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SALUS POPULI SUPREMA LEX ESTO

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



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at sos.mo.gov/adrules/pubsched.

HOW TO CITE RULES AND RSMO

RULES

The rules are codified in the *Code of State Regulations* in this system–

Title		Division	Chapter	Rule
3	CSR	10-	4	.115
Department	<i>Code of State Regulations</i>	Agency Division	General area regulated	Specific area regulated

and should be cited in this manner: 3 CSR 10-4.115.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

The rule is properly cited by using the full citation, for example, 3 CSR 10-4.115 NOT Rule 10-4.115.

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated.

Code and Register on the Internet

The *Code of State Regulations* and *Missouri Register* are available on the Internet.

The *Code* address is sos.mo.gov/adrules/csr/csr

The *Register* address is sos.mo.gov/adrules/moreg/moreg

These websites contain rulemakings and regulations as they appear in the *Code* and *Registers*.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) business days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 50—Division of Workers' Compensation
Chapter 5—Determination of Disability**

EMERGENCY RULE

8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders

PURPOSE: The intent of this emergency rule is to clarify that certain evidence related to exposure of First Responders to COVID-19 will be available for review in proceedings under Chapter 287. This rule is necessary due to the expiration of a presumption of exposure as provided in 8 CSR 50-5.005. This emergency rule is also for the purpose of clarifying eligibility for workers' compensation benefits and providing protections for First Responders in the state of Missouri related to the COVID-19 public health emergency. This emergency rule implements clarifications to the Missouri Workers' Compensation Law effected by the Governor's Executive Order 20-19 (originally Executive Order 20-02) and pursuant to the Governor's emergency powers under Chapter 44, RSMo.

EMERGENCY STATEMENT: This emergency rule incorporates and implements clarifications to the Missouri Workers' Compensation Law effected by the Governor's Executive Order 20-19 (originally Executive Order 20-02) and pursuant to the Governor's emergency

powers under Chapter 44, RSMo. Section 44.100, RSMo provides that during a state of emergency the Governor is authorized to "perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population." Emergency enactment of this rule is necessary to preserve the compelling governmental interest of protecting the health and welfare of First Responders during a time of declared state and national emergency relating to the COVID-19 pandemic.

This emergency rule directs that an affirmation from the employer of a First Responder that the First Responder's duties were such as to create an exposure to COVID-19 not typically required of the general public may be relied upon as competent and substantial evidence.

Emergency enactment of the rule will also assist the Missouri State Department of Health and Senior Services in performing their critical duties of providing for the health and welfare of Missouri citizens.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Division of Workers' Compensation believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed January 15, 2021, becomes effective February 1, 2021, and expires July 30, 2021.

(1) A First Responder, defined as a law enforcement officer, firefighter or an emergency medical technician (EMT), as such occupations are defined in Section 287.243, who has contracted COVID-19 may present evidence in the form of an affirmation from their employer that the First Responder's duties were such as to create an occupational exposure to COVID-19. In any proceeding under Chapter 287, such affirmation may be relied upon as sufficient competent evidence in the record for a finding that the occupational disease arose out of and in the course of such employment and that such occupational exposure was the prevailing factor in causing the resulting medical condition, disability and/or death. When such affirmation is presented, medical conditions, disability and/or death resulting from COVID-19 shall be considered to follow as an incident of an occupational disease and shall not be considered an ordinary disease of life to which the general public is exposed outside of the employment.

(2) The authorization referred to in Section (1) shall be made on the following form, the sole purpose of which is to be submitted as evidence in a proceeding under Chapter 287. As used in this section, the term "Authorized Employer Representative" shall mean a person with supervisory authority over, and with personal knowledge of the daily work-related duties of, the named First Responder.

Affirmation of Employer—Scope of Employment of First Responder Employee

By signing this form I affirm by personal knowledge or belief that the individual named below is a First Responder as defined in Section 287.243 and that such individual’s duties arising in the normal scope and course of his/her employment do require and cause in-person interactions with the public, in a manner not typically required of the general public, as to expose him/her to COVID-19 and that such individual did perform such duties during the time of a declared state of emergency.

This form shall constitute evidence that may be offered in a proceeding under Chapter 287.

First Responder Employee (Name): _____

Employer: _____

Authorized Employer Representative (Name/Title): _____

Authorized Employer Representative (Signature): _____

In Witness whereof I have hereunto subscribed my name and affixed by official seal
this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

(3) Section (1) shall not apply if a subsequent medical determination establishes that the First Responder did not contract COVID-19.

(4) Notwithstanding Section (1), if the weight of sufficient competent evidence demonstrates that a First Responder contracted COVID-19 resulting from exposure that was not related to the First Responder's employment, the claim shall not be compensable.

(5) The provisions of this emergency rule shall cease to be in effect at the expiration of the state of emergency declared in Executive Order 20-19 (originally declared in Executive Order 20-02) or any successor executive order extending the state of emergency, whichever occurs later, or upon the expiration of this emergency rule as set forth in Chapter 536.

AUTHORITY: section 287.650, RSMo 2016. Emergency rule filed Jan. 15, 2021, effective Feb. 1, 2021, expires July 30, 2021.

PUBLIC COST: Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.

PRIVATE COST: The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Title 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**
- Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION**
- Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY**

Rule Number and Name:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Emergency

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Political subdivisions providing workers’ compensation for first responders as defined in the emergency rule.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.

III. WORKSHEET

- See below.

IV. ASSUMPTIONS

- **PUBLIC COST:** Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.
- **PRIVATE COST:** The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Title 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**
Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION
Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY

Rule Number and Title:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Emergency

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Any private entity made up of first responders as defined in the emergency rule.	Any private entity made up of first responders as defined in the emergency rule.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

III. WORKSHEET

- See below

IV. ASSUMPTIONS

- **The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.**

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax

EMERGENCY RULE

12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location

PURPOSE: This rule modifies the manner in which the amounts required to be withheld by certain employers for employees performing services for wages from a temporary work location are calculated during a defined period.

*EMERGENCY STATEMENT: This emergency rule is necessary to respond to the Covid-19 public health emergency. This emergency rule is necessary to preserve a compelling governmental interest, in that this rule will prevent an undue burden to employers who have been required to take extraordinary steps to protect the health of their employees and the public at large in response to the Covid-19 pandemic. This emergency rule modifies the procedure for withholding and remitting Missouri state income tax and allows certain employers to elect to withhold and remit tax on the basis of primary work location when an employer's employees were working from a temporary work location during a specified period. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Department of Revenue believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed January 6, 2021, becomes effective January 21, 2021, and expires July 19, 2021.*

(1) Definitions:

(A) Employer—The term “employer” as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(2).

(B) Employee—the term “employee” as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(6).

(C) Primary Work Location – The term “primary work location” means the address of the employer where the employee was regularly assigned to work immediately preceding the declaration date.

(D) Temporary Work Location—The term “temporary work location” means a location where the employee worked during the COVID-19 relief period that was in a state other than the state of the employee’s primary work location.

(E) Time and Attendance System —The term “time and attendance system” means a system in which—

1. The employee is required on a contemporaneous basis to record his or her work location for every day worked outside of the employer’s primary work location; and

2. The system is designed to allow the employer to allocate the employee’s wages for income tax purposes among all taxing jurisdictions in which the employee performs services for wages for such employer.

(F) Wages—The term “wages” as used in this rule has the same meaning as supplied by section 143.191.2, RSMo.

(G) Declaration Date—The term “declaration date” means the date upon which the United States Government declared a “Federally declared disaster” as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic, specifically, March 13, 2020.

(H) COVID-19 Relief Period—The term “COVID-19 relief period” means the period of time beginning on the date upon which the United States Government declared a “Federally declared disaster” as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic (March 13, 2020) and ending on December 31, 2020.

