working hours that are mutually convenient to the division and the LERCF requesting the conference.

5. The administrative review process and in-person review conference shall be informal. The rules of evidence shall not apply. There is no right to conduct discovery. There shall be no right to compel the production of witnesses or evidence by subpoena or otherwise.

6. The administrative review shall be conducted by an individual designated by the director of the department or division, who may be an employee of the division or the department. However, the individual shall not have been involved in making the decision which is subject to review.

7. The individual conducting the administrative review shall conduct the administrative review and render a written decision no later than thirty (30) days from the date that the division received the request for administrative review.

8. The decision upon administrative review shall be the final decision of the department.

(9) The division will maintain a list of all LERCFs which are in compliance with the requirements of sections 210.1250-210.1286, RSMo, and this regulation.

(A) The list shall include the following information:

1. The name, physical address, and mailing address of the LERCF;

2. The name of the director of the LERCF; and

3. Whether the LERCF has submitted any fire and safety or health department certificates with the notification.

(B) The division will provide a copy of the list to anyone who asks, upon request submitted to the Children's Division, Residential Program Unit, 205 Jefferson Street, PO Box 88, Jefferson City, Missouri 65102; or by email at CD.NotifyRPU@dss.mo.gov.

(C) The director of any LERCF may submit written request to correct any errors in the list or to supplement the list with updated information.

(D) The division will update the list when errors or updates are brought to its attention. Except in cases where there is a scrivener's error, the division will provide notice and an opportunity to object making any changes about the LERCF on the list. The LERCF may seek administrative review of any changes in the list following the procedures specified in this regulation.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions four hundred thirty thousand four hundred sixty-four dollars (\$430,464) in FY22 and four hundred forty-three thousand nine hundred fifty-two dollars (\$443,952) in FY23.

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

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

AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Original rule filed Sept. 17, 2021.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13–Department of Social Services
- Division Title:** Division 35–Children’s Division
- Chapter Title:** Chapter 71–Licensing Rules for Residential Treatment Agencies for Children and Youth

Rule Number and Name:	13 CSR 35-71.300 Notification Requirements for Licensed Exempt Residential Care Facilities
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	\$430,464 in FY 22, \$443,952 in FY 23.
Department of Public Safety	\$0
Department of Health and Senior Services	\$0

III. WORKSHEET

Implementing this rule will require 5 FTE.

Cost breakout FY 22	
Salaries	\$ 198,180
Fringe	\$ 124,171
Equipment and Expense (including establishing secure portal)	\$ 108,113

TOTAL \$430,464

Cost breakout FY 23	
Salaries	\$240,194
Fringe	\$149,792
Equipment and Expense	\$ 53,966

TOTAL \$443,952

IV. ASSUMPTIONS

DSS assumes that license exempt residential care facilities are already compliant with local ordinances and requirements specific to inspections provided by DPS and DHSS.

It remains unknown how many license exempt residential care facilities currently exist in Missouri to date; however, DSS based fiscal impact estimates utilizing the assumption that there are 100 license exempt agencies currently operating in the state.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 73—Child Placing Agencies**

PROPOSED AMENDMENT

13 CSR 35-73.010 Scope and Definitions. The division is amending the title of the rule, moving sections (1)-(44) into subsections under a new section (2), and is adding a new section (1).

PURPOSE: The proposed amendment to this rule establishes the general principles governing the implementation and interpretation of the regulations in this Chapter 73. The amendment to this rule also updates the definitions of words and phrases utilized in Chapter 73 and updates the title.

(1) The following principles shall apply to all decisions made pursuant to this chapter:

(A) The safety and welfare of children is paramount;

(B) All providers of direct services to children and their families will be evaluated in a uniform, transparent, objective, and consistent basis;

(C) Services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes, and such services shall be tracked and routinely evaluated through a quality assurance program;

(D) Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with federal and state standards;

(E) Resources and efforts of the division and child placing agencies shall be committed to pursue the best possible opportunity for a successful outcome for each child. In the case of children and youth who are in the foster care system, successful outcomes may include preparing youth for a productive and successful life as an adult outside the foster care system, such as independent living. For those providers that work with children requiring intensive twenty-four- (24-) hour treatment services, successful outcomes shall be based on the least restrictive alternative possible based on the child’s needs as well as the quality of care received; and

(F) All licensed service providers shall prioritize methods of reducing or eliminating a child’s need for residential treatment through community-based services and supports.

(2) Unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481, and 210.1253, RSMo, and 13 CSR 35-71.010 and 13 CSR 35-71.015 shall apply to all regulations in this chapter (13 CSR 35-73). The singular includes the plural and the plural includes the singular. In addition, the following terms are defined as:

[(1)](A) “Adoption” means the act of receiving a child into one’s family by choice and acquiring a parent-child relationship by legal process./.;

[(2)](B) “Adoption agency” means a licensed public or private organization whose purpose or parts of its purpose is to provide adoption services to children, adoptees, adoptive applicants, and birth and/or adoptive parents./.;

[(3)](C) “Adoption services” means the provision of pre-placement or foster care services to birth and/or adoptive parents, the completion of birth parent/ social and medical histories, the completion of adoptive family assessments, post-placement services to birth and/or adoptive parents, post-adoption services to birth and/or adoptive parents, or other related activities, including those requested by courts and other adoption agencies and organizations./.;

[(4)](D) “Adoptive applicant” means a prospective adoptive parent who has applied to adopt a child but who has not yet received a child for adoptive placement. It also includes an adoptive parent who has

adopted one (1) or more children and who is requesting to adopt another child./.;

[(5)](E) “Adoptive parent” means a person with whom a child has been placed for adoption or who has adopted one (1) or more children./.;

[(6)](F) “Alternative care” means care provided a child in a foster home, a group home, residential treatment agency, child care institution, or any combination thereof./.;

(G) “Background check” means the background check required by section 210.493, RSMo, and 13 CSR 35-71.015;

[(7)](H) “Birth parent(s)” means the biological father and/or mother of a child./.;

[(8)](I) “Child” means any person under eighteen (18) years of age./.;

[(9)](J) “Child placing agency” means any person or organization, other than the parents, who places a child outside the home of the child’s parents or guardian, or advertises or holds him/herself forth as performing such services, but excluding the attorney, physician, or clergyman of the parents per section 453.014(4), RSMo./.;

[(10)](K) “Confidentiality” means [the act of holding in trust] complying with all federal and state laws governing the confidentiality of both identifying and non-identifying information about clients, families, and other individuals receiving services from a licensed child placing agency./.;

[(11)](L) “Custody” means the right of care and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child. Temporary custody of a child may be granted for a limited time only, usually pending further action or review by the court./.;

[(12)](M) “Director” means the director of the Children’s Division./.;

[(13)](N) “Division” means the Children’s Division of the Department of Social Services./.;

[(14)](O) “Facility” is any building of a licensed agency in which children reside./.;

[(15)](P) “Family Assessment” means a formal evaluation of the capacity and readiness of foster parent or adoptive applicants to receive a child, which includes a written report and recommendation./.;

[(16)](Q) “Finalization” means the issuance of a court order by an appropriate court which declares the child to be the child of adoptive petitioners as though born to them with full rights of inheritance./.;

[(17)](R) “Foster care,” see alternative care./.;

[(18)](S) “Foster Home” means a private residence of one (1) or more family members providing twenty-four- (24-) hour care to one (1) or more, but less than six (6) children who are unattended by parent or guardian and who are unrelated to either foster parent by blood, marriage, or adoption./.;

[(19)](T) “Foster parent” means a person of age twenty-one (21) or older who is licensed to provide twenty-four- (24-) hour care to one (1) or more, but less six (6), children who are unattended by parent or guardian, and who is unrelated to the child(ren) by blood, marriage, or adoption./.;

[(20)](U) “Governing body” means the legal entity with ultimate authority and responsibility for the agency’s overall operation./.;

[(21)](V) “Home study,” see family assessment./.;

[(22)](W) “ICAMA” means the Interstate Compact on Adoption and Medical Assistance (ICAMA). A contract enacted into law among twenty-eight (28) states (as of May 1994) whereby medical assistance (Medicaid) may be granted to an adopted child in the state where the child lives, based upon certain criteria, one (1) of which is the provision of adoption subsidy through an agreement between an agency and the adoptive parents./.;

[(23)](X) “ICPC” means the Interstate Compact on the Placement of Children (ICPC). A contract enacted into law among the fifty (50) states, the District of Columbia, and the Virgin Islands whereby approval must be obtained from the receiving state ICPC office prior

to the placement of a child across state lines for the purpose of adoption or certain other types of placement./;];

[(24)](Y) “ICWA” means the Indian Child Welfare Act (ICWA)/.];

[(25)](Z) “Immediate family” means a person related within the third degree of blood, marriage, or adoption/;-parent, grandparent, brother, sister, half brothers, half sisters, stepparent, stepbrothers, step-/sisters, uncle, aunt, or first cousin/./;];

[(26)](AA) “Independent adoption” means the placement of a child with a prospective adoptive parent by a birth parent or some other person, acting as allowed by state law, as an intermediary. Also referred to as a private, identified, or designated adoption/./;];

[(27)](BB) “International adoption” means the adoption of a child from a country other than the United States or of a child who is not a United States citizen by birth or naturalization/./;];

[(28)](CC) “Legal father” is the husband of a natural mother at the time the child was conceived/./;];

[29] “License” means the document issued by the division in accordance with the applicable provisions of sections 210.481 to 210.536, RSMo (Supp. 1995) to a foster home, residential care facility, or child placing agency which authorizes the foster home, residential care facility, or child placing agency to operate its program in accordance with the applicable provisions of sections 210.481 to 210.536, RSMo (Supp. 1995) and rules issued pursuant thereto.

(30) “MEPA” means Multi-Ethnic Placement Act (MEPA), Public Law 103-382 (1994).

(31) “Office” means the place where business is transacted and where the functions of an agency are performed.

(32) “Operating capital” means sufficient assets on hand to cover the initial start-up expenses for the initial period of licensure.

(33) “Permanency plan” means moving children to permanent homes, birth or adoptive, in a purposeful and timely manner.

(34) “Placement services” means any and all services offered to prospective adoptive children and families, ranging from selection of a particular family for a particular child through the physical arrival of the child in the adoptive home.

(35) “Post-legal adoption services” means any and all services offered to any party involved in an adoption after the adoption is granted or finalized by the appropriate court.

(36) “Post-placement services” means any and all services offered to any member of an adoptive family from the placement of the child to finalization of the adoption.

(37) “Power of attorney” means an instrument authorizing another to act as one’s agent or attorney.

(38) “Pre-placement services” means any and all services offered to birth parent(s) and child(ren) to evaluate and prepare them for an adoptive placement.

(39) “Private adoption” see independent adoption.

(40) “Private agency adoption” means the services offered by a licensed agency in placing a child for adoption.

(41) “Public agency adoption” means the services offered by

a state public child welfare agency in placing a child for adoption.

(42) “Social worker” means a professional person who possesses the qualifications and appropriate licensure to work directly with children, adoptees, birth and/or adoptive parents and other relevant individuals. If the person is a contracted person of a licensed child placing agency, such person must possess a valid license from the Division of Professional Registration and must, at a minimum, possess either a Bachelor’s Degree or a Master’s Degree in Social Work from an accredited institution.

(43) “Subsidy/adoption assistance” means the provision of financial assistance to adoptive families who are adopting a child with special needs as defined in state and federal law.

(44) “Termination of parental rights” (TPR) means a legal action which severs the parent-child relationship and allows the child to be adopted./

(DD) “MEPA” means Multi-Ethnic Placement Act (MEPA), Public Law 103-382 as amended;

(EE) “Office” means the place where business is transacted and where the functions of an agency are performed;

(FF) “Operating capital” means sufficient assets on hand to cover the initial start-up expenses for the initial period of licensure;

(GG) “Permanency plan” means moving children to permanent homes, birth or adoptive, in a purposeful and timely manner;

(HH) “Placement services” means any and all services offered to prospective adoptive children and families, ranging from selection of a particular family for a particular child through the physical arrival of the child in the adoptive home;

(II) “Post-legal adoption services” means any and all services offered to any party involved in an adoption after the adoption is granted or finalized by the appropriate court;

(JJ) “Post-placement services” means any and all services offered to any member of an adoptive family from the placement of the child to finalization of the adoption;

(KK) “Power of attorney” means an instrument authorizing another to act as one’s agent or attorney;

(LL) “Pre-placement services” means any and all services offered to birth parent(s) and child(ren) to evaluate and prepare them for an adoptive placement;

(MM) “Private adoption,” see independent adoption;

(NN) “Private agency adoption” means the services offered by a licensed agency in placing a child for adoption;

(OO) “Public agency adoption” means the services offered by a state public child welfare agency in placing a child for adoption;

(PP) “Social worker” means a professional person who possesses the qualifications and appropriate licensure to work directly with children, adoptees, birth and/or adoptive parents and other relevant individuals. If the person is a contracted person of a licensed child placing agency, such person must possess a valid license from the Division of Professional Registration and must, at a minimum, possess either a Bachelor’s Degree or a Master’s Degree in Social Work from an accredited institution;

(QQ) “Subsidy/adoption assistance” means the provision of financial assistance to adoptive families who are adopting a child with special needs as defined in state and federal law; and

(RR) “Termination of parental rights” (TPR) means a legal action which severs the parent-child relationship and allows the child to be adopted.

AUTHORITY sections 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.010. Original rule filed Sept. 18,

1956, effective Sept. 28, 1956. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 35—Children’s Division
Chapter 73—Child Placing Agencies**

PROPOSED AMENDMENT

13 CSR 35-73.012 Basis for Licensure and Licensing Procedures.
The division is amending sections (2), (3), and (6).

PURPOSE: The purpose of the proposed amendment to this rule is to update the procedures for applying for a license to operate a Child Placing Agency in Missouri, and to ensure that the regulations are in compliance with the new requirements of HB 557 (2021).

(2) Application for Licensure.

(A) [The application for license shall be completed by the officers of the governing board of the child placing agency, or its authorized representative, on a form prescribed and furnished by the division and shall be forwarded to the division.] To apply for a license to operate a Child Placing Agency in Missouri, the individual legally authorized to act on behalf of the Child Placing Agency shall file an application with the division on forms provided by the division.

1. The application forms are published on the division’s website and are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children’s Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, and on the web at <https://www.dss.mo.gov/provider-services/children/residential-program/child-placing.htm>, October 1, 2021. This rule does not incorporate any subsequent amendments or additions. The Child Placing Agency shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The Child Placing Agency shall submit the form with supplementary materials to the division by email at the following email address CD.CHILDPLACINGAPPS@dss.mo.gov.

2. The application form shall be signed by the legally authorized representative of the Child Placing Agency. The division will accept electronic signatures (e-signatures).

3. The Child Placing Agency may apply to the division for permission to submit its application and supporting documentation by mail or private delivery services rather than email when there are unusual, compelling, and extenuating circumstances which make submission by email impossible. The Child Placing Agency shall apply for permission to file the materials with the division in writing, and shall explain the circumstances why it cannot submit the materials by email. The Child Placing Agency

shall attach all documentation that may be necessary to complete the required notification. If the division grants permission under this subsection the LERCF may submit the form with supporting materials by mail, by private delivery service or in person to the offices of the division at Residential Program Unit, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65102; or by email to CD.CHILDPLACINGAPPS@dss.mo.gov.

(B) An agency shall submit the following documents to the division along with the application:

1. Documentation of the legal basis for operation;
2. A certified copy of the current Articles of Incorporation;
3. A copy of the current by-laws;
4. A list of the names and addresses of the current members of the governing board and a notarized letter of acceptance from each;
5. A completed personnel report on a form prescribed by the division;
6. Verification of the education, experience, and character of the administrator, all professional staff, and all contracted personnel;
7. Verification of a physical examination for all staff working directly with children, completed by a licensed physician or a registered nurse who is under the supervision of a licensed physician;
8. [Results of a check of the Child Abuse and Neglect Central Registry Unit (CA/N CRU) for all staff and volunteers] Certification that all individuals who are required to complete a background check are eligible for employment or presence at the Child Placing Agency as required in section 210.493, RSMo, and 13 CSR 35-71.015;
9. A criminal records check for each employee from a state law enforcement agency;
- 10.]9. A chart depicting the agency’s organizational structure and lines of supervision;
- 11.]10. A proposed budget for a period of not less than twelve (12) months duration which shows both anticipated expenses and income for the period;
- 12.]11. An itemized schedule of all fees to be assessed to applicants;
- 13.]12. Verification of availability of not less than ninety (90) days operating capital;
- 14.]13. A copy of the Civil Rights Agreement signed by the president of the governing board or the agency director;
- 15.]14. An outline of the agency’s proposed program and the specific geographic area to be served (this shall be directly related to the number of staff and the geographic area to which it can actually provide services);
- 16.]15. A projected staffing plan for the anticipated capacity and programming of the agency;
- 17.]16. A written statement clearly setting forth the authority and responsibilities delegated to a director, administrator, or supervisor, if other than the owner. When the responsibility for the operation of an agency rests with the governing board, that governing board shall establish written policies and procedures which clearly establish the lines of responsibility governing the operation of the agency. These shall include a statement of the kind and extent of authority delegated to the director employed to carry out the program;
- 18.]17. A written description of intake policies which delineates the types of services to be provided, specific programs offered, and the methods of care and treatment to be provided;
- 19.]18. Job title, job description, and minimum qualifications for all staff;
- 20.]19. Written child abuse and neglect reporting policy;
- 21.]20. Written personnel practices, including staff training and orientation;
- 22.]21. Written discipline policy for children in care;
- 23.]22. Written visitation policy for children in care;
- 24.]23. Written health care policy for children in care which shall include preventive, medical, eye, hearing, and dental care;

[25.]24. A written statement of any religious practices or religious restrictions;

[26.]25. A written plan for all foster parent training; and

[27.]26. Proof of professional and commercial general liability insurance.

(C) The application shall be complete when the Child Placing Agency has submitted and the division has received a fully completed application form and all necessary supporting documentation.

