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John R. Ashcroft  Secretary of State

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John R. Ashcroft

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

EDITOR-IN-CHIEF

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•

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•

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•

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

HOW TO CITE RULES AND RSMO

RULES

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

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

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

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

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

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

Code and Register on the Internet

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

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

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

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

The text of proposed rules and changes will appear under this heading. A 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 explanation is set out in the PURPOSE section of each rule. A citation of the legal authority to make rules is also required, and appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology 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 that 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, 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 25 – Office of Childhood
Chapter 100 – Early Childhood Development**

PROPOSED AMENDMENT

5 CSR 25-100.120 Individuals with Disabilities Education Act, Part C. The State Board of Education (board) is amending the purpose, section (2), and the incorporated by reference material.

PURPOSE: The purpose of the amendment is to update agency information in accordance with Executive Order 21-02, establishing the Office of Childhood, and update the incorporation by reference materials.

PURPOSE: The Department of Elementary and Secondary Education is eligible to apply for and receive federal funds under the Individuals with Disabilities Education Act of 1986 for the

provision of early intervention services to infants and toddlers with disabilities. This rule incorporates by reference changes to the [annual program] state plan required by [new] federal statutes for the provision of the services to eligible children.

(2) The Missouri state plan for the regulations implementing Part C of the Individuals with Disabilities Education Act (IDEA) First Steps Program contains the administrative provisions for the delivery of the state's federally assisted early intervention system. The Missouri state plan for the IDEA, Part C, is hereby incorporated by reference and made a part of this rule. A copy of the IDEA, Part C (revised [December 2013] September 2022), is published by and can be obtained from the Department of Elementary and Secondary Education, [Special Education Compliance Section] Office of Childhood, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 160.900–160.925, 161.092, and 376.1218, RSMo [Supp. 2013] 2016. This rule previously filed as 5 CSR 70-742.141. Executive Order 94-22 of the Governor, Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq. Original rule filed Dec. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 20, 2022.

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 between zero and two hundred seventy-four thousand dollars (\$0 and \$274,000) 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 Sara Ruediger, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102-0480, by faxing (573) 526-8000, or via email at EarlyIntervention@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for December 6, 2022, from 4:00 p.m. to 6:00 p.m. (virtual) at <https://stateofmo.webex.com/stateofmo/j.php?MTID=ma3999b6b208cb61cb988fc43dcaff29>.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Department of Elementary and Secondary Education
Division Title: Office of Childhood
Chapter Title: Early Childhood Development

Rule Number and Title:	5 CSR 25-100.120 Individuals with Disabilities Education Act, Part C
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:
548	First Steps Providers	Range of \$0 to \$274,000

III. WORKSHEET

The department's amendment proposes twelve (12) hours of professional development annually for non-licensed early intervention providers. There may be a cost to vendors associated with the obligation to fulfill annual professional development requirements, as this is a new requirement for the program. However, the department assumes that many providers may already obtain professional development as part of their professional responsibilities.

To the extent a provider was not previously engaging in professional development, there may be a fiscal cost for this new requirement.

As of July 2022, there were approximately five hundred forty-eight (548) out of two thousand nine hundred sixty-four (2,964) non-licensed early intervention providers for whom this new requirement would apply. The department estimates if all five hundred forty-eight (548) providers are already engaging in professional development, the added cost would be zero dollars (\$0) to small businesses. However, if all five hundred forty-eight (548) providers are not currently engaging in any professional development hours, there may be a cost depending on the type of professional development sought by the provider (e.g., free or paid). If a provider paid on average five hundred dollars (\$500) per year for twelve (12) hours of professional development, the estimated direct cost for five hundred forty-eight (548) providers would be two hundred seventy-four thousand dollars (\$274,000).

Total cost of this requirement to all current non-licensed early intervention providers:
 $\$500 \times 548 \text{ providers} = \$274,000$

1. The department's amendment proposes four (4) new provider types: Registered Behavior Technician, Behavior Analyst, Behavior Analyst Assistant, and Social Worker (Master's in Social Work).

As of July 2022, there were five hundred nineteen (519) out of two thousand nine hundred sixty-four (2,964) providers who may be impacted by the reclassification of provider types for Registered Behavior Technician, Behavior Analyst, and Behavior Analyst Assistant. Since this change is to add new provider types and re-classify existing providers into a provider type that better acknowledges their training and licensure status, the department does not anticipate any private costs resulting from this amendment.

IV. ASSUMPTIONS

1. Because the department does not know how many providers conduct less than twelve (12) hours of professional development per year, and the department and other agencies/organizations offer free or low cost professional development opportunities that would meet this requirement, the department estimates that the actual cost of complying with this requirement would be less than five hundred dollars (\$500) per year per provider. The department does acknowledge that there is an indirect cost to the providers for time spent in professional development activities. The department has a tracking platform, which will be available to providers to track professional development hours at no cost. Because of this, the department assumes that very few, if any, providers will have to make any purchases to comply with this rule.

While the actual cost cannot be estimated at this time, the department does acknowledge that there is a current cost for the provider's time spent on professional development activities. These current costs would continue and the department anticipates little to no impact in additional costs.

2. Because this amendment is to re-classify current providers to new provider types and no action is needed by the providers, the department assumes that there is no private cost needed to comply with this rule.

**Title 5 – DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25 – Office of Childhood
Chapter 400 – Licensing Rules for Family Child
Care Homes**

PROPOSED AMENDMENT

5 CSR 25-400.105 The Child Care Provider and Other Child Care Personnel. The State Board of Education is amending sections (1), (2), (4), and (5), and removing forms incorporated by reference in section (5).

PURPOSE: This amendment clarifies that the facility orientation requirement applies to caregivers employed on or after August 30, 2019, which is the date this requirement became effective in rule. Secondly, this amendment adds an allowance for school-age exemption for two (2) related children in accordance with changes to section 210.211, RSMo, by SB 683, passed during the Regular Session of the 101st General Assembly (2022). Thirdly, this amendment updates child care training requirements to align with the department's transition to a new professional development system.

(1) General Requirements.