(2) For services performed by an employee after the declaration date and prior to the earlier of the time at which an employer began withholding based on a time and attendance system for such employee or the end of the COVID-19 relief period, each employer may elect to withhold income tax from wages paid to such employee as if such wages were earned from work performed at the employee’s primary work location, despite such employee working from a temporary work location during the COVID-19 relief period.

(A) This rule shall only apply to:

1. Employers that did not maintain a time and attendance system for all employees on or before the declaration date, and only where such employer is:

A. An employer having a primary work location in Missouri with employees working from temporary work locations in states other than Missouri; or

B. An employer having a primary work location in a state other than Missouri with employees working from temporary work locations in Missouri.

(3) Affidavit Required—Each employer who elects to withhold and remit tax based on the primary work location of its employees under section (2) of this rule shall submit an affidavit notifying the Department of Revenue on or before January 31, 2021, of the following:

(A) The employer did not have a time and attendance system in place for all employees as of the declaration date;

(B) The employer did not have a time and attendance system in place to identify the locations at which employees performed services during the COVID-19 relief period prior to the implementation of a time and attendance system, if an employer implemented a time and attendance system during the COVID-19 relief period;

(C) The employer will issue forms W-2 to employees consistent with the primary work location of each employee for all or part of the COVID-19 relief period during which an employee was not covered by a time and attendance system; and

(D) The employer will issue communication notifying impacted employees of the employer’s election made pursuant to section (2) of this regulation no later than five (5) business days after submission of the affidavit contemplated by this section.

(4) Examples:

(A) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through November 1, 2020.

(B) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020.

(C) Employer maintains a primary work location for its employees in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will

withhold Kansas income tax from wages paid to employees working from temporary work locations in Missouri from March 13, 2020, through November 1, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(D) Employer maintains a primary work location for its employees in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Kansas income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(E) Employer had a time and attendance system in place at the beginning of the COVID-19 relief period. Employer is ineligible to elect to withhold on the basis of the employer's primary work location, and instead withholds on the basis of the location where its employees actually performed services for wages for the employer as recorded by the time and attendance system.

(5) Nothing in this rule shall be interpreted as affecting in any way the income tax liability of any resident or nonresident within the meaning of chapter 143, RSMo, nor shall this rule be interpreted as affecting in any way any liabilities arising from any municipal income or earnings tax imposed by any political subdivision of the state of Missouri.

AUTHORITY: sections 136.120, 143.191.3(1), 143.511, and 143.961, RSMo 2016. Emergency rule filed Jan. 6, 2021, effective Jan. 21, 2021, expires July 19, 2021. A proposed rule covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program
EMERGENCY AMENDMENT**

13 CSR 70-20.060 Professional Dispensing Fee. The department is amending the purpose statement, sections (1) and (2), and adding new sections (2) and (4).

PURPOSE: The purpose of this amendment is to update the amount of the professional dispensing fee reimbursable for the dispensing of MO HealthNet covered prescriptions by a pharmacy provider.

PURPOSE: The MO HealthNet Division establishes the amount of the fee reimbursable for the professional dispensing of each MO HealthNet covered prescription by a pharmacy provider, raises the current dispensing fee from three dollars (\$3) to four dollars eighty-four cents (\$4.84) and establishes a long-term care prescription fee add-on of fifteen cents (15¢).

EMERGENCY STATEMENT: This emergency amendment informs the public that the professional dispensing fee for pharmacy provider

claims will change on February 1, 2021. The professional dispensing fee compensates a pharmacy or pharmacist for costs associated with dispensing the prescription, in addition to the cost of the ingredients. The professional dispensing fee must be supported by a recent dispensing fee survey and approved by the Center for Medicare and Medicaid Services (CMS). The prior dispensing fee must be revised to reflect the recent dispensing fee survey and the current State Plan Amendment (SPA) the MO HealthNet Division submitted to CMS for its review and approval. This emergency amendment must be implemented urgently so that the MO HealthNet Division is in compliance with federal Medicaid legal requirements implemented through CMS. The MO HealthNet Division has a compelling government interest in paying the professional dispensing fee in accordance with the SPA submitted to CMS in order to meet federal funding participation requirements. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Mo HealthNet Division believes that this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. This emergency amendment was filed January 13, 2021, becomes effective February 1, 2021, and expires July 30, 2021.

(1) **Between April 1, 2017 and January 31, 2021 [A/a professional dispensing fee [of four dollars eighty-four cents (\$4.84)] shall be added to the MO HealthNet maximum allowable payment for [each] MO HealthNet reimbursable prescriptions filled or refilled by a pharmacy provider as follows.**

(A) **Out-of-state pharmacy providers receive a professional dispensing fee of \$9.55.**

(B) **In-state pharmacy providers receive a professional dispensing fee of \$14.37.**

(C) **In-state pharmacy providers receive a preferred generic product incentive fee of \$5.00.**

[(A)](D) **The professional dispensing fees as provided in this rule shall not be included in the computation of the MO HealthNet maximum allowable drug payment for participant cost-sharing purposes.**

(2) **Effective February 1, 2021, a professional dispensing fee shall be added to the MO HealthNet maximum allowable payment for MO HealthNet reimbursable prescriptions filled or refilled by a pharmacy provider as follows.**

(A) **Out-of-state pharmacy providers receive a professional dispensing fee of \$8.85.**

(B) **In-state pharmacy providers receive a professional dispensing fee of \$12.22.**

(C) **The professional dispensing fee as provided in this rule shall not be added to prescriptions reimbursed at the usual and customary charge submitted by the provider.**

(D) **The professional dispensing fees as provided in this rule shall not be included in the computation of the MO HealthNet maximum allowable drug payment for participant cost-sharing purposes.**

[(2)](3) **Effective April 1, 2017, [A/all pharmacy providers supplying prescribed MO HealthNet covered drugs to participants in long-term care facilities shall receive an additional [fifteen cent (15¢)] fifty cent (50¢) dispensing fee per claim provided they—**

(A) **Dispense medication in a drug distribution system(s) which meets minimum standards of container packaging (at least class B as defined in United States Pharmacopeia XXI);**

(B) **Certify to the MO HealthNet Division, on a form, and in the manner prescribed by the division, that they—**

1. **Provide this dispensing service to their long-term care facility resident patients;**

2. **Provide emergency services twenty-four (24) hours a day with seven (7) days a week availability; and**

3. Have **the** ability and willingness to assist in accessing medications through the MO HealthNet Exception Process; and

(C) Indicate, as prescribed by the MO HealthNet Division, on each claim that the prescription was provided in packaging qualifying for the dispensing fee add-on to a participant in a long-term care facility.

(4) A professional dispensing fee shall be added to maintenance medications no more frequently than once every twenty-five (25) days. "Maintenance medications" are defined as drugs that have a common indication for treatment of a chronic disease, and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "1."

*AUTHORITY: sections 208.153, [and] 208.201, and 660.017, RSMo [Supp. 2013] 2016. Original rule filed Dec. 15, 1987, effective March 11, 1988. Amended: Filed Sept. 26, 2013, effective March 30, 2014. Emergency amendment filed Jan. 13, 2021, effective Feb. 1, 2021, expires July 30, 2021. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

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

PRIVATE COST: This emergency amendment will cost private entities an estimate of twenty-five million, three hundred eight thousand, and nine hundred forty-three dollars (\$25,308,943) in the time the emergency is effective.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 13 - Department of Social Services
- Division Title:** Division 70 - MO HealthNet Division
- Chapter Title:** Chapter 20 – Pharmacy Programs

Rule Number and Name:	13 CSR 70-20.060 Professional Dispensing Fee
Type of Rulemaking:	Emergency Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
3600	Enrolled MO HealthNet Pharmacy Providers	Estimated cost for February 1, 2021-July 30, 2021 change: \$25,308,943

III. WORKSHEET

Beginning 02/01/2021 the new base professional dispensing fee will be \$8.85. Pharmacy providers supplying covered drugs to participants in long-term care facilities will receive an additional \$.50 dispensing fee. The dispensing fee under the existing payment methodology is estimated to be \$86,187,527. It is anticipated the cost will be \$60,878,584 under the new methodology, resulting in an annual public savings.

