

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

Licensure of the Department of Health responsible for enforcement of child care rules and laws;]

[(C)](B) Caregiver is the facility director or other child care staff whether they are paid or volunteering;

[(D)](C) Child care is care of a child away from his/her own home for any part of the *[day or night]* twenty-four- (24-) hour day for compensation or otherwise. Child care is a voluntary supplement to parental responsibility for the child's protection, development, and supervision;

(D) Child care provider or provider is the person(s) having the following responsibilities:

1. Ultimate responsibility for making and implementing decisions regarding the operation of the facility; and

2. Ultimate financial control of the operation of the facility;

(E) Child care staff member is a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; individuals residing in a family child care home who are eighteen years of age or older; and individuals residing in a family child care home who are under eighteen years of age and have been certified as an adult for the commission of an offense;

[(E)](F) Department is the Missouri Department of *[Health]* Elementary and Secondary Education;

(G) Group size is the maximum number of children assigned to a specific staff member or group of staff members, occupying an individual classroom or well-defined physical space within a large room;

(H) Homeless children and youths—

1. Are individuals who lack a fixed, regular, and adequate nighttime residence; and

2. Include:

A. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

B. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

C. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

D. Migratory children who qualify as homeless because the children are living in the circumstances described above;

[(F)](I) Infant is a child less than twelve (12) months of age;

[(G)](J) Kindergarten is a children's educational program offered to prepare children for the first grade;

[(H)](K) License-exempt child care facility or facility is a nursery school not operated by a religious organization or *[a]* child care *[operation run by]* maintained or operated under the exclusive control of a religious organization, not including religious organization academic preschools or kindergartens;

[(I)](L) Local *[health department]* public health agency is an entity that enforces local public health codes and ordinances and provides other services related to public health;

[(J)](M) Nursery school is *[a]* an educational program for preschool-age children that is operated for no more than four (4) hours per child per day;

[(K)](N) Premises is a house(s), dwelling(s), or building(s) and the adjoining land of a license-exempt child care facility;

[(L)](O) Preschool-age child is a child *[between]* two *[and]*

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED AMENDMENT

5 CSR 25-300.010 Definitions Relating to Child Care Facilities.
The State Board of Education is amending section (1).

PURPOSE: This amendment updates the terms used throughout Chapter 300 by removing, modifying, or replacing outdated terms and removing those terms not relevant to regulated child care.

(1) The following definitions shall be used in interpreting the rules of this chapter:

(A) Adult is an individual eighteen (18) years of age or older;

[(B) Bureau is the Bureau of Child Care Safety and

through five (2-5) years of age not enrolled in kindergarten;
[(M) Registered professional nurse or registered nurse is one licensed under the provisions of sections 335.011 – 335.096, RSMo to engage in the practice of professional nursing;]

(P) Religious organization is—

1. A church, synagogue, or mosque;
2. An entity that qualifies for federal tax exemption status as a not-for-profit religious organization under Section 501(c)(3) of the Internal Revenue Code; or
3. An entity whose real estate on which the child care facility is located is exempt from taxation because it is used for religious purposes;

[(N)/(Q) Religious organization academic preschool or kindergarten is a child care program provided exclusively for four- (4-)/- and five- (5-)/- year/- old children that is [operated by] maintained or operated under the exclusive control of a religious organization;

[(O) Sanitarian is a person employed by a state or local health department that conducts sanitation inspections for license-exempt child care facilities;]

[(P)/(R) School-age child is a child [four (4)] five (5) years of age or older who is enrolled in kindergarten or [elementary school] above;

[(Q)/(S) Staff/child ratio is the number of caregivers required [for] in relation to the number of children in care;

[(R)/(T) Toddler is a child [between twelve (12) and twenty-four (24)] twelve to twenty-four (12-24) months of age; and

[(S)/(U) Variance is approval by the department for a provider not to be required to meet a specific requirement of the rules of this chapter.

AUTHORITY: section[s 210.221.1(3) and 210.252.5.] 161.092, RSMo 2016, and section 210.252, RSMo Supp. [1999] 2021. This rule was previously filed as 19 CSR 40-60.010. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.010 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.010, effective Aug. 30, 2021. Amended: Filed Oct. 6, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED RESCISSION

5 CSR 25-300.030 Local Inspections. This rule established criteria for local health departments to conduct health and safety inspections and for local fire districts to conduct fire safety inspections of

license-exempt child care facilities.

PURPOSE: This rule is being rescinded as its provisions have been incorporated into other rules within this chapter, specifically 5 CSR 25-300.070 Fire Safety Requirements and 5 CSR 25-300.080 Sanitation Requirements.

AUTHORITY: section 210.221.1(3) and 210.252.5, RSMo Supp. 1999. This rule was previously filed as 19 CSR 40-60.030. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.030 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.030, effective Aug. 30, 2021. Rescinded: Filed Oct. 6, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED AMENDMENT

5 CSR 25-300.070 Fire Safety Requirements. The State Board of Education is amending section (1) and adding section (6).

PURPOSE: This amendment replaces “the effective date of these rules” with “July 30, 1995” and adds language moved from 5 CSR 25-300.030.

(1) These general fire safety requirements shall be followed at all facilities:

(E) Facilities beginning operation after *[the effective date of these rules] July 30, 1995*, shall have a minimum ceiling height of seven feet (7') in all areas used for child care; and

(6) Fire safety inspections of license-exempt facilities may be delegated to local fire districts if the standards employed for inspections are equivalent to those in this rule.

AUTHORITY: section[s 210.221.1(3) and 210.252.5] 161.092, RSMo 2016, and section 210.252, RSMo Supp. [1999] 2021. This rule was previously filed as 19 CSR 40-60.080. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.080 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.070, effective Aug. 30, 2021. Amended: Filed Oct. 6, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED AMENDMENT

5 CSR 25-300.080 Sanitation Requirements. The State Board of Education is adding section (10).

PURPOSE: This amendment adds language moved from 5 CSR 25-300.030 and adds that the Missouri Department of Health and Senior Services may conduct sanitation inspections.

(10) Sanitation inspections of license-exempt facilities may be delegated to the Department of Health and Senior Services or local public health agencies if the standards employed for inspections are substantially equivalent to this rule. Fees, as provided for in section 192.300, RSMo, may be charged at the option of the local public health agency.

AUTHORITY: section[s] 210.221.1(3) and 210.252.5] 161.092, RSMo 2016, and section 210.252, RSMo Supp. [1999] 2021. This rule was previously filed as 19 CSR 40-60.090. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.090 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.080, effective Aug. 30, 2021. Amended: Filed Oct. 6, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED RESCISSION

5 CSR 25-300.100 Transportation and Field Trip Requirements.

This rule identified the requirements the provider in a license-exempt child care facility is responsible for when transporting children and taking field trips.

PURPOSE: This rule is rescinded based on a lack of statutory authority to enforce its provisions.

AUTHORITY: sections 210.221.1(3) and 210.252.5, RSMo Supp. 1999. This rule was previously filed as 19 CSR 40-60.110. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.110 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.100, effective Aug. 30, 2021. Rescinded: Filed Oct. 6, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 300—License-Exempt Child Care Facilities**

PROPOSED AMENDMENT

5 CSR 25-300.120 Variance Requests. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment updates the term “bureau” to “department” and the phrase “owner or facility director” to “facility owner or designee” and updates details for how a variance should be requested and how to request review of a variance denial.

(1) Any facility [director] owner or designee may request a variance from [any portion of the rules of this chapter] a rule. The request for a variance shall be [made] submitted in writing to the department and shall include the [reasons for requesting the variance] rule(s) for which a variance is requested and the reason(s) for the request. The department shall approve any variance request that does not endanger the health or safety of the children served by the facility. Local inspectors may grant a variance, subject to approval by the department.

(2) If a variance request is not [recommended by the bureau] approved by the department, the facility owner or [director] designee shall be advised in writing of the basis for the [recommendation] denial. [If the owner or facility director does not agree with the recommendation to deny the variance, s/he may request the department to make a final decision regarding the denial.] The facility owner or designee may request a review of the decision by the Commissioner of Education (commissioner) of the department or designee within thirty (30) calendar days of receipt of notification of the denial. The commissioner or designee shall have fifteen (15) business days to make the final determination on the variance request. That determination is subject to

Chapter 536, RSMo, review for license-exempt facilities.

AUTHORITY: section[s] 210.221.1(3) and 210.252.5] 161.092, RSMo 2016, and section 210.252, RSMo Supp. [1999] 2021. This rule was previously filed as 19 CSR 40-60.040. Original rule filed Dec. 1, 1994, effective July 30, 1995. Changed to 19 CSR 30-60.040 July 30, 1998. Emergency amendment filed March 1, 2000, effective March 11, 2000, expired Sept. 6, 2000. Amended: Filed March 1, 2000, effective Aug. 30, 2000. Moved to 5 CSR 25-300.120, effective Aug. 30, 2021. Amended: Filed Oct. 6, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care Homes**

PROPOSED AMENDMENT

5 CSR 25-400.010 Definitions. The State Board of Education is adding new sections (4) and (9); removing sections (8), (10), (12), (16), (20), (22), (27), and (29); amending previously numbered section (7), (9), and (19); and renumbering sections accordingly.

PURPOSE: This amendment updates the terms used throughout Chapter 400 by removing, modifying, or replacing outdated terms, and removing those terms not relevant to licensed child care.

(4) Child care or day care is care of a child away from his/her own home for any part of the twenty-four- (24-) hour day for compensation or otherwise. Day care or child care is a voluntary supplement to parental responsibility for the child's protection, development, and supervision.

[(4)](5) A child care center or center, whether owned by a sole proprietor or other legal entity, is a child care program conducted in a location other than the provider's permanent residence, or separate from the provider's living quarters, where care is provided for children for any part of the twenty-four- (24-) hour day.

[(5)](6) A child care facility or facility is a family child care home, group child care home, or child care center.

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

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

[(7)](8) Child care staff member is a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; [or] individuals residing in a family child care home who are eighteen (18) years of age and older; or individuals residing in a family child care home who are under eighteen (18) years of age and have been certified as an adult for the commission of an offense.

[(8) Day care or child care is care of a child away from his/her own home for any part of the twenty-four- (24-) hour day for compensation or otherwise. Day care or child care is a voluntary supplement to parent responsibility for the child's protection, development, and supervision. Day care or child care may be given in a family child care home, group child care home, or child care center.]

(9) Commissioner is the Commissioner of Education for the Missouri Department of Elementary and Secondary Education.

[(9)](10) Department is the Missouri Department of [Health and Senior Services] Elementary and Secondary Education.

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

(12) Graded boarding school is a public or private school which provides education in at least the first through the sixth grade and which provides lodging and meals for the pupils for the standard school term.]

[(13)](12) A group child care home, whether owned by a sole proprietor or other legal entity, is a child care program where care is given by a person licensed as a group child care home provider for not more than twenty (20) children for any part of the twenty-four- (24-) hour day. A group child care home shall be in a location other than the provider's permanent residence or separate from the provider's living quarters. The provider may be licensed to operate no more than one (1) group child care home or family child care home.

[(14)](13) Group size is the maximum number of children assigned to a specific staff member or group of staff members, occupying an individual classroom or well-defined physical space within a large room.

[(15)](14) Homeless children and youths—

(A) Are individuals who lack a fixed, regular, and adequate nighttime residence; and

(B) Include:

1. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

2. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children who qualify as homeless because the children are living in the circumstances described above.

[(16) An hourly care facility is a facility licensed exclusively for irregular, intermittent, hourly care.]

[(17)](15) Infant is any child under twelve (12) months of age.

[(18)](16) Legal entity is the lawful or legally standing individual, corporation, sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability company, limited liability limited partnership, partnership, charity, and other forms of organization that has the legal capacity to enter into agreements, contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and that is accountable for illegal activities.

[(19)](17) Licensee is an individual or other legal entity who has been granted a child care license by the Department of [Health and Senior Services] **Elementary and Secondary Education**.

[(20)] *Montessori school is a child care program that subscribes to Maria Montessori's educational philosophy and is accredited by the American Montessori Society or the Association Montessori Internationale.*

[(21)](18) Night is the part of the twenty-four- (24-) hour day between 9:00 p.m. and 6:00 a.m.

[(22)] *Nursery school is a program operated by a person or organization with the primary function of providing an educational program for preschool-age children for no more than four (4) hours per child per day.*

[(23)](19) Premises is a house(s), dwelling(s), or building(s) and its adjoining land.

[(24)](20) Preschool child is any child two through five (2-5) years of age who is not in kindergarten.

[(25)](21) A religious organization is—

(A) A church, synagogue, or mosque;

(B) An entity that qualifies for federal tax exemption status as a not-for-profit religious organization under Section 501(c)(3) of the *Internal Revenue Code*; or

(C) An entity whose real estate on which the child care facility is located is exempt from taxation because it is used for religious purposes.

[(26)](22) School-age child is any child five (5) years of age or older who is in kindergarten or above.

[(27)] *School system is a program established primarily for education and which meets the following criteria:*

(A) *Provides education in at least the first through the sixth grade; and*

(B) *Provides evidence that the school system's records will be accepted by a public or private school for the transfer of any student.*

[(28)](23) Staff/child ratio is the number of caregivers required in relation to the number of children in care.

[(29)] *Summer camp is a program operated from May to September by a person or organization with the primary function of providing a summer recreational program for children five (5) years of age or older and providing no child care for children younger than five (5) years of age in the same building or in the same outdoor play area.]*

[(30)](24) Toddler is any child twelve to twenty-four (12-24) months of age.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-61.010 and 19 CSR 40-61.010. Original rule filed in 1956. For intervening history, please consult the Code of State

Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED RESCISSION

5 CSR 25-400.015 Exemption of Day Care Facilities. This rule defined the basis for which a family day care home may qualify for exemption for licensure.

PURPOSE: This rule is being rescinded to delete the incorporated Application for License to Operate a Family Day Care Home form and consolidate sections (2) and (3) into 5 CSR 25-400.025 Organization and Administration. Section (1) is removed entirely because it is not relevant to facilities licensed under this chapter.

AUTHORITY: section 210.211.1(3), RSMo, Supp. 1993. This rule previously filed as 13 CSR 40-61.035 and 13 CSR 40-61.015. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Oct. 7, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.025 Organization and Administration. The State

Board of Education is amending sections (1)-(4) and adding new sections (5)-(6).

PURPOSE: This amendment updates the term “family day care home” to “family child care home” and adds sections (5) and (6) from rescinded 5 CSR 25-400.015 Exemption of Day Care Facilities.

(1) Each family [day] child care home shall be organized according to written policies and procedures which clearly establish job responsibilities and lines of administrative authority.

(2) If a family [day] child care home is owned by a legal entity, the legal entity shall designate a person to be responsible for the daily operation of the facility and to meet the requirements of the child care provider. The department shall be notified in writing immediately if there is a change of the person designated to be responsible for the daily operation of the facility and to meet the requirements of the child care provider.

(3) The person(s) or legal entity who owns a family [day] child care home shall be responsible for meeting all debts and obligations incurred by the facility and for maintaining compliance with all licensing rules for family [day] child care homes.

(4) When the responsibility for the operation of a family [day] child care home rests with a board of directors, the department shall be notified in writing immediately if there is a change of the board president or chairperson.

(5) When a nonreligious organization having as its principal purpose the provision of child care services enters into an arrangement with a religious organization to provide continuing assistance in the maintenance or operation of a child care facility, the facility is not under the exclusive control of the religious organization and does not qualify for exemption from licensure under section 210.211.1(17), RSMo.

(6) If the person(s) operating the facility claims exemption from licensure, s/he shall file all information requested by the department to make a determination of exemption prior to opening. Facilities may waive the right to apply for exemption and request voluntary licensure. These facilities shall comply with all licensing rules.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo [2016] Supp. 2021. This rule previously filed as 13 CSR 40-61.060, 13 CSR 40-61.025, and 19 CSR 40-61.025. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care Homes**

PROPOSED AMENDMENT

5 CSR 25-400.045 Licensing Process. The State Board of Education is amending sections (2), (5), (6), and (8)-(10).

PURPOSE: This amendment updates incorporated forms and references to rules contained within.

(2) Upon receipt of a completed *Application [F]for License [T]to Operate a Child Care Facility* form, a licensing inspection shall be made. See *Application [F]for License [T]to Operate a Child Care Facility* form, [promulgated as of August 2020] revised 2021, incorporated by reference in this rule, as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>.] **Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>.** This rule does not incorporate any subsequent amendment or additions. If licensing rules are not met within six (6) months, the application shall be void and another application shall be filed.

(5) Prior to the granting of a license, the provider shall meet the requirements of [19 CSR 30-61.086] **5 CSR 25-400.086** Fire Safety.

(6) The child care provider and child care staff members, as defined by [19 CSR 30-63.010] **5 CSR 25-600.010** Definitions, shall have qualifying background screening results on file as required by [19 CSR 30-63.020] **5 CSR 25-600.020** General Requirements, prior to initial issuance of the license.

(8) Medical examination reports for the provider and child care assistant(s), as required by [19 CSR 30-61.125] **5 CSR 25-400.125** Medical Examination Reports, shall be on file at the home and available for review.

(9) Medical examination reports shall be on file at the home within thirty (30) days following the admission of each infant, toddler, or preschool child as required by [19 CSR 30-61.125] **5 CSR 25-400.125** Medical Examination Reports. A health report for school-age children shall be on file as required by [19 CSR 30-61.125] **5 CSR 25-400.125**.

(10) Enrollment information for each child shall be on file at the home as required by [19 CSR 30-61.135] **5 CSR 25-400.135** Admission Policies and Procedures.

AUTHORITY: section[s] 161.092, RSMo 2016, and sections 210.221.1(3) and 210.1080, RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-61.020, 13 CSR 40-61.045, and 19 CSR 40-61.045. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.055 Annual Requirements. The State Board of Education is amending section (1).

PURPOSE: This amendment updates the incorporated Annual Declaration for Licensed Facility form.

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

(A) An *Annual Declaration for Licensed Facility form*, [promulgated as of August 2020] revised 2021 and incorporated by reference in this rule. A/as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>, indicating the licensee's intent to continue operating a licensed family child care home and agreement to comply with all statutes and department licensing rules. **This rule does not incorporate any subsequent amendments or additions to this publication;**

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-61.031, 13 CSR 40-61.055, and 19 CSR 40-61.055. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.105 The Child Care Provider and Other Child Care Personnel. The State Board of Education is amending (1), (4), and (5).

PURPOSE: This amendment updates internal references to rules and forms.

(1) General Requirements.

(L) The department shall evaluate any information received that indicates that the subject of the criminal record review poses a threat to the safety or welfare of children. In addition to those individuals automatically disqualified from presence at a child care facility by [19 CSR 30-63.040] 5 CSR 25-600.040 Background Screening Findings, the department may also prohibit the presence of any person on the premises of the family child care home during child care hours that has a criminal history that the department determines to be evidence that said person poses a threat to the safety and welfare of children.

(M) The provider shall request the results of a criminal background check for child care staff members as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements.

(N) Child care staff members shall have qualifying background screening results on file as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements.

(O) Child care staff members with disqualifying background screening results as defined in [19 CSR 30-63.040] 5 CSR 25-600.040 Background Screening Findings, shall be prohibited from being present on the premises of the facility during child care hours.