(J) The child care provider shall ensure that within seven (7) days of employment or volunteering, and before being left alone with children that caregivers **employed on or after August 30, 2019**, receive a facility orientation. The child care provider shall ensure that documentation verifying completion of the facility orientation is maintained and on file for review by the department for each caregiver. The facility orientation shall include:

1. A tour of the facility, indoors and outdoors; and
2. A review of the following:
 - A. Licensing rules;
 - B. The facility's license and its limitations, if any;
 - C. The facility's written child care practices, including procedures for medication administration, child illness, discipline, and guidance policies;
 - D. The daily schedule;
 - E. The assigned duties and responsibilities of staff;
 - F. The names and ages of the children for whom the staff member will be responsible, including any special health, nutritional, or developmental needs;
 - G. The location of children's records;
 - H. The facility's safe sleep policy, if applicable;
 - I. The facility's disaster emergency plan and the location of emergency information; and
 - J. The mandated responsibility to report any suspected child abuse or neglect to the Children's Division *[at the toll-free number 1-800-392-3738 or online at <https://apps.dss.mo.gov/OnlineCanReporting/default.aspx>]*.

(S) The provider shall have documentation on file at the home of current certification in age-appropriate first aid and cardiopulmonary resuscitation (CPR) training. The training shall be certified by a nationally[-] recognized organization, such as the American Red Cross, American Heart Association, or an equivalent certification, *[include an in-person skills assessment,]* and be approved by the department. At least one (1) caregiver with current certification in age-appropriate first aid and CPR must be on site at all times when children are present. First aid/CPR training may count toward the annual clock hour training requirement.

(2) Licensing Capacities and Staff/Child Ratios.

(C) *[Children five (5) years of age and older who live in the provider's home shall not be counted in the licensed capacity]* A

maximum of two (2) children five (5) years of age and older who are related to the family child care home provider, or under court appointed guardianship or legal custody of a family child care home provider, shall not be counted in the licensed capacity. For the purpose of this rule, related is any of the following relationships by marriage, blood, or adoption between the provider and the children in care: parent, grandparent, great-grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, niece, or nephew.

1. If more than one (1) member of the legal entity is responsible for the daily operation of the family child care home, the related children of only one (1) such member shall be excluded from counting in the licensed capacity.

(4) Child Care Training.

(D) The clock hour training shall meet at least one (1) *[of the eight (8) Content Areas of the Core Competencies for Early Childhood and Youth Development Professionals (Kansas and Missouri) (2011) published by Child Care Aware® of Kansas/OPEN Initiative/Missouri AfterSchool Network/Kansas Enrichment Network. Copies may be obtained by contacting: OPEN Initiative at 573-884-3373 or OPENInitiative@missouri.edu or www.OPENInitiative.org. This rule does not incorporate any later amendments or additions. The eight (8) Content Areas are as follows: I. Child and Youth Growth and Development; II. Learning Environment and Curriculum; III. Observation and Assessment; IV. Families and Communities; V. Health and Safety; VI. Interactions with Children and Youth; VII. Program Planning and Development; and VIII. Professional Development and Leadership]* content area of the department-approved core competencies.

(E) Training shall be documented with the dates, the individual participant's name, the number of hours of training completed, the title of the training, training approval identification code, and the name of the trainer(s).

1. Caregivers shall obtain a Missouri Professional Development Identification (MOPD ID) number *[at www.OPENInitiative.org] from the department.*

2. All clock hour training records shall be recorded in the *[Missouri Professional Development Registry (MOPD Registry) at www.OPENInitiative.org] department's professional development system.* A summary of training from the *[MOPD System] professional development system* will serve as documentation of training hours completed.

3. Child-related college courses from an accredited college or university as identified by the U.S. Department of Education's Office of Post-Secondary Education (<http://ope.ed.gov/accreditation/>) may be counted as clock hour training. Child-related college courses shall meet the following guidelines:

A. College coursework accepted for clock hours must be child related;

B. One (1) college credit is equal to fifteen (15) clock hours;

[C. College credit is only applicable to the calendar year in which the course is successfully completed;]

[D.]C. College coursework does not include clock hour training or Continuing Education Units (CEUs) taken from a college. Clock hour training provided through colleges, such as a continuing education program or an extension office, must follow the procedures for clock hour training approval; and

[E.]D. College coursework shall be documented by a transcript from an accredited college.

(I) Clock hours earned to complete *[the]* a previous year's requirements shall not be applied to the current year's clock hour requirements. *[Caregivers shall submit the Clock Hour*

Training Reassignment form, revised 2020 and incorporated by reference in this rule, as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>, to the OPEN Initiative to assign clock hours to the appropriate year. This rule does not incorporate any subsequent amendments or additions to this publication.] Caregivers shall reassign clock hours to a previous year, as needed, to satisfy prior years' training requirements using the professional development system.

1. Clock hours cannot be reassigned more than once.

2. Clock hours for an individual training may not be split between two (2) years. The training must be reassigned in its entirety.

3. Clock hours cannot be reassigned until they appear in the professional development system.

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

(A) The training shall be documented and maintained as described in paragraph (4)(E)2. of this rule.

(B) The provider and assistant(s) in a family child care home shall complete the safe sleep training described in section (5) of this rule prior to licensure.

(C) The provider and any assistant hired or volunteering at the facility after initial licensure shall complete the safe sleep training described in section (5) of this rule within thirty (30) days of employment or volunteering at the facility.]

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

1. The training shall be documented and maintained as described in paragraph (4)(E)2. of this rule.

2. The provider, assistant(s), and volunteers in a family child care home shall complete the safe sleep training described in subsection (5)(A) of this rule prior to licensure.

3. The provider and any assistant hired or volunteering at the facility after initial licensure shall complete the safe sleep training described in subsection (5)(A) of this rule within thirty (30) days of employment or volunteering at the facility.

AUTHORITY: sections 210.221 and 210.1080, RSMo Supp. [2021]

2022, and sections 161.092 and 210.223, RSMo 2016. This rule previously filed as 13 CSR 40-61.090, 13 CSR 40-61.105, and 19 CSR 40-61.105. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 23, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing (573) 526-8000 or via email at childhoodrules@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 5 – DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 25 – Office of Childhood
Chapter 500 – Licensing Rules for Group Child
Care Homes and Child Care Centers**

PROPOSED AMENDMENT

5 CSR 25-500.102 Personnel. The State Board of Education (board) is amending sections (1)–(4) and updating the incorporated by reference material.

PURPOSE: This amendment clarifies that the facility orientation requirement applies to caregivers employed on or after August 30, 2019, which is the date this requirement became effective in rule. Secondly, this amendment updates child care training requirements and related forms to align with the department's transition to a new professional development system.

(1) General Staff Requirements.