The estimated cost to pharmacies for February 1, 2021 to July 30, 2021, will be \$25,308,943.

IV. ASSUMPTIONS

New dispensing fee amounts were applied to the FY 2020 claim data.

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

**EXECUTIVE ORDER
21-01**

WHEREAS, the Citizens Advisory Committee on Corrections was established by Governor Bob Holden on April 1, 2003, by Executive Order 03-11; and

WHEREAS, the Citizens Advisory Committee on Corrections has fulfilled its objective and assisted in strengthening the Missouri Department of Corrections' grievance procedures; and

WHEREAS, the Missouri Department of Corrections has further enhanced its operating policies and procedures for contemporary issues and needs since the inception of the Citizens Advisory Committee on Corrections; and

WHEREAS, no appointments have been made to the Citizens Advisory Committee on Corrections since 2012; and

WHEREAS, Governor Bob Holden signed Executive Order 02-05 on March 19, 2002; and

WHEREAS, Executive Order 02-05 required the Department of Natural Resources, The Department of Economic Development, the Department of Agriculture, the Department of Health and Senior Services, and the Department of Conservation to ensure coordination between state agencies in the development of administrative rules; and

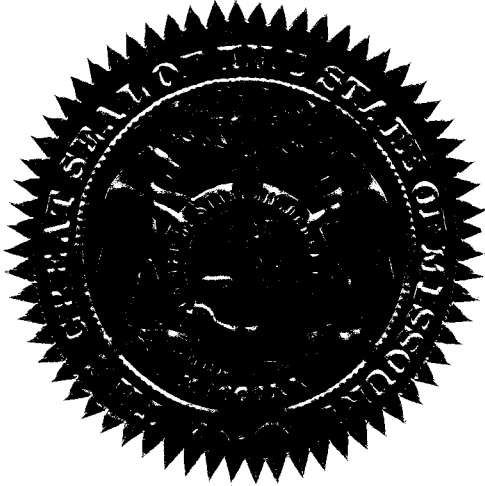
WHEREAS, that function is fulfilled through Section 536.175, RSMo and Executive Order 17-03, rendering the requirements of Executive Order 02-05 duplicative and unnecessary; and

WHEREAS, Executive Order 05-06 was signed by Governor Matt Blunt on January 24, 2005; and

WHEREAS, Executive Order 05-06 was intended to prevent offenders serving sentences within the Missouri Department of Corrections from playing video games with violent content; and

WHEREAS, the role and use of technology throughout the State of Missouri has changed significantly since 2005, and media players can be an effective tool to improve institutional and staff safety by providing offenders with constructive and educational activities, as well as enhance rehabilitative services by affording offenders additional educational and vocational opportunities:

NOW THEREFORE, I, MICHAEL L. PARSON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, hereby order that Executive Order 03-11 and Executive Order 02-05 are hereby terminated, and order that Executive Order 05-06 remains in full-force and effect, but does not apply to media available on offender media players, where the content satisfies all departmental censorship requirements and does not negatively impact officer safety or institutional security.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 7th day of January, 2021.

A handwritten signature in black ink, appearing to read "Michael L. Parson", written over a horizontal line.

MICHAEL L. PARSON
GOVERNOR

ATTEST:

A handwritten signature in black ink, appearing to read "John R. Ashcroft", written over a horizontal line.

JOHN R. ASHCROFT
SECRETARY OF STATE

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.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

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

PROPOSED AMENDMENT

5 CSR 20-400.620 Certification Requirements for Transition Administrator Certificate. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment will update the requirements to include the Missouri Leadership Developments System Micro-Credentials.

(1) An applicant for a Missouri Transition Administrator Certificate who possesses good moral character may be granted a Transition Administrator Certificate subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements specific to Transition Administrator Certificates:

(A) The Transition Administrator Certificate, valid for a period of six (6) years from the effective date on the certificate, will be issued upon completion and verification of the following:

1. For applicants seeking a Transition Administrator Certificate for *[either Career Education Director (Secondary/Adult); Elementary Principal (Grades K-8); Middle School Principal (Grades 5-9); Secondary Principal (Grades 7-12); or Special Education Director (Grades K-12)] School Leader (Grades K-12); Career and Technical Education Administrator (Grades 7-12); and Special Education Director (Grades K-12)—*

A. Four (4) years of administrator experience approved by the Missouri Department of Elementary and Secondary Education (department);

B. Participation in two (2) years of district-provided mentoring (during the first two (2) years of administrator experience);

C. The development, implementation, and completion of a professional development plan of at least one hundred twenty (120) contact hours of professional development based on standards and quality indicators as required by the State Board of Education (board), or eight (8) semester hours of graduate credit toward an advanced degree in educational leadership, reading/literacy, or curriculum/instruction, or a combination of credits/professional development, **or successful completion of three (3) department-approved micro-credentials based on the department's leadership development system;** and

D. Successful participation in an annual performance-based *[principal's] administrator* evaluation.

(2) The requirements of this rule shall become effective *[August 1, 2017] September 1, 2021.*

AUTHORITY: sections [168.011, 168.405, and 168.409, RSMo 2000, and sections 161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. 2013] 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2020. Original rule filed Oct. 29, 2013, effective May 30, 2014. Amended: Filed Jan. 14, 2021.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

5 CSR 20-400.630 Certification Requirements for Career Continuous Administrator Certificate. The State Board of Education (board) is amending sections (1) and (2).

PURPOSE: The proposed amendment will update the requirements to include the Missouri Leadership Development System Micro-Credentials.

(1) An applicant for a Missouri Career Continuous Administrator Certificate who possesses good moral character may be granted a Career Continuous Administrator Certificate subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements specific to Career Continuous Administrator Certificates:

(A) The Career Continuous Administrator Certificate for [either Career Education Director (Secondary/Adult); Elementary Principal (Grades K-8); Middle School Principal (Grades 5-9); Secondary Principal (Grades 7-12); or Special Education Director (Grades K-12)] School Leader (Grades K-12), Career and Technical Education Administrator (Grades 7-12), or Special Education Director (Grades K-12) will be issued upon completion and verification of the following:

1. Completion of an educational specialist degree or higher [or the equivalent thereof,] from a regionally accredited college or university [or another educational leadership program meeting the approval of the department]. Such degree[, or the equivalent thereof,] must be in educational leadership, reading/literacy, or curriculum/instruction or successful completion of fifteen (15) Missouri Department of Elementary and Secondary Education (department) approved micro-credentials based on the department's leadership development system;

2. Successful participation in an annual performance-based [principal] building level administrator evaluation;

3. Participation in thirty (30) contact hours of professional development annually; [and]

4. Four (4) years of administrator experience approved by the [Missouri Department of Elementary and Secondary Education [department]]; and

5. Participation in two (2) years of district-provided mentoring (during the first two (2) years of administrator experience);

(B) The holder of a Career Continuous Administrator Certificate for [either Career Education Director (Secondary/Adult); Elementary Principal (Grades K-8); Middle School Principal (Grades 5-9); Secondary Principal (Grades 7-12); or Special Education Director (Grades K-12)] School Leader (Grades K-12), Career and Technical Education Administrator (Grades 7-12), or Special Education Director (Grades K-12) is exempt from the thirty (30) contact hours of professional development if the holder has a local professional development plan in place with the school and meets at least two (2) of the following:

1. Ten (10) years of administrator experience approved by the department;

2. Completion of an educational specialist degree or higher[, or the equivalent thereof,] from a regionally accredited college or university [or another educational leadership program meeting the approval of the department]. Such degree[, or the equivalent thereof,] must be in educational leadership, reading/literacy, or curriculum/instruction; [and/or]

3. Certification from a nationally recognized professional administrator organization approved by the State Board of Education (board); and/or