(4) Child Care Training.

(I) Clock hours earned to complete the previous year's requirements shall not be applied to the current year's clock hour requirements. Caregivers shall submit the *Clock Hour Training [Credit] Reassignment form*, [promulgated as of July 2018] revised 2020 and incorporated by reference in this rule, as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>, to the OPEN Initiative to assign clock hours to the appropriate year. **This rule does not incorporate any subsequent amendments or additions to this publication.**

(5) Safe Sleep Training. Every three (3) years the provider and assistant(s) in a family child care home licensed to provide care for infants less than one (1) year of age shall successfully complete department-approved training regarding the American Academy of Pediatrics (AAP) safe sleep recommendations contained in the *American Academy of Pediatrics Task Force on Sudden Infant Death Syndrome. Technical report – SIDS and other sleep-related infant deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment*, by Moon RY, which is incorporated by reference in this rule as published in *PEDIATRICS* Volume 138, No. 5, November 1, 2016 and available at <http://pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf>. This rule does not incorporate any subsequent amendments or additions.

(B) The provider and assistant(s) in a family child care home [licensed after the effective date of this rule] shall complete the

safe sleep training described in section (5) of this rule prior to licensure.

AUTHORITY: sections 210.221 and 210.1080, RSMo Supp. [2020] 2021, and sections 161.092 and 210.223, RSMo 2016. This rule previously filed as 13 CSR 40-61.090, 13 CSR 40-61.105, and 19 CSR 40-61.105. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.115 [Day] Child Care Family and Household. The State Board of Education is amending the name of the rule and section (1).

PURPOSE: This amendment updates the term “day care” to “child care” in the rule title and within the rule.

(1) Relationships between members of the [day] child care household shall provide a positive environment for children. There shall be agreement among the adult members of the household for sharing their home with the [day] child care children.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 13 CSR 40-61.100, 13 CSR 40-61.115 and 19 CSR 40-61.115. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.125 Medical Examination Reports. The State Board of Education is amending sections (1) and (2) and removing forms at the end of the rule.

PURPOSE: This amendment replaces the term “day care” with “child care,” removes incorporated forms and replaces them with updated forms that are incorporated by reference, and updates references to Missouri Department of Health and Senior Services.

(1) [Day] Child Care Provider and Assistants.

(E) Medical examination reports shall include either a [“Risk Assessment for Tuberculosis” form, included herein, completed and signed by a health care professional, as provided by the Missouri Department of Health and Senior Services (MDHSS).] Tuberculosis (TB) Risk Assessment form, completed and signed by a health care professional, or a negative tuberculin skin test (TST) completed not more than twelve (12) months before beginning work in the facility. The Tuberculosis (TB) Risk Assessment form, revised March 2014, is incorporated by reference in this rule, as published by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102 and available by the Missouri Department of Health and Senior Services at <https://health.mo.gov/living/healthconditions/communicable/tuberculosis/tbmanual/pdf/RiskAssessmentform.pdf>. This rule does not incorporate any subsequent amendments or additions to this publication. If the person has signs or symptoms of tuberculosis, or risk factors for tuberculosis, then testing for tuberculosis shall occur.

1. If the person has no documented history of ever receiving a tuberculin skin test (TST), and elects to receive a TST, then a two-(2)-[-] step TST is required. A history of bacilli Calmette-Guerin vaccination (BCG) shall not exempt a person from receiving a tuberculin test.

2. Persons that have a newly positive tuberculin test(s) shall not be allowed to work until a medical evaluation is performed to determine if the person has active contagious tuberculosis.

3. Persons with active contagious tuberculosis shall be excluded from employment until deemed non-infectious by [MDHSS] the Missouri Department of Health and Senior Services or the local public health agency. The person may return to work once the above criteria have been met, as long as the person adheres to his/her prescribed treatment regimen.

4. All positive tuberculin tests shall be reported to the Missouri Department of Health and Senior Services or local public health agency as required by 19 CSR 20-20.020.

(F) Medical examination reports shall be signed by a licensed physician or registered nurse who is under the supervision of a licensed physician and completed not more than twelve (12) months prior to beginning work in the home. These reports may be transferable to another [day] child care facility for subsequent employment.

(G) The medical examination report form shall be supplied by the department or the provider may use his/her own form if it contains all the information on the department’s form. The Medical Examination Report for Caregivers and Staff form, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.

(2) Children.

(A) The provider shall require, within thirty (30) days following the admission of each infant, toddler, or preschool child, a medical examination report signed by a licensed physician or registered nurse who is under the supervision of licensed physician and completed not more than twelve (12) months prior to admission. **The provider may use the department's medical assessment form or the provider may use its own form if it contains all the information on the department's form. The *Child Medical Examination Report (Infant/Toddler/Pre-School)*, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

(B) Examination reports shall determine if a child's medical history and current state of health is satisfactory for participation in a [day] child care program.

(E) The medical examination report form and the health history report for school-age children shall be supplied by the department or the provider may use his/her own form if it contains all the information on the department's form. **The *School-Age Child Health Report form*, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

AUTHORITY: section 161.092, RSMo 2016, and section 210.221, RSMo [2000] Supp. 2021. This rule was previously filed as 13 CSR 40-61.110, 13 CSR 40-61.125, and 19 CSR 40-61.125. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.145 Nighttime Care. The State Board of Education is amending section (2).

PURPOSE: This amendment replaces the term "day care" with "child care."

(2) Family [day] child care homes licensed for nighttime care shall meet the requirements of the following additional rules:

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 13 CSR 40-61.130, 13 CSR 40-61.145 and 19 CSR 40-61.145. Original rule filed March 29, 1991, effective Oct. 31, 1991. Changed to 19 CSR 40-61.145, effective Dec. 9, 1993. Changed to 19 CSR 30-61.145 July 30, 1998. Moved to 5 CSR 25-400.145, effective Aug. 30, 2021. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care
Homes**

PROPOSED AMENDMENT

5 CSR 25-400.155 Overlap Care of Children. The State Board of Education is amending section (3) and adding new sections (4) and (6), renumbering as necessary, and removing the included Overlap Request Form and replacing it with an incorporated by reference form.

*PURPOSE: This amendment incorporates the **Overlap Request form** and specifies that overlap approval is not available to those facilities licensed exclusively for before- and after-school care.*

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.

(3) Overlap care shall not be provided until [an overlap request] a **Child Care Facility Overlap Request form** has been submitted, including the hours overlap care will be provided, and written approval has been received from the department. [Any changes in the hours of overlap care shall require that a new overlap request form be submitted and approved.] **The *Child Care Facility Overlap Request form*, promulgated 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

(4) **Any changes in the hours of overlap care shall require a new overlap request form be submitted and approved.**

[(4)](5) All procedures for admitting children shall be followed if a provider chooses to enroll children for overlap care.

(6) Overlap approval shall not be granted to facilities licensed exclusively for before- and after-school child care programs.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 13 CSR 40-61.140, 13 CSR 40-61.155 and 19 CSR 40-61.155. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care Homes**

PROPOSED AMENDMENT

5 CSR 25-400.210 Records and Reports. The State Board of Education is amending sections (3), (9), and (12), removing section (8), and renumbering as necessary.

PURPOSE: This amendment replaced the term “day care” with “child care,” updates internal references to rules, removes the requirement to maintain fire and disaster drills because it is duplicative of the Disaster and Emergency Preparedness rule, and adds the requirement to submit records to the department as required.

(3) Health information shall be retained in each child’s individual file and shall include:

(A) A medical examination report for each infant, toddler, or preschool child or a health report for each school-age child as required by [19 CSR 30-61.125] 5 CSR 25-400.125 Medical Examination Reports;

(C) Information concerning any accident or injury to the child while at the family [day] child care home or any emergency medical care; and

[(8)] The provider shall maintain a written record at the facility for fire, tornado, and other disaster drills as required by 19 CSR 30-61.086 Fire Safety.]

[(9)](8) A copy of qualifying background screening results shall be kept on file for child care staff members, as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements.

[(10)](9) All records of children shall be confidential, protected from unauthorized examination, and available to parents upon request.

[(11)](10) All records shall be available in the home for inspection by the department upon request.

[(12)](11) [Reports to the department shall be submitted as required] Records and reports shall be submitted to the department as required.

AUTHORITY: section 161.092, RSMo 2016, and sections 210.221.1(3), RSMo 2016 section] and 210.1080, RSMo Supp. [2018] 2021. This rule previously filed as 13 CSR 40-61.180, 13 CSR 40-61.210, and 19 CSR 40-61.210. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 400—Licensing Rules for Family Child Care Homes**

PROPOSED AMENDMENT

5 CSR 25-400.220 Variance Request. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment updates terms and clarifies how providers may request a rule variance and review of a variance denial.

(1) Any provider may request a variance from a rule. The request for a variance shall be [written to the Child Care Unit] submitted in writing to the department and shall include the [item(s)] rule(s) for which a variance is requested and the reason(s) the provider requests the variance. [Local inspectors may request a variance on behalf of the provider.] The department shall approve any variance request that does not endanger the health or safety of the children served by the facility.

(2) If a variance request is not approved by the [Child Care Unit] department, the provider shall be advised in writing of the basis for the denial. The provider may request a review of the decision by the [director] commissioner within thirty (30) calendar days of receipt of notification of the denial. The [director] commissioner or designee shall have fifteen (15) business days to make the final determination on the variance request. That determination is subject to Chapter 536, RSMo, review for licensed facilities.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 19 CSR 40-61.220. Emergency rule filed Aug. 27, 1993, effective

Sept. 5, 1993, expired Jan. 2, 1994. Emergency rule filed Jan. 4, 1994, effective Jan. 14, 1994, expired May 13, 1994. Original rule filed Aug. 27, 1993, effective April 9, 1994. Changed to 19 CSR 30-61.220 July 30, 1998. Moved to 5 CSR 25-400.220, effective Aug.30, 2021. Amended: Filed Oct. 7, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care
Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.010 Definitions. The State Board of Education is adding sections (3) and (8), removing sections (7), (9), (11), (15), (19), (21), (26), and (28), amending previously numbered sections (6), (8), and (18), and renumbering sections accordingly.

PURPOSE: *This amendment updates the terms used throughout Chapter 500 by removing, modifying, or replacing outdated terms and removing those terms not relevant to licensed child care.*

(3) Child care or day care is care of a child away from his/her own home for any part of the twenty-four- (24-) hour day for compensation or otherwise. Child care or day care is a voluntary supplement to parental responsibility for the child's protection, development, and supervision.

[(3)](4) A child care center or center, whether owned by a sole proprietor or other legal entity, is a child care program conducted in a location other than the provider's permanent residence, or separate from the provider's living quarters, where care is provided for children for any part of the twenty-four- (24-) hour day.

[(4)](5) A child care facility or facility is a family child care home, group child care home, or child care center.

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

(A) Ultimate responsibility for making and implementing decisions regarding the operation of the facility; and

(B) Ultimate financial control of the operation of the facility.

[(6)](7) A [C]child care staff member is a child care provider; persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who

are cared for or supervised by a child care provider; [or] individuals residing in a family child care home who are eighteen (18) years of age and older; **or individuals residing in a family child care home who are under eighteen (18) years of age and have been certified as an adult for the commission of an offense.**

[(7)] Day care or child care is care of a child away from his/her own home for any part of the twenty-four- (24-) hour day for compensation or otherwise. Day care or child care is a voluntary supplement to parental responsibility for the child's protection, development, and supervision. Day care or child care may be given in a family child care home, group child care home, or child care center.]

(8) Commissioner is the Commissioner of Education for the Missouri Department of Elementary and Secondary Education.

[(8)](9) Department is the Missouri Department of [Health and Senior Services] Elementary and Secondary Education.

[(9)] Director is the director of the Missouri Department of Health and Senior Services.]

[(11)] Graded boarding school is a public or private school which provides education in at least the first through the sixth grade and which provides lodging and meals for the pupils for the standard school term.]

[(12)](11) A group child care home, whether owned by a sole proprietor or other legal entity, is a child care program where care is given by a person licensed as a group child care home provider for not more than twenty (20) children for any part of the twenty-four- (24-) hour day. A group child care home shall be in a location other than the provider's permanent residence or separate from the provider's living quarters. The provider may be licensed to operate no more than one (1) group child care home or family child care home.

[(13)](12) Group size is the maximum number of children assigned to a specific staff member or group of staff members, occupying an individual classroom or well-defined physical space within a large room.

[(14)](13) Homeless children and youths—

(A) Are individuals who lack a fixed, regular, and adequate nighttime residence; and

(B) Include:

1. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

2. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children who qualify as homeless because the children are living in the circumstances described above.

[(15)] An hourly care facility is a facility licensed exclusively for irregular, intermittent, hourly care.]

[(16)](14) Infant is any child under twelve (12) months of age.

[(17)](15) Legal entity is the lawful or legally standing individual,

corporation, sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability company, limited liability partnership, partnership, charity, and other forms of organization that has the legal capacity to enter into agreements, contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and that is accountable for illegal activities.

[(18)](16) Licensee is an individual or other legal entity who has been granted a child care license by the Department of [Health and Senior Services] **Elementary and Secondary Education**.

[(19)] *Montessori school is a child care program that subscribes to Maria Montessori's educational philosophy and is accredited by the American Montessori Society or the Association Montessori Internationale.*

[(20)](17) Night is the part of the twenty-four- (24-) hour day between 9:00 p.m. and 6:00 a.m.

[(21)] *Nursery school is a program operated by a person or organization with the primary function of providing an educational program for preschool-age children for no more than four (4) hours per child per day.*

[(22)](18) Premises is a house(s), dwelling(s), or building(s) and its adjoining land.

[(23)](19) Preschool child is any child two through five (2-5) years of age who is not in kindergarten.

[(24)](20) A religious organization is—
(A) A church, synagogue, or mosque;
(B) An entity that qualifies for federal tax exemption status as a not-for-profit religious organization under Section 501(c)(3) of the *Internal Revenue Code*; or
(C) An entity whose real estate on which the child care facility is located is exempt from taxation because it is used for religious purposes.

[(25)](21) School-age child is any child five (5) years of age or older who is in kindergarten or above.

[(26)] *School system is a program established primarily for education and which meets the following criteria:*
(A) *Provides education in at least the first through the sixth grade; and*
(B) *Provides evidence that the school system's records will be accepted by a public or private school for the transfer of any student.*

[(27)](22) Staff/child ratio is the number of caregivers required in relation to the number of children in care.

[(28)] *Summer camp is a program operated from May to September by a person or organization with the primary function of providing a summer recreational program for children five (5) years of age or older, and providing no child care for children younger than five (5) years of age in the same building or in the same outdoor play area.*

[(29)](23) Toddler is any child twelve to twenty-four (12-24) months of age.

AUTHORITY: *section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-62.010 and 19 CSR 40-62.010. Original rule filed in 1956. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers**

PROPOSED RESCISSION

5 CSR 25-500.022 Exemption of Day Care Facilities. This rule defined the basis for which a group day care home or child day care center may qualify for exemption for licensure.

PURPOSE: *This rule is being rescinded to consolidate sections (2) and (3) into 5 CSR 25-500.032 Organization and Administration. Section (1) is removed entirely because it is not relevant to facilities licensed under this chapter.*

AUTHORITY: *section 210.211.1(3), RSMo Supp. 1993. This rule previously filed as 13 CSR 40-62.035, 13 CSR 40-62.022 and 19 CSR 40-62.022. Original rule filed March 29, 1991, effective Oct. 31, 1991. Changed to 19 CSR 40-62.022, effective Dec. 9, 1993. Emergency amendment filed Aug. 18, 1993, effective Aug. 28, 1993, expired Dec. 25, 1993. Emergency amendment filed Jan. 4, 1994, effective Jan. 14, 1994, expired May 13, 1994. Amended: Filed Aug. 18, 1993, effective April 9, 1994. Changed to 19 CSR 30-62.022 July 30, 1998. Moved to 5 CSR 25-500.022, effective Aug. 30, 2021. Rescinded: Filed Oct. 12, 2021.*

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

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

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rescission with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.032 Organization and Administration. The State

Board of Education is amending sections (1), (2), and (4), and adding new sections (5)-(6).

PURPOSE: *This amendment updates the term “day care” to “child care” and adds sections (5) and (6) from rescinded 5 CSR 25-500.022(2) and (3) Exemption of Day Care Facilities.*

(1) Each [day] child care facility shall be organized according to written policies and procedures which clearly establish job responsibilities and lines of administrative authority.

(2) If a group [day] child care home is owned by a legal entity, the legal entity shall designate a person to be responsible for the daily operation of the facility and to meet the requirements of the group [day] child care home provider. The department shall be notified in writing immediately if there is a change of the person designated to be responsible for the daily operation of the facility and to meet the requirements of the group [day] child care home provider.

(4) The person(s) or legal entity who owns a [day] child care facility shall be responsible for meeting all debts and obligations incurred by the facility and for maintaining compliance with all licensing rules for group [day] child care homes and [day] child care centers.

(5) When a nonreligious organization, having as its principal purpose the provision of child care services, enters into an arrangement with a well-known religious order to provide continuing assistance in the maintenance or operation of a child care facility, the facility is not under the exclusive control of the well-known religious order and does not qualify for exemption from licensure under section 210.211.1(17), RSMo.

(6) If the person(s) operating the facility claims exemption from licensure, s/he shall file all information requested by the department to make a determination of exemption prior to opening. Facilities may waive the right to apply for exemption and request voluntary licensure. These facilities shall comply with all licensing rules.

AUTHORITY: *section 161.092, RSMo 2016, and section 210.221.1(3), RSMo [2016] Supp. 2021. This rule previously filed as 13 CSR 40-62.061, 13 CSR 40-62.032, and 19 CSR 40-62.032. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.042 Licensing Process. The State Board of Education is amending sections (2) and (5)-(9).

PURPOSE: *This amendment updates incorporated forms and references to rules contained within.*

(2) Upon receipt of a completed *Application for License to Operate a Child Care Facility* form, a licensing inspection shall be made. See *Application for License to Operate a Child Care Facility* form, [promulgated as of August 2020] revised 2021, and incorporated by reference in this rule/. A/as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendment or additions. If licensing rules are not met within six (6) months, the application shall be void and another application shall be filed.

(5) Prior to the granting of a license, the provider shall meet the requirements of [19 CSR 30-62.087] 5 CSR 25-500.087 Fire Safety.

(6) Medical examination reports for all adults working in the facility, as required by [19 CSR 30-62.122] 5 CSR 25-500.122 Medical Examination Reports, shall be on file at the facility and available for review.

(7) Medical examination reports shall be on file at the facility within thirty (30) days following the admission of each infant, toddler, or preschool child as required by [19 CSR 30-62.122] 5 CSR 25-500.122 Medical Examination Reports. A health report for school-age children shall be on file as required by [19 CSR 30-62.122] 5 CSR 25-500.122.

(8) Enrollment information for each child shall be on file at the facility as required by [19 CSR 30-62.132] 5 CSR 25-500.132 Admission Policies and Procedures.

(9) The child care provider and child care staff members, as defined by [19 CSR 30-63.010] 5 CSR 25-600.010 Definitions, shall have qualifying background screening results on file as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements, prior to initial issuance of the license.