(K) The child care provider shall ensure that within seven (7) days of employment or volunteering, and before being left alone with children, that caregivers **employed on or after August 30, 2019**, receive a facility orientation. The facility orientation shall include:

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

- A. Licensing rules;
- B. The facility's license and its limitations, if any;
- C. The facility's written child care practices, including procedures for medication administration, child illness, discipline, and guidance policies;
- D. The daily schedule;
- E. The assigned duties and responsibilities of staff;
- F. The names and ages of the children for whom the staff member will be responsible, including any special health, nutritional, or developmental needs;
- G. The location of children's records;
- H. The facility's safe sleep policy, if applicable;
- I. The facility's disaster emergency plan and the location of emergency information; and
- J. The mandated responsibility to report any suspected child abuse or neglect to the Children's Division [at the toll-free number 1-800-392-3738 or online at <https://apps.dss.mo.gov/OnlineCanReporting/default.aspx>].

(T) The licensee shall have documentation on file at the facility of current certification in age-appropriate first aid and cardiopulmonary resuscitation (CPR) training for a sufficient number of child care staff to ensure that there is one (1) caregiver at the facility for every twenty (20) children in the licensed capacity. At least one (1) caregiver with current certification in age-appropriate first aid and CPR must be on site at all times when children are present. The training shall be certified by a nationally[-] recognized organization, such as the American Red Cross, American Heart Association, or an equivalent certification[, *include an in-person skills assessment,*] and be approved by the department.

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

(A) General Requirements.

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

A. A *Center Director/Group Child Care Home Provider Certification Request* form shall be submitted to the department. See *Center Director/Group Child Care Home Provider Certification Request* form, revised [2021,] 2022 and incorporated by reference in this rule as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.

B. Once the center director or group child care home provider is certificated by the department, the *Center Director/Group Child Care Home Provider Approval Request* form shall be submitted to the department and maintained on file at the facility. See *Center Director/Group Child Care Home Provider Approval Request* form, revised 2021 and incorporated by reference in this rule as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.

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

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

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

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

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

(3) Child Care Training.

(E) The clock hour training shall meet at least one (1) [of the eight (8) Content Areas of the Core Competencies for Early Childhood and Youth Development Professionals (Kansas and Missouri) (2011) published by Child Care Aware® of Kansas/OPEN Initiative/Missouri AfterSchool Network/Kansas Enrichment Network. Copies may be obtained by contacting: OPEN Initiative at 573-884-3373 or OPENInitiative@missouri.edu or www.OPENInitiative.org. This rule does not incorporate

any later amendments or additions. The eight (8) Content Areas are as follows: I. Child and Youth Growth and Development; II. Learning Environment and Curriculum; III. Observation and Assessment; IV. Families and Communities; V. Health and Safety; VI. Interactions with Children and Youth; VII. Program Planning and Development; and VIII. Professional Development and Leadership. This rule does not incorporate any subsequent amendments or additions] content area of the department-approved core competencies.

(F) Training shall be documented with the dates, the individual participant's name, the number of hours of training completed, the title of the training, training approval identification code, and the name of the trainer(s).

1. Caregivers shall obtain a Missouri Professional Development Identification (MOPD ID) number [at www.OPENInitiative.org] from the department.

2. All clock hour training records shall be recorded in the [Missouri Professional Development Registry (MOPD Registry) at www.OPENInitiative.org] department's professional development system. A summary of training from the [MOPD System] professional development system will serve as documentation of training hours completed.

(G) Child-related college courses from an accredited college or university as identified by the U.S. Department of Education's Office of Post-Secondary Education (<http://ope.ed.gov/accreditation/>) may be counted as clock hour training. Child-related college courses shall meet the following guidelines:

1. College coursework accepted for clock hours shall be child-related;

2. One (1) college credit is equal to fifteen (15) clock hours;

[3. College credit is only applicable to the calendar year in which the course is successfully completed;]

[4.]3. College courses qualifying for director approval, as stated in subparagraphs (2)(B)1.D. and E. of this rule are approved to meet annual clock hour requirements;

[5.]4. College coursework does not include clock hour training or continuing education units (CEUs) taken from a college. Clock hour training provided through colleges, such as a continuing education program or an extension office, shall follow the procedures for clock hour training approval; and

[6.]5. College coursework shall be documented by a transcript from an accredited college.

(K) Clock hours earned to complete [the] a previous year's requirements shall not be applied to the current year's clock hour requirements. [Caregivers shall submit the Clock Hour Training Reassignment form to the OPEN Initiative to assign clock hours to the appropriate year. See Clock Hour Training Reassignment form, revised 2021, and incorporated by reference in this rule as published by the Missouri Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480 and available by the department at <https://dese.mo.gov/childhood/forms>. This rule does not incorporate any subsequent amendments or additions.] Caregivers shall reassign clock hours to a previous year, as needed, to satisfy prior years training requirements using the professional development system.

1. Clock hours cannot be reassigned more than once.

2. Clock hours for an individual training may not be split between two (2) years. The training must be reassigned in its entirety.

3. Clock hours cannot be reassigned until they appear in the professional development system.

(4) Safe Sleep Training. [Every three (3) years the center director, group child care home provider, all other caregivers, and those volunteers who are counted in staff/child ratios in a

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

(A) The training shall be documented and maintained as described in paragraph (3)(F)2. of this rule.

(B) The center director, group child care home provider, all other caregivers, and those volunteers who are counted in staff/child ratios in a group child care home or child care center licensed after the effective date of this rule shall complete safe sleep training described in section (4) of this rule prior to licensure.

(C) The center director, group child care home provider, all other caregivers, and those volunteers who are counted in staff/child ratios shall complete safe sleep training described in section (4) of this rule within thirty (30) days of employment or volunteering at the facility.]

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

1. The training shall be documented and maintained as described in paragraph (3)(F)2. of this rule.

2. The child care provider, group child care home provider, child care staff members, and volunteers in a group child care home or child care center shall complete safe sleep training described in subsection (4)(A) of this rule prior to licensure.

3. The child care provider, group child care home provider, child care staff members, and volunteers shall complete safe sleep training described in subsection (4) (A) of this rule within thirty (30) days of employment or volunteering at the facility.