4. Completion of the department's Leadership Development System micro-credentials;

(C) The Career Continuous Administrator Certificate for applicants seeking a Career Continuous Administrator Certificate for Superintendent (Grades K-12) will be issued upon completion and verification of the following:

1. Four (4) years of district-level administrator experience approved by the department;

2. Participation in one (1) year of district-provided mentoring (during the first year of superintendent experience);

3. The development, implementation, and completion of a pro-

fessional development plan of at least one hundred twenty (120) contact hours of professional development based on standards and quality indicators as required by the board, or eight (8) semester hours of graduate credit toward a doctorate degree in educational leadership, or a combination of credits/professional development; and

4. Successful participation in an annual performance-based evaluation;

(D) The Career Continuous Administrator Certificate for Superintendent (Grades K-12) will remain valid based upon verification by the employing school district that the certificate holder—

1. Participated in a performance-based evaluation; and

2. Completed thirty (30) contact hours of professional development, or two (2) semester hours of graduate credit toward a doctorate degree in educational leadership, or a combination of professional development and graduate credit each year; and

(E) The holder of a Career Continuous Administrator Certificate for Superintendent (Grades K-12) is exempt from the thirty (30) contact hours of annual professional development if the holder has a local professional development plan in place with the school and meets [at least two (2) of] the following:

1. Ten (10) years of district level administrator experience approved by the department;

2. A doctorate degree in educational leadership from a regionally accredited college or university; and/[or]

3. Certification from a nationally recognized professional administrator organization approved by the board.

(2) The requirements of this rule shall become effective [August 1, 2017] September 1, 2021.

AUTHORITY: sections [168.011, 168.405, and 168.409, RSMo 2000, and sections 161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. 2013] 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2020. Original rule filed Oct. 29, 2013, effective May 30, 2014. Amended: Filed Jan. 14, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Dr. Paul Kanik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Financial and Administrative
Services
Chapter 660—School Finance**

PROPOSED RESCISSION

5 CSR 30-660.085 Attendance Hour Reporting. This rule established policies and standards for local education agencies (LEAs) for maintaining attendance hour records in accordance with Chapter 163, RSMo.

PURPOSE: This rule is being rescinded due to a reduced need for special attendance accommodations in response to the COVID-19 pandemic.

AUTHORITY: section 161.092, RSMo 2016, and sections 163.021 and 171.031, RSMo Supp. 2020. Emergency rule filed July 15, 2020, effective Aug. 1, 2020, expired Feb. 25, 2021. Original rule filed July 15, 2020, effective Jan. 30, 2021. Rescinded: Filed Jan. 13, 2021.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, ATTN: Kari Monsees, Division of Financial and Administrative Services, PO Box 480, Jefferson City, MO 65102-0480, or by email to DESE.AdminRules@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 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 8—Design Guides**

PROPOSED AMENDMENT

10 CSR 20-8.300 Design of Concentrated Animal Feeding Operation. The Department of Natural Resources is adding a new section (2) and renumbering as necessary.

PURPOSE: This proposed amendment corrects an inadvertent deletion of definitions relevant to the design standards of wastewater management and containment structures for concentrated animal feeding operations.

(2) Definitions.

(A) Definitions as set forth in the Missouri Clean Water Law, Chapter 644, Concentrated Animal Feeding Operation (Hog Bill) section 640.703, RSMo, 10 CSR 20-2.010, and 10 CSR 20-6.300 shall apply to the terms in this rule unless otherwise defined by subsection (2)(B) below.

(B) Other applicable definitions are as follows:

1. Design storage period—The calculated number of days that will fill the manure storage structure from the lower to the upper operating level for a covered storage structure or from the lower to the upper operating level for an uncovered, liquid storage structure during a period of average rainfall minus evaporation (R-E).

A. For a design storage period of fewer than three hundred sixty-five (365) days, the largest consecutive average monthly R-E, corresponding with the number of months of the storage period, shall be used.

B. For multiple storage stages, the storage period is the sum of available storage days in each stage.

C. For covered liquid manure storage structures, the upper operating level is one foot (1') below the top of the structure;

2. Freeboard—The elevation difference between the bottom of the spillway to the top of the berm for an earthen basin;

3. Groundwater table—The seasonal high water level occurring beneath the surface of the ground, including underground watercourses, artesian basins, underground reservoirs and lakes,

aquifers, other bodies of water located below the surface of the ground, and water in the saturated zone. For the purposes of this rule, groundwater table does not include the perched water table;

4. Manure—The fecal and urinary excretion of animals;

5. Manure storage structure—A fabricated structure or earthen basin used to store manure, litter, and/or process wastewater;

6. Rainfall minus evaporation (R-E)—The average depth of monthly liquid precipitation minus evaporation as published in the most recent National Weather Service Climate Atlas for the geographical region of the proposed structure;

7. Safety depth—One foot (1') of liquid depth or the depth needed to hold the volume of the ten- (10-) year, ten- (10-) day storm, whichever is greater;

8. Solid manure—Manure that can be stacked without free flowing liquids;

9. Safety volume—The volume of wastewater stored between the upper pumpdown and emergency spillway crest;

10. Storage lagoon—A lagoon that does not have adequate volume to accomplish treatment;

11. Storage volume—The volume of manure, runoff, washwater, rainfall, and additional water sources between the lower and upper operating levels;

12. Ten- (10-) year, ten- (10-) day storm—The depth of rainfall occurring in a ten- (10-) day duration over a ten- (10-) year return frequency as defined by the most recent publication of the National Weather Service Climate Atlas for the geographical region of the proposed manure storage structure;

13. Total storage capacity—The combined volume of storage and safety volumes stored between the lower pumpdown level and emergency spillway crest;

14. Treatment volume—The permanent volume maintained below the lower pumpdown designed for anaerobic treatment of manure based on latitude;

15. Waste treatment lagoon—A lagoon that is sized to have three hundred sixty-five (365) days of storage volume and adequate treatment volume;

16. Wastewater—A combination of manure, washwater, runoff, rainfall, and process wastewater; and

17. Wastewater flow—The annual rate of wastewater contributed to an animal waste management system.

[(2)](3) Permit Application Documents. All engineering documents shall be prepared by, or under the direct supervision of, a registered professional engineer licensed to practice in Missouri.

[(3)](4) Location.

(A) Protection from Flooding—Manure storage structures, confinement buildings, open lots, composting pads, and other manure storage areas in the production area shall be protected from inundation or damage due to the one hundred- (100-) year flood.

(B) The minimum setback distances from manure storage structures, manure storage areas, confinement buildings, open lots, or mortality composters shall be as follows:

1. Ten feet (10') to public water supply pipelines;

2. Fifty feet (50') to property lines;

3. Fifty feet (50') to public roads;

4. One hundred feet (100') to wetlands, ponds, or lakes not used for human water supply;

5. One hundred feet (100') to gaining streams (classified or unclassified; perennial or intermittent);

6. Three hundred feet (300') to human water supply lakes or impoundments; and

7. Three hundred feet (300') to losing streams (classified or unclassified; perennial or intermittent) and sinkholes.

(C) Distances from earthen basins shall be measured from the outside edge of the top of the berm.

[[4]](5) Manure Storage Structure Sizing.

(A) No Discharge Requirement. All manure storage structures shall comply with the design standards and effluent limitations of 10 CSR 20-6.300(4).

(B) Design Storage Period. The minimum design storage period for manure storage structures shall be as follows:

1. The minimum design storage period for liquid manure, solid manure, and dry process waste to be land applied is one hundred eighty (180) days;

2. The minimum design storage period for solid manure and dry process waste to be sold or used as bedding is ninety (90) days; and

3. The minimum design storage period for waste treatment lagoons without an impermeable cover is three hundred sixty-five (365) days.

(C) New Class I swine, veal, or poultry operations shall evaluate proposed uncovered manure storage structures in accordance with applicable federal regulation as set forth in 40 CFR 412.46(a)(1), November 20, 2008, and shall hereby be incorporated by reference, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

(D) Sizing Manure Storage Structures.