[(C)](D) A new application shall be filed—

1. If the agency fails to follow through with completing the requirements for licensure within six (6) months of initial application;

2. When an application for licensure has been withdrawn, and the agency seeks to reapply;

3. When there is a change of ownership or corporate status of the agency;

4. When the division has revoked or refused to renew a license, and a new license is sought; *and* or

5. When a license or application has been voluntarily surrendered or withdrawn by the applicant.

(3) Licensing Assessment.

(A) After the application is complete the division will conduct a thorough assessment of the agency [shall be made by the division], including a review of the documents required in this rule and visits to the agency to determine compliance with the licensing law and applicable rules.

(6) Licensing Renewal.

[(A)] Application forms for renewal of licensure shall be mailed to the child placing agency by the division at least sixty (60) days prior to the expiration of the license.]

[(B)](A) The Child Placing [a]Agency shall complete and return the application to the division [thirty (30)] sixty (60) days prior to the expiration of the current license. **The Child Placing Agency shall utilize the forms indicated in paragraph (2)(A)1. of this regulation to initiate the license renewal process. The Child Placing Agency shall attach all additional supplementary materials and documentation that may be necessary to complete the required application. The Child Placing Agencies shall submit the form with supplementary materials by email to the division to the following email address: CD.CHILDPLACINGAPPS@dss.mo.gov. The application form shall be signed by the Director of the Child Placing Agency or the Director's authorized designee. The division will accept electronic signatures.**

[(C)](B) The division shall initiate action on the completed application prior to the expiration of the existing licensure period.

[(D)](C) When an agency has made timely and sufficient application for renewal of a license, and the division fails to render a decision on the application for renewal of the license prior to the expiration date on the license, the existing license shall continue in full force and effect for up to thirty (30) days until the final decision of the division has been made. The division may further extend the period in which such decision must be made in individual cases for up to thirty (30) additional days, if good cause is shown.

[(E)](D) In addition to the completed renewal application, the [following documents shall be] **Child Placing Agency shall submit/ed/ the following documentation with the application:**

1. Verification of a biennial physical examination, completed by a licensed physician, registered nurse who is under the supervision of a licensed physician, or an advanced practice nurse in a collaborative agreement with a licensed physician for all staff working directly with children (see 13 CSR 35-73.030(3)(A));

2. A current governing board roster, with officers identified, including the addresses and a notarized letter of acceptance from each member;

3. A summary of any significant changes to programs and copies of any resulting policies or policy changes;

4. A copy of the current organizational chart;

5. A completed personnel report on a form prescribed by the division;

6. Certification that all individuals who are required to submit to a background check have completed their background checks and have been found eligible by the division for employment or presence at the Child Placing Agency as provided in section 210.493, RSMo, and 13 CSR 35-71.015;

[6.]7. Results of an annual check of the Child Abuse and Neglect CRU for all staff, contracted personnel, and volunteers working with children;

[7.]8. Results of the annual criminal records check for all staff, contracted personnel, and volunteers working with children;

[8.]9. A copy of a biennial financial audit and evaluation of the financial soundness of the operation conducted by a certified public accountant not employed by the agency;

[9.]10. A copy of the budget for the current calendar or fiscal year;

[10.]11. A statistical report on a form supplied by the division;

[11.]12. A list of the names and addresses of all current foster homes licensed by the agency;

[12.]13. An annual written plan for all foster parent training;

[13.]14. A written plan indicating how the agency will provide for the transfer of records on both open and closed cases in the event the agency closes;

[14.]15. An annual program evaluation;

[15.]16. An itemized schedule of all fees to be assessed to applicants; and

[16.]17. Copies of all written agreements (contracts) for the adoption process.

(E) When an agency has made timely and sufficient application for renewal of a license, and the division fails to render a decision on the application for renewal of the license prior to the expiration date on the license, the existing license shall continue in full force and effect for up to thirty (30) days until the final decision of the division has been made. The division may further extend the period in which such decision must be made in individual cases for up to thirty (30) additional days, if good cause is shown.

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.012. Original rule filed Feb. 6, 1997, effective July 30, 1997. Moved to 13 CSR 35-73.012 and amended: Filed Aug. 20, 2018, effective April 30, 2019. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 35—Children's Division
Chapter 73—Child Placing Agencies**

PROPOSED AMENDMENT

13 CSR 35-73.017 Hearings and Judicial Review. The division is

amending section (1).

Missouri Register. No public hearing is scheduled.

PURPOSE: The purpose of this proposed amendment is to ensure that the rule is updated to reflect the needs of current practice and to ensure that the rules are consistent with the requirements of HB 557 (2021).

(1) License Denial, or Revocation.

(A) The division may refuse to issue a license to an applicant, or may deny or revoke the license of a licensee, who—

1. Fails consistently to comply with the applicable provisions of sections 210.481–210.536[,] and Chapter 453, RSMo, if licensed as an adoption agency, and the applicable corresponding rules;

2. Violates any of the provisions of its license;

3. Violates state laws or rules relating to the protection of children;

4. **Abuses or neglects children, or /P/permits the abuse or neglect of children, or is the subject of multiple or serious reports of child abuse or neglect which upon investigation results in a finding of probable cause to suspect child abuse or neglect and fails to take corrective action acceptable to the division to ensure the safety of children;**

5. **Employs persons who the division has found ineligible for employment or presence at the Child Placing Agency pursuant to section 210.493, RSMo, and 13 CSR 35-71.015, or who abuse or neglect children, or are the subjects of multiple [or serious] reports of child abuse or neglect which upon investigation results in a finding of [probable cause to suspect] preponderance of the evidence that the individual is responsible for child abuse or neglect and the agency fails to take corrective action acceptable to the division to ensure the safety of children;**

6. Furnishes or makes any misleading or false statements or reports to the division;

7. Refuses to submit any reports or to make available to the division any records required in making an investigation;

8. Fails or refuses to submit to an investigation by an authorized and identified representative of the division at any reasonable time;

9. Fails to provide, maintain, equip, and keep in safe and sanitary condition the premises established or used for the care of children as required by law, rule, or ordinance applicable to the location of a facility; or

10. Fails to provide adequate financial resources for the satisfactory care of children being served.

AUTHORITY: sections [210.481-210.536, RSMo (1994) and (Cum. Supp. 1996)] 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.017. Original rule filed Feb. 6, 1997, effective July 30, 1997. Moved to 13 CSR 35-73.017, effective June 30, 2018. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 2021.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions five hundred seventy-four thousand two hundred eighty-two dollars (\$574,282) in FY22 and six hundred fifty-five thousand one hundred seventy-six dollars (\$655,176) in FY23.

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

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** 13-Social Services
- Division Title:** 35-Children’s Division
- Chapter Title:** 73-Child Placing Agencies

Rule Number and Name:	13 CSR 35-73.017 Hearing and Judicial Review
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS	\$574,282 in FY 22. \$655,176 in FY 23.

III. WORKSHEET

Implementation of this rule will require 7 FTE.

FY 22 Cost calculation

Salaries	\$298,305
Fringe Benefits	\$180,745
<u>Equipment and Expense</u>	<u>\$ 95,232</u>
Total	\$574,282

FY 23 Cost calculation

Salaries	\$361,546
Fringe Benefits	\$218,080
<u>Equipment and Expense</u>	<u>\$ 75,550</u>
Total	\$655,176

IV. ASSUMPTIONS

The Division of Legal Services anticipates the need for two litigation attorneys to advise and represent the Children’s Division (CD) in child health and safety assessment proceedings; injunctive proceedings to halt operations at residential care facilities; investigative subpoenas, proceedings regarding the removal and placement of children; to defend additional Children’s Division findings of child abuse or neglect in the circuit courts; and to advise CD on determinations of eligibility to be present or employed at

licensed residential care facilities and child placing agencies and to be present or employed at license-exempt residential care facilities.

The Division of Legal Services further anticipates the need for 1 Hearings Officer and one Special Counsel for hearings regarding eligibility of those to be present or employed at licensed residential care facilities and child placing agencies and to be present or employed at license-exempt residential care facilities.

The Children's Division will require 3 Children's Service Workers to prepare information for hearings.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 73—Child Placing Agencies

PROPOSED AMENDMENT

13 CSR 35-73.030 Personnel Practices and Personnel. The division is amending sections (1), (2), (6), and (7).

PURPOSE: This proposed amendment implements House Bill 557 (2021) by adding requirements for any individual associated with a child placing agency to successfully complete a background check and an annual Family Care Safety Registry check before the division considers that person eligible for employment at the agency.

(1) Personnel Practices.

(D) The agency shall require that each [employee secure and provide to the agency an annual criminal records check from a state law enforcement agency] **individual associated with the agency who is required to submit to a background check pursuant to section 210.493, RSMo, 13 CSR 35-71.015, and 13 CSR 35-73.035 successfully complete the background check and be found eligible by the division for employment or presence at the licensed child placing agency.**

(2) Child Abuse and Neglect Central Registry Unit (CA/N CRU) Checks.

(A) **After the background checks have been completed, [T]the agency shall request from the division an annual check of the Family Care Safety Registry and the Child Abuse and Neglect Central Registry Unit to determine whether a child abuse and/or neglect report has been received on staff members, employees, contracted personnel, and volunteers working directly with children. [The CRU checks shall be submitted either at the time of employment or within ten (10) days following employment, and annually thereafter.]** Results of the checks shall be on file at the agency.

(6) Staff Orientation. Immediately before or following appointment, a staff member shall be oriented to the agency’s programs, practices, and the duties and expectations of his/her position. The orientation program shall include, but not be limited to—

(G) **The laws and procedures governing the [C]confidentiality of information and records;**

(7) Staff Development.

(E) The training plan shall include, but not be limited to:

1. Developmental needs of children;
 2. The direct care and professional staff roles in the facility;
 3. Specific requirements of the applicable laws relating to adoption that effect the performance of their duties, as well as local court rules;
 4. Trans-racial and cross-cultural placement;
 5. Cultural diversity;
 6. Separation and attachment issues;
 7. Conducting a family assessment; [and]
 8. Adoption-related training, if agency provides such service;
- [A.] **9.** Interstate Compact for the Placement of Children (ICPC) and Interstate Compact on Adoption and Medical Assistance (ICAMA);
- [B.] **10.** Adoption subsidy;
- [C.] **11.** International adoptions;
- [D.] **12.** Adoption search issues;
- [E.] **13.** Adoption risk issues;
- [F.] **14.** Post-placement services; and
- [G.] **15.** Post-legal adoption services.

AUTHORITY sections 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule

originally filed as 13 CSR 40-73.030. Original rule filed Sept. 18, 1956, effective Sept. 28, 1956. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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 35—Children’s Division
Chapter 73—Child Placing Agencies

PROPOSED AMENDMENT

13 CSR 35-73.035 Staff Qualifications and Requirements. The division is amending sections (1)-(8).

PURPOSE: The purpose of this proposed amendment is to ensure that the language of the rule is consistent with current practices, and to incorporate the requirements of House Bill 557 (2021).

(1) Employee Qualifications. The agency shall employ staff who are qualified by education, training, and experience for their assigned responsibilities. A current employee who has qualified for a position under the previous rule and is serving in that position shall be exempt from meeting any increased requirements defined by these rules. **Each individual associated with the agency who is required to submit to a background check pursuant to section 210.493, RSMo, and 13 CSR 35-71.015 must also successfully complete the background check and be found eligible by the division for employment or presence at the licensed child placing agency.**

(2) Administrative Personnel.

- (D) The administrator’s responsibilities include:
1. Developing, implementing, and maintaining policies and procedures for program and fiscal operation under the direction of the governing board **and maintaining compliance with all applicable requirements of federal and state law, including the background check and eligibility requirements of section 210.493, RSMo, and 13 CSR 35-71.015;**
 2. Keeping the governing board informed of the program and management of the agency;
 3. Interpreting and implementing recognized standards for child welfare services;
 4. Ensuring that the agency achieves and maintains compliance with the requirements of the licensing rules;
 5. Employing, evaluating, and discharging staff members, in accordance with the agency’s established personnel policies; and
 6. Ensuring the maintenance of current client’s records and statistics.

(3) Supervisor of Placement Services.

(B) Supervisors of placement services are required to submit to background checks and be found eligible by the division for

employment or presence at the licensed child placing agency pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

(4) Professional Personnel.

(B) Professional staff who perform social work tasks, counseling with children and their families, therapeutic services, or planning of services for children and their families, shall have a master's degree in social work, psychology, counseling, or a closely related clinical field from an accredited college or university. Professional staff may have a bachelor's degree in social work, psychology, counseling, or a related area of study from an accredited school if s/he is under the direct supervision of a qualified supervisor of placement services (13 CSR 35-73.035(3)).

(E) Professional personnel are required to submit to background checks and be found eligible by the division for employment or presence at the licensed child placing agency pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

(5) Contracted Personnel.

(E) A file shall be maintained for each contracted personnel which includes:

1. A copy of the signed contract;
2. Verification of education and experience;
3. Verification of character references from three (3) persons, unrelated to the staff member;
4. Verification of employer references for the past five (5) years and a history of any previous employment in child care settings;
5. A copy of the job description signed by the contractor;
6. Reports of initial and subsequent biennial physical examinations;
7. Results of annual checks of the Child Abuse and Neglect Central Registry Unit (CA/N CRU) /C/checks;
8. Copies of an annual performance evaluation;
9. *[Results of the annual criminal records check]*

Documentation that each individual associated with the agency who is required to submit to a background check pursuant to section 210.493, RSMo, and 13 CSR 35-71.015 has successfully completed the background check and is found eligible by the division for employment or presence at the licensed child placing agency; and

10. Documentation of orientation and annual staff training.

(6) Students and Interns.

(A) Interns, *[G/graduate [or undergraduate] students, and* students in a field work placement at the agency shall be subject to the general personnel policies of the agency, but shall not be considered or used as substitutes for employed staff. A written plan for using students will include:

1. A plan for the selection, orientation, training, assignment, and evaluation of students;
2. A description of what services the student is responsible for and what arrangement the agency has for supervising the students;
3. A signed statement of their understanding of confidentiality;
4. A copy of the written plan shall be given to each student, his/her school, and to the supervising staff members; and
5. A plan for coverage of caseload in student's absence.

(B) Interns, graduate students, and students are required to submit to background checks and be found eligible by the division for employment or presence at the licensed child placing agency pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

(7) Clerical Staff *[Shall Be Employed as Needed]*.

(C) Clerical staff shall submit to background checks and be found eligible by the division for employment or presence at the licensed child placing agency pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

(8) An agency shall not be wholly dependent upon the use of volunteers to ensure the provision of services. If an agency uses volunteers as part of its program of services, the agency shall have written policies which include:

(H) Maintaining a file for each volunteer, who works directly with children including applications, verification of CA/N CRU and *[criminal records]* background checks, and task assignments and annual evaluations;

(I) Procedures for observing professional ethics and confidentiality of records and information;

AUTHORITY: sections 207.020, 210.506, and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2021. This rule originally filed as 13 CSR 40-73.035. Original rule filed Feb. 6, 1997, effective July 30, 1997. Moved to 13 CSR 35-73.035 and amended: Filed Sept. 7, 2018, effective April 30, 2019. Emergency amendment filed Sept. 17, 2021, effective Oct. 1, 2021, expires March 29, 2022. Amended: Filed Sept. 17, 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**

PROPOSED RULE

13 CSR 70-3.035 Violations Attested to by the Department of Health and Senior Services

PURPOSE: This rule adds violations determined by the Department of Health and Senior Services as independent grounds for provider sanctions.

Violations of 13 CSR 70-3.030(3) identified by the Department of Health and Senior Services (DHSS) or its designee during the course of an investigation shall be considered for purposes of sanctions without the need for further investigation by the Missouri Medicaid Audit and Compliance Unit (MMAC). The DHSS shall report any such violations by sworn affidavit to MMAC. Prior violations of 13 CSR 70-3.030(3) or other program violations, including, but not limited to, program violations as determined by and attested to by affidavit by the DHSS, shall be considered in their totality to determine if there is an ongoing pattern of violations. Such pattern of violations shall weigh heavily to support invoking severe sanctions.

AUTHORITY: sections 1.205, 208.153, 208.201, and 660.017, RSMo 2016. Emergency rule filed Oct. 1, 2021, effective Oct. 18, 2021, expires April 15, 2022. Original rule filed Oct. 1, 2021.

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

aggregate.

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 6—Emergency Ambulance Program**

PROPOSED RULE

13 CSR 70-6.020 Ground Emergency Medical Transportation Uncompensated Cost Reimbursement Program

PURPOSE: This rule implements the Ground Emergency Medical Transportation (GEMT) Uncompensated Cost Reimbursement Program established pursuant to section 208.1030, RSMo, which is a voluntary program that makes reconciled cost reimbursement to eligible GEMT providers that furnish qualifying emergency ambulance services to MO HealthNet participants on or after July 1, 2017.

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) Scope and Definitions.

(A) Under the Ground Emergency Medical Transportation (GEMT) Uncompensated Cost Reimbursement Program (hereinafter the "program"), the MO HealthNet Division (MHD) makes reconciled cost reimbursement to eligible GEMT providers up to the uncompensated Medicaid costs associated with GEMT services. This reconciled cost reimbursement applies only to GEMT services rendered to MHD participants by eligible GEMT Providers on or after July 1, 2017. Total reimbursements from MHD, including the reconciled cost reimbursement, will not exceed one hundred percent (100%) of the eligible GEMT provider's actual costs of providing GEMT services to MHD participants. The supplemental MHD reimbursement shall be distributed to eligible GEMT providers based on GEMT services provided to MHD participants on a per-transport basis. The reconciled cost reimbursement is not an individual increase to current fee-for-service reimbursement rates.

(B) Definitions.