AUTHORITY: section[s] 161.092 [and 210.223], RSMo 2016, and sections 210.221, **210.223**, and 210.1080, RSMo Supp. [2021] 2022. This rule previously filed as 13 CSR 40-62.091, 13 CSR 40-62.102, and 19 CSR 40-62.102. Original rule filed March 29, 1991, effective Oct. 31, 1991. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 27, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Nancy Scherer, Department of Elementary and Secondary Education, Office of Childhood, PO Box 480, Jefferson City, MO 65102, by faxing (573) 526-8000 or via email at childhoodrules@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 6 – DEPARTMENT OF HIGHER EDUCATION AND
WORKFORCE DEVELOPMENT
Division 10 – Commissioner of Higher Education
Chapter 2 – Student Financial Assistance Programs**

PROPOSED RESCISSION

6 CSR 10-2.080 Higher Education Academic Scholarship Program. This rule provided authority to the Coordinating Board of Higher Education to provide scholarships to Missouri residents.

PURPOSE: The United States Department of Education is assuming responsibility for the Missouri Student Loan Program. The Department of Higher Education and Workforce Development will no longer be a guarantee agency.

AUTHORITY: section 173.250, RSMo 2016. Original rule filed Nov. 14, 1986, effective Feb. 28, 1987. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Sept. 23, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Higher Education and Workforce Development, 301 W. High Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 6 – DEPARTMENT OF HIGHER EDUCATION AND
WORKFORCE DEVELOPMENT
Division 10 – Commissioner of Higher Education
Chapter 2 – Student Financial Assistance Programs**

PROPOSED RESCISSION

6 CSR 10-2.090 Guarantors of Student Loans to Missourians. This rule provided authority to the Coordinating Board of Higher Education to provide scholarships to Missouri residents.

PURPOSE: The department no longer needs guidelines regarding the activities of private and independent guarantors of student loans because United States Department of Education is assuming responsibility for the Missouri Student Loan Program.

AUTHORITY: section 173.186, RSMo 1994. Original rule filed Oct.

15, 1986, effective March 12, 1987. Rescinded: Filed Sept. 30, 2022.

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 Higher Education and Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 9 – DEPARTMENT OF MENTAL HEALTH
Division 45 – Division of Developmental Disabilities
Chapter 2 – Eligibility for Services**

PROPOSED AMENDMENT

9 CSR 45-2.010 Eligibility for Services From the Division of Developmental Disabilities. The department is amending the purpose, and sections (1)-(4), amending and renumbering remaining sections, and deleting form *Missouri Critical Adaptive Behaviors Inventory* (MOCABI).

PURPOSE: This amendment is necessary to increase the efficiency and effectiveness of the assessment process and update terminology.

[PURPOSE: This rule establishes procedures for how the Division of Developmental Disabilities determines eligibility for its services. Because the recently revised definition of the term “developmental disability” in section 630.005.1.(8), RSMo, changes the population possibly eligible for services from the division, the division must revise its procedures for accepting applications for its services and determining eligibility for those services.] This rule describes the process and terminology used to determine eligibility for Division of Developmental Disabilities services.

(1) **Eligibility** – Through this rule, the department intends to assist applicants for division services as they proceed through the eligibility determination process and to direct division staff so that [it] they may assist applicants and individuals in expeditiously obtaining accurate, comprehensive evaluations and needed services. Specifically, the division intends to –

(2) [Terms defined in sections 630.005, 632.005, and 633.005, RSMo, are incorporated by reference for use in this rule.] **Definitions** – As used in this rule, unless the context clearly indicates otherwise, the following terms also mean:

(A) **Applicant** – A person who has applied for services from the division and/or that person’s representative;

(B) **Assessment** – The process of identifying an individual’s health status and intellectual, emotional, physical, developmental, and social functioning levels for use in determining eligibility or developing the service plan [or individualized family service plan];

(C) **Assessment team** – Professionals employed by the Division of Developmental Disabilities with specialized training and experience in the field of developmental disabilities who determine the applicant’s eligibility for services;

[(C)](D) **Client** – Any person who is placed by the department in a facility or program licensed and funded by the department or who is a recipient of services from a [r]Regional [o]Office (RO). Clients will be referred to as individuals throughout this rule;

(E) **Cognitive or physical impairment** – An impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques;

[(D)](F) **Comprehensive evaluation** – A study, including a sequence of observations and/or examinations of an individual, [leading to conclusions and recommendations jointly formulated by an interdisciplinary assessment team of persons with special training and experience in the diagnosis and habilitation of persons with intellectual disabilities (also called mental retardation) and other developmental disabilities.] and/or a review of records such as medical and other relevant records, leading to conclusions and recommendations regarding eligibility.

1. For children from birth through age four (0–4), a comprehensive evaluation may include, but not necessarily be limited to, an [interdisciplinary] assessment team’s[;] –

A. Assessment of the child using First Steps eligibility criteria, or review of evidence of one (1) of the at-risk factors set out in paragraphs (3)(A)1.–3. of this rule, coupled with a review of scores on the Vineland Adaptive Behavior Scales (Vineland);

B. Review of available educational and medical information;

C. Review of additional individualized assessment and interview results to provide evidence of [mental] cognitive or physical impairments likely to continue indefinitely, evidence of substantial functional limitations caused by [mental] cognitive or physical impairments, and evidence of a need for sequential and coordinated special services which may be of lifelong or extended duration; and

D. Formulation of conclusions and recommendations.

2. For [children] individuals ages five [through seventeen (5–17)] (5) and older, a comprehensive evaluation may include[,] but not necessarily be limited to[,] an interdisciplinary assessment team’s[;] –

A. Review of [educational records] the results of the Missouri Adaptive Abilities Scale (MAAS);

B. Review of available vocational and medical information, and educational information;

[C. Review of Vineland scores or results of the Missouri Critical Adaptive Behaviors Inventory (MOCABI), included herein, as set out in paragraphs (3)(B)1. and 2. of this rule;]

[D.]C. Review of additional individualized assessment and interview results to provide evidence of [mental] cognitive or physical impairments likely to continue indefinitely, evidence of substantial functional limitations caused by [mental] cognitive or physical impairments, and evidence of a need for sequential and coordinated special services which may be of lifelong or extended duration; and

[E.]D. Formulation of conclusions and recommendations.