AUTHORITY: *section[s] 161.092, RSMo 2016, and sections 210.221.1(3) and 210.1080, RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-62.021, 13 CSR 40-62.042, and 19 CSR 40-62.042. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care
Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.052 Annual Requirements. The State Board of Education is amending section (1).

PURPOSE: This amendment updates the incorporated Annual Declaration for Licensed Facility form.

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

(A) An Annual Declaration for Licensed Facility form, [promulgated as of August 2020] revised 2021 and incorporated by reference in this rule. A/as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>, indicating the licensee's intent to continue operating a licensed group child care home or child care center and agreement to comply with all statutes and department licensing rules. **This rule does not incorporate any subsequent amendments or additions;**

AUTHORITY: section[s] 161.092, RSMo 2016, and sections 210.221.1(3) and 210.252.5, RSMo Supp. [2020] 2021. This rule previously filed as 13 CSR 40-62.031, 13 CSR 40-62.052, and 19 CSR 40-62.052. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care
Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.102 Personnel. The State Board of Education is amending sections (1)-(3).

PURPOSE: This amendment updates internal references to rules and

forms, removes duplicative language, and clarifies that an individual with a disqualifying background screening result shall be prohibited from being present on the premises of the child care facility.

(1) General Staff Requirements.

(K) The child care provider shall ensure that within seven (7) days of employment or volunteering and before being left alone with children that caregivers receive a facility orientation. [The child care provider shall ensure that documentation verifying completion of the facility orientation is maintained and on file for review by the department for each caregiver.] The facility orientation shall include:

1. A tour of the facility, indoors and outdoors; and
2. A review of the following:

- A. Licensing rules;
- B. The facility's license and its limitations, if any;
- C. The facility's written child care practices, including procedures for medication administration, child illness, discipline, and guidance policies;
- D. The daily schedule;
- E. The assigned duties and responsibilities of staff;
- F. The names and ages of the children for whom the staff member will be responsible, including any special health, nutritional, or developmental needs;
- G. The location of children's records;
- H. The facility's safe sleep policy, if applicable;
- I. The facility's disaster emergency plan and the location of emergency information; and

J. The mandated responsibility to report any suspected child abuse or neglect to the Children's Division at the toll-free number 1-800-392-3738 or online at <https://apps.dss.mo.gov/OnlineCanReporting/default.aspx>.

(M) The provider shall request the results of a criminal background check for child care staff members as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements.

(N) Child care staff members shall have qualifying background screening results on file as required by [19 CSR 30-63.020] 5 CSR 25-600.020 General Requirements.

(O) Child care staff members with disqualifying background screenings results as defined in [19 CSR 30-63.040] 5 CSR 25-600.040 Background Screening Findings, shall be prohibited from being present on the premises of the facility [during child care hours].

(2) Center Director or Group Child Care Home Provider.

(A) General Requirements.

1. An approved certificated group child care home provider or center director shall be responsible for planning, monitoring, and managing the facility's daily program.

A. A Center Director [or]/Group Child Care Home Provider Certification Request form shall be submitted to the department. See Center Director [or]/Group Child Care Home Provider Certification Request form, [promulgated as of August 2020] revised 2021, and incorporated by reference in this rule. A/as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.

B. Once the center director or group child care home provider is certificated by the department, the Center Director [or]/Group Child Care Home Provider Approval Request form shall be submitted to the department and maintained on file at the facility. See Center Director [or]/Group Child Care Home Provider Approval Request form, [promulgated as of August 2020] revised 2021 and incorporated by

reference in this rule. A) as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] **Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>**. This rule does not incorporate any subsequent amendments or additions.

2. Center directors and group child care home providers routinely shall be on duty during the hours of highest attendance a minimum of forty (40) hours per week. If the facility operates less than forty (40) hours per week, the center director or group child care home provider shall be on duty at least fifty percent (50%) of the operating hours.

3. The licensee is required to maintain an approved certificated group child care home provider or center director on staff.

4. The duties and responsibilities of the center director or group child care home provider shall be defined clearly in writing.

5. In the absence of the center director or group child care home provider, another responsible individual shall be designated to be in charge of the facility.

6. The center owner(s), or the board president or chairperson, shall notify the department immediately when there is a change of directors and shall have a qualifying criminal background check on file as required by [19 CSR 30-63.020] **5 CSR 25-600.020 General Requirements**.

(3) Child Care Training.

(K) Clock hours earned to complete the previous year's requirements shall not be applied to the current year's clock hour requirements. Caregivers shall submit the *Clock Hour Training [Credit] Reassignment* form to the OPEN Initiative to assign clock hours to the appropriate year. See *Clock Hour[s] Training [Credit] Reassignment form [promulgated as of 2018], revised 2021*, and incorporated by reference in this rule. A) as published by the Missouri Department of [Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and available by the department at <https://health.mo.gov/safety/childcare/forms.php>] **Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>**. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: [sections 210.221 and 210.1080, RSMo Supp. 2020, and] sections 161.092 and 210.223, RSMo 2016, and sections 210.221 and 210.1080, RSMo Supp. 2021. This rule previously filed as 13 CSR 40-62.091, 13 CSR 40-62.102, and 19 CSR 40-62.102. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION Division 25—Office of Childhood Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers

PROPOSED AMENDMENT

5 CSR 25-500.122 Medical Examination Reports. The State Board of Education is amending sections (1) and (2) and deleting the forms herein.

PURPOSE: This amendment replaces the term “day care” with “child care,” removes incorporated forms and replaces them with updated forms incorporated by reference, and updates references to the Missouri Department of Health and Senior Services.

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) Staff and Volunteers.

(A) All persons working in a [day] child care facility in any capacity during child care hours, including volunteers counted in staff/child ratios, shall be in good physical and emotional health with no physical or mental conditions which would interfere with child care responsibilities. These persons shall have a medical examination report, signed by a licensed physician or registered nurse who is under the supervision of a licensed physician, on file at the facility at the time of initial licensure or within thirty (30) days following employment.

(B) Medical examination reports shall include either a [“Risk Assessment for Tuberculosis” form, included herein, completed and signed by a health care professional, as provided by the Missouri Department of Health and Senior Services (MDHSS).] **Tuberculosis (TB) Risk Assessment form, completed and signed by a health care professional, or a negative tuberculin skin test (TST) completed not more than twelve (12) months before beginning work in the facility. The Tuberculosis (TB) Risk Assessment form, revised March 2014, is incorporated by reference in this rule, as published by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102 and available by the Missouri Department of Health and Senior Services at <https://health.mo.gov/living/healthconditions/communicable/tuberculosis/tbmanual/pdf/RiskAssessmentForm.pdf>. This rule does not incorporate any subsequent amendments or additions.** If the person has signs or symptoms of tuberculosis, or risk factors for tuberculosis, then testing for tuberculosis shall occur.

1. If the person has no documented history of ever receiving a tuberculin skin test (TST), and elects to receive a TST, then a two-(2)-[-] step TST is required. A history of bacilli Calmette-Guerin vaccination (BCG) shall not exempt a person from receiving a tuberculin test.

2. Persons that have a newly positive tuberculin test(s) shall not be allowed to work until a medical evaluation is performed to determine if the person has active contagious tuberculosis.

3. Persons with active contagious tuberculosis shall be excluded from employment until deemed non-infectious by [MDHSS] the Missouri Department of Health and Senior Services or the local public health agency. The person may return to work once the above criteria have been met, as long as the person adheres to his/her prescribed treatment regimen.

4. All positive tuberculin tests shall be reported to the Missouri Department of Health and Senior Services or local public health agency as required by 19 CSR 20-20.020.

(C) Medical examination reports shall be completed not more than twelve (12) months prior to beginning work in the facility and may be transferable to another [day] child care facility for subsequent employment.

(D) The medical examination report form shall be supplied by the department or the facility may use its own form if it contains all the information on the department's form. **The Medical Examination Report for Caregivers and Staff form, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

(2) Children.

(A) The provider, within thirty (30) days following the admission of each infant, toddler, or preschool child, shall require a medical examination report signed by a licensed physician or registered nurse who is under the supervision of a licensed physician and completed not more than twelve (12) months prior to admission. **The provider may use the department's medical assessment form or the provider may use its own form if it contains all the information on the department's form. The Child Medical Examination Report (Infant/Toddler/Pre-School) form, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

(B) The examination report shall determine if a child's medical history and current state of health is satisfactory for participation in a [day] child care program.

(E) The medical examination report form and the health history report for school-age children shall be supplied by the department or the facility may use its own form if it contains all the information on the department's form. **The School-Age Child Health Report form, revised 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

AUTHORITY: section 161.092, RSMo 2016, and section 210.221, RSMo [2000] Supp. 2021. This rule was previously filed as 13 CSR 40-62.110, 13 CSR 40-62.122, and 19 CSR 40-62.122. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers**

PROPOSED RESCISSION

5 CSR 25-500.152 Hourly Care Facilities. This rule set forth requirements for facilities providing irregular, intermittent, hourly care for children.

PURPOSE: This rule is being rescinded because it is outdated and no longer utilized.

AUTHORITY: section 210.221.1(3), RSMo Supp. 1993. This rule previously filed as 13 CSR 40-62.140, 13 CSR 40-62.152 and 19 CSR 40-62.152. Original rule filed March 29, 1991, effective Oct. 31, 1991. Changed to 19 CSR 40-62.152, effective Dec. 9, 1993. Changed to 19 CSR 30-62.152 July 30, 1998. Moved to 5 CSR 25-500.152, effective Aug. 30, 2021. Rescinded: Filed Oct. 12, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.162 Overlap Care of Children. The State Board of Education is amending sections (1), (2), and (6), adding new sections (3) and (7), removing section (5), and renumbering the rule accordingly.

PURPOSE: This amendment incorporates by reference the Overlap Request form and clarifies how overlap is calculated and when it may be utilized.

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) There may be situations (for example, to accommodate parents' work shifts, before- and after-school care or before- and after-summer camp care) when the number of children in care may exceed the licensed capacity of the facility at the time of overlap. The number

in care shall never be more than one-third (1/3) over the licensed capacity of the facility **at the time of overlap**. The overlap period(s) shall not exceed two (2) hours total in any twenty-four- (24-)[-] hour child-care day. The two (2) hours of available overlap time may be utilized in smaller time periods.

(2) Overlap care shall not be provided until *[an overlap request]* a **Child Care Facility Overlap Request form** has been submitted, *including the hours overlap care will be provided* and written approval has been received from the department. *[Any changes in the hours of overlap care shall require that a new overlap request form be submitted and approved (see 19 CSR 40-61.155)]* **The Child Care Facility Overlap Request form, promulgated 2021, is incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.**

(3) **Any changes in the hours of overlap care shall require a new overlap request form be submitted and approved.**

[[3]](4) All procedures for admitting children shall be followed if a provider chooses to enroll children for overlap care.

[[4]](5) Staff/child ratios shall be maintained during overlap periods.

[[5]] **When before- and after-summer camp care for children is provided, the provider shall require that the parent(s) sign a statement of consent for the child to be taken from the facility to the summer camp location.]**

(6) Overlap shall be granted to an infant/toddler unit or to a preschool/school-age unit based on the licensed capacity of each unit. **Overlap for infant/toddler units shall be calculated separately from the overlap of preschool/school-age units, with the required staff/child ratios maintained for each group.** A provider may not use the time period for one (1) unit to increase the overlap period for the other unit.

(7) **The overlap period(s) shall not exceed two (2) hours total daily for both infant/toddler and preschool/school-age children.**

[[7]](8) Overlap approval shall not be granted to facilities licensed exclusively for before- and after-school child care programs.

AUTHORITY: *section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 13 CSR 40-62.150, 13 CSR 40-62.162, and 19 CSR 40-62.162. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care
Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.222 Records and Reports. The State Board of Education is amending sections (3), (9), and (12), removing section (8), and renumbering the remainder of the rule accordingly.

PURPOSE: *This amendment updates internal references to rules, removes the requirement to maintain fire and disaster drills because it is duplicative of 5 CSR 25-500.090 Disaster and Emergency Preparedness, and adds the requirement to submit records to the department as required.*

(3) Health information shall be retained in each child's individual file and shall include:

(A) A medical examination report for each infant, toddler, or preschool child or a health report for each school-age child as required by *[19 CSR 30-62.122]* **5 CSR 25-500.122** Medical Examination Reports;

[[8]] **The provider shall maintain a written record at the facility for fire and disaster drills.]**

[[9]](8) A copy of qualifying background screening results shall be kept on file for child care staff members, as required by *[19 CSR 30-63.020]* **5 CSR 25-600.020** General Requirements.

[[10]](9) All records of children shall be confidential, protected from unauthorized examination, and available to the parent(s) upon request.

[[11]](10) All records shall be available in the facility for inspection by the department upon request.

[[12]](11) **[Reports to the department shall be submitted as required.] Records and reports shall be submitted to the department as required.**

AUTHORITY: *section 161.092, RSMo 2016, and sections 210.221.1(3)[, RSMo 2016,] and [section] 210.1080, RSMo Supp. [2018] 2021. This rule previously filed as 13 CSR 40-62.190, 13 CSR 40-62.222, and 19 CSR 40-62.222. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 500—Licensing Rules for Group Child Care
Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.230 Variance Request. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment updates terms and clarifies how providers may request a rule variance and review of a variance denial.

(1) Any provider may request a variance from a rule. The request for a variance shall be *[written to the Child Care Unit]* submitted in writing to the department and shall include the *[item(s)]* rule(s) for which a variance is requested and the reason(s) the provider requests the variance. *[Local inspectors may request a variance on behalf of the provider.]* The department shall approve any variance request that does not endanger the health or safety of the children served by the facility.

(2) If a variance request is not approved by the *[Child Care Unit]* department, the provider shall be advised in writing of the basis for the denial. The provider may request a review of the decision by the *[director]* commissioner within thirty (30) calendar days of receipt of notification of the denial. The *[director]* commissioner or designee shall have fifteen (15) business days to make the final determination on the variance request. That determination is subject to Chapter 536, RSMo, review for licensed facilities.

AUTHORITY: section 161.092, RSMo 2016, and section 210.221.1(3), RSMo Supp. [1993] 2021. This rule previously filed as 19 CSR 40-62.230. Emergency rule filed Aug. 27, 1993, effective Sept. 5, 1993, expired Jan. 2, 1994. Emergency rule filed Jan. 4, 1994, effective Jan. 14, 1994, expired May 13, 1994. Original rule filed Aug. 27, 1993, effective April 9, 1994. Changed to 19 CSR 30-62.230 July 30, 1998. Moved to 5 CSR 25-500.230, effective Aug. 30, 2021. Amended: Filed Oct. 12, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 600—Child Care Comprehensive Background
Screening**

PROPOSED AMENDMENT

5 CSR 25-600.010 Definitions. The State Board of Education is

amending sections (1) and (5), adding a new section (3), removing previous section (4), and renumbering sections accordingly.

PURPOSE: This amendment expands the definition of child care provider to include registered child care providers, replaces the Department of Health and Senior Services with the Department of Elementary and Secondary Education, and replaces the term “Director” with “Commissioner.”

(1) Child care provider is a person licensed, *[or]* regulated, or registered to provide child care within the state of Missouri, including the member(s), manager(s), shareholder(s), director(s), and officer(s) of any entity licensed, *[or]* regulated, or registered to provide child care within the state of Missouri.

(3) Commissioner is the Commissioner of Education for the Missouri Department of Elementary and Secondary Education.

[(3)](4) Criminal background check includes the following:

- (A) A Federal Bureau of Investigation fingerprint check;
- (B) A search of the National Crime Information Center’s National Sex Offender Registry; and
- (C) A search of the following registries, repositories, including the Family Care Safety Registry, or databases in Missouri, the state where the child care staff member resides, and each state where such staff member resided during the preceding five (5) years:
 - 1. The state criminal registry or repository, with the use of fingerprints being required in the state where the staff member resides and optional in other states;
 - 2. The state sex offender registry or repository; and
 - 3. The state-based child abuse and neglect registry and database.

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

(5) Department is the Missouri Department of *[Health and Senior Services]* Elementary and Secondary Education.

AUTHORITY: section 161.092, RSMo 2016, and section 210.1080, RSMo Supp. [2020] 2021. This rule originally filed as 19 CSR 30-63.010. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expired March 13, 2021. Amended: Filed Aug. 31, 2020, effective Feb. 28, 2021. Moved to 5 CSR 25-600.010, effective Aug. 30, 2021. Amended: Filed Oct. 8, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 600—Child Care Comprehensive Background
Screening**

PROPOSED AMENDMENT

5 CSR 25-600.020 General Requirements. The State Board of Education is amending section (1).

PURPOSE: This amendment replaces the phrase “family child care home, group child care home, child care center, or license-exempt” with “licensed, regulated, or registered child care,” expanding the provisions of this rule to registered child care facilities.

(1) Prior to the employment or presence of a child care staff member in a [family child care home, group child care home, child care center, or license-exempt] licensed, regulated, or registered child care facility not exempted by section 210.1080.13, RSMo, the child care provider shall request the results of a criminal background check for such child care staff member from the department.

AUTHORITY: section 161.092, RSMo 2016, and section 210.1080, RSMo Supp. [2020] 2021. This rule originally filed as 19 CSR 30-63.020. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expired March 13, 2021. Amended: Filed Aug. 31, 2020, effective Feb. 28, 2021. Moved to 5 CSR 25-600.020, effective Aug. 30, 2021. Amended: Filed Oct. 8, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 600—Child Care Comprehensive Background
Screening**

PROPOSED AMENDMENT

5 CSR 25-600.040 Background Screening Findings. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment replaces the phrase “family child care home, group child care home, child care center, or license-exempt” with “licensed, regulated, or registered child care,” expanding the provisions of this rule to registered child care facilities. This amendment also specifies that the ineligibility to maintain a presence at family child care homes is only during child care hours and includes minors certified as adults in the commission of an offense, consistent with section 210.1080.5, RSMo.

(1) Any child care staff member or prospective child care staff member shall be ineligible for employment or presence at a [family child care home, group child care home, child care center, or license-exempt] licensed, regulated, or registered child care facility not exempted by section 210.1080.13, RSMo, if such person—

(2) Adult household members eighteen (18) years of age and older, or household members who are under eighteen (18) years of age but have been certified as an adult for the commission of an offense, in a family child care home shall be ineligible to maintain a presence at a family child care home during child care hours if any one (1) or more of the provisions of section (1) of this rule applies to them.

AUTHORITY: section 161.092, RSMo 2016, and section 210.1080, RSMo Supp. [2020] 2021. This rule originally filed as 19 CSR 30-63.040. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expired March 13, 2021. Amended: Filed Aug. 31, 2020, effective Feb. 28, 2021. Moved to 5 CSR 25-600.040, effective Aug. 30, 2021. Amended: Filed Oct. 8, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25—Office of Childhood
Chapter 600—Child Care Comprehensive Background
Screening**

PROPOSED AMENDMENT

5 CSR 25-600.050 Process for Appeal Required in Section 210.1080, RSMo. The State Board of Education is amending section (1).

PURPOSE: This amendment expands the provisions of this rule to staff members of regulated and registered child care facilities appealing their ineligibility determinations.

(1) The prospective child care staff member or child care staff member of a licensed, regulated, or registered child care facility may appeal a finding of ineligibility for employment or presence at a child care facility in writing to the department as allowed by section 210.1080.9, RSMo.