1. Cost objective means a function or category of service for which costs are incurred.

2. Direct cost means, in accordance with 2 CFR 200.413, direct costs are those costs that—

A. Can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity; or

B. Can be directly assigned to such activities relatively easily with a high degree of accuracy.

3. Eligible GEMT provider means a provider who is eligible to receive reconciled cost reimbursement under this program because it meets the following requirements continuously during the claiming

period:

A. Provides GEMT services to MHD participants;

B. Is enrolled as an MHD provider for the period being claimed; and

C. Is owned, operated, or contracted by the state or a political subdivision of the state.

4. Emergency Medical Response (EMR) means a cost objective that includes all expenditures for GEMT services.

5. GEMT services means both the act of transporting an individual from any point of origin to the nearest medical facility capable of meeting the emergency medical needs of the patient, as well as the advanced, limited-advanced, and basic life support services provided to an individual by eligible GEMT providers before or during the act of transportation. As of January 1, 2020, GEMT services also include advanced, limited-advanced, and basic life support services provided to an individual who is released on the scene without transportation by ambulance to a medical facility. Advanced, limited-advanced, or basic life support services provided to an individual who is released on the scene without transportation by ambulance to a medical facility prior to January 1, 2020, shall not be considered GEMT services. A run that does not result in a transport or delivery of on-site advanced, limited-advanced, or basic life support services shall not be considered GEMT services.

6. Indirect cost means those costs that are incurred by a supporting organization or related party which are not directly accounted for as costs for EMR services, non-EMR services or shared costs. Examples of indirect costs include overhead costs (i.e. accounting, human resources, etc.) incurred by a city, county, or other local government agency or special district that benefit the eligible GEMT provider, but the eligible GEMT provider has not been charged for those costs. The identification of shared costs does not preclude an eligible GEMT provider from also incurring indirect costs, and it is appropriate in certain cases for the uncompensated Medicaid costs to include both shared costs and indirect costs.

7. MHD participant means a patient enrolled in fee-for service Missouri Medicaid.

8. Non-Emergency Medical Response (non-EMR) means a cost objective that includes expenditures for non-medical emergency services, such as fire suppression not including medical services, and non-emergency ancillary services, such as fire prevention and fire permit issuance that are performed in the absence of an emergency in order to support preparedness, mitigate the need for emergency response, or lessen the severity of an emergency that might occur.

9. Reconciled cost reimbursement means a payment to eligible GEMT providers up to the uncompensated Medicaid costs associated with GEMT services for MHD participants.

10. Shared costs means costs that cannot be directly assigned to EMR services or non-EMR services relatively easily with a high degree of accuracy. Examples of shared costs include personnel who perform EMR and non-EMR services and overhead departments who perform EMR and non-EMR services.

11. Shift means a standard period of time assigned for a complete cycle of work, as set by each eligible GEMT provider. The number of hours in a shift may vary among providers but will be consistent for each individual provider.

12. Service period means July 1 through June 30 of each Missouri State fiscal year.

13. Transport means GEMT services that are provided by eligible GEMT providers to individuals, regardless of whether the service was billed or paid. Medicaid transports includes GEMT services for Medicaid managed care, Medicaid crossover and Medicaid fee for service patients. Other payer program transports shall be GEMT services provided to patients with payer sources other than Medicaid. Transportation services that do not involve an emergency or which are non-medical emergencies shall not be included as Transports. GEMT services that are denied as not medically necessary shall not be included as transports.

14. Uncompensated Medicaid costs means the cost of GEMT

Services for MHD participants that exceeds the reimbursement received from, but not limited to, Medicaid, patients, and enhanced supplemental payments received from the ambulance service reimbursement allowance under 13 CSR 70-3.200. Cost excludes Medicaid managed care and dual-eligible Medicaid Transports.

15. Dual-eligible Medicaid transport means any transport where Medicaid is not the primary payor due to other coverage including Medicare or other private insurance. These costs will not be reimbursed in the GEMT supplemental program.

(2) Participation and Enrollment Requirements.

(A) Participation in the GEMT program is voluntary.

(B) Ambulance providers that are not owned, operated, or contracted by the state or a political subdivision of the state are not eligible to participate in the program.

(C) As a condition of participation under this program, eligible GEMT providers shall transfer an administrative fee to MHD in an amount not to exceed five percent (5%) of the nonfederal share of the uncompensated Medicaid costs associated with GEMT Services as identified in the eligible GEMT provider's as-filed cost report. Such fee shall be transferred separately from the intergovernmental transfer of funds to MHD.

(D) An eligible GEMT provider must complete and submit to MHD the following forms, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, September 22, 2021, and may be downloaded from <https://dss.mo.gov/mhd/providers/gemt.htm>, obtained by emailing a written request to Ask.GEMT@dss.mo.gov, or acquired in-person at 615 Howerton Court, Jefferson City, MO 65109. This rule does not include any subsequent amendments or additions:

1. GEMT Program Provider Agreement for the MO HealthNet Division Ground Emergency Medical Transportation (GEMT) Uncompensated Cost Reimbursement Program;
2. Electronic Funds Transfer Authorization Agreement;
3. Intergovernmental Transfer of Public Funds Agreement; and
4. Administration Fee Agreement.

(3) Interim Payments and Cost Settlement Process.

(A) If the eligible GEMT provider's as-filed cost report reflects that the eligible GEMT provider has uncompensated Medicaid Costs associated with GEMT services, the eligible GEMT provider is eligible to receive an interim payment from MHD. The eligible GEMT provider will make an intergovernmental transfer of funds to MHD in an amount equivalent to the nonfederal share of the uncompensated Medicaid costs amount shown on the as-filed cost report. MHD will then make an interim payment to the eligible GEMT provider in the amount of the total uncompensated Medicaid costs.

(B) If the eligible GEMT provider's as-filed cost report does not reflect any uncompensated Medicaid costs associated with GEMT services, then the provider is not entitled to receive an interim payment from MHD under this supplemental payment program and will not be responsible for any costs associated with implementing the GEMT program.

(C) MHD will audit and reconcile the as-filed cost reports within one (1) year of receipt of the as-filed cost reports, unless MHD determines that additional time is needed, not to exceed three (3) years from receipt of the as-filed cost reports. To audit and reconcile the as-filed cost reports, MHD will use paid claims data for the service period generated from the Medicaid Managed Information Systems (MMIS) and eligible GEMT provider records. MHD will make adjustments to the as-filed cost report based on the audit and reconciliation and send the provider its preliminary findings within sixty (60) days of initiating the audit and reconciliation process and receiving all relevant data from providers. The provider will be given sixty (60) days to respond to MHD's preliminary findings, unless an extension is granted by MHD. MHD's final audit and reconciliation decision will be issued within sixty (60) days after receipt of MHD's pre-

liminary findings. If at the end of the final audit and reconciliation it is determined that the interim payment made to the eligible GEMT provider exceeded the provider's uncompensated Medicaid costs associated with GEMT services, the provider shall return the excess amount associated with the federal share to MHD and MHD will return the amount to the federal government pursuant to 42 CFR 433.316. If at the end of the final reconciliation it is determined that the interim payment made to the eligible GEMT provider was lower than the provider's uncompensated Medicaid costs associated with GEMT services, the eligible GEMT provider shall make an additional intergovernmental transfer to MHD in an amount equivalent to the nonfederal share of the underpayment, and MHD will then make an additional payment to the eligible GEMT provider of the full underpayment amount. MHD shall recoup funds paid out under section 208.1030, RSMo, and this regulation upon a disallowance of federal financial participation (FFP) for those funds. The recoupment will follow the process outlined in 13 CSR 70-3.030(6).

(D) Each provider's uncompensated Medicaid cost associated with GEMT services is the sum of the number of transports for MHD participants provided during the applicable service period shown as paid in MMIS data, excluding Medicaid managed care and dual-eligible Medicaid transports, and contained in eligible GEMT provider records, multiplied by the provider's per-transport cost rate, less all amounts received and payable from MHD (excluding Medicaid managed care payments) and patients for such transports as shown in the MMIS and eligible GEMT provider records, and all other sources of reimbursement for such transports. Other sources of reimbursement include, but are not limited to, co-payments received from participants, and enhanced supplemental payments received from the ambulance service reimbursement allowance under 13 CSR 70-3.200.

(E) Each provider's per-transport cost rate is determined by adding the provider's allowable direct, shared, and indirect costs of providing GEMT services divided by the total number of transports provided for the applicable service period.

(4) Cost Report Requirements.

(A) To receive reconciled cost reimbursement under the GEMT program, each eligible GEMT provider must submit an annual cost report to MHD. The cost report form and the cost report instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, and available at <https://dss.mo.gov/mhd/providers/gemt.htm>, or by emailing a written request to Ask.GEMT@dss.mo.gov, September 22, 2021. This rule does not incorporate any subsequent amendments or additions.

(B) The cost report must be completed in compliance with the requirements set forth in this regulation and the cost report instructions incorporated herein. The eligible GEMT provider shall submit the cost report to MHD by November 30 for the prior state fiscal year ending June 30, unless the provider has submitted a written request to MHD for an extension and such request is granted by MHD. Any written request for an extension must include a detailed explanation of the circumstances supporting the need for additional time. Extensions may be granted by MHD for good cause.

(C) Each provider shall maintain fiscal and statistical records for the services period covered by the cost report. All records must be accurate and sufficiently detailed to substantiate the cost report data. The records must be maintained until the later of—

1. The division certifies that the cost report is finalized and settled; or
2. A period of six (6) years following the submission of the cost report. If an audit is in progress, all records relevant to the audit must be retained until the audit is completed or the final resolution of all audit exceptions, deferrals, and/or disallowances.

(D) All costs reported must be in accordance with the following:

1. Allowable and unallowable costs.

A. Reconciled cost reimbursement is available only for allowable costs incurred for GEMT services rendered to MHD participants based on the provider's financial data reported on the cost report.

B. Computation of allowable costs and their allocation methodology must be determined in accordance with the Centers for Medicare and Medicaid Services (CMS) Provider Reimbursement Manual (CMS Pub. 15-1), 2 CFR Part 200, and 42 CFR Part 413, except as expressly modified herein.

(I) Part 200 of Title 2, *Code of Federal Regulations*, is incorporated by reference and made a part of this rule as published by the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408, and available at <https://dssrule-tracker.mo.gov/dss-proposed-rules/welcome.action>, January 1, 2021. This rule does not incorporate any subsequent amendments or additions.

(II) Part 413 of Title 42, *Code of Federal Regulations*, is incorporated by reference and made a part of this rule as published by the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408, and available at <https://dssrule-tracker.mo.gov/dss-proposed-rules/welcome.action>, October 1, 2020. This rule does not incorporate any subsequent amendments or additions.

(III) The Provider Reimbursement Manual—Part 1 (CMS Pub. 15-1) is incorporated by reference and made a part of this rule as published by the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, and available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021929>, September 22, 2021. A copy is available at the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. This rule does not incorporate any subsequent amendments or additions.

C. Costs which are considered unallowable include expenditures, such as bad debts, contributions and donations, entertainment including alcoholic beverages, fundraising costs, lobbying, legal judgments, and fines or penalties, which 2 CFR Part 200 does not permit to be charged to federal programs. If unallowable costs are not easily identifiable from allowable costs, the associated revenues received for providing the unallowable services will be offset against allowable cost. Additionally, for the purposes of Medicaid cost identification for the GEMT program, expenditures attributed to the non-emergency medical response cost objective are not costs incurred for GEMT services.

D. Amounts required to be paid pursuant to the ambulance service reimbursement allowance (AFRA) under 13 CSR 70-3.200, excluding administrative fees and pooling fees, are allowable for GEMT services. Pooling payments received from participation in the ambulance service reimbursement allowance program shall reduce the ambulance service reimbursement allowance amount reported as allowable by the provider.

E. Administrative costs incurred for reimbursing MHD for costs associated with implementing the GEMT program must be excluded from the cost report.

F. Eligible GEMT providers routinely use contract billing service providers to assist with the administrative functions of billing and collecting on patient accounts. Payments to contract billing service providers are an allowable administrative cost. Fee arrangements based on hourly rates, fixed amounts, percentage of collection, or other methods are all considered allowable for computing uncompensated Medicaid costs, however, all payments to contract billing service providers must not exceed fair market value; and

2. Direct and Indirect Costs.

A. All direct costs must be reasonable and necessary and must be supported by documentation from which the costs incurred by the provider can be readily discerned and verified with reasonable certainty. Such documentation shall be subject to review by MHD.

B. Eligible GEMT providers that do not provide fire services

would not have shared costs and the cost report would reflect only EMR direct costs. Eligible GEMT providers that do not provide fire services but provide training (of non-employees) or non-emergency medical transportation services (e.g., non-emergency transportation between medical facilities or patient homes) shall include the costs of such services in their EMR direct costs, but shall offset those costs by any reimbursement received for such services up to the amount of costs for such services.

C. There is no universal rule for classifying certain costs as either direct cost or shared cost under every accounting system. A cost may be direct cost with respect to some specific service or Cost objective, but shared cost with respect to the federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances as a direct cost or a shared cost in order to avoid possible double-charging of federal awards. For example, any cost incurred by an eligible GEMT provider which includes both costs incurred applicable to non-EMR services as well as GEMT services must in their entirety be consistently classified as direct or shared costs.

D. Direct costs for providing GEMT services include only the unallocated payroll costs for the shifts in which personnel dedicate one hundred percent (100%) of their time to providing GEMT services, medical equipment and supplies, and other costs directly related to the delivery of GEMT services, such as first-line supervision, materials and supplies, professional and contracted services, capital outlay, travel, and training. These costs must be in compliance with federal Medicaid non-institutional reimbursement policy and are directly attributable to the provision of the GEMT services.

E. Shared costs for EMR and non-EMR services shall be allocated based on a reasonable method in accordance with the guidelines in 2 CFR Part 200. The cost report shall allow the provider to use any reasonable method allowed in the Centers for Medicare and Medicaid Services (CMS) Provider Reimbursement Manual (CMS Pub. 15-1), 2 CFR Part 200, and 42 CFR Part 413, an example of reasonable methods include, among others:

- (I) Square footage allocations for capital cost;
- (II) Depreciation cost for capital cost; or
- (III) Time studies for salaries and benefits.

F. When providing allocation information, statistics from the shared costs should not be included in the calculations for allocation between EMR and non-EMR services.

G. Pursuant to 2 CFR Part 200, indirect costs are determined in accordance to one (1) of the following options:

(I) Eligible GEMT providers that receive more than thirty-five million dollars (\$35,000,000) in direct federal awards must either have a Cost Allocation Plan (CAP) or a cognizant agency approved indirect rate agreement in place with its federal cognizant agency to identify indirect cost. If the provider does not have a CAP or an indirect rate agreement in place with its federal cognizant agency and it would like to claim indirect cost in association with a non-institutional service, it must obtain one (1) or the other before it can claim any indirect cost;

(II) Eligible GEMT providers that receive less than thirty-five million dollars (\$35,000,000) of direct federal awards are required to develop and maintain an indirect rate proposal for purposes of audit. In the absence of an indirect rate proposal, providers may use methods originating from a CAP to identify its indirect cost. If the provider does not have an indirect rate proposal on file or a CAP in place and it would like to claim indirect cost in association with a non-institutional service, it must secure one (1) or the other before it can claim any indirect cost;

(III) Eligible GEMT providers which receive no direct federal funding can use any of the following previously established methodologies to identify indirect cost:

- (a) A CAP with its local government;
- (b) An indirect rate negotiated with its local government;

or

- (c) Direct identification through use of a cost report;

(IV) If the GEMT provider never established any of the above methodologies, it may do so, or it may elect to use the ten percent (10%) *de minimis* rate to identify its indirect cost.

AUTHORITY sections 208.1030, 208.201, and 660.017, RSMo 2016. Original rule filed Sept. 22, 2021.

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

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.040 [Inpatient] Hospital [and] Outpatient [Hospital] Settlements. The division is amending the title, the purpose, and sections (1), (2), and (4), removing section (3) and (5), adding a new section (4), and renumbering as necessary.

PURPOSE: This amendment deletes or clarifies outdated terms, language, and provisions regarding hospital inpatient and outpatient settlements. The division is removing the provisions governing inpatient settlements entirely, since the practice of calculating settlements for those services has ceased.

PURPOSE: This regulation defines the specific procedures used to calculate the final [or amended settlements] outpatient settlements for hospital providers. [These settlements are authorized in 13 CSR 70-15.010.]

(1) General. This regulation defines the specific procedures used to calculate [inpatient and] outpatient settlements for Missouri in-state hospitals participating in the Missouri Medicaid program. [Although inpatient and outpatient settlements are calculated at the same time, an overpayment for outpatient services shall not be offset against an underpayment for inpatient services. Outpatient settlement shall not be determined for cost reports periods ending after December 31, 1998 except for recently closed hospitals, new hospitals, and nominal charge providers as provided for in paragraph (4)(E)4. and hospitals that had a change in ownership or merged operation in paragraph (4)(E)5. and elect to stay under the retrospective payment system.] **Outpatient settlements are only determined for new hospitals and nominal charge providers.**

(A) The hospital's settlement will be determined after the division receives a Medicare/[Medicaid] cost report [from the Medicare fiscal intermediary] with a Notice of Provider Reimbursement (NPR). The cost report used for the settlement shall be the one with the latest NPR at the time the settlement is calculated. The data used, except for Medicaid data, shall be as reported in the cost report unless adjusted by this regulation. The current version of the cost report is [HCFA] Centers for Medicare and Medicaid Services (CMS) 2552-192/10, and references in this regulation are from this

cost report. However, the division will use the version of the report received from the fiscal intermediary, which may change the references.

(B) [The Medicaid data used in the final settlements will be] **The Medicaid charges used to determine the cost, and the payments used to determine the final settlement, will be from the division's paid claims [history] data for reimbursable services paid on a percentage basis under 13 CSR 70-15.160(1)-(2).** This data includes only claims on which Medicaid made payment.

(C) Pursuant to 13 CSR 70-15.160(5), effective for dates of service beginning July 20, 2021, payment for outpatient hospital services will be final, with no cost settlement.

(2) Definitions.

[(A) Reimbursable cost. Reimbursable costs are the costs which are identified as reimbursable in 13 CSR 70-15.010 and the Hospital Provider Manual.

(B) Labor/delivery room day. A labor/delivery room day is a day where the mother enters the hospital prior to the census hour but is not admitted to the hospital until the next day after she delivers.]