1. The structure shall be designed to hold all inputs, between the upper and lower operating levels, anticipated during the design storage period.

2. Uncovered liquid storage structures shall also include:

A. One in ten (1-in-10) year rainfall minus evaporation from the surface of the structure, held between the operating levels; and

B. Safety volume based on the twenty-five (25) year, twenty-four (24) hour storm event above the upper operating level.

3. Tanks and pits shall also include six inches (6") of depth below the lower operating level for incomplete removal allowance.

4. Earthen basins shall also include:

A. At least one foot (1') of freeboard or two feet (2') for structures that receive storm water from open lots larger than the surface area of the storage structure;

B. Two feet (2') of permanent liquid depth below the lower operating level. Anaerobic treatment volume greater than two feet (2') will satisfy this requirement;

C. Sludge accumulation volume; and

D. Treatment volume below the lower operating level for anaerobic treatment lagoons.

[[5]](6) Construction of Earthen basins.

(A) Geohydrologic Evaluation. A geohydrologic evaluation of the proposed earthen basin prepared by the Missouri Geological Survey shall be submitted to the department. If the geohydrologic evaluation gives a severe rating for collapse potential, an earthen basin shall not be used.

(B) Detailed Soils Investigation. A detailed soils investigation is required to substantiate feasibility and to determine the quantity and quality of soil materials on-site and from a borrow area for use in the basin and/or liner. The following information, in whole or in part, is required:

/A./1. Atterburg limits;

/B./2. Standard proctor density (moisture/density relationships);

/C./3. Coefficient of permeability (undisturbed and remolded);

/D./4. Depth to bedrock;

/E./5. Particle size analysis; and

/F./6. Depth to groundwater table.

(C) Shape and Location.

1. The shape of all cells shall be such that there are no narrow or elongated portions or islands, peninsulas, or coves.

2. The floor of the structure shall be a consistent elevation with finished elevations not be more than three inches (3") above or below the average elevation of the floor.

3. The floor of the basin shall be at least four feet (4') above the groundwater table or the water table as modified by subsurface drainage and at least two feet (2') above bedrock.

(D) Outer berm slopes shall not be steeper than three to one (3:1), horizontal to vertical, and inner slopes not be flatter than four to one (4:1) or steeper than three to one (3:1) for uncovered lagoons or two and one-half to one (2.5:1) for covered lagoons.

(E) Berm Construction and Width. Construction specifications shall include the following:

1. Compact soil used in constructing the basin floor (not including clay liner) and berm cores to between two percent (2%) below and four percent (4%) above the optimum water content and to at least ninety percent (90%) standard proctor density;

2. Use lifts for berm construction not exceeding twelve inches (12") with a maximum rock size not exceeding one-half (1/2) the thickness of the compacted lift; and

3. Construct the top width of the berm a minimum of eight feet (8') for fill heights from fifteen to twenty feet (15'-20'), use minimum top widths of ten feet (10') and for fill heights from twenty to twenty-five feet (20'-25'), use minimum top widths of twelve feet (12').

(F) Emergency Spillway. To prevent overtopping and cutting of berms, an emergency overflow shall be provided that—

1. Has a minimum bottom width of ten feet (10') and a minimum depth of one foot (1'); and

2. Is compacted and vegetated or otherwise constructed to prevent erosion due to possible flow.

(G) Compacted Clay Liner.

1. Liner construction. Compacted clay liners shall be constructed to—

A. Be scarified and compacted to between two percent (2%) below and four percent (4%) above the optimum water content and to at least ninety percent (90%) standard proctor density.

B. Be raised in lifts not exceeding six inches (6") with a maximum rock size not exceeding one-half (1/2) the thickness of the compacted lift.

C. Be maintained at or above the optimum water content until the basin is prefilled with water.

D. Have a minimum thickness of twelve inches (12").

2. Permeability. All earthen basins shall be sealed so that seepage loss through the seal is minimized and to meet the following specifications:

A. Cover the floor and extend up the inner slope to where the side slope intersects with the top of the berm.

B. Have a design permeability of the basin seal not exceeding 1.0×10^{-7} centimeter per second (cm/sec). For soils which have a coefficient of permeability greater than 1.0×10^{-7} (cm/sec), unusual depth, or potable ground water contamination potential, liner thickness of more than twelve inches (12") may be required. The following equation shall be used to determine minimum seal thickness:

$$t = (H \times K) / 5.4 \times 10^{-7} \text{ cm/sec}$$

where

K = permeability coefficient of the soil in question;

H = head (maximum water level depth) of water in the basin; and

t = thickness of the soil seal.

(H) Protection of Berms. Rip-rap or some other acceptable method of erosion control is required as a minimum around all piping entrances and exits, for aerated cell(s), on the slopes and floor in the areas where turbulence will occur, and for protection from wave action for basins with a surface area greater than five (5) acres.

(I) If alternative liners are used, permeability, durability, and integrity of the proposed materials must be satisfactorily demonstrated for anticipated conditions.

(J) Depth Gauges. A permanent depth measurement gauge or marker shall be installed and maintained in the basin that is easily readable at one-foot (1') or smaller increments and clearly displayed

lower, upper, and emergency spillway levels.

(K) Piping. Fill around pipes installed through embankments shall be compacted to prevent seepage and pressurized piping must be valved. Valves are not required on gravity piping into the lagoon.

(L) Safety. Consideration shall be given for safety in using open storage structures including the use of prevention and recovery components.

(M) Operation and Maintenance. An operation and maintenance plan is required addressing the major components of the concentrated animal feeding operation system.

[[6]](7) Construction of Tanks and Pits. Construction of tanks and pits shall meet the following requirements:

(A) Soils and Foundation. A thorough site investigation shall be made to determine the physical characteristics and suitability of the soil and foundation for the fabricated storage structure. Position the floor of the below-ground storage tanks two feet (2') above the groundwater table;

(B) Allow one foot (1') of depth at the top of covered structures for agitation and/or ventilation;

(C) Include a permanent depth measurement gauge or marker that is easily readable at one-foot (1') or smaller increments for uncovered tanks and pits;

(D) Use perimeter tiling and granular backfill for below-ground pits;

(E) Locate tank and pit footings at or below the maximum frost depth;

(F) Design concrete and steel features according to published guidelines; and

(G) Design and construct tanks and pits to be watertight.

[[7]](8) Construction of Solid Manure Components. The following requirements shall be met when constructing poultry buildings, open lots, stacking pads, stacksheds, and other similar structures:

(A) Divert surface water away from animal confinement areas and buildings;

(B) Floors and Pads. Construct the base of covered and uncovered lots, poultry buildings, and other solid manure storage areas of concrete or other rigid, essentially watertight materials or from a firm, compacted, earthen base of Unified Soil Classification System (USCS) class CH, MH, CL, GC, or SC soils a minimum of two feet (2') above the groundwater table and be at least two feet (2') above bedrock;

(C) Uncovered solids storage areas must also meet the following:

1. Have an overall slope between two percent (2%) and four percent (4%) for unpaved lots;

2. Be maintained in a way that prevents ponding; and

3. Have a runoff collection structure that meets the requirements of this rule.

[[8]](9) Design and Construction of Pipelines, Pump Stations, and Land Application Systems.

(A) General. Design of pipelines shall be based on the following requirements:

1. Ensure the storage/treatment facilities can be emptied within the time limits stated in the nutrient management plan;

2. Convey the required flow without plugging, based on the type of material and total solids content;

3. Install at a depth sufficient to protect against freezing;

4. Install with appropriate connection devices to prevent contamination of private or public water supply distribution systems and groundwater;

5. Size pumps to transfer material at the required system head and volume;

6. Install a minimum of three feet (3') below the natural stream floor and as nearly perpendicular to the stream flow as possible;

7. Encase when buried under public roads; and

8. Separation from potable water lines. Pipelines shall be locat-

ed at least ten feet (10') horizontally from and at least eighteen inches (18") below the base of any potable water line.