AUTHORITY: section 161.092, RSMo 2016, and section 210.1080, RSMo Supp. [2020] 2021. This rule originally filed as 19 CSR 30-63.050. Emergency rule filed Feb. 15, 2019, effective Feb. 25, 2019, expired Aug. 23, 2019. Original rule filed Feb. 15, 2019, effective Aug. 30, 2019. Emergency amendment filed Aug. 31, 2020, effective Sept. 15, 2020, expired March 13, 2021. Amended: Filed Aug. 31, 2020, effective Feb. 28, 2021. Moved to 5 CSR 25-600.050, effective

Aug. 30, 2021. Amended: Filed Oct. 8, 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 Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing 573-526-8000, or via e-mail at childhoodrules@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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

PROPOSED AMENDMENT

12 CSR 10-2.067 Failure to Pay Estimated Tax for Tax Years Ending After December 31, [1983] 1989. The director is amending the title, the purpose statement, and sections (1)-(15).

PURPOSE: This rule is being amended to remove or change unnecessary, outdated, or incorrect language and citations, to account for statutory and other legal changes since the original filing of the rule, to make the language of section (7) of this rule more lenient, and to promote clarity.

PURPOSE: This rule clarifies the requirement for filing declaration of estimated income tax by individuals and corporations [and], the determination of the amount of the installments required to be paid by the appropriate due dates, and the additions to tax imposed for the underpayment of estimated tax.

[(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective on January 1, 1973.]

[(2)](1) Applicability and Scope of Rule. This rule is applicable only with respect to taxable years ending after December 31, [1983] 1989, and is intended as an interpretive guideline in the application of Chapter 143, RSMo.

[(3)](2) Definitions. As used in this rule—

(A) The term “director” shall mean the director of revenue or his/her duly authorized agent or designee;

(B) The term “farmer” shall mean an individual [having an estimated Missouri adjusted gross income (MAGI) from farming for the taxable year which is at least two-thirds (2/3) of his/her total estimated MAGI taxable in this state for the taxable year] described in section 143.531.2, RSMo. The term does not include [a fisherman or] a corporation and income from catching, taking, harvesting, cultivating, or farming any aquatic forms of animal and vegetable life (other than oyster farming) does not constitute gross income from farming; and

[(C) The term large corporation shall mean that the corporation (or any predecessor corporation) in any of the three (3) preceding taxable years had a federal taxable income of at least one (1) million dollars and had a Missouri taxable income of one hundred thousand dollars (\$100,000); and]

[(D)](C) The term “other corporation” shall mean any corporation not defined [in subsection (3)(C)] as a “large corporation” in section 143.761, RSMo.

[(4)](3) General Rule. Section 143.761[. 1], RSMo, imposes an addition to tax in the case of any underpayment of estimated tax by an individual or a corporation (with certain exceptions described in section 143.761.4., RSMo). This addition to tax is in addition to any applicable civil or criminal penalties [and] (including, but not limited to, an addition to tax or penalty under section 143.751, RSMo). If the amount of Missouri estimated tax is reasonably expected to be at least the amount that requires a declaration of estimated tax under section 143.521, RSMo, then the addition to tax under section 143.761, RSMo, is imposed without regard to [whether or not extenuating circumstances disclosed a] any reasonable cause or lack of willful neglect for the underpayment. There [are] is no provision for the payment of interest with respect to any underpayment of estimated tax.

[(5)](4) Amount [and Period] of Underpayment. The amount of the underpayment for any installment date is the excess of—

(A) Ninety percent (90%) in the case of corporations[, eighty percent (80%) in the case of] or individuals[, (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax shown on the return for the taxable year, or if no return was filed, ninety percent (90%) in the case of corporations[, eighty percent (80%) in the case of] or individuals[, (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax for the year, divided by the number of installment dates prescribed for the taxable year, over; and

(B) The amount, if any, of the installment paid on or before the last day prescribed for its payment.

[(6)](5) The amount of the addition is determined [at] by the application of the rate set forth in section [(8) of this rule upon] 32.065, RSMo, to the amount of underpayment of any installment of estimated tax for the [year from] period beginning with the date the installment [is] was required to be paid until the earliest of the following:

(A) The fifteenth day of the fourth month following [tax] the close of the taxable year; or

(B) With respect to any portion of the underpayment, the date on which such portion is paid[, whichever is earlier].

For the purpose of determining the period of underpayment, the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time; and a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subsection [(5)](4)(A) of this rule for the installment date, shall be considered a payment of any previous underpayment.

[(7)](6) In determining the amount of the installment paid on or before the last day prescribed for payment of the installment, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his/her credit for taxes withheld at the source on wages, and the amount of that credit shall be deemed a payment of estimated tax. An equal part of the amount of the credit shall be considered paid on each installment date for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates the amounts were actually withheld.

[(8) Beginning January 1, 1983 the rate of additions to tax is the same as established by the director of revenue under authority of section 32.065, RSMo and 12 CSR 10-41.010 Annual Adjusted Rate of Interest.]

[(9)](7) Statement Relating to Underpayment. If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one (1) or more of the exceptions described in section 143.761.4./, RSMo, precludes the imposition of the addition to the tax, the appropriate Missouri form should be attached to the income tax return for the taxable year showing the applicability of an exception. *[Any error in computation]* **Failure to show the applicability of [the estimate] an exception** will result in the imposition of the additions to tax on the total amount of the underpayment **of the installment** and not on the amount by which the taxpayer fails to come within one (1) of the five (5) exceptions.

[(10)](8) Exceptions to Imposition of Additions to Tax. Exceptions shown in subsections *[(10)](8)(A)-(D)* apply to individuals. Exceptions shown in subsections *[(10)](8)(A)-(E)* apply to all corporations except large corporations as defined in *[subsection (3)(C) of this rule.]* **section 143.761, RSMo.** Only the exceptions shown in subsections *[(10)](8)(B), (C), and (E)* apply to large corporations. The addition to the tax under section 143.761, RSMo, will not be imposed for any underpayment of any installment of estimated tax, if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax equals or exceeds the least of the following amounts:/.

(A) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, **provided that the preceding taxable year was a year of twelve (12) months** and a return showing a liability for tax was filed for that year:/.

(B) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) in the case of other corporations/, *eighty percent (80%) in the case of* or individuals/, (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis *[by—]* as follows.

1. *[Multiplying]* **Multiply** by twelve (12) (or the number of months in the taxable year if less than twelve (12)) the taxable income (computed without the standard deduction and without the deduction for personal and dependency exemptions, **if any**) or the AGI if the standard deduction is to be used for the calendar months:/.

2. *[Dividing]* **Divide** the resulting amount by the number of those calendar months:/.

3. *[Deducting]* **Deduct** from that amount the standard deduction, if applicable, the deductions for personal and dependency exemptions, **if any**, determined as of the date prescribed for payment, and the deduction for federal income tax liability;/ and/.

4. *[Multiplying]* **Multiply**, in the case of an **other** corporation *[other than a large corporate taxpayer]*, the amount determined in paragraph *[(10)](8)(B)3.* of this rule by the applicable **apportionment** percentage determined *under section 143.451 or 32.300, RSMo* as of the last day of the month preceding the date prescribed for payment:/.

For tax years beginning on or after January 1, 2020, the applicable apportionment percentage is determined under section 143.455, RSMo. For tax years beginning before January 1, 2020, the applicable apportionment percentage is determined under either section 143.451 or 32.200, RSMo.

(C) An amount equal to ninety percent (90%) of the tax computed, at the rate applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year preceding the date prescribed for payment:/.

(D) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and

the taxpayer's status with respect to personal and dependency exemptions, **if any**, for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to that year, in case of a taxpayer required to file a return for the preceding taxable year:/.

(E) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis *[by—]* as follows.

1. *[Multiplying]* **Multiply** by twelve (12) the taxable income:/ for the **“applicable period”** identified in paragraph (8)(E)3. below.

2. *[Dividing]* **Divide** the resulting amount by the **whole** number of months *[in the taxable year]* **within the “applicable period”** used in paragraph (8)(E)1. above (that is, 3, 5, 6, 8, 9 or 11/), as the case may be/; and/.

3. *[Using]* **Determine** the *[calculations]* **“applicable period”** for use in paragraphs *[(10)](8)(E)1.* and 2. as follows:/.

A. *[For t]*The first three (3) months of the taxable year, in the case of an installment required to be paid in the fourth month:/.

B. *[For t]*The first three (3) months or *[for]* the first five (5) months of the taxable year, in the case of an installment required to be paid in the sixth month:/.

C. *[For t]*The first six (6) months or *[for]* the first eight (8) months of the taxable year, in the case of an installment required to be paid in the ninth month/; and/.

D. *[For t]*The first nine (9) months or *[for]* the first eleven (11) months of the taxable year, in the case of the installment required to be paid in the twelfth month:/.

[(F) For example, illustrating the application of the provisions for imposition of addition to tax for any underpayment of estimated tax in the case of an individual, see the examples set out in 12 CSR 10-2.065(10); and]

(F) **Example: An individual filed an income tax return for his/her taxable year 2022, which showed an income tax of four thousand dollars (\$4,000). The individual always files on a calendar year basis. The individual pays installments of estimated tax of one thousand dollars (\$1,000) each on April 15, June 15, and September 15 of 2023, and on January 15 of 2024. The individual files an income tax return for his/her taxable year 2023 on April 15, 2024, and the return shows an income tax of thirteen thousand dollars (\$13,000). The individual is not liable for an addition to tax for the failure to pay estimated tax, as the individual has timely paid installments of estimated tax in amounts that meet the exception in subsection (8)(A) of this rule.**

(G) *[Taxpayer,]* **Example: [a]** farmer files an income tax return on February 15 of the succeeding year paying his/her total tax liability of five thousand dollars (\$5,000) on that date. In this case, there is no underpayment of estimated tax since the filing of the return and **full** payment of the tax on or before *[February 28]* **March 1** of the succeeding year is considered as the *[taxpayer's]* farmer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year *[under section]* pursuant to section 143.521.6./, RSMo. In the event that the *[taxpayer]* farmer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have **only** been required to pay sixty-six and two-thirds percent (66 2/3%) of his/her total tax liability for the year on that date.

(H) **Example: An individual (other than a farmer) files an income tax return on February 15 of the succeeding year paying his/her total tax liability of five thousand dollars (\$5,000) on that date. In this case, there is an underpayment of estimated tax. The individual has not paid any installments of estimated tax. Unless the individual meets one (1) of the exceptions in subsections (8)(A)-(D) of this rule, an addition to tax for failure to pay estimated tax will be imposed.**

[(11)](9) Example: The following example illustrates the application of the [new] exception in subsection (8)(E) of this rule to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year [large] corporation[:]. Assume that a corporation has eighty thousand dollars (\$80,000) of Missouri taxable income from January through June, and one hundred thousand dollars (\$100,000) of Missouri taxable income from January through August. Further assume that the corporate income tax rate is four percent (4%), and that the first two (2) installments for the year already meet the exception in subsection (8)(E) of this rule. The third installment payment must be at least four thousand fifty dollars (\$4,050) for it to meet the exception in subsection (8)(E) of this rule, calculated as follows:

The lesser of:

$\$80,000 \times 12 = \$960,000$
 $\$960,000 \text{ divided by } 6 = \$160,000$
 $\$160,000 \times 4\% = \$6,400$
 $\$6,400 \times 90\% = \$5,760$
 $\$5,760 \times 75\% = \$4,320$

or

$\$100,000 \times 12 = \$1,200,000$
 $\$1,200,000 \text{ divided by } 8 = \$150,000$
 $\$150,000 \times 4\% = \$6,000$
 $\$6,000 \times 90\% = \$5,400$
 $\$5,400 \times 75\% = \$4,050.$

[(A) The Y Corporation is a large corporation meeting all requirements in subsection (3)(C). Assume in the first three (3) months of the taxable year its federal taxable income from all sources was two (2) million dollars and that it had no positive or negative modifications for the period under sections 143.121 and 143.141, RSMo. Further assume that its apportionment factor for the period is fifty percent (50%). The following procedure would be followed in determining whether the exception in subsection (10)(E) of this rule would apply to its required first installment payment due in the fourth month:

1. Net income all sources
January through March \$ 2,000,000;
 2. Annualized income—
line 1. X 12/3 \$ 8,000,000;
 3. Less estimated
federal tax \$ 3,659,750;
 4. Annualized Missouri
taxable income
all sources \$ 4,340,250;
 5. Annualized Missouri
taxable income at 50% \$ 2,170,125;
- and
6. Estimated Missouri
tax at 100% \$108,506.25.

If the large corporation estimated tax payments paid on or before the date due for the first installment is at least \$24,413.82 ($\$108,506.25 \times 90\% \times 1/4$) no addition to tax would be imposed with respect to the first installment.]

[(12)](10) Statutory Changes Require Amended Installment. Taxpayers required to make a declaration of estimated tax shall make a recalculation of the installment due when there is a change in statute which affects the estimated liability and installments for their taxable period. Example: Assume Z Corporation had a state income tax estimated tax for [their] its fiscal year beginning July 1, 1983, and ending June 30, 1984, based upon a Missouri taxable income of two million dollars (\$2,000,000) with a tax of one hundred thousand dollars (\$100,000) at the five percent (5%) tax rate then in effect. To avoid additions to tax, the former exception provided in section 143.761.4(2), RSMo, of eighty percent (80%) was used. Effective January 1, 1984, House Bill No. 10, First Extraordinary Session, 82nd General Assembly, increased the eighty percent (80%)

to ninety percent (90%) for corporations. The taxpayer had paid two (2) installments of twenty thousand dollars (\$20,000) a each prior to the change in statute. The calculation to determine the amount of the third and fourth installment would be as follows:

- (A) Missouri taxable
income \$2,000,000;
 - (B) Missouri tax
(historical 5% rate) \$100,000;
 - (C) Estimated tax after change of
statute $90\% \times \$100,000$ \$90,000;
 - (D) Amount required to be paid through
3 installments ($\$90,000 \div 4 \times 3$) \$67,500;
 - (E) Amount paid first 2
installments ($\$20,000 \times 2$) \$40,000;
 - (F) Amount of 3rd installment
(line (D) minus (E)) \$27,500;
- and
- (G) Amount of 4th installment
(line (C) X 1/4) \$22,500.

If the corporation's estimated tax payment equals ninety percent (90%) of the amount due for the three (3) installments no additions to tax would be imposed with respect to the third installment. This same calculation method would apply to a calendar year situation when the statute was changed and applied during their taxable period.

[(13)](11) Determination of Taxable Income for Installment Periods. In determining the applicability of the exceptions in section 143.761.4(2) or (3), RSMo, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made. For example, if a taxpayer distributes year-end bonuses to its employees but does not determine the amount of the bonuses until the next to the last month of the taxable year, it may not deduct any portion of the year-end bonuses in determining the taxable income for any installment period other than the final installment period for the taxable year. If a taxpayer on an accrual method of accounting wishes to use either of the exceptions in section 143.761.4(2) or (3), RSMo, s/he must establish the amount of income and deductions for each applicable installment period. If income is derived from business in which the production, purchase, or sale of merchandise is an income-producing factor requiring the use of inventories, the taxpayer will be unable to determine accurately the amount of the taxable income for the applicable period unless there can be established, with reasonable accuracy, the cost of goods sold for the applicable installment period. [The] Unless a more exact determination is available, the cost of goods sold for the period shall be [considered, unless a more exact determination is available, as that part] determined based on the same proportion of the cost of goods sold during the entire taxable year as the ratio of gross receipts from the sales for the installment period [is] to the gross receipts from the sale for the entire taxable year.

[(14)](12) Members of Partnerships. In determining a partner's taxable income for the months in his/her taxable year which precede the month in which the installment date occurs, each partner shall take into account all items for any partnership taxable year ending with or within this taxable year to the extent that those items are attributable to months in the partnership taxable year which preceded the month in which the installment date occurs together with any guaranteed payments from the partnership to the extent that the guaranteed payments are includable in his/her taxable income for those months. The provisions of this section may be illustrated by the following examples[:].

(A) A, who is an individual calendar year taxpayer, is a member of a partnership whose taxable year ends on January 31. A must take into account, in the determination of his/her taxable income for the

installment due on April 15, 1984, all of his/her distributive share of partnership items and the amount of any guaranteed payments made to him/her which were deductible by the partnership in the partnership taxable year beginning on February 1, 1983, and ending on January 31, 1984[; and].

(B) Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1984, his/her distributive share of partnership items for the period July 1, 1983, through March 31, 1984; and for the installment due on June 15, 1984, s/he must take into account the amounts for the period July 1, 1983, through May 31, 1984; and for the installment due on September 15, 1984, s/he must take into account the amounts for the entire partnership taxable year of July 1, 1983, through June 30, 1984 (the date on which the partnership taxable year ends).

[(15)](13) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections [(10)(A)](8)(B) and [(B)](C) of this rule as of any installment date, the beneficiary of an estate or trust must take into account his/her distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him/her currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during the period must be taken into account. If the taxable year of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him/her, as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precedes the month in which the installment date occurs. This rule is similar to the rule that applies for a member of a partnership when a partner and a partnership of which s/he is a member have different taxable years.

AUTHORITY: section 143.961, RSMo [1986] 2016. Original rule filed Dec. 30, 1983, effective April 12, 1984. Amended: Filed Oct. 12, 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, Administration Division, 301 W High Street, Room 218, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

PROPOSED RESCISSION

12 CSR 10-2.085 Credit for New or Expanded Business Facility. This rule clarified and carried out the provisions of the credit for a new or expanded business facility as provided in sections 135.100–135.160, RSMo.

PURPOSE: Legislative changes to the program have made the rule

invalid and, therefore, this rule is being rescinded.

AUTHORITY: section 135.150, RSMo 1986. Original rule filed Jan. 15, 1985, effective June 13, 1985. Rescinded: Filed Oct. 12, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Administration Division, 301 W High Street, Room 218, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

PROPOSED RESCISSION

12 CSR 10-2.230 Construction Contractors. This rule set forth the uniform provisions concerning multistate allocation and apportionment of income from construction contractors which were adopted by the Multistate Tax Commission.

PURPOSE: The three-factor apportionment method is no longer allowed per statute, and therefore, this rule is being rescinded.

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Dec. 17, 1990, effective April 29, 1991. Rescinded: Filed Oct. 12, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Administration Division, 301 W High Street, Room 218, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 41—General Tax Provisions**

PROPOSED AMENDMENT

12 CSR 10-41.010 Annual Adjusted Rate of Interest. The Director of Revenue proposes to amend section (1) to reflect the interest to be charged on unpaid, delinquent taxes.

PURPOSE: This proposed amendment establishes the annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2022.

(1) Pursuant to section 32.065, RSMo, the Director of Revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governor's of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

Calendar Year	Rate of Interest on Unpaid Amounts of Taxes
1995	12%
1996	9%
1997	8%
1998	9%
1999	8%
2000	8%
2001	10%
2002	6%
2003	5%
2004	4%
2005	5%
2006	7%
2007	8%
2008	8%
2009	5%
2010	3%
2011	3%
2012	3%
2013	3%
2014	3%
2015	3%
2016	3%
2017	4%
2018	4%
2019	5%
2020	5%
2021	3%
2022	3%

AUTHORITY: section 32.065, RSMo 2016. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Oct. 19, 2021, effective Jan. 1, 2022, expires June 29, 2022. Amended: Filed Oct. 15, 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, Legislative Office, 301 W High Street, Room 218, 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.