[(C)](A) Medicaid payments. Medicaid payments included in the settlement include actual Medicaid claims payments, partial insurance payments on claims, and patient liability amounts for coinsurance and deductibles [and outlier claim payments]. If the insurance payments exceed the Medicaid liability, the claim will not be considered a Medicaid claim.

[(D) Inpatient service costs. The reimbursable costs for inpatient services or costs which will be included in the final settlement are those services or costs which are provided to the Medicaid beneficiary after being admitted to the hospital. Services or costs provided prior to admission as an inpatient should be billed as outpatient services, except for cost associated with labor and delivery room days.]

[(E)](B) Outpatient services/cost. Reimbursable outpatient services or costs are services or costs that are provided prior to the patient being admitted to the hospital. Only outpatient services or cost which are reimbursed on a percentage of charge as defined in 13 CSR 70-15.160 will be included in the final settlement, unless they are excluded elsewhere in this regulation.

[(F) Routine cost center. A routine cost center is an adult and peds unit, subprovider unit, nursery unit or special care unit.

(G) Special care unit. A special care unit is a hospital unit that furnishes services to critically ill inpatients. Examples are Intensive Care Units (ICU), Coronary Care Unit (CCU), or Neonatal Care Unit. The ICU unit may be for only one (1) type of patient or for all critically ill patients.

(H) Paid days. Paid days are the actual number of days paid for inpatient services on claims with the first date of service within the fiscal period of the cost report.

(I) Routine charges. Routine charges are the charges billed by the hospital for the care provided to the patient in a routine care center. These services are normally provided to all patients in the hospital.]

[(J)](C) Ancillary charges. Ancillary charges are the charges billed by the hospital for services that are not routinely provided in the routine care center and are not provided to all patients.

[(K) Private room day. A private room day is a day when due to the patient's medical condition it is determined that the patient should be alone in a room.]

(D) New hospitals. A hospital which does not have a fourth prior year cost report necessary for establishment of a prospective rate will have final settlement calculated for their initial three (3) cost report periods.

(E) Nominal charge provider. A nominal charge provider must meet one (1) of the following criteria:

1. An acute care hospital with an unsponsored care ratio of

at least sixty-five percent (65%) and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of more than forty percent (40%). The un-sponsored care ratio is determined as the sum of bad debts and charity care divided by total net revenue. The hospital must meet one (1) of the federally mandated disproportionate share qualifications; or

2. A public non-state governmental acute care hospital with a low income utilization rate (LIUR) of at least fifty percent (50%) and a Medicaid inpatient utilization rate (MIUR) greater than one (1) standard deviation from the mean, and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of at least forty percent (40%); or

3. The hospital is a public hospital operated by the Department of Mental Health primarily for the care and treatment of mental disorders.

(F) Division. Unless otherwise designated, division refers to the MO HealthNet Division (MHD) a division of the Department of Social Services charged with the administration of the MO HealthNet program.

[(L)](G) Incorporation by [R]reference. [This rule adopts and incorporates by reference the provisions of the—] This rule incorporates by reference the following:

[1. Current Medicare/Medicaid cost report forms that have a Notice of Provider Reimbursement (NPR) from the Medicare fiscal intermediary; and]

2. Missouri Medicaid Institutional (Hospital) Manual.]

1. The Hospital Provider Manual is incorporated by reference and made a 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 <https://manuals.momed.com/manuals>, September 10, 2021. This rule does not incorporate any subsequent amendments or additions; and

2. 42 CFR part 413, which is incorporated by reference and made a part of this rule as published by the Office of the Federal Register, 800 North Capitol St. NW, Suite 700, Washington, DC 20408, and available at <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-413?toc=1>, November 1, 2021. This rule does not incorporate any subsequent amendments or additions.

[(3) Inpatient settlements will be calculated based on paid day hospital services after the Medicare/Medicaid cost report is received from the fiscal intermediary. Based on this settlement the division shall make any recoupments necessary to ensure that Title XIX Medicaid payments for inpatient services do not exceed the allowable inpatient Medicaid charges. This settlement shall not result in additional payment to the hospital if its cost exceeds its payments. This settlement will be determined in the following manner:

(A) Data will be gathered from the Medicaid inpatient claim history for paid days by routine cost center; private room days; routine charges; charges for each ancillary cost center; and inpatient payments for claims with first date of service in the cost report period;

(B) The division will extract the following data from the cost report received from the fiscal intermediary:

1. The total patient days from worksheet S-3 for each routine cost center and observation bed days. The total patient days for adults and peds may be adjusted for labor and delivery room days reported on questionnaire, if not included on worksheet S-3;

2. The total cost from worksheet D-1 for adults and peds, after removing swing-beds and private room cost differential, and if the hospital has a subprovider, the total cost from worksheet D-1 for the subprovider after removing the private room cost differential. These costs are before the Respiratory Therapy/Physical Therapy (RT/PT) limit and

Reasonable Compensation Equivalent (RCE) disallowance;

3. The total cost from worksheet D-1 for special care units and nursery unit. These costs are before RT/PT limit adjustment and RCE disallowance;

4. The cost-to-charge ratio for each covered ancillary service from worksheet C Part I column 7;

5. The Direct Graduate Medical Education (GME) amount reported on worksheet E-3 Part IV line 3;

6. If the hospital is proprietary, the equity ratio from worksheet F-5 Part I line 4 column 1; and

7. The private room cost differential per diem from worksheet D-1 for adults and peds and subproviders, if provided;

(C) The inpatient Medicaid reimbursable cost will be determined as follows:

1. The Medicaid routine cost for adults and peds and subprovider units will be calculated by taking the total routine cost from paragraph (3)(B)2. From this cost will be removed the cost of observation bed days from subparagraph (3)(C)1.A. This total cost will be divided by the total patient days for adults and peds not including observation days (adjusted for labor and delivery room days if not included on worksheet S-3) plus patient days for any subprovider unit. This cost per day will be multiplied by the Medicaid paid days for adults and peds and subprovider units to determine Medicaid routine adult and peds cost. The cost of private room days will be added to this cost.

A. Observation cost will be determined by dividing the routine cost for adults and peds from paragraph (3)(C)2., by adult and peds days, adjusted by labor and delivery room days if not included, plus observation bed days. This cost per day is multiplied by the observation bed days reported on worksheet S-3 column 6 line 19 to determine the observation cost.

B. If the hospital reports medically necessary Medicaid private room days on worksheet D-1 line 14 and the data from the division's paid claim history reports private room days, the private room cost will be calculated by multiplying the private room cost differential per diem from worksheet D-1 line 35 by the lower of Medicaid private room days from the division's claims data or the private room days reported on worksheet D-1;

2. The routine inpatient cost for each special care unit will be determined by dividing the routine cost for the special care unit by the total patient days for that special care unit to determine the unit's cost per day. This cost per day will be multiplied by Medicaid paid days for that special care unit from the division's paid claim history to determine Medicaid cost (If the hospital has more than one (1) ICU unit with Medicaid days reported on the cost report, the Medicaid patient days for ICU from the division's records will be prorated based on the Medicaid days reported on the cost report.);

3. The routine cost for the nursery unit will be determined by dividing total nursery cost by total nursery days to determine the nursery cost per day. This cost per day will be multiplied by the Medicaid paid days to determine Medicaid nursery cost (Nursery days will not be prorated between nursery and neonatal. The hospital must use the proper room accommodation revenue code to bill neonatal days.);

4. The ancillary cost for each ancillary cost center will be determined by multiplying the Medicaid ancillary cost center's charges by its cost-to-charge ratio from paragraph (3)(B)4. (Based on the information in the cost report and in the division's data some ancillary accounts on the division's data may be combined.);

5. The Medicaid inpatient portion of the GME will be determined using the methodology on worksheet E-3 part IV

from the Medicare/Medicaid cost report by substituting Medicaid data in place of the Medicare data;

6. If the hospital is a proprietary hospital it may be entitled to a return on equity. This cost would be determined by multiplying the equity ratio from paragraph (3)(B)6., by the Medicaid cost in paragraphs (3)(C)1.-4.; and

(D) Comparison of Inpatient Medicaid Cost to Inpatient Medicaid Payments.

1. The total inpatient Medicaid cost will be determined as the sum of the cost in paragraphs (3)(C)1.-6.

2. The Medicaid inpatient payments include the following amounts:

A. Partial payments made by third party payers (that is, insurance companies, HMO, etc);

B. Coinsurance and deductibles, which are the responsibility of the patient whether or not they were actually collected;

C. Inpatient claims payments made by the Medicaid program; and

D. Outlier claim payments with service dates within the cost report period.

3. The total payments from subparagraph (3)(D)2.A.-D., will be subtracted from the lesser of the total cost in paragraph (3)(D)1., or the Medicaid charges from subsection (3)(A) (except hospitals identified by Medicare as a nominal charge provider for that fiscal year shall have their settlements based on cost). If the lesser of cost or charge exceeds the payment, no additional payment is due the hospital. (The inpatient settlement is zero (0) under the prospective payment plan.) If these payments exceed the charges the difference will result in an overpayment which will be due from the hospital (Disproportionate share payments are waived from the overpayment determination).]

[(4)](3) Hospital Outpatient [Hospital] Settlements[, Provider Based Rural Health Clinic (PBRHC) settlements or Provider Based Federally Qualified Health Centers (PBFQHC) settlements] will be calculated [after the division receives the Medicare/Medicaid cost report with a NPR from the hospital fiscal intermediary.

(A) The Division of Medical Services shall adjust the hospital's outpatient Medicaid payments, PBRHC or PBFQHC Medicaid payments to conform with the percent of cost paid on an interim basis under 13 CSR 70-15.160 for the appropriate time period (except for those hospitals that qualify under subsection (4)(B), whose payments will be based on the percent of cost in paragraph (4)(A)1., 2., or 3. for—

1. Services prior to January 5, 1994, the lower of eighty percent (80%) of the outpatient share of the costs from subsection (4)(D), or eighty percent (80%) of the outpatient charges from paragraph (4)(C)1.;

2. Services after January 4, 1994 and prior to April 1, 1998, the lower of ninety percent (90%) of the outpatient share of the cost from subsection (4)(D), or ninety percent (90%) of the outpatient charge from paragraph (4)(C)1.;

3. Services after March 31, 1998, included in cost reports ending prior to January 1, 1999, the lower of one hundred percent (100%) of the outpatient share of the cost from subsection (4)(D), or one hundred percent (100%) of the outpatient charge from paragraph (4)(C)1.; and

4. PBRHC and PBFQHC shall be reimbursed one hundred percent (100%) of its share of the cost in paragraph (4)(E)2.

(B) A facility that meets the Medicare criteria of nominal charge provider for the fiscal period shall have its net cost reimbursement based on its cost in paragraph (4)(A)1., 2., or 3.

(C) The Medicaid charges used to determine the cost, and the payments used to determine the settlement will be—

1. For outpatient services the charges and payments extracted from the Medicaid outpatient claims history for reimbursable services paid on a percentage basis under 13 CSR 70-15.160.

2. For PBRHC and PBFQHC the charges and payments will be for services billed under 13 CSR 70-94.020.] as follows:

[(D)](A) The [Medicaid] hospital's Medicaid outpatient[, cost will be determined by multiplying the overall outpatient cost-to-charge ratio, determined in accordance with paragraph [(4)](D)1.] (3)(A)1. of this rule, by the Medicaid charges from [paragraph (4)(C)1.] subsection (1)(B) of this rule. To this product will be added the Medicaid outpatient share of] Direct Graduate Medical Education (GME) to arrive at the total outpatient Medicaid cost. The GME will be determined [using the methodology on worksheet E-3 part IV from the Medicare/Medicaid cost report (HCFA 2552-92) by substituting Medicaid data in place of Medicare data.] during the Medicaid cost report audit. The Medicaid payments from subsection (1)(B) will be subtracted from the total outpatient Medicaid cost to determine the final overpayment or underpayment.

1. The overall outpatient cost-to-charge ratio will be determined by multiplying the [reported total] outpatient charges for each ancillary cost center, excluding Provider Based Rural Health Clinic (PBRHC) or Provider Based Federally Qualified Health Centers (PBFQHC), on [the supplemental] worksheet C part I column [10]7 [(HCFA 2552-83) or substitute schedule] by the appropriate cost-to-charge ratio from worksheet C [(HCFA 2552-92)] part I column [7]9 [part I of the fiscal intermediary's audited Medicare/Medicaid cost report] to determine the outpatient cost for each cost center [reimbursed on a percentage of charge basis by Medicaid under 13 CSR 70-15.160]. Total the outpatient costs from each cost center and total the outpatient charges from each cost center. Divide the total outpatient costs by the total outpatient charges to arrive at the overall outpatient cost-to-charge ratio.

[(E) The Medicaid outpatient final settlement for cost reports ending prior to January 1, 1999, unless the hospital closed or had a change in ownership or merger prior to July 1, 2002, will determine either an overpayment or an underpayment for the hospital's outpatient services.

1. The outpatient Medicaid cost determined in subsection (4)(D) is multiplied by the percent of cost allowed in paragraph (4)(A)1., 2., or 3., to determine the reimbursable cost for outpatient services. (If a cost report covers both periods the outpatient Medicaid charges will be split to determine the reimbursable cost for each time period.) From this cost subtract the outpatient payments made on a percentage of charge basis under 13 CSR 70-15.010 for the time period. (Medicaid payments include the actual payment by Medicaid, third party payments, coinsurance and deductibles.) The difference is either an overpayment (negative amount) due from provider or underpayment (positive amount) due to provider;

2. Closed facilities. Hospitals which closed after January 1, 1999 but before July 1, 2002 will have final settlements for cost reports ending during this time period calculated in accordance with 13 CSR 70-15.040(4)(E)1.;

3. New hospitals which do not have a fourth, fifth, and sixth prior year cost report necessary for establishment of a prospective rate will have final settlement calculated for their initial three (3) cost report periods;

4. Hospitals who qualify as nominal charge providers in accordance with 42 CFR 413.13(f) will have final settlements calculated for all cost report periods; and

5. Hospitals which had a change in ownership or merged with another hospital between January 1, 1997 and June 30, 2002 will have a final settlement calculated in accordance with this regulation for the first three (3) cost

report periods after the change in ownership or merger after which it will be reimbursed under the prospective outpatient hospital reimbursement methodology unless it elects to be reimbursed under the prospective payment methodology starting July 1, 2002.

(F) The Medicaid PBRHC or PBFQHC final settlement will determine either an overpayment or an underpayment for the hospital's PBRHC or PBFQHC services. For PBRHC or PBFQHC services multiply the PBRHC or PBFQHC Medicaid charges from paragraph (4)(C)2., by the cost center's cost-to-charge ratio to determine PBRHC or PBFQHC cost. From this cost, the PBRHC or PBFQHC payments associated with charges from paragraph (4)(C)2., are subtracted. The difference is either an overpayment (negative amount) due from provider or an underpayment (positive amount) due to provider.

(5) Reopened cost reports received after the division has completed a final settlement will be calculated in the same manner as the original settlement. The division will not reopen any cost report when the amended NPR is received more than five (5) years after the hospital's fiscal year end unless the reopening is due to the provider submitting false or fraudulent information to its cost report. If the amended cost report changes the previous settlement by less than one hundred dollars (\$100) the cost report will not be reopened. If the prior settlement(s) resulted in an overpayment on the inpatient side, then an underpayment, up to the amount of the net inpatient recoupment, may be made.]

(4) Under no circumstances will the division accept amended cost reports for final settlement determination or adjustment after the date of the division's notification of the final settlement amount.

AUTHORITY: sections [208.152,] 208.153, 208.201, and 660.017, RSMo [2000] 2016, and sections 208.152 and 208.471, RSMo Supp. [2001] 2021. Original rule filed June 2, 1994, effective Dec. 30, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 22, 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 will be scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 100—Missouri Rx Plan**

PROPOSED AMENDMENT

13 CSR 70-100.010 Missouri Rx Plan Benefits and Limitations. The Department of Social Services is removing sections (3)-(8), (10), (12), (13), and (15), amending the purpose and sections (2), (4), and (5), and renumbering as necessary.

PURPOSE: The purpose of this amendment is to update the rule to reflect the current program processes.

PURPOSE: This rule establishes the benefits and limitations for administering the Missouri Rx Plan[,] and Missouri's State Pharmacy Assistance Program[, to provide prescription drug assistance to Missourian's sixty-five (65) years of age and older or disabled and receiving Social Security benefits in need of coordinating benefits with Medicare's Prescription Drug (Part D) Program].

(2) Definitions.

[(A) Applicant—A person who applies to participate in the Missouri Rx Plan, either personally or through an authorized representative.

(B) Application—The form completed and submitted to the Missouri Rx Plan by an applicant which is used to determine the applicant's eligibility to participate in the Missouri Rx Plan.

(C) Authorized Representative—If an applicant is incapable of submitting an application on his or her own behalf, the Missouri Rx Plan shall accept one (1) of the following persons designated by the applicant:

1. A close relative by blood or marriage, such as a parent, spouse, son, daughter, brother, or sister;

2. A representative payee designated by the Social Security Administration; or

3. A representative of a public/private social service agency, which the applicant is a client, who has been designated by the agency to so act.

(D) Household Income—The combined gross income of all the related or non-related members of a household.

(E) Liquid Assets—Assets that can be converted to cash in a short time with little or no loss in value, including such assets as checking and savings accounts, certificates of deposit, stocks, bonds, savings bonds, mutual funds, Individual Retirement Account or similar investment, cash, and value of real estate other than the primary residence.

(F) Member—A person who meets the eligibility requirements of the Missouri Rx Plan and has been enrolled in the Missouri Rx Plan.]

(A) Dual eligible—An individual who is eligible for both Medicare and Medicaid.

[(G)](B) Missouri Rx Plan—The state pharmacy assistance program administered by the Department of Social Services, MO HealthNet Division.

[(H)](C) Out-of-pocket costs—[Means t]The [deductible and] co-pays required for prescription drug. The Missouri Rx Plan does not pay for the Medicare Part D monthly premium.