9. Aerial pipeline crossings of streams shall:

A. Provide support for all joints in pipes utilized in the crossing;

B. Protect from the impact of flood waters and debris; and

C. Be constructed so that they will remain watertight and free from changes in alignment or grade.

(B) Gravity Pipelines. Design of pipelines shall be based on the following requirements:

1. Use a minimum slope of one percent (1%) for four inch (4") pipe, six-tenths percent (0.6%) for six inch (6") pipe, and four-tenths percent (0.4%) for eight inch (8") pipe;

2. Design with clean-outs at a maximum interval of three hundred feet (300') and with maximum horizontal curves of ten (10) degrees at pipe joints; and

3. Design gravity discharge pipes used for emptying a storage/treatment structure with a minimum of two (2) valves in series.

(C) Force Mains and Pressure Pipes. Design velocities shall be between three (3) and six (6) feet per second.

(D) Testing. Hydro-pressure tests shall be made only after the completion of backfilling operations and for a minimum of one (1) hour using a minimum test pressure of the maximum system operating pressure.

(E) Pump Stations.

1. Water supply protection. Manure pump stations shall not be connected to a potable water supply and shall be located at least three hundred feet (300') from any potable water supply well.

2. Alarm systems. Alarm systems are required for pumping stations that are activated in cases of power failure, pump failure, or any cause of high water in the wet well.

(F) Land Application Systems. Land application systems shall be designed with:

1. Spray application equipment specified that minimizes the formation of aerosols;

2. The pumping system and distribution system sized for the flow and operating pressure requirements of the distribution equipment and the application restrictions of the soils and topography;

3. Provisions for draining the pipes to prevent freezing, if pipes are located above the frost line;

4. A suitable structure provided for either a portable pumping unit or a permanent pump installation, the intake to the pumping system providing the capability for varying the withdrawal depth, the intake elevation maintained twelve to twenty-four inches (12"-24") below the liquid elevation, the intake screened so as to minimize clogging of the sprinkler nozzle or distribution system orifices, and, for use of a portable pump, a stable platform and flexible intake line with flotation device to control depth of intake;

5. Thrust blocking of pressure pipes; and

6. An automatic pump or engine shut-offs in case of pressure drop.

[[9]](10) General System Details.

(A) Mechanical Equipment. Mechanical equipment shall be used and installed in accordance with manufacturers' recommendations and specifications and major mechanical units installed under the supervision of the manufacturer's representative.

(B) Potable Water Supply Protection. No piping or other connections shall exist in any part of the concentrated animal feeding operation system, which under any conditions, might cause the contamination of a potable water supply.

[[10]](11) Mortality Management. Class I operations shall not use burial as a permanent mortality management method to dispose of routine mortalities.

AUTHORITY: sections 640.710 and 644.026, RSMo 2016. Original

rule filed July 14, 2011, effective April 30, 2012. Amended: Filed Jan. 26, 2016, effective Oct. 30, 2016. Amended: Filed June 15, 2018, effective Feb. 28, 2019. Emergency amendment filed Dec. 8, 2020, effective Dec. 22, 2020, expires June 19, 2021. Amended: Filed Jan. 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Attn: Cindy LePage, PO Box 176, Jefferson City, MO 65102. Comments may also be sent with name and address through e-mail to cindy.lepage@dnr.mo.gov or online <https://dnr.mo.gov/proposed-rules/welcome.action#OPEN>. To be considered, comments must be received no later than March 25, 2021. The public hearing is scheduled to be held virtually on March 18, 2021, beginning at 9 a.m. Meeting number (access code): 177 331 4014, meeting password: DNR. Call-in number toll number (US/Canada): 1-650-479-3207. To join from a video system or application: dial 1773314014@stateofmo.webex.com.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and
Training Program
Chapter 16—Peace Officer Standards and
Training Commission Fund**

PROPOSED AMENDMENT

11 CSR 75-16.010 Peace Officer Standards and Training Commission Fund. The director is amending paragraph (2)(D)2. by modifying the percentage of funds to be disbursed to certain counties and municipalities.

PURPOSE: This amendment modifies the percentage of fund distribution to counties and municipalities that contribute more than five hundred dollars (\$500) to the fund from a fixed ninety percent (90%) to a variable percentage to be determined by the Director of Public Safety based upon the amount of residual funds available.

(2) The [D]director shall distribute monies from the POST Fund to participating counties and municipalities as follows:

(D) All participants who contributed more than five hundred dollars (\$500) shall receive a distribution as follows:

1. The participant's CONTRIBUTION FACTOR shall be calculated, which shall equal the participant's contribution divided by total contributions;

2. The participant's BASE DISTRIBUTION shall be calculated, which shall equal [ninety percent (90%)] a percentage of the participant's contribution to be determined by the director based upon available funds;

3. An OVERALL RESIDUAL shall be calculated, which shall equal total contributions, less the total of five hundred dollar (\$500) payments pursuant to subsection (2)(C) of this rule, less the total of base distributions pursuant to paragraph (2)(D)2. of this rule, plus accrued interest on total contributions, less a reserve amount to be determined by the director;

4. The participant's RESIDUAL ADJUSTMENT shall be calculated, which shall equal the OVERALL RESIDUAL multiplied by the participant's CONTRIBUTION FACTOR; and

5. The participant's actual distribution shall equal the participant's BASE DISTRIBUTION plus the participant's RESIDUAL ADJUSTMENT.

AUTHORITY: sections 590.178 and 590.190, RSMo 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed Jan. 15, 2004, effective July 30, 2004. Amended: Filed July 1, 2008, effective Dec. 30, 2008. Amended: Filed March 8, 2019, effective Sept. 30, 2019. Amended: Filed Jan. 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 Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. 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 RULE

12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location

PURPOSE: This rule modifies the manner in which the amounts required to be withheld by certain employers for employees performing services for wages from a temporary work location are calculated during a defined period.

(1) Definitions.

(A) Employer—The term "employer" as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(2).

(B) Employee—The term "employee" as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(6).

(C) Primary Work Location—The term "primary work location" means the address of the employer where the employee was regularly assigned to work immediately preceding the declaration date.

(D) Temporary Work Location—The term "temporary work location" means a location where the employee worked during the COVID-19 relief period that was in a state other than the state of the employee's primary work location.

(E) Time and Attendance System—The term "time and attendance system" means a system in which—

1. The employee is required on a contemporaneous basis to record his or her work location for every day worked outside of the employee's primary work location; and

2. The system is designed to allow the employer to allocate the employee's wages for income tax purposes among all taxing jurisdictions in which the employee performs services for wages for such employer.

(F) Wages—The term "wages" as used in this rule has the same meaning as supplied by section 143.191.2, RSMo.

(G) Declaration Date—The term "declaration date" means the date upon which the United States Government declared a "Federally declared disaster" as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic, specifically, March 13, 2020.

(H) COVID-19 Relief Period—The term "COVID-19 relief period"

means the period of time beginning on the date upon which the United States Government declared a “Federally declared disaster” as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic (March 13, 2020) and ending on December 31, 2020.

(2) For services performed by an employee after the declaration date and prior to the earlier of the time at which an employer began withholding based on a time and attendance system for such employee or the end of the COVID-19 relief period, each employer may elect to withhold income tax from wages paid to such employee as if such wages were earned from work performed at the employee’s primary work location, despite such employee working from a temporary work location during the COVID-19 relief period.

(A) This rule shall only apply to—

1. Employers that did not maintain a time and attendance system for all employees on or before the declaration date, and only where such employer is—

A. An employer having a primary work location in Missouri with employees working from temporary work locations in states other than Missouri; or

B. An employer having a primary work location in a state other than Missouri with employees working from temporary work locations in Missouri.