FISCAL NOTE PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Counties	<i>This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The 2022 interest rate imposed on delinquent taxes is equal to that imposed in 2021.</i>
Cities	
Special Taxing Districts	

III. WORKSHEET

The proposed amendment establishes the rate of interest for 2022 at three percent (3%), which is equal to the rate in 2021

This proposed amendment will not cost public entities more than five hundred dollars (\$500) in the aggregate. Because the 2022 interest rate imposed on delinquent taxes is equal to the rate imposed in 2021, the interest rate will be the same on each \$100 of delinquent taxes to public entities.

Interest on Delinquent Taxes Paid to Department of Revenue

	Current Rule 3.00%	Proposed Amendment 3.00%
Example:		
Past due tax amount	\$100.00	\$100.00
Interest Amount (%)	\$3.00	\$3.00
Total Amount Due	\$103.00	\$103.00

IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the Director of Revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year, as set by the Board of Governors of the Federal Reserve, rounded to the nearest full percentage. The actual bank prime loan rate noted by the Federal Reserve in 2021 was three point two five percent (3.25%). The actual bank prime loan rate noted by the Federal Reserve in 2020 was five point two five percent (5.25%).

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Any taxpayer with delinquent tax.	Any taxpayer with delinquent tax.	<i>This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The 2021 interest rate imposed on delinquent taxes is equal to that imposed in 2020. The actual number of affected taxpayers is unknown.</i>

III. WORKSHEET

The proposed amendment establishes the rate of interest for 2022 at three percent (3%), which is equal to the rate in 2021.

This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. Because the 2022 interest rate imposed on delinquent taxes is equal to the rate imposed in 2021, the interest rate will be the same on each \$100 of delinquent taxes to private entities. The actual number of affected taxpayers is unknown.

Interest on Delinquent Taxes Paid to Department of Revenue

	Current Rule 3.00%	Proposed Amendment 3.00%
Example:		
Past due tax amount	\$100.00	\$100.00
Interest Amount (%)	\$3.00	\$3.00
Total Amount Due	\$103.00	\$103.00

IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the Director of Revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year, as set by the Board of Governors of the Federal Reserve, rounded to the nearest full percentage. The actual bank prime loan rate noted by the Federal Reserve in 2021 was three point two five percent (3.25%). The actual bank prime loan rate noted by the Federal Reserve in 2020 was five point two five percent (5.25%).

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration**

PROPOSED AMENDMENT

12 CSR 10-104.030 Filing Requirements as Defined in Section 144, RSMo. The department is amending the title of the rule and sections (3) and (4).

PURPOSE: This rule is updated per statutory changes regarding the guidance for determining a taxpayer's filing frequency and the taxpayer's obligation to file a return and remit tax on the due date according to sections 144.080, 144.081, 144.090, 144.100, 144.140, 144.160, 144.170, and 144.250, RSMo.

(3) Basic Application.

(A) Every licensed taxpayer must file a return and remit tax due [by the statutory due date] as provided in subsection (3)(C). The taxpayer must file a return even if no sales were made during the reporting period. The taxpayer is responsible for obtaining the necessary forms for filing. Failure to obtain tax forms does not relieve the taxpayer from filing.

(B) The taxpayer's filing frequency is determined by the amount of state sales tax collected by the taxpayer for all business locations during the previous calendar year. The filing frequency of a new business is based on the estimated taxable sales for the first year of operation. Local, conservation, or parks and soils taxes are not considered in determining filing frequency.

1. If state tax collections equal or exceed five hundred dollars (\$500) per calendar month, the taxpayer must file and remit taxes on a monthly basis.

2. If state tax collections are less than five hundred dollars (\$500) per calendar month but equal or exceed [one] two hundred dollars (\$1/200) in a calendar quarter, the taxpayer must file and remit taxes on a quarterly basis.

3. If state tax collections are less than [one] two hundred dollars (\$1/200) per quarter, the taxpayer must file and remit taxes on an annual basis.

(C) A monthly return is due on the [twentieth] last day of the following month [except for the last month of a quarter]. A quarterly return [and a monthly return] filed for the last month of a quarter is due on the last day of the following month. An annual return is due on January 31 following the calendar year. If the due date falls on a Saturday, Sunday, or state of Missouri holiday the return is due on the next business day.

(4) Examples.

(B) A taxpayer prepares its February return on March [20] 31 and calculates tax due at **twenty-five thousand dollars** (\$25,000). When preparing the return the taxpayer takes the **two percent (2%)** timely payment allowance equaling **five hundred dollars** (\$500). The postal carrier picks up the return and payment on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because the return is postmarked on [March 21] **April 1**, the return is **one (1)** day late. The taxpayer loses the **two percent (2%)** timely payment allowance. The **twenty-five thousand dollars** (\$25,000) is subject to **five percent (5%)** additions to tax. Interest accrues on **five hundred dollars** (\$500) until it is paid to the department.

(C) A taxpayer prepares its February return on March [19] 31. When preparing the return the taxpayer takes the **two percent (2%)** timely payment allowance equaling **five hundred dollars** (\$500). The taxpayer sends the return and payment to its mailroom for metering. The taxpayer's mailroom meters the envelope on March [20] 31. The postal carrier picks up the return on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because U.S. Postal Service's postmark is [March 21] **April 1**, the return is **one (1)** day late.

AUTHORITY: sections 144.270[, RSMo Supp. 2012,] and [section] 144.705, RSMo [2000] 2016. Original rule filed June 29, 2000, effective Dec. 30, 2000. Amended: Filed Jan. 15, 2013, effective July 30, 2013. Amended: Filed Oct. 12, 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, Administration Division, 301 W High Street, Room 218, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 108—Sales/Use Tax—Taxable Services**

PROPOSED AMENDMENT

12 CSR 10-108.300 Sales of Electricity, Water, and Gas as Defined in Section 144, RSMo. The Department of Revenue is amending the title of the rule, the original purpose statement, and sections (2), (3), and (4).

PURPOSE: The purpose of the amendment is to conform the regulation to more recent case law.

PURPOSE: Section 144.020.1(3), RSMo, imposes a tax on the basic rate paid for sales of electricity, water, and gas to domestic, commercial, or industrial consumers. Section 144.030.2(23), RSMo, exempts from tax[,] sales for domestic use of these services, as well as wood, coal, and home heating oil. Section 144.032, RSMo, provides cities and counties the option to reimpose certain local sales taxes on sales for domestic use. This rule explains the taxation of electricity, water, and gas. [This rule does not address the exemptions for sales of electricity to manufacturers or material recovery processing plants, for use in basic steelmaking or battery manufacturing, or sales for resale to hotels or other lodging establishments.]

(2) Definition of Terms.

(B) Domestic use—nonagricultural, nonindustrial, and noncommercial use. Sales made by regulated utilities pursuant to a "residential" rate classification are for domestic use. Sales through a single or master meter for residential nursing homes, apartments, or condominiums, including service for common areas and facilities and vacant units, but not including administrative and maintenance areas, are sales for domestic use.

(3) Basic Application of Tax.

(A) Sales or use taxes [applies] apply to all sales of electricity, water, and gas to commercial or industrial consumers.

(4) Examples.

(C) A company purchases natural gas from an out-of-state supplier, who has nexus with Missouri, for commercial use. [Transportation charges are included on its monthly bill and separately stated. Use tax applies to the cost of gas purchased including the transportation charges] **The supplier must collect vendor's use tax on the sales price of the gas.**

AUTHORITY: sections [144.010 and 144.030, RSMo Supp. 2005 and 143.961, 144.032, 144.036 and] 143.961, 144.032, and 144.046, RSMo [2000] 2016, and sections 144.010 and 144.030, RSMo Supp. 2021. Original rule filed May 1, 2006, effective Nov. 30, 2006. Amended: Filed Oct. 12, 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, Administration Division, 301 W High Street, Room 218, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery
and Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.060 Material Recovery Processing Plant Exemption, as Defined in Section 144.030, RSMo. The department is amending the title of the rule and sections (1), (2), (3), and (4).

PURPOSE: This rule is being amended to address the changes made to section 144.030.2(4), RSMo, by the General Assembly.

(1) In general, the purchase of machinery and equipment, and the materials and supplies required solely for the operation, installation, or construction of such machinery and equipment is exempt from tax if used to establish new, or to replace or expand existing, material recovery processing plants in this state. **Motor vehicles used on highways, as defined in section 301.010, RSMo, and materials and supplies used or consumed in the construction of a building or structure do not qualify for this exemption.**

(2) Definition of Terms.

(A) Material recovery processing plant—A facility *[which converts recovered]* that has as its primary purpose the recovery of materials into a *[new] useable product[,]* or *[to]* a different form *[which]* that is used in producing a new product, and includes facilities or equipment used exclusively for the collection of]. A facility that uses a product made from recovered materials *[for delivery]* to manufacture another product is not a material recovery processing plant *[but does not include motor vehicles used on highways]*.

(B) New product—An item made from recovered materials that has a distinct identity, use, and market value separate from the recovered materials.

[(B)](C) Recovered materials—*[Those materials]* Items that have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not *[they]* the items require subsequent separation and processing.

(D) Solid waste—Garbage, refuse, and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental, and domestic activities, but does not include hazardous waste, recovered materials, overburden, rock, tailings, matte, slag, or other waste material resulting from mining, milling, or smelting.

(E) Useable product—An item converted from recovered materials that has a market value.

(3) Basic Application of Exemption.

(A) *[Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases]* The purchase of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state *[are]* is not subject to tax. *[Purchases]* The purchase of materials and supplies required solely for the operation, installation, or construction of such machinery and equipment *[are]* is not subject to tax.

(B) *[New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt.]* Materials and supplies used or consumed in the construction of a building or structure do not qualify for this exemption. Supplies do not include fuel.

(C) Recovery of materials does not include the reuse of materials within a manufacturing process or the use of a product previously recovered. A facility or equipment can also qualify if it is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. Equipment does not include motor vehicles used on highways.

(4) Examples.

(A) A new company purchases machinery and equipment to retread old tires. The company purchases old tires and produces retread tires for sale with the use of the new machinery and equipment, *[it produces retread tires for sale]*. The machinery and equipment is not used for any other purpose. The machinery and equipment may be purchased under the material recovery processing plant exemption because the primary purpose of the facility is to convert the old tires into a useable product.

(B) *[A taxpayer recycles fuel. It processes both solid and liquid waste materials for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste materials into sizes appropriate for processing. The taxpayer's mobile and conveyor systems are used to transport the solid and liquid wastes to different processes performed on the materials in taxpayer's facility. The fuel recycling facility would qualify as a material recovery processing plant because it converts recovered materials, solid and liquid waste materials, into a new product, fuels, that are then used to manufacture a new product, cement.]* A taxpayer acquires and processes solid waste for use as a fuel in its manufacturing operation. The taxpayer has a separate facility that uses shredders and pulverizers to grind the solid waste into sizes appropriate for use in the manufacturing operation. The separate facility, but not the manufacturing operation, qualifies for the material recovery processing plant exemption because the primary purpose of the separate facility is to convert solid waste into a useable product.

(C) *[Assuming the same facts in example (4)(B), the]* A taxpayer has a facility that uses shredders and pulverizers to grind solid waste into sizes appropriate to use for fuel and qualifies as a material recovery processing plant. The taxpayer purchases lubricants to operate *[its machinery]* the shredders and *[equipment]* pulverizers. Because the lubricants are required solely for the operation of the *[machinery and equipment, they are not subject to tax]* shredders and pulverizers in a material recovery processing plant, the purchase of the lubricants qualifies for the material recovery processing plant exemption.

[(D)] Taxpayer does not operate a material recovery processing plant but operates a facility used exclusively for the

collection of recovered materials for delivery to a material recovery processing plant. Taxpayer purchases storage bins, conveyors and a special truck for hauling waste material to and from its facility. The storage bins and conveyors would be exempt from tax. The special truck would be considered a motor vehicle pursuant to section 301.010, RSMo, and would be subject to tax.]

[(E)](D) A taxpayer operates a recycling business that purchases aluminum, paper, and other used consumer products to be bundled and then sold to facilities [which] that use them as raw materials to produce new and different products. [A] The taxpayer purchases loaders, baling machines, and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which compress the recovered materials to be bailed for shipping. Because the taxpayer is collecting [recyclable] recovered materials, [and converts them into a different form, which is then used to produce new products,] the [taxpayer's operation would qualify as a material recovery processing plant. The] purchase of the loaders, baling machines, and crushing equipment [would] qualify for the material recovery processing plant exemption [if they were purchased and used to establish a new, or to replace or expand an existing plant].

(E) A taxpayer operates a facility used exclusively for the collection of used motor oil for delivery to a material recovery processing plant. The taxpayer purchases storage tanks, pumps, and a truck for hauling the oil to and from its facility. The purchase of the storage tanks and pumps is exempt from tax. The truck is a motor vehicle used on highways and does not qualify for the material recovery processing plant exemption.

(F) A manufacturer makes metal pipe. The manufacturing process creates metal scrap, which the taxpayer collects and reuses in its manufacturing process. The pipe manufacturer is not a material recovery processing plant because the metal scrap is reused in the pipe manufacturer's manufacturing process.

(G) A manufacturer makes polyvinyl chloride (PVC) pipe. The manufacturing process creates scrap that the pipe manufacturer collects and sells to a recycling company. The recycling company grinds and pulverizes the scrap for sale to others that use the processed scrap to make other products. The pipe manufacturer's facility is not a material recovery processing plant because the primary purpose of the plant is not the recovery of materials. The recycling company is a material recovery processing plant because its primary purpose is to convert solid waste into a different form for use in making new products. The plants that use recovered materials purchased from the recycling company are not material recovery processing plants.

(H) A manufacturer makes PVC pipe. To keep its plant clean, the manufacturer uses equipment to collect all scrap. After the scrap is collected in the plant, it is separated, crushed, bundled, and delivered to a recycler. The equipment used to clean the plant floor by collecting the scrap is subject to tax because it is not used exclusively for preparing the scrap for delivery to the recycler. The purchase of the equipment used to separate, crush, and bundle the scrap qualifies for the material recovery processing plant exemption because it is used exclusively to prepare the scrap for delivery to the recycler.

(I) A pressboard manufacturer acquires sawdust from a sawmill to use in its manufacturing process. The sawdust has not been previously altered or recycled. The pressboard manufacturer converts the sawdust into pressboard. The pressboard manufacturer is a material recovery processing plant because the plant is recovering sawdust into a new usable product. Plants that use pressboard purchased from the pressboard manufacturer are not material recovery processing plants.

(J) A window manufacturer purchases aluminum sheets for use in its manufacturing process. The aluminum sheets are made from one hundred percent (100%) recycled aluminum. The window manufacturer is not a material recovery processing plant

because it is only using materials that were previously recovered.

(K) A manufacturer uses charcoal to purify water as part of its manufacturing process. The manufacturer must change the charcoal periodically because the charcoal no longer purifies the water once it is used for a while. The manufacturer contracts with a third party to revitalize the used charcoal using a chemical process. The third party returns the revitalized charcoal to the manufacturer, which then reuses it. The third party is a material recovery processing plant because the charcoal was diverted from the solid waste stream.

(L) A chicken processor processes live chickens into chicken parts for retail sale. The chicken processor has another facility that uses the entrails and other remaining parts to make dog food. The processor's other facility is a material recovery processing plant because the plant is recovering chicken entrails and other remaining parts into dog food.

(M) A manufacturing plant uses chemicals and solvents in its production processes to make chemical products used in various herbicides and pesticides. At the end of the manufacturing process, the plant isolates and recovers portions of the component parts, ingredients, and other chemicals from the chemical products to reuse them in subsequent manufacturing operations. The plant is not a material recovery processing plant because it is recovering materials to maintain an intended loop of reuse in a manufacturing process and not recovering materials to divert them from being discarded into the solid waste stream.

AUTHORITY: sections 144.270 and 144.705, RSMo [1994] 2016. Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 12, 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, Administration Division, 301 W High Street, Room 218, 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 40—Family Support Division Chapter 2—Income Maintenance

PROPOSED AMENDMENT

13 CSR 40-2.015 Authorized Representatives. The division is amending subsection (2)(D) and adding section (19).

PURPOSE: This amendment adds the Adult Expansion Group (AEG) to the list of groups that constitute "MO HealthNet programs" for purposes of this rule. The AEG was created by Amendment 2, which was passed by referendum on August 4, 2020, and which created Article IV, Section 36(c) of the Missouri Constitution, which requires the department to extend MO HealthNet coverage to Missourians ages 19-64 whose income is below 133% of the federal poverty level. This amendment also incorporates three (3) federal regulations and one (1) subpart of the Code of Federal Regulations (CFR). First, the rule governing authorized representatives (42 CFR 435.923). Second, the rule governing the privacy and security of personally

identifiable information (45 CFR 155.260), which authorized representatives must honor. Third, the rule governing the entities who may receive a reassigned claim from a Medicaid provider (42 CFR 447.10). Finally, the amendment incorporates the subpart in federal rules—42 CFR 431 Subpart F—on safeguarding information on Medicaid participants. Authorized representatives must agree to adhere to these rules as a condition of their representation.

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.

(2) For purposes of this rule, the following terms shall mean:

(D) "MO HealthNet programs" shall mean the MO HealthNet benefits provided to participants under the MO HealthNet programs including, but not limited to, MO HealthNet for the Aged, Blind, and Disabled (MHABD) program, MO HealthNet for Families (MHF) program, the **Adult Expansion Group (AEG) pursuant to Article IV Section 39(c) of the Missouri Constitution**, MO HealthNet for Kids (MHK) program, MO HealthNet for Pregnant Women (MPW) program, and Uninsured Wom/a/en's Health Services (UWHS) program. MO HealthNet programs also include presumptive eligibility for any of the above programs; and

(19) This rule hereby incorporates by reference the following provisions and definitions from the Code of Federal Regulations (CFR) listed below as published by the Office of the Federal Register, 800 North Capitol St. NW, Suite 700, Washington, DC 20408, and which is located on the website of the U.S. Government Publishing Office at <https://www.govinfo.gov/app/collection/CFR>. This rule does not incorporate any subsequent amendments or additions:

- (A) 42 CFR 435.923, October 20, 2021;
- (B) 42 CFR 431 Subpart F, October 20, 2021;
- (C) 45 CFR 155.260, October 20, 2021; and
- (D) 42 CFR 447.10, October 20, 2021.

AUTHORITY: sections 207.010, 207.022, 208.991, and 660.017, RSMo [Supp. 2013] 2016. Original rule filed June 30, 2015, effective Dec. 30, 2015. Emergency amendment filed Oct. 5, 2021, effective Oct. 20, 2021, expires April 17, 2022. Amended: Filed Oct. 5, 2021.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The overall implementation of Article IV, Section 36(c) of the *Missouri Constitution*, pursuant to which the division is amending this regulation, is estimated to cost 2.71 billion dollars (\$2,710,000,000), which includes 258.5 million dollars (\$258,500,000) in state funding and 2.45 billion dollars (\$2,450,000,000) in federal financial participation annually starting in fiscal year 2022.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Legal Services-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 40—Family Support Division
Chapter 7—Family Healthcare**

PROPOSED AMENDMENT

13 CSR 40-7.010 Scope and Definitions. The division is amending subsection (1)(K).

PURPOSE: This proposed amendment adds the Adult Expansion Group to the list of populations that fall under Family MO HealthNet programs, pursuant to Amendment 2, which was ratified on August 4, 2020, and which created Article IV, Section 36(c) of the *Missouri Constitution*.