[(I)](3) Eligibility. To qualify for the Missouri Rx Plan the individual must be—

(A) A U.S. citizen or a lawfully admitted alien;

(B) A Missouri resident, a person who has, or intends to have, a fixed place of residence in Missouri, with the present intent of maintaining a permanent home in Missouri for the indefinite future; and

(C) Sixty-five (65) years of age or older; or

(D) Be an individual between the ages of nineteen (19) and sixty-four (64) who is disabled and receiving a Social Security Benefit; and

(E) Enrolled in a Medicare Part D prescription drug plan; and

(F) Is not a member of a retirement plan that is receiving a benefit under the Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173; and

(G) Has an annual household income not to exceed one

hundred eighty-five percent (185%) of the federal poverty level (FPL), subject to appropriations. The Federal Poverty Level is published annually. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued; and

(H) An individual who is an inmate of a public institution is not eligible for Missouri Rx Plan.

(4) *Application process.* The application for the Missouri Rx Plan must be made in writing on the prescribed form. The request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with the applicant's knowledge and consent. The application filing date is the date the application is received by the MO HealthNet Division. The MO HealthNet will consider an application without regard to race, color, age, sex, disability, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964. The application shall require the applicant to attest to the following information:

- (A) Date of birth;
- (B) Social Security number;
- (C) Medicare claim number;
- (D) Self-certification of Missouri residency;
- (E) Mailing address;
- (F) Contact information;
- (G) Self-certification of household income;
- (H) Self-certification of liquid assets;
- (I) Certification and attestation statement;
- (J) Signature of applicant or authorized representative;
- (K) Name of Medicare Part D Prescription Drug Plan; and
- (L) Additional information as may be necessary to comply with state or federal law.

(5) The applicant shall submit the following documentation with the application:

- (A) Copy of Medicare Health Insurance Card; and
- (B) Copy of Social Security Card.

(6) The MO HealthNet Division shall have the right to a review and audit of information on the application form, with a reasonable prior notice to the applicant, if selected for review.

(A) The Missouri Rx Plan may require documentation to verify Missouri residency. Documentation of Missouri residency may include one (1) of the following:

- 1. Valid driver's license;
- 2. Valid Missouri state identification card;
- 3. Voter registration card; or
- 4. Utility bill with address.

(B) The Missouri Rx Plan may require documentation to verify income. Documentation of income may include one (1) of the following:

- 1. Social Security benefits—as paid after deduction of Medicare premium;
- 2. Pension—as paid;
- 3. Veterans Administration Pension—as paid;
- 4. U.S. Railroad Retirement Benefits—as paid;
- 5. Wages—net amount after deductions for taxes and Federal Insurance Contributions Act (FICA);
- 6. Interest/Dividends—gross amount;
- 7. Capital Gains—gross amount from capital gains on stocks, mutual funds, and bonds;
- 8. Credit Life or Credit Disability Insurance Payments—as paid;
- 9. Alimony—as paid;
- 10. Rental income from an entire dwelling—gross rent paid minus standard deduction of twenty percent (20%) for expenses;

11. Roomer/Boarder Income—gross room/board paid minus standard deduction of ten percent (10%) for expenses;

12. Self Employment—countable income as reported to Internal Revenue Service (IRS);

13. Unemployment Compensation—as paid; or

14. Additional information, as may be necessary to verify income.

(7) Program eligibility will be denied or terminated if the applicant refuses to cooperate with the request for verification information. If all verification information requested is not received by the due date, an eligibility determination cannot be made. This will result in denial of the application. Verification that is provided or received may reveal a new eligibility issue not previously realized that requires additional verification. If the additional verification requested is not received by the due date given, the application will be denied or the individual terminated from the Missouri Rx Plan.

(8) The applicant shall assist the Missouri Rx Plan in securing corroboration of the applicant's information on the application form and required documentation when necessary. Program eligibility will be denied or terminated if the applicant refuses to cooperate with the request.]

[(9)](3) Individuals who are enrolled in Medicare and [Medicaid] MO HealthNet (dual eligibles) are deemed to have enrolled in the Missouri Rx Plan.

[(10) Effective Date of Coverage. Coverage begins on the date the applicant is determined eligible for the Missouri Rx Plan. There is no retroactive coverage. Eligible individuals will receive an identification card from the Missouri Rx Plan.]

[(11)](4) Benefit Limits.

(A) The Missouri Rx Plan shall pay fifty percent (50%) of the member's out-of-pocket costs for prescription drugs covered by the Medicare Prescription Drug Program and by the members Medicare Part D Plan formulary.

(B) Members with a MO HealthNet spenddown requirement must meet the spenddown at least once during the calendar year for the Missouri Rx Plan to pay fifty percent (50%) of the member's out-of-pocket costs.

[(B)](C) The Missouri Rx Plan shall have the authority to change the benefit limits at any time to achieve program cost control.

[(12) Member's Responsibilities.

(A) The member shall notify the Missouri Rx Plan within ten (10) days of any change in circumstances when the member no longer meets the eligibility requirements set forth in sections 208.780 to 208.798, RSMo and regulations.

(B) The authorized representative or other responsible person shall notify the Missouri Rx Plan of the death of a member within sixty (60) days of the member's death.

(13) Annual review. Missouri Rx Plan members do not need to reapply every year. Once a member is enrolled, the member does not need to reapply. Missouri Rx Plan members receive a notice to update their information from the Missouri Rx Plan. Failure to return the requested information will result in termination of eligibility. A redetermination is completed when all eligibility factors are examined and a decision regarding continued eligibility is reached.]

[(14)](5) Termination from the Program.

(A) A member shall be terminated from the Missouri Rx Plan if he or she no longer meets the MO HealthNet or Medicare eligibility requirements [under sections 208.780 to 208.798, RSMo

or this regulation].

[(15) Confidentiality. The Missouri Rx Plan will provide safeguards that restrict the use or disclosure of information about applicants and members to purposes directly connected with the administration of the Missouri Rx Plan. Purposes directly related to administration of the Missouri Rx Plan include establishing eligibility, providing services for members, auditing the Missouri Rx Plan, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.]

AUTHORITY: sections 208.201, [208.780 to 208.798] 208.782, 208.786, and 660.017, RSMo [Supp. 2014] 2016. Original rule filed Aug. 15, 2014, effective Feb. 28, 2015. Amended: Filed Sept. 22, 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 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 1—Controlled Substances**

PROPOSED AMENDMENT

19 CSR 30-1.002 Schedules of Controlled Substances. The department is amending section (1).

PURPOSE: This amendment updates the Schedules of Controlled Substances to be consistent with 21 CFR Part 1308.

(1) Schedules of Controlled Substances.

(A) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Drug Enforcement Administration (DEA) Controlled Substances Code Number set forth opposite it.

1. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

A. Acetyl-alpha-methylfentanyl (N-(1-(1-methyl-2-phenethyl)- 4-piperidinyl)-N-phenylacetamide)	9815
B. Acetylmethadol	9601
C. Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)- N-phenylacetamide)	9821
D. N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other names: acryl fentanyl, acryloylfentanyl)	9811

E. AH-7921(3,4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl] benzamide)	9551
F. Allylprodine	9602
G. Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol levothadyl acetate or LAAM)	9603
H. Alphameprodine	9604
I. Alphamethadol	9605
J. Alpha-methylfentanyl (N-1-(alphamethyl-beta- phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2- phenylethyl)-4 ((N-propanilido) piperidine)	9814
K. Alpha-methylthiofentanyl (N-(1-methyl-2-(2-thienyl) ethyl-4-piperidinyl)-N- phenylpropanamide)	9832
L. Benzethidine	9606
M. Betacetylmethadol	9607
N. Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2- phenethyl)-4-piperidinyl)- N-phenylpropanamide)	9830
O. Beta-hydroxy-3- methylfentanyl (other name: N-(1-(2-hydroxy-2-phenethyl)- 3-methyl-4-piperidinyl)-N- phenylpropanamide)	9831
P. N-[1-[2-hydroxy-2-(thiophen- 2-yl) ethyl]piperidin-4-yl]- N-phenylpropionamide (Other names: beta-hydroxythiofentanyl)	9836
Q. Betameprodine	9608
R. Betamethadol	9609
S. beta-Methyl fentanyl (N-phenyl-N-(1-(2-phenylpropyl)piperidin -4-yl) propionamide (Other name: β-methyl fentanyl)	9856
T. beta'-Phenyl fentanyl (N-(1-phenethylpiperidin -4-yl)-N,3-diphenylpropanamide (Other names: β'-phenyl fentanyl ; 3-phenylpropanoyl fentanyl)	9842
[S./U. Betaprodine	9611
[T./V. Clonitazene	9612
W. Crotonyl fentanyl ((E)-N-(1- phenethylpiperidin-4-yl)-N- phenylbut-2-enamide)	9844
X. N-(1-phenethylpiperidin-4-yl)-N- Phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl)	9847
[U./Y. Cyclopropyl fentanyl (N-(1-phenethylpiperidin-4-yl) -N-phenylcyclopropanecar- boxamide)	9845
[V./Z. Dextromoramide	9613
[W./AA. Diampromide	9615
[X./BB. Diethylthiambutene	9616
[Y./CC. Difenoxyin	9168
[Z./DD. Dimenoxadol	9617
[AA./EE. Dimepheptanol	9618
[BB./FF. Dimethylthiambutene	9619
[CC./GG. Dioxaphetyl butyrate	9621
[DD./HH. Dipipanone	9622
[EE./II. Ethylmethylthiambutene	9623
[FF./JJ. Etonitazene	9624
[GG./KK. Etoperidine	9625

LL. Fentanyl carbamate (ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate)	9851	LLL. ortho-Methyl acetylfentanyl (N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl) acetamide (Other name: 2-methyl acetylfentanyl)	9848
[HH.]MM. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other names: 4-fluoroisobutyryl fentanyl, para-fluoroisobutyryl fentanyl)	9824	MMM. ortho-Methyl methoxyacetyl fentanyl (2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl) acetamide (Other name: 2-methyl methoxyacetyl fentanyl)	9820
NN. 2'-Fluoro ortho-fluorofentanyl (N-(1-(2-fluorophenethyl) piperidin-4-yl)-N-(2-fluorophenyl) propionamide (Other names: 2'-fluoro 2-fluorofentanyl)	9855	NNN. N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: para-chloroisobutyryl fentanyl)	9826
[II.]OO. N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (Other names: furanyl fentanyl)	9834	[AAA.]OOO. para-Fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide)	9823
[JJ.]PP. Furethidine	9626	[BBB.]PPP. Para-fluorofentanyl(N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl) propanamide)	9812
[KK.]QQ. Hydroxypethidine	9627	QQQ. para-Fluoro furanyl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide)	9854
RR. N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (Other name: isobutyryl fentanyl)	9827	RRR. para-Methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl) butyramide)	9837
[LL.]SS. Ketobemidone	9628	SSS. para-Methylfentanyl (N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl) propionamide (Other Name: 4-methylfentanyl)	9817
[MM.]TT. Levomoramide	9629	[CCC.]TTT. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine)	9663
[NN.]UU. Levophenacymorphan	9631	[DDD.]UUU. Phenadoxone	9637
[OO.]VV. Methoxyacetyl fentanyl (2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9825	[EEE.]VVV. Phenampromide	9638
WW. 4'-Methyl acetyl fentanyl (N-(1-(4-methylphenethyl) piperidin-4-yl)-N-phenylacetamide)	9819	[FFF.]WWW. Phenomorphan	9647
[PP.]XX. 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers	9813	[GGG.]XXX. Phenoperidine	9641
[QQ.]YY. 3-Methylthiofentanyl (N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide)	9833	YYY. Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide (Other name: benzoyl fentanyl)	9841
[RR.]ZZ. Morpheridine	9632	[HHH.]ZZZ. Piritramide	9642
[SS.]AAA. MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)	9661	[III.]AAAA. Proheptazine	9643
[TT.]BBB. MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl) piperazine)	(9560)	[JJJ.]BBBB. Propiridine	9644
[UU.]CCC. Noracymethadol	9633	[KKK.]CCCC. Propiram	9649
[VV.]DDD. Norlevorphanol	9634	[LLL.]DDDD. Racemoramide	9645
[WW.]EEE. Normethadone	9635	[MMM.]EEEE. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: tetrahydrofuranlyl fentanyl)	9843
[XX.]FFF. Norpipanone	9636	[NNN.]FFFF. Thiofentanyl (N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide)	9835
[YY.]GGG. N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: ocfentanil)	9838	GGGG. Thiofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide (Other names: 2-thiofuranyl fentanyl; thiophene fentanyl)	9839
HHH. ortho-Fluoroacryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) acrylamide)	9852	[OOO.]HHHH. Tilidine	9750
III. ortho-Fluorobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) butyramide (Other Name: 2-fluorobutyryl fentanyl)	9846	[PPP.]IIII. Trimeperidine	9646
[ZZ.]JJJ. ortho-Fluorofentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) propionamide); other name: 2-fluorofentanyl)	9816	2. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
KKK. ortho-Fluoroisobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9853	A. Acetorphine	9319
		B. Acetyldihydrocodeine	9051
		C. Benzylmorphine	9052
		D. Codeine methylbromide	9070
		E. Codeine-N-Oxide	9053
		F. Cyprenorphine	9054

G. Desomorphine	9055	K. 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H)	7517
H. Dihydromorphine	9145	L. 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C)	7519
I. Drotebanol	9335	M. 2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2)	7385
J. Etorphine (except hydrochloride salt)	9056	N. 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I)	7518
K. Heroin	9200	O. 2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4)	7532
L. Hydromorphanol	9301	P. 4-methoxyamphetamine	7411
M. Methyldesorphine	9302	Some trade or other names: 4-methoxy-amethylphenethylamine; paramethoxyamphetamine; PMA;	
N. Methyldihydromorphine	9304	Q. 5-methoxy-3,4-methylenedioxyamphetamine	7401
O. Morphine methylbromide	9305	R. 4-methyl-2,5-dimethoxyamphetamine	7395
P. Morphine methylsulfonate	9306	Some trade and other names: 4-methyl-2, 5- dimethoxy-a-methylphenethylamine; DOM; and STP;	
Q. Morphine-N-Oxide	9307	S. 3,4-methylenedioxyamphetamine	7400
R. Myrophine	9308	T. 3,4-methylenedioxymethamphetamine(MDMA)	7405
S. Nicocodeine	9309	U. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethylalpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA)	7404
T. Nicomorphine	9312	V. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine and N-hydroxy MDA)	7402
U. Normorphine	9313	W. 3,4,5-trimethoxyamphetamine	7390
V. Pholcodine	9314	X. 5-MeO-DMT or 5-methoxy-N,N-dimethyltryptamine	7431
W. Thebacon	9315	Y. Alpha-methyltryptamine	7432
3. Opiate Similar Synthetic Substances. Substances scheduled by the United States Drug Enforcement Administration as substances that share a pharmacological profile similar to fentanyl, morphine, and other synthetic opioids, unless specifically excepted or unless listed in another schedule. These substances are—		Z. Bufotenine	7433
A. Butyryl fentanyl (<i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylbutyramide)	9822	Some trade and other names: 3-(b-Dimethylaminoethyl)-5-hydroxy-indole; 3-(2-dimethylaminoethyl)-5-indolol; <i>N</i> , <i>N</i> -dimethylserotonin; 5-hydroxy- <i>N</i> , <i>N</i> -dimethyltryptamine; mappine;	
B. U-47700 (3,4-Dichloro- <i>N</i> -[2-(dimethylamino)cyclohexyl]- <i>N</i> -methylbenzamide)	9547	AA. Diethyltryptamine	7434
C. N-(1-phenethylpiperidin-4-yl)-<i>N</i>-phenylpentanamide (Other name: valeryl fentanyl)	9840	Some trade and other names: <i>N</i> , <i>N</i> -Diethyltryptamine; DET;	
4. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (For purposes of paragraph (1)(A)4. of this rule only, the term isomer includes the optical, position, and geometric isomers.):		BB. Dimethyltryptamine	7435
A. Alpha-ethyltryptamine	7249	Some trade or other names: DMT;	
Some trade or other names: etryptamine; Monase; alpha-ethyl-1 <i>H</i> -indole-3-ethenamine; 3-(2-aminobutyl)indole; alpha-ET; and AET;		CC. 5-methoxy- <i>N,N</i> -diisopropyltryptamine (other name: 5-MeODIPT)	7439
B. 4-bromo-2,5-dimethoxyamphetamine	7391	DD. Ibogaine	7260
Some trade or other names: 4-bromo-2, 5- dimethoxy-a-methylphenethylamine; 4-bromo- 2, 5-DMA;		Some trade and other names: 7-Ethyl- 6,6β,7,8,9,10,12,13-octahydro-2-methoxy-6, 9-methano-5 <i>H</i> -pyrido [1',2':1,2] azepino[5,4-b] indole; Tabernanthe iboga;	
C. 4-bromo-2,5-dimethoxyphenethylamine	7392	EE. Lysergic acid diethylamide	7315
D. 2,5-dimethoxyamphetamine	7396	FF. Marihuana	7360
Some trade or other names: 2,5-dimethoxy-amethylphenethylamine; 2,5-DMA;		Some trade or other names: marijuana;	
E. 2,5-dimethoxy-4-ethylamphetamine	7399	GG. Mescaline	7381
Some trade or other names: DOET;		HH. Parahexyl	7374
F. 2,5-dimethoxy-4-(<i>n</i>)-propylthiophenethylamine (other name: 2C-T-7)	7348	Some trade or other names: 3-Hexyl-1- hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl- 6 <i>H</i> -dibenzo[b,d]pyran; Synhexyl;	
G. 2-(2,5-Dimethoxy-4-(<i>n</i>)-propylphenyl) ethanamine (2C-P)	7524	II. Peyote	7415
H. 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)	7509	Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Lemaire, whether growing or not; the seeds	
I. 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)	7508		
J. 2-(2,5-Dimethoxy-4-nitrophenyl) ethanamine (2C-N)	7521		

thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;

JJ. *N*-ethyl-3-piperidyl benzilate 7482

KK. *N*-methyl-3-piperidyl benzilate 7484

LL. Psilocybin 7437

MM. Psilocyn 7438

NN. Tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* 7370 plant), as well as synthetic equivalents of the substances contained in the *cannabis* plant or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers, or both, with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