E. **Designated representative** – A parent, relative, or other person designated by an adult who does not have a guardian. The designated representative may participate in the development of the individual support plan at the request of, and as directed by, the individual;

[3. For adults ages eighteen (18) and older, a comprehensive evaluation may include, but not necessarily be limited to, an interdisciplinary assessment team’s:

A. Review of the results of the MOCABI;

B. Review of available vocational, medical, and educational information;

C. Review of additional individualized assessment and interview results to provide evidence of mental or physical impairments likely to continue indefinitely, evidence of substantial functional limitations caused by mental or physical impairments, and evidence of a need for sequential and coordinated special services which may be of lifelong or extended duration; and

D. Formulation of conclusions and recommendations;]

[(E)](G) Developmental delay –

1. A delay, as measured and verified by appropriate diagnostic measures and procedures [(an interdisciplinary assessment)], which results in a child having obtained no more than approximately fifty percent (50%) of the developmental milestones and skills that would be expected of a child of equal age and considered to be developing within normal limits. The delay must be identified in one (1) or more of the following five (5) developmental areas: cognitive, speech or language, self-help, physical (including vision and hearing), or psychosocial; or

2. Demonstrated atypical development in any one (1) of the five (5) developmental areas, based on professional judgment of an [interdisciplinary] assessment team and documented by –

A. Systematic and documented observation of functional abilities in daily routine;

B. Developmental history; and

C. Other appropriate assessment procedures which may include[,] but are not necessarily limited to[,] parent report, criteria-referenced assessment, and developmental checklist;

[(F)](H) Developmental disability – A disability which –

1. Is attributable to –

A. Intellectual [disability (also called mental retardation)] **developmental disorder**, cerebral palsy, epilepsy, head injury, autism, or a learning disability related to a brain dysfunction; or

B. Any other [mental] **cognitive** or physical impairment or combination of [mental] **cognitive** or physical impairments;

2. Is manifested before the person attains age twenty-two (22);

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in two (2) or more of the following six (6) areas of major life activities: self-care, receptive and expressive language development and use, learning, self-direction, capacity for independent living or economic self-sufficiency, and mobility; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, habilitation, or other services which may be of lifelong or extended duration and are individually planned and coordinated;

[(G)](I) Eligible – Qualified through a comprehensive evaluation by the **Division of Developmental Disabilities** to receive services from the division, but not necessarily entitled to a specific service;

[(H)](J) First Steps – [A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention and service coordination services through individualized family service plans to all handicapped infants and toddlers (birth through age thirty-six months (0–36 months)) and their families in compliance with P. L. 99-457, Part H:] A program of the **Department of Elementary and Secondary Education (DESE)** offering coordinated services to Missouri families of children, birth to age three (3), who have delayed development or diagnosed conditions that are associated with developmental disabilities. First Steps is governed by 5 CSR 25-100.120 in accordance with Part C of the federal **Individuals with Disabilities Education Act (IDEA)**;

[(I)] Individualized family service plan – A written plan for providing early intervention services to a child and its family and

which must –

1. Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;

2. Be based on the multidisciplinary evaluation and assessment of both the child and the family; and

3. Include services to enhance the child's development and the capacity of the family to meet the child's special needs;

[(J)] Initial service plan – A document developed by the individual's service coordinator to authorize immediate and necessary services after the individual has been determined eligible but before the service plan or individualized family service plan is developed and implemented;]

[(K)] **Individual support plan (ISP)** – A document directed by the individual, with assistance as needed from a representative, in collaboration with a planning team. The ISP identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. The ISP shall encompass a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments, and/or other services to be provided for the individual become part of the ISP;

[(L)] **Individual support plan team (ISP team)** – The individual, the individual's designated representative(s), the support coordinator, and representatives of services required or desired by the individual;

[(M)] **Initial Plan** – A document that notifies the individual of eligibility for services and facilitates referral to case management;

[(K)](N) Intellectual [disability] **developmental disorder** – Significantly subaverage general intellectual functioning [which originates before age eighteen (18) and is associated with significant impairment in adaptive behavior;], at or below two (2) standard deviations below the mean, including a margin for measurement error when appropriate, as measured by an individually administered, comprehensive, and psychometrically sound test of intelligence. Intellectual developmental disorder originates before age eighteen (18) and is associated with significant impairment in adaptive behavior as assessed by both clinical evaluation and culturally appropriate, psychometrically sound measures;

[(L)](O) Intake – The process conducted prior to determination of eligibility by which data is gathered from an applicant;

[(M)] **Interdisciplinary assessment team** – Qualified developmental disabilities professionals, persons with special training or experience in the identification or habilitation of persons with developmental disabilities, and others approved by the division who participate in the comprehensive evaluation process for team determination of an applicant's eligibility for services from the division;

[(N)] **Interdisciplinary team** – The individual or applicant, service coordinator, interdisciplinary assessment team members, as appropriate, personnel from agencies providing services required or desired, and other persons (including family members) designated by the individual or applicant;]

[(P)] **Legal representative** – Parent of a minor child or legal guardian;

[(O)](Q) Logging – Recording in a uniform, consistent manner those dates and activities related to application, comprehensive evaluation, and other eligibility determination procedures as well as dates and activities related to applicant and individual appeals;

[(P)](R) Major life activities –

1. Self-care – Daily activities which enable a person to meet basic needs for food, hygiene, and appearance; demonstrated ongoing ability to appropriately perform basic activities of

daily living with little or no assistance or supervision;

2. Receptive and expressive language – Communication involving verbal and nonverbal behavior enabling a person to understand and express ideas and information to the general public with or without assistive devices; demonstrated ability to understand ordinary spoken and written communications and to speak and write well enough to communicate thoughts accurately and appropriately on an ongoing basis;

3. Learning – General cognitive competence and ability to acquire new behaviors, perceptions, and information and to apply experiences in new situations; demonstrated ongoing ability to acquire information, process experiences, and appropriately perform ordinary, cognitive, age-appropriate tasks on an ongoing basis;

4. Mobility – Motor development and ability to use fine and gross motor skills; demonstrated ongoing ability to move about while performing purposeful activities with or without assistive devices and with little or no assistance or supervision;

5. Self-direction – Management and control over one's social and personal life; ability to make decisions and perform activities affecting and protecting personal interests; demonstrated ongoing ability to take charge of life activities as age-appropriate through an appropriate level of self-responsibility and assertiveness; and

6. Capacity for independent living or economic self-sufficiency – Age-appropriate ability to live without extraordinary assistance from other persons or devices, especially to maintain normal societal roles; ability to maintain adequate employment and financial support; ability to earn a living wage, net (determined by the [interdisciplinary] assessment team for each individual), after payment of extraordinary expenses caused by the disability; demonstrated ability to function on an ongoing basis as an adult independent of extraordinary emotional, physical, medical, or financial support systems;

[(Q)](S) Markedly disturbed social relatedness – A condition found in children from birth through age four (0–4) and characterized by –