(1) Definitions.

(K) "Family Mo HealthNet programs" means MO HealthNet benefits provided to participants under the MO HealthNet for Families (MHF) program, the **Adult Expansion Group (AEG) pursuant to Article IV, Section 36(c) of the Missouri Constitution**, MO HealthNet for Kids (MHK) program, MO HealthNet for Pregnant Women (MPW) program, and Uninsured Wom/a/en's Health Services (UWHS) program. Family MO HealthNet programs also include presumptive eligibility for any of the above programs.

AUTHORITY: sections 207.022 and 660.017, RSMo 2016. Original rule filed July 31, 2013, effective Feb. 28, 2014. Amended: Filed Oct. 1, 2018, effective May 30, 2019. Emergency amendment filed Oct. 5, 2021, effective Oct. 20, 2021, expires April 17, 2022. Amended: Filed Oct. 5, 2021.

PUBLIC COST: This proposed amendment will not cost state agencies more than five hundred dollars (\$500) in the aggregate. The overall implementation of Article IV, Section 36(c) of the *Missouri Constitution*, pursuant to which the division is amending this regulation, is estimated to cost 2.71 billion dollars (\$2,710,000,000), which includes 258.5 million dollars (\$258,500,000) in state funding and 2.45 billion dollars (\$2,450,000,000) in federal financial participation annually starting in fiscal year 2022.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Legal Services-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 40—Family Support Division
Chapter 7—Family Healthcare**

PROPOSED AMENDMENT

13 CSR 40-7.050 Presumptive Eligibility. The department is amending sections (1), (2), and (4).

PURPOSE: This proposed amendment allows qualified hospitals to make Medicaid presumptive eligibility determinations for the Adult Expansion Group (AEG), per Article IV Section 36(c) of the *Missouri Constitution*. The state is legislatively mandated to implement these changes by July 1, 2021. Applicable federal regulations require state Medicaid agencies to offer qualified hospitals the opportunity to make presumptive eligibility determinations for this

Medicaid population.

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) The department shall provide MO HealthNet benefits to individuals during a period of presumptive eligibility for individuals who have been determined eligible for MO HealthNet benefits on the basis of preliminary information by a presumptive eligibility qualified entity in accordance with this rule, **and pursuant to sections 435.1100, 435.1101, 435.1102, 435.1103, and 435.1110 of Title 42, Code of Federal Regulations, which is incorporated by reference and made 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 its website (<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-435?toc=1>), October 20, 2021. This rule does not incorporate any subsequent amendments or additions.**

(2) For the purposes of this rule—

(A) “Presumptive eligibility” means temporary MO HealthNet benefits for children under the age of nineteen (19) (pursuant to 42 U.S.C. sections 1396a(47) and 1396r-1a and 42 CFR sections 435.1102 and 435.1110), parents and other caretaker relatives (pursuant to 42 CFR sections 435.1103 and 435.1110), former foster care children (pursuant to 42 CFR sections 435.1103 and 435.1110), pregnant women (pursuant to 42 U.S.C. sections 1396a(47) and 1396r-1 and 42 CFR sections 435.1103 and 435.1110), [and] individuals with breast cancer or cervical cancer (pursuant to 42 U.S.C. sections 1396a(47) and 1396r-1b and 42 CFR sections 435.1103 and 435.1110), **and adults between ages nineteen (19) and sixty-four (64) (pursuant to 42 CFR 435.1110)**, allowing them to receive MO HealthNet benefits before they have applied for MO HealthNet benefits through the division;

(B) “Qualifying hospital” has the same meaning as in 42 CFR 435.1110(b);

(C) “Federally qualified health center” has the same meaning as in 42 U.S.C. section 1396(l)(2)(B);

(D) “Rural health clinic” has the same meaning as in 42 U.S.C. section 1395x(aa)(2);

(E) “Presumptive eligibility qualified entity” means a MO HealthNet provider organization responsible for screening individuals/families regarding presumptive eligibility for MO HealthNet benefits.

1. For presumptive eligibility determinations for children under the age of nineteen (19), “presumptive eligibility qualified entity” means a federally qualified health center, rural health clinic, or qualifying hospital that meets the requirements for a “qualified entity” in 42 U.S.C. section 1396r-1a(b)(3)(A).

2. For presumptive eligibility determinations for pregnant women, “presumptive eligibility qualified entity” means a county health department, federally qualified health center, rural health clinic, or qualifying hospital that meets the requirements for a “qualified provider” in 42 U.S.C. section 1396r-1(b)(2).

3. For presumptive eligibility determinations for parents and caretaker relatives, “presumptive eligibility qualified entity” means a qualifying hospital as provided in section 42 CFR 435.1110.

4. For presumptive eligibility determinations for breast and cervical cancer treatment, “presumptive eligibility qualified entity” means a Show-Me Healthy Women *[P]*provider which has a participation agreement with the Missouri Department of Health and Senior Services that meets the requirements for a “qualified entity” in 42 U.S.C. section 1396r-1b(b)(2).

5. For presumptive eligibility determinations for former foster care children, “presumptive eligibility qualified entity” means a qualifying hospital.

6. For adults between ages nineteen (19) and sixty-four (64), “presumptive eligibility qualified entity” means a qualifying hospital.

(4) A presumptive eligibility qualified entity shall make presumptive eligibility determinations subject to the requirements listed below:

(H) In making a presumptive eligibility determination, the presumptive eligibility qualified entity shall apply preliminary eligibility criteria established by applicable law and regulation, using forms provided by the division, and shall approve an application for presumptive eligibility only if the following requirements are met:

1. For children under the age of nineteen (19)—

A. The child must meet the same requirements for income and United States and Missouri residency required for regular Medicaid coverage for children under nineteen (19); and

B. There can be no more than one (1) presumptive eligibility period within a twelve- (12-) month period starting with the effective date of the initial presumptive eligibility period;

2. For parents and caretaker relatives—

A. Individuals must be parents or other caretaker relatives (as defined in 42 CFR 435.4), including pregnant women, of a dependent child (as defined in 42 CFR 435.4) under age eighteen (18);

B. The individual must meet the same requirements for income and United States and Missouri residency required for regular Medicaid coverage for parents; and

C. There can be no more than one (1) presumptive eligibility period within a twelve- (12-) month period starting with the effective date of the initial presumptive eligibility period;

3. For pregnant women—

A. The individual must be pregnant;

B. The woman must meet the same requirements for income and United States and Missouri residency required for regular Medicaid coverage for pregnant women or for coverage under the Show-Me Healthy Baby program; and

C. The individual must not have already received benefits under a MO HealthNet presumptive eligibility program during the current pregnancy;

4. For breast and cervical cancer treatment—

A. The individual must be diagnosed with breast or cervical cancer by a Show-Me Healthy Women *[P]*provider unless the participant is diagnosed by a MO HealthNet provider while currently receiving MO HealthNet benefits;

B. The woman must meet the same requirements for income and United States and Missouri residency required for regular coverage under the Breast and Cervical Cancer Coverage program; and

C. There can be no more than one (1) presumptive eligibility period within a twelve- (12-) month period starting with the effective date of the initial presumptive eligibility period;

5. For former foster care children—

A. The individual must be in foster care under the responsibility of the state of Missouri as of their eighteenth birthday or within thirty (30) days prior to their eighteenth birthday;

B. The individual must be under the age of twenty-six (26) years old;

C. The individual must not be eligible for another MO HealthNet benefits group;

D. The individual must have been covered by MO HealthNet while they were in foster care;

E. The individual must be a Missouri resident; and

F. There can be no more than one (1) presumptive eligibility period within a twelve- (12-) month period starting with the effective date of the initial presumptive eligibility period; **and**

6. For adults between ages nineteen (19) and sixty-four (64)- United States and Missouri residency required for regular Medicaid coverage for adults between ages nineteen (19) and

sixty-four (64) pursuant to 42 CFR 435.1103 and 435.1110; and
B. There can be no more than one (1) presumptive eligibility period within a twelve- (12-) month period starting with the effective date of the initial presumptive eligibility period;

AUTHORITY: sections 207.022[, RSMo Supp. 2014, section 208.151.1(22), RSMo Supp. 2013,] and [section] 660.017, RSMo [2000] 2016, and section 208.151.1(22), RSMo Supp. 2021. Original rule filed March 31, 2016, effective Sept. 30, 2016. Emergency amendment filed Oct. 5, 2021, effective Oct. 20, 2021, expires April 17, 2022. Amended: Filed Oct. 5, 2021.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The overall implementation of Article IV, Section 36(c) of the Missouri Constitution, pursuant to which the division is amending this regulation, is estimated to cost 2.71 billion dollars (\$2,710,000,000), which includes 258.5 million dollars (\$258,500,000) in state funding and 2.45 billion dollars (\$2,450,000,000) in federal financial participation annually starting in fiscal year 2022.

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 90—Home Health Program**

PROPOSED AMENDMENT

13 CSR 70-90.010 Home Health-Care Services. The MO HealthNet Division is adding subsection (2)(C), amending sections (7) and (8), and adding section (9).

PURPOSE: This amendment allows the adult expansion group described in Article IV Section 36(c) of the Missouri Constitution to receive habilitative services through the Missouri Home Health Program, and updates the incorporated by reference dates.

(2) Home health services include the following services and items:
(C) Physical, occupational, or speech therapy when the following conditions are met:

1. The participant is age nineteen (19) or over and under age sixty-five (65) and enrolled under the Medicaid eligibility criteria for the adult expansion group as described in Article IV section 36(c) of the Missouri Constitution; and

2. Physical, occupational, or speech therapy is a habilitative service that will help the individual keep, learn, or improve skills and functioning for daily living, in accordance with limitations set forth in section (9) of this rule;

[(C)](D) Intermittent home health aide; and

[(D)](E) Supplies identified as specific and necessary to the delivery of a participant's nursing care and prescribed in the plan of care. Supplies are health care related items that are consumable or disposable, or cannot withstand repeated use by more than one (1) individual, that are required to address an individual medical disability, illness, or injury. Medical supplies are classified as—

1. Routine—medical supplies used in small quantities for patients during the usual course of most home visits; or

2. Non-routine—medical supplies needed to treat a patient's specific illness or injury in accordance with the physician's plan of care and meet further conditions discussed in more detail below.

*(7) To be reimbursed by MO HealthNet, all home health services and supplies must be provided in accordance with a written plan of care authorized by the participant's physician. The criteria for the development of the written plan of care and changes to the written plan of care through interim order(s) are described in the MO HealthNet Division Home Health Provider Manual. The MO HealthNet Division Home Health 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 <http://manuals.momed.com/manuals/>, [December 10, 2019] **September 24, 2021**. This rule does not incorporate any subsequent amendments or additions. Plans of care and interim order(s) are to be maintained in the client record.*

(8) Skilled therapy services as described in subsection (2)(B) will be considered reasonable and necessary for treatment if the conditions of paragraphs (8)(A)1.-4. are met.

(9) The combination of physical, occupational, and speech therapy as described in subsection (2)(C) of this rule is limited to a total of twenty (20) visits inclusive of services from all MO HealthNet providers per year.

AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. [2019] 2021. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 5, 2021, effective Oct. 20, 2021, expires April 17, 2022. Amended: Filed Oct. 5, 2021.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. There is no fiscal impact to fee-for-service. Adult expansion group participants will be enrolled in managed care and this service will be provided through the managed care health plan, and the costs of those services are included in the capitation payments that Missouri HealthNet Division (MHD) makes to the managed care providers. There is an estimated overall fiscal impact, which would be for managed care, as follows: Home health agencies, \$0 fiscal impact anticipated for proposed changes; and MO HealthNet, \$10,594,584.90 anticipated across all MHD programs, and \$2,648,646.22 fiscal impact anticipated for the Home Health program.

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 15—ELECTED OFFICIALS
Division 50—Treasurer
Chapter 4—Missouri Education [Savings] Program**

PROPOSED AMENDMENT

15 CSR 50-4.010 General Organization. The treasurer is amending the chapter title and sections (1) and (2).

PURPOSE: This amendment updates the name of the Missouri Education Program.

(1) House Bill No. 959, 2nd Regular Session, 92nd General Assembly (2004), as amended by Senate Bill No. 882, 2nd Regular Session, 99th General Assembly (2018), as amended by House Bill No. 297, 1st Regular Session, 101st General Assembly (effective August 28, 20/18/21), codified at sections 166.400 through 166.456, RSMo, creates the Missouri Education [Savings] Program (the program), to be administered by the Missouri Education [Savings] Program Board (the board). The board consists of the state treasurer (who serves as chairman), the commissioner of the state Department of Higher Education, the commissioner of education, the commissioner of the state Office of Administration, the director of the state Department of Economic Development, two (2) persons having demonstrable experience and knowledge in the areas of finance or the investment and management of public funds, one (1) of whom will be selected by the president *pro tem* of the state Senate and the other selected by the speaker of the state House of Representatives, and one (1) person having demonstrable experience and knowledge in the area of banking or deposit rate determination and placement of certificates of deposit or other deposit investments, to be appointed by the [G]overnor with the advice and consent of the senate. The board's primary purpose is to administer the program and the board possesses all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the statute.

(2) The program is designed to promote access to [higher] education by providing individuals with a convenient method to fund the increasingly expensive cost of [post-secondary] education. By allowing participants to make current contributions for designated beneficiaries and by investing these contributions with the goal of achieving a rate of return that reflects increases in educational costs, the program is intended to provide designated beneficiaries with funds needed for the costs of their [post-secondary school] education. Within limits set by state and federal law, contributions to a savings account pursuant to the program are deductible from the contributor's state income tax, and income earned or received from the program by a contributor or beneficiary are not subject to state income tax.

AUTHORITY: section 166.415, RSMo Supp. [2019] 2021, and section 536.023, RSMo 2016. Original rule filed Aug. 30, 1999, effective Feb. 29, 2000. Amended: Filed June 13, 2019, effective Nov. 30, 2019. Amended: Filed Oct. 4, 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 Office of the State Treasurer, Harry S. Truman State Office Building, PO Box 210, Jefferson City, MO 65102, or via email at info@treasurer.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 15—ELECTED OFFICIALS

Division 50—Treasurer

Chapter 4—Missouri Education [Savings] Program

PROPOSED AMENDMENT

15 CSR 50-4.020 Missouri Education [Savings] Program. The treasurer is amending the chapter title and sections (2)–(8).

PURPOSE: This amendment updates the name of the Missouri Education Program.

(2) Definitions.

(A) Existing Missouri Definitions. The following terms, as used in this rule, are defined in section 166.410, RSMo: benefits, board, eligible educational institution, *Internal Revenue Code*, participation agreement, qualified higher education expenses, qualified education expenses, [savings] program.

(C) Additional Definitions. The following definitions shall also apply to the following terms as they are used in this rule:

1. "501(c)(3) organization" means an organization described in section 501(c)(3) of the *Internal Revenue Code* and exempt from taxation under section 501(a) of the *Internal Revenue Code*;

2. "Account" means the account in the [savings] program established by a participant and maintained for a beneficiary;

3. "Account balance" means the fair market value of an account on a particular date;

4. "Account owner" means—a) a participant or b) the transferee of an account pursuant to subsection (5)(H) below;

5. "Beneficiary" means a designated beneficiary as defined in section 529 of the *Internal Revenue Code* and the Treasury regulations (or proposed regulations) promulgated thereunder;

6. "Cash" shall include, but not be limited to, checks drawn on a banking institution located in the continental United States in U.S. dollars (other than cashiers checks, travelers checks, or third-party checks exceeding ten thousand dollars (\$10,000)), money orders, payroll deduction, and electronic funds transfers. Cash does not include property;

7. "Disability" means, with respect to a beneficiary, any disability of such beneficiary that has been certified pursuant to paragraph (6)(B)2. below;

8. "Member of the family" means an individual who is related to the beneficiary as listed in subparagraphs (2)(C)8.A. through (2)(C)8.I. of this definition, together with such changes to such list as may be included, from time-to-time, in the definition of "member of the family" pursuant to section 529 of the *Internal Revenue Code* or the Treasury regulations (or proposed regulations) thereunder:

A. A son or daughter, or a descendant of either;

B. A stepson or stepdaughter;

C. A brother, sister, stepbrother, or stepsister;

D. The father or mother, or an ancestor of either;

E. A stepfather or stepmother;

F. A son or daughter of a brother or sister;

G. A brother or sister of the father or mother;

H. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or

I. The spouse of the designated beneficiary or the spouse of any individual de-scribed in subparagraphs (2)(C)8.A. through (2)(C)8.H. of this definition.

For purposes of determining who is a member of the family hereunder, a legally adopted child of an individual shall be treated as the child of such individual by blood, and the terms brother and sister include a brother or sister by the halfblood;

9. "Non-qualified withdrawal" means a distribution from an account other than a qualified withdrawal, a withdrawal due to death, disability or scholarship of beneficiary, a rollover distribution, or a distribution from an account that is made after amounts are held in such account for the minimum length of time, if at all, permitted by section 529 of the *Internal Revenue Code* without the imposition of a penalty;

10. "Participant" means a person who has entered into a participation agreement pursuant to the statute and this rule for the payment of qualified education expenses on behalf of a beneficiary;

11. "Person" means any individual, estate, association, trust, partnership, limited liability company, corporation, the state of Missouri or any department thereof, or any political subdivision of the state of Missouri;

12. "Qualified withdrawal" means a distribution from an account established under the *[savings]* program used exclusively to pay qualified education expenses of the beneficiary;

13. "Rollover distribution" means a distribution or transfer from an account for a beneficiary that is transferred or deposited within sixty (60) days of the distribution into an account for another beneficiary who is a member of the family of the current beneficiary, in each case to the extent permitted as a rollover distribution, as defined in section 529(c)(3)(C)(i) of the *Internal Revenue Code* and the Treasury regulations (or proposed regulations) promulgated thereunder. A distribution is not a rollover distribution unless there is a change of beneficiary. The account for such other beneficiary may be an account established under the *[savings]* program or an account established under a qualified state tuition program in another state;

14. "Scholarship" means any scholarship and any allowance or payment described in section 135(d)(1)(B) or (C) of the *Internal Revenue Code*;

15. "Scholarship account" means an account in the *[savings]* program established by a participant that is a scholarship sponsor and maintained for the benefit of one (1) or more current and/or future beneficiaries;

16. "Scholarship sponsor" means the state of Missouri, an instrumentality of the state of Missouri, a political subdivision of the state of Missouri, or an organization described in section 501(c)(3) of the *Internal Revenue Code*, in each case who establishes one (1) or more accounts as part of a scholarship program;

17. "Statute" means sections 166.400 to 166.456, RSMo, as amended from time-to-time; and

18. "Withdrawal due to death, disability, or scholarship of beneficiary" means a distribution from an account established under the *[savings]* program—a) made because of death or disability of the beneficiary, or b) made because of the receipt of a scholarship by the beneficiary to the extent that such distribution does not exceed the amount of such scholarship.

(3) Purposes. The purposes of the *[savings]* program are—a) to encourage savings to enable students to continue their education by attending eligible educational institutions, and b) to enable participants and beneficiaries to avail themselves of tax benefits provided for qualified state tuition programs under the *Internal Revenue Code*.