(I) 1 *cis* or *trans* tetrahydrocannabinol and their optical isomers;

(II) 6 *cis* or *trans* tetrahydrocannabinol and their optical isomers;

(III) 3,4 *cis* or *trans* tetrahydrocannabinol and its optical isomers; and

(IV) Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered;

OO. Ethylamine analog of phencyclidine 7455

Some trade or other names: *N*-ethyl-1- phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, *N*-(1-phenylcyclohexyl)-ethylamine, cyclohexamine, PCE;

PP. Pyrrolidine analog of phencyclidine 7458

Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine PCPy, PHP;

QQ. Thiophene analog of phencyclidine 7470

Some trade or other names: 1-(1-(2-thienyl)- cyclohexyl)-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP;

RR. 1-(1-(2-thienyl)cyclohexyl) pyrrolidine 7473

Some other names: TCPy;

SS. *Salvia divinorum*

TT. *Salvinorin A*

UU. 3-Fluoromethcathinone 1233

VV. 4-Fluoromethcathinone 1238

WW. Mephedrone, or 4-methylmethcathinone 1248

XX. Methylenedioxy-pyrovalerone, MDPV, or (1-(1,3-Benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-pentanone 7535

YY. Methylone, or 3,4-Methylenedioxy-methcathinone 7540

ZZ. Quinolin-8-yl 1-pentyl-1*H*indole-3-carboxylate (PB-22; QUPIC) 7222

AAA. Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22) 7225

BBB. *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*indazole-3-carboxamide (AB-FUBINACA) 7012

CCC. *N*-(1-amino-3, 3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (ADB-PINACA) 7035

DDD. (1-pentyl-1*H*-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole) 7144

EEE. [1-(5-fluoro-pentyl)-1*H*indol-3-yl](2,2,3,3-tetramethylcyclopropyl) methanone (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, 1-(5-fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole) 7011

FFF. *N*-(1-adamantyl)-1-pentyl-1*H*indazole-3-carboxamide (Other names: APINACA, AKB48) 7048

GGG. 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 251-NBOMe; 2*C*-I-NBOMe; 25I; Cimbi-5) 7538

HHH. 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25*C*-NBOMe; 2*C*-*C*-NBOMe; 25*C*; Cimbi-82) 7537

III. 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25*B*-NBOMe; 2*C*-*B*-NBOMe; 25*B*; Cimbi-36) 7536

JJJ. 4-methyl-*N*-ethylcathinone (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one) 1249

KKK. 4-methyl-*alph*pyrrolidinopropiophenone, (Other names: 4-MePPP; MePPP; 4-methyl- α -pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one) 7498

LLL. *alph*pyrrolidinopentio-phenone (Other names: α -PVP; α -pyrrolidinoverophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one) 7545

MMM. Butylone (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one) 7541

NNN. Pentedrone (Other names: α -methylaminoverophenone; 2-(methylamino)-1-phenylpentan-1-one) 1246

OOO. Pentylone (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one)	7542	AAAA. methyl 2-(1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-FUBINACA)	7020
PPP. Naphyrone (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one)	1258	BBBB. methyl 2-(1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA)	(7021)
QQQ. <i>alpha</i> -pyrrolidinobutio-phenone (Other names: α -PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one)	7546	CCCC. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)propan-1-one (ethylone)	7547
RRR. <i>N</i> -(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1 <i>H</i> -indazole-3-carboxamide (Other names: AB-CHMINACA)	7031	DDDD. Naphthalen-1-yl 1-(5-fluoropentyl)-1 <i>H</i> -indole-3-carboxylate (Other names: NM2201; CBL2201)	7221
SSS. <i>N</i> -(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1 <i>H</i> indazole-3-carboxamide (Other names: AB-PINACA)	7023	EEEE. <i>N</i> -(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamide (Other name: 5F-AB-PINACA)	7025
TTT. [1-(5-fluoropentyl)-1 <i>H</i> -indazol-3-yl](naphthalen-1-yl)methanone (Other names: THJ-2201)	7024	FFFF. 1-(4-cyanobutyl)- <i>N</i> -(2-phenylpropan-2-yl)-1 <i>H</i> -indazole-3-carboxamide (Other names: 4-CN-CUMYLBUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYLBINACA; CUMYL-4CNBINACA; SGT-78)	7089
UUU. <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1 <i>H</i> -indazole-3-carboxamide (Other names: MAB-CHMINACA; ADB-CHMINACA)	7032	GGGG. methyl 2-(1-(cyclohexylmethyl)-1 <i>H</i> -indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA)	7044
VVV. methyl 2-(1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA)	7034	HHHH. 1-(5-fluoropentyl)- <i>N</i> -(2-phenylpropan-2-yl)-1 <i>H</i> -pyrrolo[2,3- <i>b</i>]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA)	7085
WWW. methyl 2-(1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamido)-3-methylbutanoate (Other names: 5F-AMB)	7033	IIII. <i>N</i> -ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543
XXX. <i>N</i> -(adamantan-1-yl)-1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamide (Other names: 5F-APINACA, 5F-AKB48)	7049	JJJJ. methyl 2-(1-(4-fluorobutyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate (4F-MDMB-BINACA, 4F-MDMB-BUTINACA)	7043
YYY. <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamide (Other names: ADB-FUBINACA)	7010	KKKK. 1-(4-methoxyphenyl)- <i>N</i> -methylpropan-2-amine (Other names: <i>para</i> -methoxymethamphetamine, PMMA)	1245
ZZZ. methyl 2-(1-(cyclohexylmethyl)-1 <i>H</i> -indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA, MMB-CHMINACA)	7042	<i>ICCCC</i> / <i>JLLLL</i> . Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (I) Any compound structurally derived from 3-(1-naphthoyl)indole or 1 <i>H</i> indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(<i>N</i> -methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Including, but not limited to: (a) AM2201, or 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole	7201
		(b) JWH-007, or 1-pentyl-2-methyl-3-(1-naphthoyl)indole	

- (c) JWH-015, or 1-propyl-2-methyl-3-(1-naphthoyl)indole
 - (d) JWH-018, or 1-pentyl-3-(1-naphthoyl)indole 7118
 - (e) JWH-019, or 1-hexyl-3-(1-naphthoyl)indole 7019
 - (f) JWH-073, or 1-butyl-3-(1-naphthoyl)indole 7173
 - (g) JWH-081, or 1-pentyl-3-(4-methoxy-1-naphthoyl)indole 7081
 - (h) JWH-098, or 1-pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole
 - (i) JWH-122, or 1-pentyl-3-(4-methyl-1-naphthoyl)indole 7122
 - (j) JWH-164, or 1-pentyl-3-(7-methoxy-1-naphthoyl)indole
 - (k) JWH-200, or 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl)indole 7200
 - (l) JWH-210, or 1-pentyl-3-(4-ethyl-1-naphthoyl)indole
 - (m) JWH-398, or 1-pentyl-3-(4-chloro-1-naphthoyl)indole 7398
- (II) Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(*N*-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (III) Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(*N*-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (IV) Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(*N*-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Including, but not limited to:
- (a) JWH-201, or 1-pentyl-3-(4-methoxyphenylacetyl)indole
 - (b) JWH-203, or 1-pentyl-3-(2-chlorophenylacetyl)indole 7203
 - (c) JWH-250, or 1-pentyl-3-(2-methoxyphenylacetyl)indole 6250
 - (d) JWH-251, or 1-pentyl-3-(2-methylphenylacetyl)indole
 - (e) RCS-8, or 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole 7008
- (V) Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic

ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(*N*-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent.

Including, but not limited to:

(a) CP 47,497 & homologues, or 2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain *n*=5, and homologues where side chain *n*=4, 6, or 7 7297, 7298

(VI) Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(*N*-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to:

(a) AM-694, or 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole 7694

(b) RCS-4, or 1-pentyl-3-(4-methoxybenzoyl)indole (SR-19 and RCS-4) 7104

(VII) CP 50,556-1, or [(6*S*,6*aR*,9*R*,10*aR*)-9-hydroxy-6-methyl-3-[(2*R*)-5-phenylpentan-2-yl]oxy-5,6,6*a*,7,8,9,10,10*a*-octahydrophenanthridin-1-yl] acetate;

(VIII) HU-210, or (6*aR*,10*aR*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6*a*,7,10,10*a*-tetrahydrobenzo[*c*]chromen-1-ol;

(IX) HU-211, or Dexanabinol,(6*aS*,10*aS*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6*a*,7,10,10*a*-tetrahydrobenzo[*c*]chromen-1-ol;

(X) Dimethylheptylpyran, or DMHP.

5. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

A. Gamma-hydroxybutyric acid and other names GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutonic acid; sodium oxybate; sodium oxybutyrate 2010

B. Mecloqualone 2572

C. Methaqualone 2565

6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

A. Aminorex 1585

Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazolone; 4,5-dihydro-5-phenyl-2-oxazolamine;

B. *N*-benzylpiperazine (some other names: BZP, 1-benzylpiperazine) 7493

C. Cathinone (Some trade or other names: 2-amino-1-phenyl-1-propanone, alphaaminopropiophenone, 2-aminopropiophenone and norephedrone) 1235

D. 4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) 1595

D./E. Fenethylamine 1503

E./F. Methcathinone 1237

Some trade or other names: 2-(methylamino)- propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinine; AL-464; AL-422; AL-463 and URI 432;

[F.]G. 4-methoxymethcathinone	
[G.]H. cis-4-methylaminorex (cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine)	1590
[H.]I. 4-Methyl-alpha-pyrrolidinobutiophenone, or MPBP	
[I.]J. N-ethylamphetamine	1475
[J.]K. N,N-dimethylamphetamine	1480

(some other names: *N,N*-alpha-trimethylbenzeneethanamine; *N,N*-alpha-trimethylphenethylamine)

7. A temporary listing of substances subject to emergency scheduling under federal law shall include any material, compound, mixture, or preparation which contains any quantity of the following substances:

[A. <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylacetamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: acetyl fentanyl)	9821
B. <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylpentanamide, its isomers, esters, ethers, salts and salts of isomers, esters, and ethers (Other name: valeryl fentanyl)	9840
C. <i>N</i> -(4-methoxyphenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: <i>para</i> -methoxybutyryl fentanyl)	(9837)
D. <i>N</i> -(4-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: <i>para</i> -chloroisobutyryl fentanyl)	(9826)
E. <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylisobutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: isobutyryl fentanyl)	(9827)
F. <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylcyclopentanecarboxamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other name: cyclopentyl fentanyl)	(9847)]
[G.]A. Fentanyl-related substances, their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers.	9850

(I) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect

under section 505 of the Federal Food, Drug, and Cosmetic Act 21 U.S.C. 355, that is structurally related to fentanyl by one (1) or more of the following modifications:

(a) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(b) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(c) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(d) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(e) Replacement of the *N*-propionyl group by another acyl group.

[H. <i>Naphthalen-1-yl</i> 1-(5-fluoropentyl)-1 <i>H</i> -indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: NM2201; CBL2201)	(7221)
I. <i>N</i> -(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5F-AB-PINACA)	(7025)
J. 1-(4-cyanobutyl)- <i>N</i> -(2-phenylpropan-2-yl)-1 <i>H</i> -indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 4-CN-CUMYL BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYLBINACA; CUMYL-4CNBINACA; SGT-78)	(7089)
K. methyl 2-(1-(cyclohexylmethyl)-1 <i>H</i> -indole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: MMB-CHMICA, AMB-CHMICA)	(7044)
L. 1-(5-fluoropentyl)- <i>N</i> -(2-phenylpropan-2-yl)-1 <i>H</i> -pyrrolo[2,3- <i>b</i>]pyridine-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5F-CUMYL-P7AICA)	(7085)
M. <i>N</i> -Ethylpentylone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: ephylone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	(7543)]

<p>[N.]B. ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers (trivial name: 5F-EDMB-PINACA)</p>	7036	<p><i>alpha</i>-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one</p>	7446								
<p>[O.]C. methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers (trivial name: 5F-MDMB-PICA)</p>	7041	<p>[W.]K. <i>alpha</i>-Pyrrolidinoheptanophenone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one)</p>	7548								
<p>[P.]D. <i>N</i>-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (trivial names: FUB-AKB48; FUB-APINACA; AKB48 <i>N</i>-(4-FLUOROBENZYL))</p>	7047	<p>[X.]L. 4'-Chloro-<i>alpha</i>-pyrrolidinovalerophenone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 4-chloro-α-PVP; 4'-chloro-<i>alpha</i>-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one)</p>	7443								
<p>[Q.]E. 1-(5-fluoropentyl)-<i>N</i>-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (trivial names: 5F-CUMYL-PINACA; SGT-25)</p>	7083	<p>[Y.]M. <i>N,N</i>-diethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers (Other names: isotonitazene; <i>N,N</i>-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1H-benzimidazole-1-ethanamine)</p>	9614								
<p>[R.]F. (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts, and salts of isomers (trivial name: FUB-144)</p>	7014	<p>N. 1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one, its isomers, esters, salts, and salts of isomers, esters, and ethers (Other names: brorphine; 1-[1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2H-benzimidazol-2-one)</p>	9098								
<p>[S.]G. <i>N</i>-Ethylhexedrone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other name: 2-(ethylamino)-1-phenylhexan-1-one)</p>	7246	<p>8. Khat, to include all parts of the plant presently classified botanically as <i>catha edulis</i>, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts.</p>	7032								
<p>[T.]H. <i>alpha</i>-Pyrrolidinohexanophenone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: α-PHP; <i>alpha</i>-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one)</p>	7544	<p>(B) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.</p>									
<p>[U.]I. 4-Methyl-<i>alpha</i>-ethylaminopentiophenone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one)</p>	7245	<p>1. Substances, vegetable origin, or chemical synthesis. Unless specifically excepted or unless listed in another schedule, Schedule II shall include any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:</p>									
<p>[V.]J. 4'-Methyl-<i>alpha</i>-pyrrolidinohexiophenone, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: MPHP; 4'-methyl-</p>		<p>A. Opium and opiate; and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxegol, naloxone, and naltrexone and their respective salts, but including the following:</p> <table border="0"> <tbody> <tr> <td data-bbox="954 1892 1097 1917">(I) Raw opium</td> <td data-bbox="1430 1892 1484 1917">9600</td> </tr> <tr> <td data-bbox="954 1917 1143 1942">(II) Opium extracts</td> <td data-bbox="1430 1917 1484 1942">9610</td> </tr> <tr> <td data-bbox="954 1942 1122 1967">(III) Opium fluid</td> <td data-bbox="1430 1942 1484 1967">9620</td> </tr> <tr> <td data-bbox="954 1967 1166 1992">(IV) Powdered opium</td> <td data-bbox="1430 1967 1484 1992">9639</td> </tr> </tbody> </table>	(I) Raw opium	9600	(II) Opium extracts	9610	(III) Opium fluid	9620	(IV) Powdered opium	9639	
(I) Raw opium	9600										
(II) Opium extracts	9610										
(III) Opium fluid	9620										
(IV) Powdered opium	9639										

(V) Granulated opium	9640	<i>/S./T.</i> Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	9232
(VI) Tincture of opium	9630		
(VII) Codeine	9050	<i>/T./U.</i> Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	9233
(VIII) Dihydroetorphine	9334		
(IX) Ethylmorphine	9190		
(X) Etorphine hydrochloride	9059	<i>/U./V.</i> Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid	9234
(XI) Hydrocodone	9193		
(XII) Hydromorphone	9150	<i>/V./W.</i> Phenazocine	9715
(XIII) Metopon	9260	<i>/W./X.</i> Piminodine	9730
(XIV) Morphine	9300	<i>/X./Y.</i> Racemethorphan	9732
(XV) Oripavine	9330	<i>/Y./Z.</i> Racemorphan	9733
(XVI) Oxycodone	9143	<i>/Z./AA.</i> Remifentanil	9739
(XVII) Oxymorphone	9652	<i>/AA./BB.</i> Sufentanil	9740
(XVIII) Thebaine	9333	<i>/BB./CC.</i> Tapentadol	9780
		<i>/CC./DD.</i> Thiafentanil	9729
B. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (1)(B)1.A. of this rule shall be included in Schedule II, except that these substances shall not include the isoquinoline alkaloids of opium;		3. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:	
C. Opium poppy and poppy straw	9650	A. Amphetamine, its salts, optical isomers, and salts of its optical isomers	1100
D. Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include:		B. Lisdexamfetamine, its salts, isomers, and salts of its isomers	1205
(I) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; or		C. Methamphetamine, its salts, isomers, and salts of its isomers	1105
(II) Ioflupane;		D. Phenmetrazine and its salts	1631
E. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy)	9670	E. Methylphenidate	1724
2. Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan, and levopropoxyphene excepted:		4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:	
A. Alfentanil	9737	A. Amobarbital	2125
B. Alphaprodine	9010	B. Glutethimide	2550
C. Anileridine	9020	C. Pentobarbital	2270
D. Bezitramide	9800	D. Phencyclidine	7471
E. Bulk Dextropropoxyphene (Non-dosage Forms)	9273	E. Secobarbital	2315
F. Carfentanil	9743	5. Hallucinogenic substances:	
G. Dihydrocodeine	9120	A. Nabilone	7379
H. Diphenoxylate	9170	Another name for nabilone: (\pm)trans-3-(1, 1-dimethylheptyl)-6, 6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo(b,d)pyran-9-one.	
I. Fentanyl	9801	B. Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the United States Food and Drug Administration.	(7365)
J. Isomethadone	9226	6. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:	
K. Levo-alphaacetylmetadol		A. Immediate precursor to amphetamine and methamphetamine:	
Some other names: levo-alphaacetylmetadol, levomethadyl acetate, LAAM	9648	(I) Phenylacetone	8501
L. Levomethorphan	9210	Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;	
M. Levorphanol	9220	B. Immediate precursors to phencyclidine (PCP):	
N. Metazocine	9240	(I) 1-phenylcyclohexylamine	7460
O. Methadone	9250	(II) 1-piperidinocyclohexanecarbonitrile (PCC)	8603
P. Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane	9254	C. Immediate precursor to fentanyl:	
Q. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid	9802	(I) 4-anilino-N-phenethyl-4-piperidine (ANPP)	8333
R. Oliceridine (N-[(3-methoxythiophen-2-yl)methyl]({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine fumarate)	9245		
<i>/R./S.</i> Pethidine (Meperidine)	9230		

(II) *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl) 8366

7. Any material, compound, mixture, or preparation which contains any quantity of the following alkyl nitrites:

A. Amyl nitrite;

B. Butyl nitrite.

(C) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

1. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

A. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under 21 CFR 308.32 and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances 1405

B. Benzphetamine 1228

C. Chlorphentermine 1645

D. Clortermine 1647

E. Phendimetrazine 1615

2. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

A. Any compound, mixture, or preparation containing—

(I) Amobarbital 2126

(II) Secobarbital 2316

(III) Pentobarbital 2271

or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule;

B. Any suppository dosage form containing—

(I) Amobarbital 2126

(II) Secobarbital 2316

(III) Pentobarbital 2271

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

C. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof 2100

D. Chlorhexadol 2510

E. Embutramide 2020

F. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomer, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act; 2012

G. Ketamine, its salts, isomer, and salts of isomers (some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone) 7285

H. Lysergic acid 7300

I. Lysergic acid amide 7310

J. Methyprylon 2575

K. Perampanel, and its salts, isomers, and salts of isomers 2261

L. Sulfondiethylmethane 2600

M. Sulfonethylmethane 2605

N. Sulfonmethane 2610

O. Tiletamine and zolazepam or any salt thereof 7295

Some trade or other names for a tiletaminezolazepam combination product: Telazol.

Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6-8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, flupyrzapon.

3. Nalorphine 9400

4. Narcotics drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

A. Not more than one and eight tenths grams (1.8gm) of codeine per one hundred milliliters (100 mL) or not more than ninety milligrams (90 mg) per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium 9803

B. Not more than one and eight tenths grams (1.8gm) of codeine per one hundred milliliters (100 mL) or not more than ninety milligrams (90 mg) per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts 9804

C. Not more than one and eight tenths grams (1.8gm) of dihydrocodeine per one hundred milliliters (100 mL) or not more than ninety milligrams (90 mg) per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts 9807

D. Not more than three hundred milligrams (300 mg) of ethylmorphine per one hundred milliliters (100 mL) or not more than fifteen milligrams (15 mg) per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808

E. Not more than five hundred milligrams (500 mg) of opium per one hundred milliliters (100 mL) or per one hundred grams (100 gm) or not more than twenty-five milligrams (25 mg) per dosage unit, with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts 9809

F. Not more than fifty milligrams (50 mg) of morphine per one hundred milliliters (100 mL) or per one hundred grams (100 gm), with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810

5. Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

A. Buprenorphine 9064

6. Anabolic steroids. Unless specially excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation. DEA has assigned code 4000 for all anabolic steroids. Anabolic steroids. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that promotes muscle growth, except an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for that administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters, and ethers:

A. 3β,17β-dihydroxy-5α-androstane

B. 3α,17β-dihydroxy-5α-androstane

C. 5α-androstan-3,17-dione

- D. 1-androstenediol (3 β ,17 β -dihydroxy-5 α -androst-1-ene)
 E. 1-androstenediol (3 α ,17 β -dihydroxy-5 α -androst-1-ene)
 F. 4-androstenediol (3 β ,17 β -dihydroxy-androst-4-ene)
 G. 5-androstenediol (3 β ,17 β -dihydroxy-androst-5-ene)
 H. 1-androstenedione ([5 α]-androst-1-en-3,17-dione)
 I. 4-androstenedione (androst-4-en-3,17-dione)
 J. 5-androstenedione (androst-5-en-3,17-dione)
 K. Bolasterone (7 α ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one)
 L. Boldenone (17 β -hydroxyandrost-1,4-diene-3-one)
 M. Boldione (androstra-1,4-diene-3,17-dione)
 N. Calusterone (7 β ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one)
 O. Clostebol (4-chloro-17 β -hydroxyandrost-4-en-3-one)
 P. Dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methyl-androst-1,4-dien-3-one)
 Q. Desoxymethyltestosterone (17 α -methyl-5 α -androst-2-en-17 β -ol) (a.k.a. madol)
 R. Δ 1-dihydrotestosterone (a.k.a.'1-testosterone')(17 β -hydroxy-5 α -androst-1-en-3-one)
 S. 4-dihydrotestosterone (17 β -hydroxy-androstan-3-one)
 T. Drostanolone (17 β -hydroxy-2 α -methyl-5 α -androstan-3-one)
 U. Ethylestrenol (17 α -ethyl-17 β -hydroxyestr-4-ene)
 V. Fluoxymesterone (9-fluoro-17 α -methyl-11 β ,17 β -dihydroxyandrost-4-en-3-one)
 W. Formebolone (Formebolone) (2-formyl-17 α -methyl-11 α ,17 β -dihydroxyandrost-1,4-dien-3-one)
 X. Furazabol (17 α -methyl-17 β -hydroxyandrostan[2,3-c]-furan)
 Y. 13 β -ethyl-17 β -hydroxygon-4-en-3-one
 Z. 4-hydroxytestosterone (4,17 β -dihydroxy-androst-4-en-3-one)
 AA. 4-hydroxy-19-nortestosterone (4,17 β -dihydroxy-estr-4-en-3-one)
 BB. Mestanolone (17 α -methyl-17 β -hydroxy-5 α -androstan-3-one)
 CC. Mesterolone (1 α -methyl-17 β -hydroxy-[5 α]-androstan-3-one)
 DD. Methandienone (17 α -methyl-17 β -hydroxyandrost-1,4-dien-3-one)
 EE. Methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene)
 FF. Methasterone (2 α ,17 α -dimethyl-5 α -androstan-17 β -ol-3-one)
 GG. Methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one)
 HH. 17 α -methyl-3 β ,17 β -dihydroxy-5 α -androstane
 II. 17 α -methyl-3 α ,17 β -dihydroxy-5 α -androstane
 JJ. 17 α -methyl-3 β ,17 β -dihydroxyandrost-4-ene
 KK. 17 α -methyl-4-hydroxynandrolone(17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one)
 LL. Methyldienolone (17 α -methyl-17 β -hydroxyestra-4,9(10)-dien-3-one)
 MM. Methyltrienolone (17 α -methyl-17 β -hydroxyestra-4,9,11-trien-3-one)
 NN. Methyltestosterone (17 α -methyl-17-hydroxyandrost-4-en-3-one)
 OO. Mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one)
 PP. 17 α -methyl- Δ 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (a.k.a. 17 α -methyl-1-testosterone)
 QQ. Nandrolone (17 β -hydroxyestr-4-ene-3-one)
 RR. 19-nor-4-androstenediol (3 β ,17 β -dihydroxyestr-4-ene)
 SS. 19-nor-4-androstenediol (3 α ,17 β -dihydroxyestr-4-ene)
 TT. 19-nor-4,9(10)-androstaenedione (estra-4,9(10)-diene-3,17-dione)
 UU. 19-nor-5-androstenediol (3 β ,17 β -dihydroxyestr-5-ene)
 VV. 19-nor-5-androstenediol (3 α ,17 β -dihydroxyestr-5-ene)
 WW. 19-nor-4-androstenedione (estr-4-en-3,17-dione)
 XX. 19-nor-5-androstenedione (estr-5-en-3,17-dione)
 YY. Norbolethone (13 β ,17 α -diethyl-17 β -hydroxygon-4-en-3-one)
 ZZ. Norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one)
 AAA. Norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one)
 BBB. Normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one)
 CCC. Oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α]-androstan-3-one)
 DDD. Oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one)
 EEE. Oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androstan-3-one)
 FFF. Prostanazol (17 β -hydroxy-5 α -androstan[3,2-c]pyrazole)
 GGG. Stanolone (Δ 1-dihydrotestosterone (a.k.a. 1-testosterone)(17 β -hydroxy-5 α -androst-1-en-3-one)
 HHH. Stanozolol (17 α -methyl-17 β -hydroxy-[5 α]-androst-2-eno[3,2-c]-pyrazole)
 III. Stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one)
 JJJ. Testolactone(13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone)
 KKK. Testosterone(17 β -hydroxyandrost-4-en-3-one);
 LLL. Tetrahydrogestrinone (13 β ,17 α -diethyl-17 β -hydroxygon-4,9,11-trien-3-one)
 MMM. Trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one)
 NNN. Any salt, ester, or isomer of a drug or substance described or listed in this subparagraph, if that salt, ester, or isomer promotes muscle growth except an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the */s/Secretary of Health and Human Services* for that administration.
7. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product 7369
 (Some other names for dronabinol: (6aRtrans)- 6a,7,8,10a-tetrahydro-6.6.9-trimethyl-3-pentyl-6H-dibenzo (b,d) pyran-1-ol, or (-) -delta-9-(trans)-tetrahydrocannabinol.)
- (D) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.
1. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:
- A. Not more than one milligram (1 mg) of difenoxin (DEA Drug Code No. 9168) and not less than twenty-five micrograms (25 mcg) of atropine sulfate per dosage unit 9167
 B. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane) 9278
 C. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers (including tramadol) 9752
 D. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:
- (I) Not more than two hundred milligrams (200 mg) of codeine per one hundred milliliters (100 mL) or per one hundred

grams (100 gm);

(II) Not more than one hundred milligrams (100 mg) of dihydrocodeine per one hundred milliliters (100 mL) or per one hundred grams (100 gm); or

(III) Not more than one hundred milligrams (100 mg) of ethylmorphine per one hundred milliliters (100 mL) or per one hundred grams (100 gm).

2. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

A. Alfaxalone	2731
B. Alprazolam	2882
C. Barbitol	2145
D. Brexanolone	2400
E. Bromazepam	2748
F. Camazepam	2749
G. Carisoprodol	8192
H. Chloral betaine	2460
I. Chloral hydrate	2465
J. Chlordiazepoxide	2744
K. Clobazam	2751
L. Clonazepam	2737
M. Clorazepate	2768
N. Clotiazepam	2752
O. Cloxazolam	2753
P. Delorazepam	2754
Q. Diazepam	2765
R. Dichloralphenazone	2467
S. Estazolam	2756
T. Ethchlorvynol	2540
U. Ethinamate	2545
V. Ethyl loflazepate	2758
W. Fludiazepam	2759
X. Flunitrazepam	2763
Y. Flurazepam	2767
Z. Fospropofol	2138
AA. Halazepam	2762
BB. Haloxazolam	2771
CC. Ketazolam	2772
DD. Lemborexant	2245
EE. Loprazolam	2773
FF. Lorazepam	2885
GG. Lormetazepam	2774
HH. Mebutamate	2800
II. Medazepam	2836
JJ. Meprobamate	2820
KK. Methohexital	2264
LL. Methylphenobarbital (Mephobarbital)	2250
MM. Midazolam	2884
NN. Nimetazepam	2837
OO. Nitrazepam	2834
PP. Nordiazepam	2838
QQ. Oxazepam	2835
RR. Oxazolam	2839
SS. Paraldehyde	2585
TT. Petrichloral	2591
UU. Phenobarbital	2285
VV. Pinazepam	2883
WW. Prazepam	2764
XX. Quazepam	2881
YY. Remimazolam	2846
/YY./ZZ. Suvorexant	2223
/ZZ./AAA. Temazepam	2925
/AAA./BBB. Tetrazepam	2886

/BBB./CCC. Triazolam	2887
/CCC./DDD. Zaleplon	2781
/DDD./EEE. Zolpidem	2783
/EEE./FFF. Zopiclone	2784

3. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

A. Fenfluramine	1670
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4. Lorcaserin. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

A. Lorcaserin	1625
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5. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

A. Cathine ((+)- norpseudoephedrine)	1230
B. Diethylpropion	1610
C. Fencamfamin	1760
D. Fenproporex	1575
E. Mazindol	1605
F. Mefenorex	1580
G. Modafinil	1680
H. Pemoline (including organometallic complexes and chelates thereof)	1530
I. Phentermine	1640
J. Pipradrol	1750
K. Serdexmethylphenidate	1729
/K./L. Sibutramine	1675
/L./M. Solriamfetol (2-amino-3- phenylpropyl carbamate; benzenepropanol, beta- amino-, carbamate (ester))	1650
/M./N. SPA (-)-1-dimethylamino- 1,2-diphenylethane	1635

6. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

A. Pentazocine	9709
B. Butorphanol (including its optical isomers)	9720
C. Eluxadoline (5-[[[(2S)-2- amino-3-[4-aminocarbonyl]- 2,6-dimethylphenyl]-1- oxopropyl] [(1S)-1-(4-phenyl- 1 H-imidazol-2- yl)ethyl]amino]methyl]-2- methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers)	9725

7. Ephedrine. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system including their salts, isomers, and salts of isomers:

A. Ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient.

(E) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or

brand name designated, listed in this subsection.

1. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as follows, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

A. Not more than two hundred milligrams (200 mg) of codeine per one hundred milliliters (100 mL) or per one hundred grams (100 gm);

B. Not more than one hundred milligrams (100 mg) of dihydrocodeine per one hundred milliliters (100 mL) or per one hundred grams (100 gm);

C. Not more than one hundred milligrams (100 mg) of ethylmorphine per one hundred milliliters (100 mL) or per one hundred grams (100 gm);

D. Not more than two and five-tenths milligrams (2.5 mg) of diphenoxylate and not less than twenty-five micrograms (25 mcg) of atropine sulfate per dosage unit;

E. Not more than one hundred milligrams (100 mg) of opium per one hundred milliliters (100 mL) or per one hundred grams (100 gm); and

F. Not more than five-tenths milligram (0.5 mg) of difenoxin (DEA Drug Code No. 9168) and not less than twenty-five micrograms (25 mcg) of atropine sulfate per dosage unit.

2. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system including its salts, isomers, and salts of isomers:

A. Pyrovalerone 1485

3. Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or its salts or optical isomers, or salts of optical isomers or any compound, mixture, or preparation containing any detectable quantity of ephedrine or its salts or optical isomers, or salts of optical isomers if the drug preparations are starch-based solid dose forms, if such preparations are sold over the counter without a prescription. The following drug preparations containing ephedrine and pseudoephedrine are not scheduled controlled substances:

A. Drug preparations in liquid form;

B. Drug preparations that require a prescription in order to be dispensed.

4. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

A. Ezogabine [N-[2-amino-4(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester] 2779

B. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide] 2746

C. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] 2782

D. Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) 2710

E. Lasmiditan [2,4,6-trifluoro-N-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide] 2790

F. Cenobamate ([1(R)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate; 2H-tetrazole-2-ethanol, alpha-(2-chlorophenyl)-, carbamate (ester), (alphaR)-; carbamic acid (R)-(+)-1-(2-chlorophenyl)-2-(2H-tetrazol-2-yl)ethyl ester) 2720

AUTHORITY: section 195.015, RSMo Supp. [2020] 2021, and section 195.195, RSMo 2016. Material found in this rule previously filed as 19 CSR 30-1.010. Original rule filed April 14, 2000, effective Nov. 30, 2000. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 28, 2021, effective Oct. 13, 2021, expires April 10, 2022. Amended: Filed Sept. 28, 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 or in opposition to this proposed amendment with Michael Boeger, Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs, PO Box 570, Jefferson City, MO 65102 or via email at BNDD@health.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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Regulation and Licensure Chapter 30—Ambulatory Surgical Centers and Abortion Facilities

PROPOSED AMENDMENT

19 CSR 30-30.060 Standards for the Operation of Abortion Facilities. The department is amending paragraph (1)(A)8.

PURPOSE: This amendment updates the list of laws, regulations, and standards that governing bodies must ensure abortion facilities abide by or otherwise comply with.

(1) Governing Body, Administration, and Medical Staff.

(A) The facility shall have a governing body which may be an individual owner or owners, partnership, corporate body, association, or public agency.

1. The governing body shall have full legal responsibility for determining, implementing, and monitoring policies governing a facility's total operation and for ensuring that the policies are administered in a manner to provide acceptable care in a safe environment and in accordance with all legal requirements and standards of care.

2. The governing body shall select and employ an administrator who is a physician licensed in Missouri, a registered nurse licensed in Missouri, or an individual who has at least one (1) year of administrative experience in health care.

3. If there is any change in the designation of the administrator, the governing body shall notify the department within ten (10) calendar days of the change.

4. The governing body shall ensure that, in the absence of the administrator from the facility, a person who meets the qualifications of an administrator as defined in this regulation shall be present at

the facility and fulfill the administrator's duties.

5. Bylaws of the governing body shall acknowledge that department surveyors shall be allowed to inspect the facility at any time the facility is in operation. Surveyors shall have due regard for the medical condition and reasonable privacy of the on-site patients.

6. Bylaws of the governing body shall require that the medical staff, facility personnel and all others providing services relative to the facility shall be directly or indirectly responsible to the governing body through the administrator.

7. The governing body, through the administrator, shall establish criteria for the content of patient records and shall provide for timely completion of those records and disciplinary action for non-compliance.

8. The governing body, through the administrator, shall ensure that the abortion facility abides by all applicable state and federal laws and regulations. This shall include, but not be limited to, compliance with Chapter 188, RSMo./, 13 CSR 70-3.030(3), and:

A. Notifying pathology lab of failed abortion within twenty-four (24) hours;

B. Ensuring that the physician providing informed consent to the patient is the physician who performs the procedure;

C. Ensuring that all medical records associated with abortions accurately reflect the date and time the record was created;

D. Ensuring that the physician who performs the abortion performs a pelvic exam at least seventy-two (72) hours before an abortion unless, in the physician's clinical judgment, such pelvic exam is not medically necessary and said physician documents the reason for such determination;

E. Ensuring that any physician, nurse, or other health care provider, or their contracted agents, cooperate with any Department of Health and Senior Services investigator upon written request of the investigator;

F. Ensuring that all employees participate in an annual fire drill;

G. Ensuring that policies are written in accordance with regulatory requirements;

H. Ensuring that endotracheal equipment is maintained and that staff is aware of the location of the equipment;

I. Following all acceptable sterilization standards for surgery instruments and equipment; and

J. Maintaining controlled substance logs in accordance with published regulations.

9. Any violation of law or regulation shall be immediately referred, in writing, with details of said violation or violations, to the Medicaid Audit and Compliance Unit of the Department of Social Services.