1. Persistent failure to initiate or respond in an age-appropriate manner to most social interactions[.]; for example, absence of visual tracking and reciprocal play, lack of vocal imitation or playfulness, apathy, little or no spontaneity, or lack of or little curiosity and social interest; or

2. Indiscriminate sociability[.]; for example, excessive familiarity with relative strangers by making requests and displaying affection;

[(R)] *Mental or physical impairment—*

1. An impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques; or

2. An impairment, in the broadest interpretation, which may include any neurological, sensory, biochemical, intellectual, cognitive, or perceptual deficit (excluding social problems) or mood disorder, as determined by an interdisciplinary assessment team, which limits an individual's ability to perform life, developmental, or functional activities that would be expected of an individual of equal age and considered to be developing or to have developed within normal limits;

(S) *Mental retardation—Significantly sub average general intellectual functioning which originates before age eighteen (18) and is associated with significant impairment in adaptive behavior;*

(T) *[Missouri Critical Adaptive Behaviors Inventory (MOCABI)—A structured interview tool used during screening to gather data to help determine if a substantial functional limitation exists;] Missouri Adaptive Abilities Scale (MAAS)—A standardized, normative, and criterion-based*

instrument used to determine the existence and severity of substantial functional limitations of major life activities;

[(U)] *Person-centered planning process—A process directed by the individual, with assistance as needed from a representative. The process may include other individuals freely chosen by the participant who are able to serve as important contributors to the process. The person-centered planning process enables and assists the individual to access a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally-defined outcomes, and the training, supports, therapies, treatments, and/or other services become part of the service plan;*

(V) *Protector—An adult individual's parent, relative, or other person, except for a legally appointed guardian, designated by the individual and recognized by the department to assist the individual in planning and participating in habilitation;*

(W) *Service plan (SP)—a document directed by the individual, with assistance as needed from a representative, in collaboration with an interdisciplinary team. The plan identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. A plan shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. The training, supports, therapies, treatments, and/or other services provided for the individual become part of the service plan;*

(X) *Qualified developmental disabilities professional—An individual who qualifies for the state of Missouri job classification of Case Manager I or who meets the following qualifications:*

1. One (1) or more years of professional experience—a) as a registered nurse, b) in social work, special education, psychology, counseling, vocational rehabilitation, physical therapy, occupational therapy, speech therapy, or a closely related area, or c) in providing direct care to people with developmental disabilities (DD); and

2. A bachelor's degree from an accredited college or university with a minimum of twenty-four (24) semester hours or thirty-six (36) quarter hours of credit in one or a combination of human service field specialties. Additional experience as a registered nurse may substitute on a year-for-year basis for a maximum of two (2) years of required education;

(Y) *Representative—Applicant's or individual's legal guardian, parent (if applicant or individual is a minor) or protector (for adult individuals);*

[(Z)](U) *Screening—Initial evaluation services, possibly including review by an [interdisciplinary] assessment team of information collected during the intake and application processes to substantiate that the applicant is developmentally disabled or is suspected to be developmentally disabled and requires further assessment for eligibility determination;*

[(AA)] *Special education services—Programs designed to meet the needs and maximize the capabilities of children who are handicapped or severely handicapped and which include, but are not limited to, the provision of diagnostic and evaluation services; student and parent counseling; itinerant, homebound, and referral assistance; organized instructional and therapeutic programs; transportation; and corrective and supporting services;*

(V) **Substantial—At least two (2) or more standard deviations below the mean, taking into consideration the standard error of measure, on a standardized, norm-referenced measure;**

[(BB)](W) **Substantial functional limitation—An inability, due to a [mental] cognitive or physical impairment, to [individually and] independently perform a major life activity within expectations of age and culture; and**

[(CC)](X) **Temporary action plan—A written plan [developed by (at least) the applicant, the applicant's family, and service**

coordinator to authorize additional assessment and counseling services only for the purpose of completing the comprehensive evaluation; and] authorizing additional time for the purpose of completing the comprehensive evaluation.

[(DD) Vineland Adaptive Behavior Scales (Vineland)—A screening device for evaluating an individual's performance in daily activities by assessing the four (4) domains of communication, daily living, socialization, and motor development.]

(3) Eligibility for services from the division is predicated on the applicant's either having an intellectual [disability (also called mental retardation)] **developmental disorder** or [a] developmental disability or being at risk of becoming developmentally delayed or developmentally disabled. The following criteria [shall be] is used in carrying out comprehensive evaluations for determining eligibility for services from the division:

(A) [Children From Birth Through Age Four (0–4). Children who are eligible for the First Steps program, as well as children who, except for age, would be eligible for that program, even though the children may not be eligible for public school services, automatically shall be eligible for services except for children whose sole service needs are specialized medical treatment for diagnosed health conditions or for children served by the Department of Health and Senior Services under an interagency agreement with the Department of Mental Health. The division shall determine eligibility for those children on an individualized basis; or any one (1) of the following at-risk circumstances, when coupled with a score of at least one and one-half (1.5) standard deviations below the norm in any one (1) of the four (4) developmental areas of the Vineland shall make a child eligible:] **Children From Birth Through Age Four (0–4). Individuals participating in the First Steps Program under DESE are eligible for services under the Division of Developmental Disabilities. The Division shall determine eligibility for those children not enrolled in First Steps based on one (1) of the following at-risk circumstances, when coupled with a score of at least one and one-half (1.5) standard deviations below the mean, taking into consideration the standard error of measure, in any one (1) area of a norm-referenced, standardized, and age-appropriate measure of adaptive function:**

1. Receipt by the division of documentation, based upon an individualized assessment from a qualified developmental disabilities professional, that there is markedly disturbed social relatedness in most contexts which puts the child at risk of becoming developmentally delayed or developmentally disabled; **or**

2. Determination by a regional office that a child's primary care[]giver has a developmental disability and that the developmental disability could put the child at risk of becoming developmentally delayed or developmentally disabled; **[or]**

[3. A Children's Division referral of a child who that division has found reason to suspect is abused or neglected and who a qualified developmental disabilities professional has documented, based upon an individualized assessment, is at risk of becoming developmentally delayed or developmentally disabled;]

(B) Children Ages Five Through Seventeen (5–17).