(3) Affidavit Required—Each employer who elects to withhold and remit tax based on the primary work location of its employees under section (2) of this rule shall submit an affidavit notifying the Department of Revenue on or before January 31, 2021, of the following:

(A) The employer did not have a time and attendance system in place for all employees as of the declaration date;

(B) The employer did not have a time and attendance system in place to identify the locations at which employees performed services during the COVID-19 relief period prior to the implementation of a time and attendance system, if an employer implemented a time and attendance system during the COVID-19 relief period;

(C) The employer will issue forms W-2 to employees consistent with the primary work location of each employee for all or part of the COVID-19 relief period during which an employee was not covered by a time and attendance system; and

(D) The employer will issue communication notifying impacted employees of the employer’s election made pursuant to section (2) of this regulation no later than five (5) business days after submission of the affidavit contemplated by this section.

(4) Examples.

(A) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through November 1, 2020.

(B) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020.

(C) Employer maintains a primary work location for its employees

in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Kansas income tax from wages paid to employees working from temporary work locations in Missouri from March 13, 2020, through November 1, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(D) Employer maintains a primary work location for its employees in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Kansas income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(E) Employer had a time and attendance system in place at the beginning of the COVID-19 relief period. Employer is ineligible to elect to withhold on the basis of the employer’s primary work location, and instead withholds on the basis of the location where its employees actually performed services for wages for the employer as recorded by the time and attendance system.

(5) Nothing in this rule shall be interpreted as affecting in any way the income tax liability of any resident or nonresident within the meaning of Chapter 143, RSMo, nor shall this rule be interpreted as affecting in any way any liabilities arising from any municipal income or earnings tax imposed by any political subdivision of the state of Missouri.

AUTHORITY: sections 136.120, 143.191.3(1), 143.511, and 143.961, RSMo 2016. Emergency rule filed Jan. 6, 2021, effective Jan. 21, 2021, expires July 19, 2021. Original rule filed Jan. 11, 2021.

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

PRIVATE COST: This proposed rule will cost private entities an estimated one hundred eighty-five thousand dollars (\$185,000) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule 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.*

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Revenue
Division Title: Director of Revenue
Chapter Title: Income Tax**

Rule Number and Name:	12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location
Type of Rulemaking:	PROPOSED RULE

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Revenue	Less than \$500

III. WORKSHEET

IV. ASSUMPTIONS

The Department of Revenue assumes an unknown number of employers will file Affidavits with the Department. The Department will scan those documents and make them available to our staff. Systematic queries of tax returns may be completed based on the submission of the Affidavits.

The work to scan and complete queries is not beyond normal daily activities of the staff involved and would not result in additional funding needs.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Revenue**
- Division Title: Director of Revenue**
- Chapter Title: Income Tax**

Rule Number and Title:	12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location
Type of Rulemaking:	EMERGENCY RULE

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
500	Businesses who employ individual working remotely	\$185,000

III. WORKSHEET

500 businesses multiplied by \$370 median hourly rate for attorneys equals \$185,000

IV. ASSUMPTIONS

The rule requires employers who had employees working remotely, but continued withhold tax based on their employees primary work locations, to file an Affidavit with the Department of Revenue. In addition, they are required to provide communication to those employees impacted.

The Department estimates no more than 500 business that would take advantage of this rule.

The Department assumes it will take 1 hour or less to complete the Affidavit. Based on a report published in 2019 by Missouri Lawyers Media, the median hourly rate for Missouri attorneys is \$370. The Department believes \$370 is the maximum it would cost to complete the document, as we will post a document on our website that may be used as the Affidavit. In most instances, this affidavit will not need to be completed by an attorney.

In addition to the completion of the Affidavit, the employers are required to notify impacted employees. The cost of this notification should be minimal. The Department assumes most employers will send an email notification to their employees.

**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 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 Woman’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 provisions and definitions from the *Code of Federal Regulations* (CFR), 42 CFR 435.923, 45 CFR 155.260, 42 CFR 447.10, and 42 CFR 431 Subpart F, which are incorporated by reference and made a part of this rule as published by the Office of the Federal Register, 800 North Capitol St. NW, Suite 700, Washington, DC 20408, and which is located on the website of the U.S. Government Publishing Office at <https://www.govinfo.gov/content/pkg/CFR-2019-title34-vol2/pdf/CFR-2019-title34-vol2-subtitleB-chapIII.pdf>, October 1, 2019. This rule does not incorporate any subsequent amendments or additions.

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. Amended: Filed Jan. 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 (\$258,000,000) 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.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13–Social Services
Division Title: Division 40–Family Support Division
Chapter Title: Chapter 2–Income Maintenance

Rule Number and Name:	13 CSR 40-2.015 Authorized Representatives
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Department of Mental Health	\$0

III. WORKSHEET

The purpose of this proposed amendment is to comply with Amendment 2, the ratification of which created Section 36(c) of Article IV of the Missouri Constitution. Effective July 1, 2021, the Department of Social Services (DSS) shall extend MO HealthNet (Medicaid) coverage to persons age 19-64 with income under 133% of the federal poverty level. This proposed amendment includes this group known as the Adult Expansion Group (AEG) in the definition of Family MO HealthNet programs.

The proposed regulation change will not have a fiscal impact. Overall implementation costs of Amendment 2 that modifies Section 36(c) of Article IV of the Missouri Constitution is estimated to cost \$2.71 billion total (\$258.5 million state share / \$2.45 billion federal) annually.

IV. ASSUMPTIONS

N/A

**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 Woman’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. Amended: Filed Jan. 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 (\$258,000,000) 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.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13–Social Services
Division Title: Division 40–Family Support Division
Chapter Title: Chapter 7–Family Healthcare

Rule Number and Name:	13 CSR 40-7.010 Scope and Definitions
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Department of Mental Health	\$0

III. WORKSHEET

The purpose of this proposed amendment is to comply with Amendment 2, the ratification of which created Section 36(c) of Article IV of the Missouri Constitution. Effective July 1, 2021, the Department of Social Services (DSS) shall extend MO HealthNet (Medicaid) coverage to persons age 19-64 with income under 133% of the federal poverty level. This proposed amendment includes this group known as the Adult Expansion Group (AEG) in the definition of Family MO HealthNet programs.

The proposed regulation change will not have a fiscal impact. Overall implementation costs of Amendment 2 that modifies Section 36(c) of Article IV of the Missouri Constitution is estimated to cost \$2.71 billion total (\$258.5 million state share / \$2.45 billion federal) annually.

IV. ASSUMPTIONS

N/A

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.045 Thirty-One-Day Supply Maximum Restriction on Pharmacy Services Reimbursed by the MO HealthNet Division. The Department of Social Services is amending the purpose statement, sections (1), (2), (3), and (4), and adding a new section (5).

PURPOSE: The purpose of this amendment is to update “recipient” and “patient” to “participant,” which is the current standard language. This amendment also adds an additional exemption to the thirty-one- (31-) day restriction to allow for a new ninety- (90-) day supply program identified in proposed rule 13 CSR 70-20.047 Ninety-Day Supply Requirement for Select Medications. The amendment also makes grammatical corrections by adding hyphens to the terms “thirty-one (31) days” or “ninety (90) days” when those terms are used as adjectives.

PURPOSE: This rule establishes a thirty-one- (31-) day supply maximum restriction per dispensing on pharmacy services reimbursed by the MO HealthNet Division on behalf of [patients] participants eligible for any of the fee-for-service programs.

(1) The maximum days’ supply of medication [which] that may be provided per dispensing on behalf of a [patient] participant eligible for any of the fee-for-service programs is thirty-one (31) days [supply], except for those drugs and/or categories under the provisions of this rule. Medication may be dispensed in quantities less than a thirty-one- (31-) day supply, if so ordered by the prescriber, except as specified elsewhere in this rule.