(4) Program Administration and Management. The *[savings]* program shall be administered and managed in compliance with the provisions of the *Internal Revenue Code* (including section 529, other applicable sections and implementing regulations and guidelines), the statute and this rule. Procedures and forms for use in the administration and management of the *[savings]* program shall be subject to the approval of the board. If the board designates a third party to assist or act for the board with respect to the administration and management of the *[savings]* program, the references herein to the board shall govern such a designee of the board.

(5) *[Savings]* Program Participation and Participation Agreements.

(B) Participant Eligibility. A participant may be any person—a) who submits to the board a completed participation agreement, and an address for each participant and beneficiary in the United States, and b) who otherwise meets the qualifications set forth in federal law, Missouri law, and regulations governing the *[savings]* program. A participant that establishes a scholarship account shall provide the valid Social Security numbers or taxpayer identification numbers and addresses in the United States of each beneficiary of the applicable scholarship account prior to or in connection with a request for a distribution.

(C) Participation Agreements. To participate in the *[savings]* program, a prospective participant must submit a completed participation agreement with either an initial contribution or a selection of electronic funds transfer or payroll deduction as the method of initial

contribution. The participation agreement will provide that the participant (and any successor account owner) will retain ownership of payments made under the program through the opening of an account in the name of the participant and for the benefit of the beneficiary designated by such participant (or the successor account owner). Only one (1) account owner and one (1) beneficiary is permitted per account, except that scholarship accounts may be established for the benefit of one (1) or more present or future beneficiaries. One (1) or more participants may establish accounts for a single beneficiary. Each participant agreement shall impose a penalty on the early distribution of funds in accordance with section 166.430, RSMo. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions set forth therein, subject to subsection (5)(I) below.

(D) Contributions. All contributions to accounts shall be in cash. The maximum amount which may be contributed annually by a participant with respect to a beneficiary shall be established by the board, from time-to-time, but in no event shall be more than the total contribution limit described in the succeeding sentence. The total contributions that may be held in an account shall be the amount established by the board from time-to-time, but in no event shall be more than the maximum amount permitted for the *[savings]* program to qualify as a "qualified state tuition program" pursuant to section 529 of the *Internal Revenue Code*.

(H) Changes of Account Ownership. An account owner may transfer ownership of an account to another person eligible to be a participant under the provisions of the statute and this rule, and upon receipt of a request for change of account owner that satisfies the criteria set forth in this subsection, the transferee shall be considered the account owner for all purposes related to the *[savings]* program, regardless of the source of subsequent contributions.

1. General rule. Any such change of account ownership shall be effective provided that the transfer—a) is irrevocable, b) transfers all ownership, reversionary rights, and powers of appointments (i.e., power to change beneficiaries and to direct distributions from the account), and c) is submitted to the board on a change of account owner form in such form as the board may specify from time-to-time and completed by the account owner (or, in the event of the death of the account owner, by the personal representative of his or her estate).

2. Designation of contingent account owners. Any account owner that is an individual person may designate a contingent account owner for its account, to become the owner of the account automatically upon the death of such account owner. Upon the death of an account owner who has made such a designation of contingent account owner, the assets of the account shall not be deemed assets of such person's estate for any reason. Prior to the initial action taken by the contingent account owner following the death of the deceased account owner, the contingent account owner shall provide a certified copy of a death certificate sufficiently identifying said deceased account owner by name and Social Security number or taxpayer identification number, or such other proof of death as is recognized under applicable law.

(6) Payment of Benefits; Withdrawals.

(F) Security. An account owner or beneficiary may not use any account or other interest in the *[savings]* program or any portion thereof as security for a loan.

(7) Investments.

(A) General (Investment Standards and Objectives). The board shall invest the funds received from participants, together with any income thereon, in such investments as the board shall reasonably determine will achieve a long-term total return through a combination of capital appreciation and current income. In exercising or delegating its investment powers and authority, the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In accordance

with the standards established herein and in the statute, the board may invest, through the board or any investment manager, funds received pursuant to the *[savings]* program. Any such investment shall be made solely in the interest of the account owners and beneficiaries and for the exclusive purposes of providing benefits to beneficiaries and defraying reasonable expenses of administering the program. An account owner or beneficiary may, directly or indirectly, direct the investments of any contributions to the program (or any earnings thereon) no more than two (2) times in any calendar year.

(8) Costs of Administration. All costs of administration of the *[savings]* program shall be borne by the account owners, from amounts paid as penalties on account of non-qualified withdrawals or early qualified withdrawals and from amounts on deposit in the accounts, as described in more detail in the participation agreements.

AUTHORITY: section 166.415, RSMo Supp. [2019] 2021. Emergency rule filed Aug. 30, 1999, effective Sept. 14, 1999, expired March 12, 2000. Original rule filed Aug. 30, 1999, effective Feb. 29, 2000. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 4, 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 Office of the State Treasurer, Harry S. Truman State Office Building, PO Box 210, Jefferson City, MO 65102, or via email at info@treasurer.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 15—ELECTED OFFICIALS

Division 50—Treasurer

Chapter 4—Missouri Education *[Savings]* Program

PROPOSED AMENDMENT

15 CSR 50-4.030 Missouri MOST 529 Matching Grant Program. The treasurer is amending the chapter title and sections (1), (2) and (6).

PURPOSE: This amendment updates the name of the *Missouri Education Program*.

(1) Definitions.

(A) Existing Missouri Definitions. The following terms, as used in this rule, are defined in section 166.410, RSMo: Beneficiary, Board, Eligible Educational Institution, Participation Agreement, and *[Savings]* Program. The following terms, as used in this rule, are defined in the *Missouri Code of State Regulations*, 15 CSR 50-4.020(2): Account Owner, Member of the Family, Non-qualified Withdrawal, Qualified Withdrawal, and Participant.

(B) Additional Definitions. The following definitions shall also apply to the following terms as they are used in this rule:

1. “MOST Matching Grant” means funds granted to an eligible account owner pursuant to the MOST 529 Matching Grant Program;

2. “MOST Matching Grant Account” means an account maintained for a beneficiary in which MOST matching grant funds are deposited;

3. “MOST Matching Grant Application” means the application required to be submitted by an account owner to be considered for a

MOST matching grant;

4. “Plan Account” means the account in the *[savings]* program established by a participant and maintained for a beneficiary; and

5. “Plan Description” means the MOST—Missouri’s 529 Education Plan Program Description.

(2) Program Description. The MOST 529 Matching Grant Program is a limited grant program administered by the board as set forth below. The MOST 529 Matching Grant Program is funded with money provided by the program manager of the *[savings]* program. The program may not be funded every year. When funded, funds are limited and, in any given year, may be capped by the board in an amount determined by the board to ensure availability of funds for the duration of the grant program. The funds will be granted to eligible applicants on a first-come, first-served basis.

(6) MOST Matching Grant Accounts.

(B) The *[savings]* plan shall retain control of the assets in the MOST matching grant account until the account owner submits a request in good order for a qualified withdrawal to an eligible educational institution.

AUTHORITY: section 166.415, RSMo Supp. [2019] 2021. Emergency rule filed April 5, 2012, effective April 15, 2012, expired Jan. 23, 2013. Original rule filed April 5, 2012, effective Oct. 30, 2012. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 4, 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 Office of the State Treasurer, Harry S. Truman State Office Building, PO Box 210, Jefferson City, MO 65102, or via email at info@treasurer.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 81—Certification

PROPOSED AMENDMENT

19 CSR 30-81.030 Evaluation and Assessment Measures for Title XIX Recipients and Applicants. The department is amending section (1), adding sections (7) and (8), adding forms DA-124 A/B, DA-124 C ATT, and DA-124 C, and amending form DHSS-DRL 110 (10-20).

PURPOSE: This amendment adds the level-of-care evaluation and assessment requirements back that were effective prior to October 31, 2021, in order for those individuals who would have qualified for Title XIX-funded services prior to October 31, 2021, to be eligible to receive services funded through the American Rescue Plan Act. The amendment also removes the words “an Intellectual Disability!” on the DHSS-DRL-110 (10-20) form included herein in sections (2) and (3).

PURPOSE: This rule sets the requirements for the periodic evaluation and assessments of residents in long-term care facilities in relationship to evaluation and assessment processes, level[-] off[-] care

needed by individuals, and appropriate placement of individuals in order to receive this care. The rule also includes the algorithm utilized for the department's Home and Community Based Services program for its level-of-care determination. The rule includes a second level-of-care determination to be utilized from October 31, 2021, until the funding from the American Rescue Plan Act (temporary enhanced federal medical assistance percentage) has been expended.

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

(H) Pro re nata (PRN)—medication or treatment ordered by a physician to be administered as needed, but not regularly scheduled;

/(H)/(I) Recipient—any resident in a certified long-term care facility who is receiving inpatient Title XIX assistance;

(J) Redetermination of level-of-care—the periodic assessment of the recipients' continued eligibility and need for continuation at the previously assigned level of care. Periodic assessment includes, but is not limited to, the following:

1. Assessment of new admissions to a long-term care facility;

2. Assessment of a change in mental and/or physical status for a resident who is being readmitted to a long-term care facility after transfer to an acute care facility, and the previous DA-124 A/B or C forms do not reflect the resident's current care needs; and

3. Assessment of DA-124 forms as requested by the Department of Social Services, Family Support Division;

/(I)/(K) Reevaluation of level-of-care—the periodic assessment of the recipients' continued eligibility and need for continuation at the previously assigned level of care. Periodic assessment includes, but is not limited to, the following:

1. Assessment of new admissions to a long-term care facility;

2. Assessment of a change in mental and/or physical status for a resident who is being readmitted to a long-term care facility after transfer to an acute care facility, and the previous DHSS-DRL-109 (10-20), Nursing Facility Level of Care Assessment or DHSS-DRL-110 (10-20), Level One Nursing Facility Pre-Admission Screening for Mental Illness/Intellectual Disability or Related Condition forms do not reflect the resident's current care needs; and

3. Assessment of DHSS-DRL-109 (10-20), Nursing Facility Level of Care Assessment or DHSS-DRL-110 (10-20), Level One Nursing Facility Pre-Admission Screening for Mental Illness/Intellectual Disability or Related Condition forms as requested by Department of Social Services, Family Support Division;

/(J)/(L) Resident—a person seventeen (17) years or older who by reason of aging, illness, disease, or physical or mental infirmity receives or requires care and services furnished by a long-term care facility and who resides in, is cared for, treated, or accommodated in such long-term care facility for a period exceeding twenty-four (24) consecutive hours; and

/(K)/(M) The department—Department of Health and Senior Services.

(7) Dual level-of-care assessments to be performed to determine level-of-care need from October 31, 2021, until the date that all of the temporary enhanced federal medical assistance percentage funds from the American Rescue Plan Act of 2021 are expended.

(A) The department is eligible to receive an additional ten percent (10%) enhanced federal medical assistance percentage for home and community based services provided from April 1, 2021, through March 31, 2022, through the American Rescue Plan Act of 2021. This funding will allow the department to determine level-of-care need under the department's previous scoring system directly prior to the department's level-of-care transformation which takes effect on October 31, 2021, through formal rulemaking. Therefore, if an individual does not qualify for level of care under the current level-of-care assessment as set

forth in sections (5) and (6) of this rule from October 31, 2021, until the date that all of the temporary enhanced federal medical assistance percentage funds from the American Rescue Plan Act of 2021 are expended, then individuals shall also be assessed using a level-of-care assessment as set forth in section (8) of this rule. An individual may qualify for level-of-care need under either of these level of care assessments from October 31, 2021, until the date that all of the temporary enhanced federal medical assistance percentage funds from the American Rescue Plan Act of 2021 are expended.

(8) Second level-of-care determination to be performed from October 31, 2021, until the date that all of the temporary enhanced federal medical assistance percentage funds from the American Rescue Plan Act of 2021 are expended.

(A) Initial determination of level-of-care needs requirements.

1. For the purpose of making a determination of level-of-care need and in accordance with 42 CFR sections 456.370 and 483.104, the department or its designated agents, or both, will conduct a review and assessment of the evaluations made by the attending physician for an applicant in or seeking admission to a long-term care facility. The review and assessment shall be conducted using the criteria in subsection (8)(D) of this rule.

2. The department shall complete the assessment within ten (10) working days of receipt of all documentation required by subsection (8)(D) in this rule unless further evaluation by the State Mental Health Authority is required by 42 CFR 483.100 to 483.138.

(B) Redetermination of level-of-care requirements.

1. Redetermination of level-of-care of individual recipients who are eligible for placement in long-term care facilities shall be conducted by the department through a review and assessment of the DA-124A/B (10-21) Initial Assessment – Social and Medical, DA-124C (10-21) Level One Nursing Facility Pre-Admission Screening for Mental Illness/Intellectual Disability or Related Condition, and DA-124C ATT (10-21) Notice to Applicant included herein and any documentation provided by the resident's attending physician. A referring individual shall fill out and submit the forms to the department at COMRU@health.mo.gov.

(C) Level-of-care criteria for long-term care facility care-qualified Title XIX recipients and applicants.

1. Individuals will be assessed with the ultimate goal to achieve placement for these individuals in the least restrictive environment possible, yet enable them to receive all services required by their physical/mental condition.

2. The specific areas which will be considered when determining an individual's ability or inability to function in the least restrictive environment are mobility, dietary, restorative services, monitoring, medication, behavioral, treatments, personal care, and rehabilitative services.

3. To qualify for intermediate or skilled nursing care, an applicant or recipient shall exhibit physical impairment, which may be complicated by mental impairment or mental impairment which may be complicated by physical impairment severe enough to require intermediate or skilled nursing care.

(D) Assessed needs point designations requirements.

1. Applicants or recipients will be assessed for level-of-care by the assignment of a point count value for each category cited in paragraph (8)(C)2. of this rule.

2. Points will be assessed for the amount of assistance required, the complexity of the care, and the professional level of assistance necessary, based on the level-of-care criteria. If the applicant's or recipient's records show that the applicant's or recipient's attending physician has ordered certain care, medication or treatments for an applicant or recipient, the department will assess points for a PRN order if the applicant or recipient has actually received or required that care, medication, or treatment within the thirty (30) days prior to review and evaluation by

the department.

3. For individuals seeking admission to a long-term care facility on or after October, 31, 2021, the applicant or recipient will be determined to be qualified for long-term care facility care if he or she is determined to need care with an assessed point level of twenty-four (24) points or above, using the assessment procedure as required in paragraph (8)(D)7. of this rule.

4. For individuals seeking admission to a long-term care facility on or after October 31, 2021, an applicant with twenty-one (21) points or lower will be assessed as ineligible for Title XIX-funded long-term care in a long-term care facility, unless the applicant qualifies as otherwise provided in section (5), section (6), or paragraphs (8)(D)5. or 6. in this rule.

5. Applicants or recipients may occasionally require care or services, or both, which could qualify as long-term care facility services. In these instances, a single nursing service requirement may be used as the qualifying factor, making the individual eligible for long-term care facility care regardless of the total point count. The determining factor will be the availability of professional personnel to perform or supervise the qualifying care services. Qualifying care services may include, but are not limited to:

- A. Administration of levine tube or gastrostomy tube feedings;
- B. Nasopharyngeal and tracheotomy aspiration;
- C. Insertion of medicated or sterile irrigation and replacement catheters;
- D. Administration of parenteral fluids;
- E. Inhalation therapy treatments;
- F. Administration of injectable medications other than insulin, if required other than on the day shift; and
- G. Requirement of intensive rehabilitation services by a professional therapist at least five (5) days per week.

6. An applicant or recipient will be considered eligible for inpatient Title XIX assistance regardless of the total point count if the applicant or recipient is unable to meet physical/mental requirements for residential care facility (RCF) or assisted living facility (ALF) residency as specified by section 198.073, RSMo.

7. Points will be assigned to each category, as required by paragraph (8)(C)2. in this rule, in multiples of three (3) according to the following requirements:

A. Mobility is defined as the individual's ability to move from place to place. The applicant or recipient will receive—

(I) Zero (0) points if assessed as independently mobile, in that the applicant or recipient requires no assistance for transfers or mobility. The applicant or recipient may use assistive devices (cane, walker, wheelchair) but is consistently capable of negotiating without assistance of another individual;

(II) Three (3) points if assessed as requiring minimum assistance, in that the applicant or recipient is independently mobile once the applicant or recipient receives assistance with transfers, braces, or prosthesis application or other assistive devices, or a combination of these (example, independent use of wheelchair after assistance with transfer). This category includes individuals who are not consistently independent and need assistance periodically;

(III) Six (6) points if assessed as requiring moderate assistance, in that the applicant or recipient is mobile only with direct staff assistance. The applicant or recipient must be assisted even when using canes, walker, or other assistive devices; and

(IV) Nine (9) points if assessed as requiring maximum assistance, in that the applicant or recipient is totally dependent upon staff for mobility. The applicant or recipient is unable to ambulate or participate in the ambulation process, requires positioning, supportive device, application, prevention of contractures or pressure sores, and active or passive range of motion exercises;

B. Dietary is defined as the applicant's or recipient's nutri-

tional requirements and need for assistance or supervision with meals. The applicant or recipient will receive—

(I) Zero (0) points if assessed as independent in dietary needs, in that the applicant or recipient requires no assistance to eat. The applicant or recipient has physician's orders for a regular diet, mechanically altered diet, or requires only minor modifications (example, limited desserts, no salt or sugar on tray);

(II) Three (3) points if assessed as requiring minimum assistance, in that the applicant or recipient requires meal supervision or minimal help, such as cutting food or verbal encouragement. Calculated diets for stabilized conditions shall be included;

(III) Six (6) points if assessed as requiring moderate assistance, in that the applicant or recipient requires help, including constant supervision during meals, or actual feeding. Calculated diets for unstable conditions are included; and

(IV) Nine (9) points if assessed as requiring maximum assistance, in that the applicant or recipient requires extensive assistance for special dietary needs or with eating, which could include enteral feedings or parenteral fluids;

C. Restorative services are defined as specialized services provided by trained and supervised individuals to help applicants or recipients obtain and/or maintain their optimal highest practicable functioning potential. Each applicant or recipient must have an individual overall plan of care developed by the provider with written goals and response/progress documented. Restorative services may include, but are not limited to, applicant or recipient teaching program (self-transfer, self-administration of medications, self-care), range of motion, bowel and bladder program, remotivational therapy, validation therapy, patient/family program, and individualized activity program. The applicant or recipient will receive—

(I) Zero (0) points if restorative services are not required;

(II) Three (3) points if assessed as requiring minimum services in order to maintain level of functioning;

(III) Six (6) points if assessed as requiring moderate services in order to restore the individual to a higher level of functioning; and

(IV) Nine (9) points if assessed as requiring maximum services in order to restore to a higher level of functioning. These are intensive services, usually requiring professional supervision or direct services;

D. Monitoring is defined as observation and assessment of the applicant's or recipient's physical and/or mental condition. This monitoring could include assessment of routine laboratory work, including, but not limited to, evaluating digoxin and coumadin levels, measurement and evaluation of blood glucose levels, measurement and evaluation of intake and output of fluids the individual has received and/or excreted, weights and other routine monitoring procedures. The applicant or recipient will receive—