10. The governing body, through the administrator, shall be responsible for developing, implementing, and enforcing a policy to ensure protection of facility employees, physicians, and volunteers from retaliation or adverse employer actions by the facility for disclosing information regarding alleged infection control concerns; alleged facility mismanagement [of] or fraudulent activity; or alleged violations of state or federal law or regulations regarding patient care, patient safety, or facility safety.

AUTHORITY: section 197.225, RSMo Supp. [2019] 2021. Original rule filed July 15, 1987, effective Oct. 25, 1987. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 28, 2021, effective Oct. 13, 2021, expires April 10, 2022. Amended: Filed Sept. 28, 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 Department of Health and Senior Services, Division of Regulation and Licensure, Steve Bollin, Division Director, PO Box 570, Jefferson City, MO 65102-0570. 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 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 2250—Missouri Real Estate Commission
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2250-2.040 Compensation Disputes and Compensation Paid to Unlicensed Business Entity. The commission is amending the title, purpose, and section (1), and adding new section (2).

PURPOSE: This amendment enacts legislative changes effective August 28, 2021 that permits brokers to pay real estate compensation to unlicensed business entities registered with the Missouri Secretary of State.

PURPOSE: This rule defines the commissioner's limitations with regard to civil problems of licensees and establishes guidelines for brokers paying compensation to unlicensed business entities owned by broker-salespersons or salespersons that were formed for the purpose of receiving compensation earned by such licensee.

(1) Disputes Concerning Matters of Compensation.

[(1)](A) The commission will not enter into disputes between licensees concerning matters of commissions. The license law and these rules are designed to regulate the business conduct of licensees in the interest of the public and to discipline licensees when warranted. The commission has no authority to award money damages[,] but, as a condition of probation, may order restitution be made to injured parties.

(2) Compensation Paid to Unlicensed Business Entity.

(A) A broker may pay real estate compensation directly to an unlicensed business entity if the entity—

1. Has a valid registration on file with the Missouri secretary of state that reflects the business entity was formed for the purpose of receiving real estate compensation earned by the licensee; and

2. Is owned solely by the licensee, or owned by the licensee and the licensee's unlicensed spouse, or owned by the licensee and the licensee's licensed spouse both of whom are affiliated with the broker/brokerage paying the compensation, or owned by the licensee and other licensees all of whom are affiliated with the broker/brokerage paying the compensation.

(B) A business entity that receives compensation from a broker as provided for in subsections 4 and 5 of section 339.150, RSMo, shall not be required to be licensed under Chapter 339, RSMo, but the business entity must be—

1. Owned by a currently licensed broker-salesperson and/or salesperson;

2. Properly registered with the Missouri secretary of state, in good standing, and authorized to conduct business in Missouri; and

3. Established for the purpose of receiving real estate compensation to which the business entity's Articles of Organization or Articles of Incorporation filed with the Missouri secretary of state must include verbiage indicating the business entity was formed for the purpose of receiving real estate compensation.

(C) The designated broker of the brokerage paying the compensation to an unlicensed business entity shall be responsible for ensuring the business entity is in compliance with 339.150, RSMo, and the corresponding regulations promulgated thereunder.

(D) Any compensation paid to an unlicensed business entity must be paid in the exact name of the entity registered with the secretary of state, or under a currently registered fictitious name of the business entity.

(E) Entities currently licensed as a Missouri real estate entity, that wish to cease being licensed, may surrender their current license(s) as delineated under rule 20 CSR 2250-8.155(1) and must ensure they meet the requirements of sections 339.100 and 339.150, RSMo, and all regulations promulgated thereunder before receiving compensation payable to the unlicensed entity from a designated broker.

AUTHORITY: sections 339.100.3., 339.120, and 339.150, RSMo Supp. [2012] 2021, and section 339.205, RSMo 2016. This rule originally filed as 4 CSR 250-2.040. Original rule filed Sept. 25, 1975, effective Oct. 15, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 22, 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 Real Estate Commission, PO Box 1339, Jefferson City, MO 65102, by facsimile at 573-751-2777, or via email at realestate@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.

**Title 20—DEPARTMENT OF COMMERCE
AND INSURANCE
Division 2250—Missouri Real Estate Commission
Chapter 8—Business Conduct and Practice**

PROPOSED AMENDMENT

20 CSR 2250-8.070 Advertising. The commission is adding new section (5) and renumbering as necessary.

PURPOSE: This amendment enacts legislative changes effective August 28, 2021, that restricts real estate advertisement by unlicensed entities and use of certain terms that leads the general public to believe the unlicensed entity is a licensed real estate firm.

(5) No licensee or group of licensees shall advertise as a real estate company in any manner, or use any name, team name, or other term that could be construed by members of the public as the advertiser being a real estate partnership, company, brokerage, or business entity, unless the advertiser holds a valid appropriate entity license.

(A) Such terms include use of the words realty, brokerage, company, or other terms that may be construed as a real estate entity.

(B) The context of the advertisement or solicitation may be considered by the commission when determining whether a licensee has committed a violation.

(C) A licensee or group of licensees that are not entities under Chapter 339, RSMo, with fictitious names, which want to adver-

tise with the licensee or group name, should file with the secretary of state a fictitious name that is owned by the broker/brokerage in which the licensee or group of licensees are affiliated. The registration of a fictitious name with the Missouri Secretary of State's Office does not exempt a licensee or group of licensees from the requirements of 20 CSR 2250-8.070(3).

[(5)](6) Guaranteed Sales.

(A) As used in this rule, the term guaranteed sales plan includes, but is not limited to: *[(i)]1.*) any plan in which a seller's real estate is guaranteed to be sold, or *[(ii)]2.*) any plan where a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

(B) Any written advertisement by a licensee of a guaranteed sales plan shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth (1/4) as large as the largest print in the advertisement.

(C) Any radio or television advertisement by a licensee of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

(D) Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased, and the approximate net proceeds the seller may reasonably expect to receive.

AUTHORITY: sections 339.100 and 339.120, RSMo Supp. [2007] 2021. This rule originally filed as 4 CSR 250-8.070. Original rule filed Nov. 14, 1978, effective Feb. 11, 1979. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 22, 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 Real Estate Commission, PO Box 1339, Jefferson City, MO 65102, by facsimile at 573-751-2777, or via email at realestate@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.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, and 168.081, RSMo 2016, and section 168.021, RSMo Supp. 2021, the board amends a rule as follows:

5 CSR 20-400.220 Application for Substitute Certificate of License to Teach is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2021 (46 MoReg 926-927). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received a total of two (2) comments on this proposed amendment. Of those two (2) comments, both requested another avenue for persons to obtain a substitute teacher certificate.

COMMENT #1: Ken Boning, professor and coordinator for the Jefferson College Teacher Education Program, stated that allowing students to take a Foundations of Education course should also result in obtaining a substitute teacher certificate.

RESPONSE: This comment does not specifically address the pro-

posed amendment; therefore, no changes have been made to the amendment as a result of this comment. We will take this comment into consideration for future amendments.

COMMENT #2: Angie Miller, department chair at Ozarks Technical Community College, stated that allowing students to complete a course they are already taking as a part of the educator preparation process should also result in obtaining a substitute teacher certificate.

RESPONSE: This comment does not specifically address the proposed amendment; therefore, no changes have been made to the amendment as a result of this comment. We will take this comment into consideration for future amendments.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under section 161.092, RSMo 2016, the board rescinds a rule as follows:

5 CSR 20-400.360 Missouri Critical Teacher Shortage Forgivable Loan Program is **rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 15, 2021 (46 MoReg 1000-1001). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Financial and Administrative
Services
Chapter 640—School Buildings**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under section 161.092, RSMo 2016, and section 161.215, RSMo Supp. 2021, the board amends a rule as follows:

5 CSR 30-640.200 Early Learning Facilities Funding Formula for Lease Agreements is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2021 (46 MoReg 927). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092 and 163.011, RSMo 2016, the board amends a rule as follows:

5 CSR 30-660.080 Performance Districts **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2021 (46 MoReg 927-928). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092 and 167.126(4) and (5), RSMo 2016, the board amends a rule as follows:

5 CSR 30-660.095 State Agency Payments to School Districts for Educational Services **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2021 (46 MoReg 926). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Financial and Administrative
Services
Chapter 680—Food and Nutrition Services**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092 and 178.430, RSMo 2016, the board adopts a rule as follows:

5 CSR 30-680.080 School Food Authority Appeal Procedures **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2021 (46 MoReg 928-930). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes

effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department amends a rule as follows:

9 CSR 30-3.032 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1050-1052). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One (1) comment was received.

COMMENT #1: A staff member requested that paragraphs (4)(A)1.–4. be removed and subsection (4)(A) be amended to state, “Organizations requesting certification must comply with 9 CSR 10-7.130, Procedures to Obtain Certification, by submitting a fully completed application to the department.”

RESPONSE AND EXPLANATION OF CHANGE: The rule has been amended as requested.

9 CSR 30-3.032 Certification of Substance Use Disorder Prevention and Treatment Programs

(4) Approval of Programs and Sites. The department must authorize and approve each proposed program/service and site prior to the delivery of services.

(A) Organizations requesting certification must comply with 9 CSR 10-7.130, Procedures to Obtain Certification, by submitting a fully completed application to the department.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department rescinds a rule as follows:

9 CSR 30-3.100 Service Delivery Process and Documentation **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.100 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1052-1054). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received one (1) comment on the proposed rule.

COMMENT #1: A staff member requested that Qualified Addiction “Specialist” in subsection (2)(B) be changed to Qualified Addiction “Professional.”

RESPONSE AND EXPLANATION OF CHANGE: The language has been changed as requested.

9 CSR 30-3.100 General Requirements for Substance Use Disorder Treatment Programs

(2) Diagnosis. Eligibility for services shall include a diagnosis of a substance use disorder by a licensed diagnostician in accordance with the *Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5)*, 2013, incorporated by reference and made a part of this rule as published by the American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901. This rule does not incorporate any subsequent amendments or additions to this publication.

(B) Signatures can be obtained by a face-to-face meeting with a licensed diagnostician or a face-to-face meeting with a master’s level Qualified Addiction Professional (QAP) or a Qualified Mental Health Professional (QMHP) followed by sign off by a licensed diagnostician. Signature stamps shall not be used.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department rescinds a rule as follows:

9 CSR 30-3.110 Service Definitions and Staff Qualifications is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1054). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.110 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1054-1058). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Two (2) comments were received.

COMMENT #1: George Oestreich, Pharm.D., MPA, Principal, G.L.O. & Associates, provided comments regarding subsection (1)(O) medication services, and subsection (1)(P) medication services support.

Dr. Oestreich commented that pharmacists are, by education and training, drug experts. Missouri citizens should be allowed access to pharmacists when participating in the key service functions such as screening for and educating on medication side effects, changing medication orders, and consulting on medication monitoring and management, as included in this service.

As promulgated by the Missouri Pharmacy Practice Act (RSMo, 338.010) and defined by the Missouri Board of Pharmacy in 20 CSR 2220-6.070 and 20 CSR 2220-6.080, pharmacists can work under a collaborating practice agreement, referred to as a medication therapeutic plan or medication therapy services (MTS) by pharmacists, to make necessary therapy changes similar to an APRN. Pharmacists are highly qualified healthcare professionals capable of performing the key services listed above.

There is specialized training that many Missouri pharmacists have acquired in managing psychotropic medications. The Department of Mental Health already recognizes and lists, “A psychiatric pharmacist as defined in 9 CSR 30-4.030” as a Qualified Mental Health Professional (QMHP) in 9 CSR 10-7.140.

We recommend that pharmacists be included in the list of providers who are qualified and can provide medication services and medication services support.

RESPONSE: The department appreciates the comments from Dr. Oestreich. Due to staff requirements included in the current Medicaid State Plan Amendment for the Comprehensive Substance Treatment and Rehabilitation (CSTAR) Program, pharmacists cannot be added at this time. When the CSTAR State Plan is opened in the future to make necessary program changes, the department will consider the addition of pharmacists as qualified practitioners of the CSTAR agency to provide medication services and medication services support. This will be subject to approval by the Centers for Medicare and Medicaid. Not all certified CSTAR programs employ or have a contractual relationship with a pharmacist(s) to provide services, therefore, their addition as a qualified provider may benefit a limited number of programs throughout the state.

COMMENT #2: A staff member requested that “Inc.” be removed from “Missouri Credentialing Board” in section (3), as that is incorrect.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and made this change.

9 CSR 30-3.110 Service Definitions, Staff Qualifications, and Documentation Requirements for Substance Use Disorder Treatment Programs

(3) Supervision of Associate Counselors. If an AAC provides individual or group counseling, he/she shall meet the requirements of the Missouri Credentialing Board or the appropriate board of professional registration within the Department of Commerce and Insurance. All counselor functions performed by an AAC shall be performed pursuant to the supervisor's authority, oversight, guidance, and full professional responsibility.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department rescinds a rule as follows:

9 CSR 30-3.132 Opioid Treatment Program is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1058). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.132 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1058-1063). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Three (3) comments were received.

COMMENT #1: A department staff member requested “antagonist” be added to the types of medications included in subsection (2)(A).
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will add “antagonist” to subsection (2)(A).

COMMENT #2: A department staff member requested “licensed physician” be changed to “qualified prescriber” in paragraph (2)(B)1.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will change the language as requested.

COMMENT #3: A department staff member requested “program physician” be changed to “qualified prescriber” in the second sentence of paragraph (2)(B)3.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will change the language as requested.

9 CSR 30-3.132 Opioid Treatment Programs

(2) Medication Administration, Dispensing, and Use. OTPs shall only utilize medications approved by the FDA for the treatment of opioid use disorder.

(A) Opioid agonist, partial agonist, and antagonist treatment medications shall be administered and dispensed by a practitioner licensed in Missouri and registered under the appropriate state and federal laws to administer or dispense opioid drugs.

(B) Written policies and procedures shall be maintained to ensure the following dosage form and initial dosing requirements are met:

1. Methadone is prescribed by a qualified prescriber, administered and dispensed only in oral form, and formulated in a manner to reduce its potential for parenteral abuse;

2. For newly admitted individuals, the initial dose of methadone does not exceed thirty (30) milligrams and the total dose for the first day does not exceed forty (40) milligrams, unless the program physician documents in the individual record that forty (40) milligrams did not suppress opioid abstinence symptoms; and

3. Each opioid agonist medication is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions shall be made by a qualified prescriber familiar with the most up-to-date product labeling. These procedures must ensure any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual record.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.155 Staff Requirements for Comprehensive Substance Treatment and Rehabilitation (CSTAR) Programs is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1064-1065). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.157 Community Support in Comprehensive Substance Treatment and Rehabilitation (CSTAR) Programs is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46

MoReg 1065-1066). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192–630.198, RSMo 2016, the department adopts a rule as follows:

9 CSR 30-3.195 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2021 (46 MoReg 1066-1067). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received two (2) comments on the proposed rule.

COMMENT #1: A staff member requested the following be added to section (3): “Each individual served or parent/guardian must provide informed, written consent to treatment prior to delivery of services, and a copy of the consent form must be retained in the individual’s record. Consent to treat documentation shall be updated annually, as applicable.”

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will add this language to section (3).

COMMENT #2: A staff member requested paragraph (3)(B)1. be revised to state, “Each individual shall participate in the development of his/her treatment plan.” The remaining language regarding the signature of individuals served or that of their parent/guardian on the treatment plan should be removed as that is no longer required.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and will make this change to paragraph (3)(B)1.

9 CSR 30-3.195 Outpatient Substance Use Disorder Treatment Programs

(3) Treatment Planning. Services shall be provided under the direction of an individual treatment plan as specified in 9 CSR 10-7.030(4). Each individual served or parent/guardian must provide informed, written consent to treatment prior to delivery of services, and a copy of the consent form must be retained in the individual’s record. Consent to treat documentation shall be updated annually, as applicable.

(B) The treatment plan shall be completed within the first three (3) outpatient visits.

1. Each individual shall participate in the development of his/her treatment plan.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under

section 313.805, RSMo Supp. 2021, the commission amends a rule as follows:

**11 CSR 45-5.090 Submission of Chips for Review and Approval
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2021 (46 MoReg 758). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 2, 2021, and the commission held a public hearing on the proposed amendment on July 6, 2021. No one attended the public hearing and no written comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2021, the commission amends a rule as follows:

**11 CSR 45-5.110 Primary, Secondary, and Reserve Sets of Gaming
Chips is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2021 (46 MoReg 758). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 2, 2021, and the commission held a public hearing on the proposed amendment on July 6, 2021. No one attended the public hearing and no written comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2021, the commission amends a rule as follows:

**11 CSR 45-5.140 Receipt of Gaming Chips or Tokens from
Manufacturer is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2021 (46 MoReg 758-759). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 2, 2021, and the commission held a public hearing on the proposed amendment on July 6, 2021. No one attended the public hearing and no written comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2021, the commission amends a rule as follows:

11 CSR 45-9.108 Minimum Internal Control Standards (MICS)—
Chapter H is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2021 (46 MoReg 759). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 2, 2021, and the commission held a public hearing on the proposed amendment on July 6, 2021. No one attended the public hearing and no written comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2021, the commission amends a rule as follows:

11 CSR 45-9.118 Minimum Internal Control Standards (MICS)—
Chapter R is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2021 (46 MoReg 759). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 2, 2021, and the commission held a public hearing on the proposed amendment on July 6, 2021. No one attended the public hearing and no written comments were received.

**Title 20—DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2010—Missouri State Board of Accountancy
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.271, RSMo 2016, the board amends a rule as follows:

20 CSR 2010-2.061 Requirements for an Initial License to Practice
is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2021

(46 MoReg 1337). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.