(2) Drugs and/or categories of medications [which] that are exempt from the thirty-one- (31-) day supply limitation and therefore may be dispensed in quantities exceeding a thirty-one- (31-) day supply are made available in the MO HealthNet Pharmacy Manual, section 13.6.D(1)[, located through the Department of Social Services, MO HealthNet Division website at manuals.momed.com/manuals, which]. The MO HealthNet Pharmacy Manual is incorporated by reference [and made part of] in this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website <http://manuals.momed.com/manuals/>, [April 18, 2018] **October 2, 2020**. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to [affect] effectuate changes in the list of drugs and/or categories of medications [which] that are exempt from the thirty-one- (31-) day supply limitation by amending this rule.

(3) All spend down [recipients] participants are exempt from the MO HealthNet thirty-one- (31-) day supply maximum restriction on pharmacy services.

(4) Exemptions from the thirty-one- (31-) day supply limitation may be given with prior authorization by the MO HealthNet Division to prevent a higher level of care.

(5) Drugs and/or categories of medications identified by 13 CSR 70-20.047 are exempt from the thirty-one- (31-) day supply limitation.

AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. [2018] 2020. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expired May 29, 2001. Original rule filed June 29, 2000, effective Feb. 28, 2001. Amended:

Filed Dec. 5, 2000, effective June 30, 2001. Amended: Filed April 18, 2018, effective Nov. 30, 2018. Amended: Filed Jan. 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 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 20—Pharmacy Program**

PROPOSED RULE

13 CSR 70-20.047 Ninety-Day Supply Requirement for Select Medications

PURPOSE: This rule establishes a ninety- (90-) day supply requirement per dispensing on select medications reimbursed by the MO HealthNet Division on behalf of participants eligible for any of the fee-for-service programs.

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) MO HealthNet participating pharmacies shall dispense a ninety- (90-) day supply of select medications to a participant eligible for any of the fee-for-service programs. Drugs and/or categories of medications that are subject to this ninety- (90-) day supply requirement are identified in the 90-Day Supply Medication List, which is incorporated by reference and made part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at <https://dss.mo.gov/mhd/cs/pharmacy/pages/frequpdat.htm>, October 22, 2020. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. 2020. Original rule filed Jan. 15, 2021.

PUBLIC COST: This proposed rule will save state agencies or political subdivisions an estimated three million four hundred forty-seven thousand dollars (\$3,447,000) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to

Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
- Division Title:** Division 70 - MO HealthNet Division
- Chapter Title:** Chapter 20 – Pharmacy Programs

Rule Number and Name:	13 CSR 70-20.047 Ninety-Day Supply Requirement for Select Medications
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services MO HealthNet Division	Estimated Annual Savings = \$3,447,000

III. WORKSHEET

N/A

IV. ASSUMPTIONS

Estimated annual savings are based on current utilization of the selected medications with the current level of MO HealthNet enrollment. Utilization and case load may alter annual savings from the estimate.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.060 Professional Dispensing Fee. The department is amending the purpose statement and section (1), amending and renumbering section (2), and adding new sections (2) and (4).

PURPOSE: The purpose of this amendment is to update the amount of the professional dispensing fee reimbursable for the dispensing of MO HealthNet covered prescriptions by a pharmacy provider in line with the most recent cost of dispensing survey.

PURPOSE: The MO HealthNet Division establishes the amount of the fee reimbursable for the professional dispensing of each MO HealthNet covered prescription by a pharmacy provider, raises the current dispensing fee from three dollars (\$3) to four dollars eighty-four cents (\$4.84) and establishes a long-term care prescription fee add-on of fifteen cents (15¢).

(1) Between April 1, 2017 and January 31, 2021, [A/a professional dispensing fee [of four dollars eighty-four cents (\$4.84)] shall be added to the MO HealthNet maximum allowable payment for [each] MO HealthNet reimbursable prescriptions filled or refilled by a pharmacy provider./] as follows:

(A) Out-of-state pharmacy providers receive a professional dispensing fee of nine dollars fifty-five cents (\$9.55);

(B) In-state pharmacy providers receive a professional dispensing fee of fourteen dollars thirty-seven cents (\$14.37);

(C) In-state pharmacy providers receive a preferred generic product incentive fee of five dollars zero cents (\$5.00); and

[(A)](D) The professional dispensing fees as provided in this rule shall not be included in the computation of the MO HealthNet maximum allowable drug payment for participant cost-sharing purposes.

(2) Effective February 1, 2021, a professional dispensing fee shall be added to the MO HealthNet maximum allowable payment for MO HealthNet reimbursable prescriptions filled or refilled by a pharmacy provider as follows:

(A) Out-of-state pharmacy providers receive a professional dispensing fee of eight dollars and eighty-five cents (\$8.85);

(B) In-state pharmacy providers receive a professional dispensing fee of twelve dollars and twenty-two cents (\$12.22), plus an adjustment to account for the costs of the Missouri Pharmacy Reimbursement Allowance attributable to Medicaid-reimbursed prescriptions;

(C) The professional dispensing fee as provided in this rule shall not be added to prescriptions reimbursed at the usual and customary charge submitted by the provider; and

(D) The professional dispensing fees as provided in this rule shall not be included in the computation of the MO HealthNet maximum allowable drug payment for participant cost-sharing purposes.

[(2)](3) Effective April 1, 2017, [A/all pharmacy providers supplying prescribed MO HealthNet covered drugs to participants in long-term care facilities shall receive an additional [fifteen cent (15¢)] fifty cent (50¢) dispensing fee per claim provided they—

(A) Dispense medication in a drug distribution system(s) which meets minimum standards of container packaging (at least class B as defined in United States Pharmacopeia XXI);

(B) Certify to the MO HealthNet Division, on a form, and in the manner prescribed by the division, that they—

1. Provide this dispensing service to their long-term care facility resident patients;

2. Provide emergency services twenty-four (24) hours a day

with seven (7) days a week availability; and

3. Have the ability and willingness to assist in accessing medications through the MO HealthNet Exception Process; and

(C) Indicate, as prescribed by the MO HealthNet Division, on each claim that the prescription was provided in packaging qualifying for the dispensing fee add-on to a participant in a long-term care facility.

(4) A professional dispensing fee shall be added to maintenance medications no more frequently than once every twenty-five (25) days. “Maintenance medications” are defined as drugs that have a common indication for treatment of a chronic disease, and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of “1.”

AUTHORITY: sections 208.153, [and] 208.201, and 660.017, RSMo [Supp. 2013] 2016. Original rule filed Dec. 15, 1987, effective March 11, 1988. Amended: Filed Sept. 26, 2013, effective March 30, 2014. Emergency amendment filed Jan. 13, 2021, effective Feb. 1, 2021, expires July 30, 2021. Amended: Filed Jan. 13, 2021.

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

PRIVATE COST: This proposed amendment will cost private entities an estimate of fifty million, six hundred seventeen thousand, and eight hundred eighty-seven dollars (\$50,617,887) annually.

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

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 13 - Department of Social Services
- Division Title:** Division 70 - MO HealthNet Division
- Chapter Title:** Chapter 20 – Pharmacy Programs

Rule Number and Name:	13 CSR 70-20.060 Professional Dispensing Fee
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
3600	Enrolled MO HealthNet Pharmacy Providers	<p>Estimated cost for SFY 21 February 1, 2021-June 30, 2021 change: \$21,090,786</p> <p>Annual estimated cost for SFY 22 change: \$50,617,887</p>

III. WORKSHEET

Beginning 02/01/2021 the new base professional dispensing fee will be \$8.85. Pharmacy providers supplying covered drugs to participants in long-term care facilities will receive an additional \$.50 dispensing fee. The dispensing fee under the existing payment methodology is estimated to be \$172,375,054. It is anticipated the cost will be \$121,757,167 annually under the new methodology, resulting in an annual public savings.

The estimated cost to pharmacies in SFY 21 February 1, 2021 to June 30, 2021, will be \$21,090,786 and the estimated annual cost to pharmacies will be \$50,617,887 in SFY 2022.

IV. ASSUMPTIONS

New dispensing fee amounts were applied to the FY 2020 claim data.