1. Children scoring as follows on the [Vineland] **MAAS** shall be considered to have substantial functional limitations in two (2) or more areas of major life activity:

A. One and one-half (1.5) standard deviations below the [norm] **mean** in at least two (2) developmental areas; or

B. Two (2) or more standard deviations below the [norm] **mean** in only one (1) developmental area.

[2. Children of older ages in this age range for whom the MOCABI may be a more appropriate screening instrument and whose scores on the MOCABI, or through additional individualized assessment or interview, indicate deficits in two (2) or more of the areas of major life activity shall be considered to have substantial functional limitations in those areas; and]

(C) Adults Ages Eighteen (18) and Older. Adults whose comprehensive evaluations, **including results of the MAAS**, indicate deficits in two (2) or more of the areas of major life activity shall be considered to have substantial functional limitations in those areas.

[(4) The procedure for determining eligibility for applicants and individuals shall be a comprehensive evaluation consisting of phases rather than a series of discrete and sequential steps. That is, screening and assessment shall not necessarily be separate and required steps. Thus, a screening itself may find an applicant eligible for services, and further assessment would be completed primarily to assist in development of the service plan or individualized family service plan. Furthermore, only if screening does not result in a determination of eligibility shall further assessment be conducted for the purpose of determining eligibility. On the other hand, if there is convincing evidence that an applicant has a developmental disability, neither screening nor assessment shall be necessary for the purpose of determining eligibility. Rather, the regional office shall conduct an assessment for the purpose of developing the service plan or individualized family service plan. No applicant shall be found ineligible solely as a result of screening except an applicant whose disability clearly was not manifested before age twenty-two (22); a finding of ineligibility shall be made only after completion of the comprehensive evaluation. Each regional office director shall designate a member of the staff to help ensure that the eligibility determination process proceeds in a timely manner. The name of that individual shall be posted in the office and shall be given to all applicants. This staff member shall have access to all necessary information from the interdisciplinary assessment teams.]

(4) Eligibility Process.

(A) [Regional offices shall complete comprehensive evaluations within thirty (30) working days after receipt of valid applications from all applicants except applicants for services under the First Steps program. For applicants for services under the First Steps program, regional offices shall complete comprehensive evaluations and develop individualized family service plans within forty-five (45) days after receiving referrals for services under that program.] **Regional offices shall complete comprehensive evaluations within thirty (30) business days after receipt of valid applications and sufficient supporting medical, psychological, and/or educational reports. A Division of Developmental Disabilities staff member shall be designated to help ensure the eligibility determination process proceeds in a timely manner. The name of that individual shall be given to all applicants. This staff member shall have access to all necessary information relevant to the application for services.**

(B) Individuals may apply for services only on application forms provided by the division.

1. By the end of the next [working] **business** day after any referral, inquiry, or request for services, a regional office shall provide application forms and information about services offered by the division [and the regional offices] unless it is clearly evident that the inquiry, request, or referral has been made to the division inappropriately or is for a person who is **clearly** ineligible for services. In cases of evident ineligibility or inappropriate inquiries, requests, or referrals, regional offices

shall refer individuals for whom services have been requested to appropriate agencies within five (5) *[working]* business days after the inquiry, request, or referral.

2. For an individual's request for services to be considered, the regional office must receive a valid application for services. An application shall be valid only if signed or marked by the applicant. A mark must be witnessed.

3. Regional office staff shall contact the individual within ten (10) *[working]* business days of receipt of an invalid application to obtain a valid application so that the *[comprehensive evaluation]* eligibility process can continue.

4. If the regional office has not received an application within thirty (30) calendar days of the date it was provided to the individual, regional office staff shall contact the individual directly by telephone, **electronic** or **regular** mail, *[if possible, and]* or in person, *[if necessary,]* to determine if the individual desires to continue the application for services and, if so, if assistance is needed in completing an application.

(C) *[Except as otherwise required in subsection (4)(A), within thirty (30) working days of receipt of a valid application, a regional office shall complete a comprehensive evaluation and determine eligibility for services. A comprehensive training program shall be developed to train staff to evaluate persons from any disability group which may be eligible for services under the definition of developmental disability.] A comprehensive evaluation includes –*

1. *[If screening is required—]A norm-referenced, standardized, and age-appropriate measure of adaptive function shall be used during assessment of children up to age five (5) to determine if substantial functional limitations exist; or*

[A. The Vineland shall be used during screening of children up to age eighteen (18) to help to determine if substantial functional limitations exist unless administration of the MOCABI is considered more appropriate for children of older ages in the age range of five through seventeen (5–17); or

B. The MOCABI shall be used during screening of adults age eighteen (18) and older to help determine if substantial functional limitations exist.

2. *Regional offices shall conduct screenings and assessments in applicants' homes as feasible unless applicants request other sites. If screenings or assessments are not done in applicants' homes, reasons shall be documented in applicants' files. If screenings or assessments are to be done at the regional offices, the regional offices shall work with applicants to secure transportation to the offices.*

3. *If applicants are not found eligible through screening, regional offices shall conduct further assessments to complete comprehensive evaluations. Applicants not found eligible pursuant to the definition of developmental disability but who claim eligibility due to intellectual disability (also called mental retardation) shall refer to subsection (4)(D) of this rule.]*

2. The MAAS shall be used during comprehensive evaluation of individuals age five (5) and older to determine if substantial functional limitations exist.

(D) When "in-person" meetings, including assessments, are required, the regional office staff shall conduct such meetings in applicants' homes as feasible unless applicants request other sites. If meetings are at the Regional Office, the regional office staff shall work with applicants to secure transportation to the offices.

[(D)](E) If an applicant who claims eligibility due to intellectual [disability (also called mental retardation)] developmental disorder has not been found to have substantial functional limitations in two (2) or more areas of major life activity under this rule, the [interdisciplinary] assessment team shall [conduct further cognitive and behavioral

assessments] consider any additional assessments or other relevant information provided by the applicant to determine if the applicant has an intellectual [disability (also called mental retardation)] developmental disorder. One (1) or more standardized testing tools currently defined by the American Association on Intellectual and Developmental Disabilities shall be used in conducting [the cognitive and] adaptive behavioral assessment/s].

[(E)](F) If within thirty (30) [working] business days of receipt of a valid application the [interdisciplinary] assessment team finds the applicant ineligible for services, the regional office shall –

1. Provide, to the applicant, within one (1) *[working]* business day of the decision, written notice of right to appeal the decision, a statement of the legal and factual reasons for the denial, a notice of the appeals process contained in 9 CSR 45-2.020, and a brochure which explains the appeals process;

2. Orally provide to the applicant, within one (1) *[working]* business day of the decision, if possible, the reasons for ineligibility and an explanation of the applicant's right to appeal, along with *[the name of the applicant's service coordinator and the telephone number at the regional office] information about how and to whom to request an appeal;* and

3. Make referrals within five (5) *[working]* business days of the decision[,] to other agencies and monitor services received by the applicant for at least thirty (30) calendar days from the date of the ineligibility determination.