(I) Zero (0) points if assessed as requiring only routine monitoring, such as monthly weights, temperatures, blood pressures, and other routine vital signs and routine supervision;

(II) Three (3) points if assessed as requiring minimal monitoring, in that the applicant or recipient requires periodic assessment due to mental impairment, monitoring of mild confusion, or both, or periodic assessment of routine procedures when the recipient's condition is stable;

(III) Six (6) points if assessed as requiring moderate monitoring, in that the applicant or recipient requires recurring assessment of routine procedures due to the applicant's or recipient's unstable physical or mental condition; and

(IV) Nine (9) points if assessed as requiring maximum monitoring, which is intensive monitoring usually by professional personnel due to applicant's or recipient's unstable physical or mental condition;

E. Medication is defined as the drug regimen of all physician-ordered legend medications, and any physician-ordered non-legend medication for which the physician has ordered monitoring due to the complexity of the medication or the condition of the applicant or recipient. The applicant or recipient will receive—

(I) Zero (0) points if assessed as requiring no medication, or has not required PRN medication within the thirty (30) days prior to review and evaluation by the department;

(II) Three (3) points if assessed as requiring any regularly scheduled medication and the applicant or recipient exhibits a stable condition;

(III) Six (6) points if assessed as requiring moderate supervision of regularly scheduled medications, requiring daily monitoring by licensed personnel; and

(IV) Nine (9) points if assessed as requiring maximum supervision of regularly scheduled medications, a complex medication regimen, unstable physical or mental status or use of medications requiring professional observation and assessment, or a combination of these;

F. Behavioral is defined as an individual's social or mental activities. The applicant or recipient will receive—

(I) Zero (0) points if assessed as requiring little or no behavioral assistance. Applicant or recipient is oriented and memory intact;

(II) Three (3) points if assessed as requiring minimal behavioral assistance in the form of supervision or guidance on a periodic basis. Applicant or recipient may display some memory lapses or occasional forgetfulness due to mental or developmental disabilities, or both. Applicant or recipient generally relates well with others (positive or neutral) but needs occasional emotional support;

(III) Six (6) points if assessed as requiring moderate behavioral assistance in the form of supervision due to disorientation, mental or developmental disabilities, or uncooperative behavior; and

(IV) Nine (9) points if assessed as requiring maximum behavioral assistance in the form of extensive supervision due to psychological, developmental disabilities, or traumatic brain injuries with resultant confusion, incompetency, hyperactivity, hostility, severe depression, or other behavioral characteristics. This category includes residents who frequently exhibit bizarre behavior, are verbally or physically abusive, or both, or are incapable of self-direction. Applicants or recipients who exhibit uncontrolled behavior that is dangerous to themselves or others must be transferred immediately to an appropriate facility;

G. Treatments are defined as a systematized course of nursing procedures ordered by the attending physician. The applicant or recipient will receive—

(I) Zero (0) points if no treatments are ordered by the physician;

(II) Three (3) points if assessed as requiring minimal type-ordered treatments, including nonroutine and preventative treatments, such as whirlpool baths and other services;

(III) Six (6) points if assessed as requiring moderate type-ordered treatments requiring daily attention by licensed personnel. These treatments could include: daily dressings, PRN oxygen, oral suctioning, catheter maintenance care, treatment of stasis or pressure sore ulcers, wet/moist packs, maximist, and other such services; and

(IV) Nine (9) points if assessed as requiring maximum type-ordered treatments of an extensive nature requiring provision, direct supervision, or both, by professional personnel. These treatments could include intratracheal suctioning, insertion or maintenance of suprapubic catheter, continuous oxygen, new or unregulated ostomy care, dressings of deep draining lesions more than once daily, care of extensive skin disorders such as advanced pressure sore or necrotic lesions, infrared heat, and

other services;

H. Personal care is defined as activities of daily living, including hygiene; personal grooming, such as dressing, bathing, oral and personal hygiene, hair and nail care, shaving; and bowel and bladder functions. Points will be determined based on the amount of assistance required and degree of assistance involved in the activity. The applicant or recipient will receive—

(I) Zero (0) points if assessed as requiring no assistance with personal care, in that the applicant or recipient is an independent, self-care individual. No assistance is required with personal grooming; the applicant or recipient has complete bowel and bladder control;

(II) Three (3) points if assessed as requiring minimal assistance with personal care, in that the applicant or recipient requires assistance with personal grooming, and/or exhibits infrequent incontinency (once a week or less);

(III) Six (6) points if assessed as requiring moderate assistance with personal care, in that the applicant or recipient requires assistance with personal grooming, requiring close supervision or exhibits frequent incontinency (incontinent of bladder daily but has some control or incontinent of bowel two (2) or three (3) times per week), or a combination of these; and

(IV) Nine (9) points if assessed as requiring maximum assistance with personal care, in that the applicant or recipient requires total personal care to be performed by another individual, and/or exhibits continuous incontinency all or most of the time; and

I. Rehabilitation is defined as the restoration of a former or normal state of health through medically ordered therapeutic services either directly provided by or under the supervision of a qualified professional. Rehabilitation services include, but are not limited to, physical therapy, occupational therapy, speech therapy, and audiology. If ordered by the physician, each resident must have an individually planned and implemented program with written goals and response/progress documented. Points will be determined by intensity of required services and the applicant's or recipient's potential for rehabilitation as determined by the rehabilitation evaluation. The applicant or recipient will receive—

(I) Zero (0) points if assessed as requiring no ordered rehabilitation services;

(II) Three (3) points, if assessed as requiring minimal-ordered rehabilitation services of one (1) time per week;

(III) Six (6) points if assessed as requiring moderate-ordered rehabilitative services of two (2) or three (3) times per week; or

(IV) Nine (9) points if assessed as requiring maximum-ordered rehabilitative services of four (4) times per week or more.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
INITIAL ASSESSMENT - SOCIAL AND MEDICAL

FSD CO. NO.	<input type="checkbox"/> CASH
LOAD NO.	<input type="checkbox"/> XIX

All questions on this form must be answered – write N/A if not applicable. Blank areas will result in return of document and delay in payment.

A. SOCIAL ASSESSMENT

1. PERSON'S NAME (LAST, FIRST, MI)		2. DCN	3. DOB	4. SOCIAL SECURITY NUMBER
5. SEX	10. CURRENT LOCATION (ADDRESS)			
6. RACE	11. Have you ever served on active duty in the Armed Forces of the United States and separated from such service under conditions other than dishonorable? <input type="checkbox"/> Yes <input type="checkbox"/> No			
7. EDUCATION LEVEL <input type="checkbox"/> GRADE SCHOOL <input type="checkbox"/> HIGH SCHOOL <input type="checkbox"/> COLLEGE <input type="checkbox"/> OTHER	If yes, would you like to receive information and assistance regarding the agency's veteran services? <input type="checkbox"/> Yes <input type="checkbox"/> No			
8. OCCUPATION	12. NAME OF PROPOSED NURSING FACILITY PLACEMENT, PHONE #		13. PERSON'S LEGAL GUARDIAN <input type="checkbox"/> OR DESIGNATED CONTACT PERSON <input type="checkbox"/>	
9. DATE ADMITTED TO NF			NAME _____ STREET ADDRESS _____ CITY _____ STATE _____ ZIP _____ PHONE _____	

B. MEDICAL ASSESSMENT

Attach additional sheets of information if necessary.

1. HEIGHT	2. WEIGHT	6. RECENT MEDICAL INCIDENTS (i.e., CVA, SURGERY, FRACTURE, HEAD INJURY, ETC., AND GIVE DATE)		
3. B/P	4. PULSE	RESIDUAL EFFECTS: _____		
5. DATE OF LAST MEDICAL EXAM	7. SPECIAL LAB TESTS AND FREQUENCY			
		8. PRESCRIPTION DRUGS (DOSAGE AND FREQUENCY, INCLUDING PRNS; SHOULD CORRELATE WITH DIAGNOSES)		
		1. _____	4. _____	7. _____
		2. _____	5. _____	8. _____
		3. _____	6. _____	9. _____
9. LIST ALL DIAGNOSES (SHOULD CORRELATE WITH MEDICATIONS) (INCLUDE PSYCH DX)		10. POTENTIAL PROBLEM AREAS AND/OR ADDITIONAL COMMENTS		11. STABILITY
1. _____	6. _____			<input type="checkbox"/> 1. IMPROVING
2. _____	7. _____			<input type="checkbox"/> 2. STABLE
3. _____	8. _____			<input type="checkbox"/> 3. DETERIORATING
4. _____	9. _____			<input type="checkbox"/> 4. UNSTABLE
5. _____	10. _____			
12. LEVEL OF CARE REQUESTED BY PERSON'S PHYSICIAN (CHECK ONE) <input type="checkbox"/> NF <input type="checkbox"/> RCF <input type="checkbox"/> ICFMR <input type="checkbox"/> MH <input type="checkbox"/> SUPPLEMENTAL NC <input type="checkbox"/> HOME CARE				
13. MENTAL STATUS (CHECK ALL THAT APPLY)		14. BEHAVIORAL INFORMATION (CHECK ONE BOX FOR EACH)		15. FUNCTIONAL IMPAIRMENT (CHECK ALL THAT APPLY AND GIVE RATIONALE)
<input type="checkbox"/> ORIENTED TO: <input type="checkbox"/> person, <input type="checkbox"/> place, <input type="checkbox"/> time		NONE MIN MOD MAX		<input type="checkbox"/> VISION _____
<input type="checkbox"/> THINKS CLEARLY		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> CONFUSED		<input type="checkbox"/> HEARING _____
<input type="checkbox"/> LETHARGIC		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> WITHDRAWN		<input type="checkbox"/> SPEECH _____
<input type="checkbox"/> ALERT		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> HYPERACTIVE		<input type="checkbox"/> AMBULATION _____
<input type="checkbox"/> MEMORY: <input type="checkbox"/> good, <input type="checkbox"/> fair, <input type="checkbox"/> poor		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> WANDERS		<input type="checkbox"/> MANUAL DEXTERITY _____
		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> SUSPICIOUS		<input type="checkbox"/> TOILETING _____
		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> COMBATIVE		<input type="checkbox"/> PATH TO SAFETY _____
		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> SUPERVISED FOR SAFETY		
		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> CAUSES MGT. PROBLEMS		
		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> CONTROLLED WITH MEDICATION(S)		
16. ASSESSED NEEDS (CHECK APPROPRIATE BOX FOR EACH; GIVE RATIONALE PLUS AMOUNT OF STAFF ASSISTANCE NEEDED. (YOU MUST USE GUIDE #1 ON BACK.))				
NONE	MIN	MOD	MAX	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. MOBILITY _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. DIETARY _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. RESTORATIVE SERVICES _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. MONITORING _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5. MEDICATION _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6. BEHAVIOR/MENTAL COND. _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. TREATMENTS _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8. PERSONAL CARE _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. REHAB. SERVICES _____

17. POTENTIAL FOR REHAB <input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR		CENTRAL OFFICE USE ONLY	
18. PATIENT REFERRED BY NAME OF INDIVIDUAL OR AGENCY		LEVEL OF CARE DETERMINATION BY DIVISION DRL CENTRAL OFFICE	
19. FORM COMPLETED BY SIGNATURE OF INDIVIDUAL		<input type="checkbox"/> 1 NF <input type="checkbox"/> 2 IID <input type="checkbox"/> 3 MH <input type="checkbox"/> 4 SNC <input type="checkbox"/> 5 NONE	
ADDRESS	TELEPHONE NUMBER	NEXT EVALUATION DATE	SIGNATURE DATE
TELEPHONE	FAX NUMBER	DATE	STATE PHYSICIAN'S CONSULTANT

GUIDE #1 - ASSESSED NEEDS:

1. **MOBILITY** - individual's ability to move from place to place. Do they require assistive device, physical assist with transfer, mobile only with physical assist or unable to ambulate and/or totally dependent?
2. **DIETARY** - individual's nutritional requirements and need for assist and/or supervision with meals. Do they have a special diet, require tray set up, cueing, feeding or on tube feedings or IV fluids?
3. **RESTORATIVE** - specialized services provided to help individual obtain/maintain optimal function potential. Is individual receiving ROM, B & B program, RO, frequency, and amount of assistance required?
4. **MONITORING** - Observation and assessment of individual's physical and mental condition. This may include routine lab work, I & O, clinitest, acetest, weights and other routine procedures.
5. **MEDICATION** - A drug regimen of all physician ordered legend and non-legend drugs for which a physician has ordered monitoring due to complexity of drug or condition of individual.
6. **BEHAVIORAL** - individual's social or mental activities. Does individual require supervision/guidance or assist due to their behavior? Are they alert, oriented, disoriented, uncooperative, abusive or incapable of self-direction?
7. **TREATMENTS** - a systematized course of nursing procedures ordered by the attending physician. What is the treatment and how often is it ordered? Is the treatment non-routine and preventive, require daily attention by a professional or require extensive direct supervision?
8. **PERSONAL CARE** - activities of daily living, including hygiene, personal grooming (dressing, bathing, oral hygiene, hair and nail care, shaving), and bowel and bladder function. Does daily care require supervision, close supervision or total care?
9. **REHABILITATION** - restoration of former or normal state of health through medically ordered therapeutic services either directly provided by or under the supervision of a qualified professional, which may include PT, OT, ST and audiology. What type of rehab is individual receiving and how often do they receive it?

NOTE: Refer to 19 CSR 30-81.030 for complete details of point count system.

GUIDE #2 - INSTRUCTIONS (for Pre-Admission Screenings):

A. NURSING FACILITY ADMISSIONS FROM HOSPITALS-

1. If the person is hospitalized and will or MAY seek placement in a Medicaid certified bed within a skilled or intermediate nursing facility upon discharge, the hospital completes the Level One (I) Screening (DA-124C form) as soon as possible. If a Level Two (II) Screening is then indicated, the hospital also completes the DA-124A/B form (**all questions must be answered**). Email both forms to: COMRU@health.mo.gov. NOTE: The hospital must take immediate action since the Level II Screening process takes 7-9 working days to complete. The physician's signature, discipline, license number and date are ALWAYS required.

2. In Missouri, Federal & State regulations require that Level II Screenings be completed PRIOR to nursing facility placement EXCEPT when a person qualifies for a SPECIAL ADMISSION CATEGORY (follow directions on DA-124C form). NOTE: COMRU nurse may require copy of History & Physical.

B. NURSING FACILITY ADMISSIONS FROM HOME OR RCF OR ALF-

1. Skilled/intermediate nursing facilities receiving persons directly from home should assist families in completing the Level I Screening (DA-124C) with instructions for them to obtain the family physician's signature. If a Level II Screening is indicated, completion of the DA-124A/B follows, as outlined in section A, #1 and 2.

2. **EMERGENCY ADMISSIONS FROM HOME OR RCF OR ALF-**If the person is a danger to himself or others, or if protective oversight is necessary, call the Adult Abuse and Neglect Hotline, 1-800-392-0210. Explain the emergency and ask that a DHSS Worker review the client for EMERGENCY admission to a skilled/intermediate nursing facility. Complete the DA-124A/B & C forms and contact COMRU immediately (573-522-3092). If the emergency occurs at night or on a weekend, do the same and contact COMRU at open of next business day before emailing the forms. If the person will require more than 7 days in a nursing facility, notify COMRU immediately.

3. All Medicaid certified beds, including swing beds, within skilled/intermediate nursing facilities MUST have a completed DA-124C form. If the person is PRIVATE PAY and their Level I Screening does NOT indicate the need for a Level II Screening, the DA-124C form is kept in their chart (on file) until they apply for Medicaid. At that time, a current DA-124A/B form is completed, attached to the original DA-124C form, and mailed to the same address as in section A, #1.

C. NURSING FACILITY TRANSFERS-

1. When persons transfer from one skilled/intermediate nursing facility to another, the sending facility furnishes a copy of their DA-124A/B & C forms to the receiving facility. The receiving facility then notifies their local FSD office of the transfer.

2. When persons transfer from one skilled/intermediate nursing facility to another and application for Medicaid is not indicated, the ORIGINAL DA-124C form must follow to the next facility.

D. TRANSFERS FROM A FACILITY TO A HOSPITAL TO ANOTHER FACILITY-

1. When the person transfers from one skilled/intermediate facility to a hospital, then to another skilled/intermediate facility, hospitals must consider the following prior to placement:

a. If the person did not need a Level II Screening prior to placement at the sending facility, no new forms are indicated if this hospital stay does not exceed 60 days (unless a current Level I Screening indicates the need for a Level II Screening).

b. If the person had a Level II Screening prior to placement at the sending facility, but is being hospitalized for acute medical treatment, no new forms are necessary if the hospital stay does not exceed 60 days.

E. PERSON IS DISCHARGED HOME BUT UNABLE TO STAY-

1. If person is out of facility less than 60 days, no new forms are required. Notify local FSD office of person's readmission.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
NOTICE TO APPLICANT

APPLICANT'S NAME

Have you ever served on active duty in the Armed Forces of the United States and separated from such service under conditions other than dishonorable?

Yes No

If yes, would you like to receive information and assistance regarding the agency's veteran services?

Yes No

Federal Law (Section 1919(b) of the Social Security Act) requires a mental health screening for all persons seeking admission to a Medicaid certified nursing home. The purpose of this law, known as the Nursing Home Reform Act, is to ensure persons with mental health related conditions are placed in appropriate living arrangements where both their physical and mental health needs may be treated.

You are seeking admission to a Medicaid certified bed. Even though you may have completed screenings required by Missouri Department of Health and Senior Services, the nursing facility may **not** admit you to a Medicaid certified bed until all required mental health screenings are done.

The mental health screening is divided into two parts. The first screening (Level I) is done by the nursing home as part of the admission process or by a hospital before a patient is discharged. If the Level I screening suggests that you have a mental health need, a full evaluation (Level II) must be done by the Department of Mental Health.

This notice is to tell you that your Level I screening indicates that you may have a mental health service need. This means:

- 1. You may **not** be admitted to the nursing facility until there is a determination that nursing home placement is appropriate.
- 2. Due to the seriousness of your physical illness, you may be admitted to the nursing home. A full evaluation will be done later to determine if nursing home placement is appropriate.
- 3. Due to your need for **Respite Care**, you may be admitted to the nursing facility for no more than 30 days without a full evaluation if nursing home placement is appropriate.
- 4. Due to your need for **Emergency Care** for protection, you may be admitted to the nursing facility for no more than 7 days without a full evaluation to determine if nursing home placement is appropriate.
- 5. Your physician has certified that you are likely to require less than 30 days of nursing facility services for the condition for which you are currently receiving hospital care. If it becomes apparent that you will stay longer than 30 days, a full evaluation must be done at that time to determine that continued nursing home placement is appropriate.

Full Mental Health Evaluation

If a full mental health evaluation must be done, persons employed or contracted by the Department of Mental Health will contact you. The purpose of the full evaluation is to see if you:

- 1) have a mental health condition as defined by the Nursing Home Reform Act,
- 2) need nursing home level of care or another living arrangement, and
- 3) need special mental health services that the nursing home is unable to provide, or
- 4) need lessor intensity mental health services that the nursing home is mandated by law to provide.

You, or your legal representative, will be given the results of the full evaluation and appeal rights. If the results show that nursing home care is not right for your physical and mental health needs, the Department of Health and Senior Services and Department of Mental Health will give you information about other services that may better meet your needs.