[(F)](G) [Except as otherwise required in subsection (4)(A),]If the [interdisciplinary] assessment team cannot make an eligibility determination within thirty (30) [working] business days of receipt of a valid application because the regional office has not received collateral data or other information critical to the determination, [an interdisciplinary] the assessment team shall develop a temporary action plan within that thirty- (30-) [working] business-day period, and the office may take up to thirty (30) additional business days to determine eligibility.

1. For an applicant then determined eligible during the additional thirty- (30-) business-day period, the *[interdisciplinary] assessment* team also shall develop the *[service] initial plan [or individualized family service plan]* within the thirty (30) business days of the determination of eligibility.

2. For individuals needing immediate services, the service coordinator also shall develop an initial *[service plan] ISP* within five (5) *[working]* business days after the eligibility determination unless *[a service plan or family service plan] an ISP* has already been developed.

3. For an applicant determined ineligible during the additional thirty- (30-) business-day period, the regional office shall provide written and oral notices as set out in paragraphs (4)(*[E]*)1. and 2. of this rule and shall make referrals to other agencies and monitor services received by the applicant as set out in paragraph (4)(*[E]*)3. of this rule.

[(G)](H) [If the interdisciplinary assessment team does not make a determination on eligibility within thirty (30) working days of receipt of a valid application, even though the regional office has received collateral data and all other information critical to the determination, the regional office staff member designated under section (4) of this rule or the applicant shall notify the office director, who shall direct the interdisciplinary assessment team to make the eligibility determination within five (5) working days of the notification from the staff member designated under section (4) of this rule, or the applicant.] If the assessment team has received collateral data and all other information necessary for the determination and does not make a determination within thirty (30) business days, they have an additional five (5) business days to make

a determination.

1. For an applicant then determined eligible, the office shall proceed as set out in paragraphs (4)(~~H~~)1.–3. of this rule.

2. For an applicant then determined ineligible, the office shall proceed as set out in paragraphs (4)(~~E~~)(~~F~~)1.–3. of this rule.

~~(H)~~(**I**) For an applicant determined eligible within thirty (30) **[working] business** days of receipt of valid application –

1. The regional office shall provide written notice of eligibility and client status within three (3) **[working] business** days of the determination;

2. The **[interdisciplinary] planning** team shall develop **[a service plan or individualized family service plan] an ISP** within thirty (30) **business** days after the date of the eligibility determination; and

3. For individuals needing immediate services, the service coordinator also shall develop an initial **[service plan] ISP** within five (5) **[working] business** days after the eligibility determination. **[unless a service plan or individualized family service plan already has been developed.]**

~~(I)~~(**J**) **[Using a comprehensive evaluation, regional offices shall periodically review the eligibility status of individuals served and shall discharge individuals who are no longer eligible for services and individuals for whom division services are no longer appropriate. At a minimum, all individuals shall be reassessed through comprehensive evaluations on or immediately before their fifth, eighteenth, and twenty-second birthdays.]** **The Regional Office (RO) shall reassess individuals through comprehensive evaluation as needed. RO shall discharge individuals who are no longer eligible for services and individuals for whom division services are no longer appropriate.**

1. Not later than sixty (60) **calendar** days before a reassessment, the regional office shall provide to the individual a written notice of the upcoming reassessment and of the possibility that division services may be discontinued.

2. If, as a result of the comprehensive evaluation, an individual is found ineligible or no longer in need of services, the regional office shall provide written and oral notice as set out in paragraphs (4)(~~E~~)(~~F~~)1. and 2. of this rule and shall prepare a discharge plan which shall provide at least sixty (60) **calendar** days from the date of that plan for the individual to transition from division services into services from other agencies. The **regional office and the individual's support coordinator** shall monitor and assist with that transition.

~~(J)~~ **For purposes of quality enhancement and consistency, the regional office staff member designated under section (4) of this rule shall conduct timely reviews of all individual assessments, diagnostic impressions, and findings of the interdisciplinary assessment team and report irregularities to the director. This quality enhancement procedure is not part of the eligibility determination process and shall not delay delivery of services to eligible individuals.]**

(**K**) Regional office staff shall log the disposition of all applications, including eligibility determinations, appeals, and referrals to other agencies. Comprehensive evaluation activities noted throughout this rule shall be logged immediately or on the same **[working] business** day.

(**L**) If an applicant or **[individual] legal representative** disagrees with an ineligibility determination, the determination may be appealed under procedures contained in 9 CSR 45-2.020.

AUTHORITY: section 630.050, RSMo [Supp. 2011] 2016. This rule was previously filed as 9 CSR 50-1.045. Original rule filed Oct. 2, 1991, effective May 14, 1992. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 26, 2022.

PUBLIC COST: This proposed amendment will not cost state

agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Mental Health, Denise Thomas, PO Box 687, Jefferson City, MO 65102 or by email to denise.thomas@dmh.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 9 – DEPARTMENT OF MENTAL HEALTH
Division 45 – Division of Developmental Disabilities
Chapter 2 – Eligibility for Services**

PROPOSED AMENDMENT

9 CSR 45-2.015 Prioritizing Access to Funded Services. The department is amending sections (1), (2) and (4), deleting section (3), and renumbering remaining sections.

PURPOSE: This amendment updates outdated language and terminology.

(1) Definitions.

~~(A)~~ **Autism waiver**—A set of services, not including residential services, for children eligible for Medicaid, who have been diagnosed by a licensed physician, psychologist, or mental health professional to have autism or autism spectrum disorder and who have been determined to otherwise require the level of care provided in an intermediate care facility for developmental disabilities (ICF/DD).]

~~(B)~~(**A**) **Community services**—Supports funded and purchased through the Department of Mental Health Purchase of Service (POS) system with general revenue appropriations to assist individuals who have an intellectual **[disability (also called mental retardation)] developmental disorder** and/or developmental disabilities to live in the community. Eligibility for MO HealthNet is not required. Community services includes services for people with autism spectrum disorders funded with general revenue appropriations and administered through the Autism Projects defined at 9 CSR 45-3.060.

~~(C)~~(**B**) **Community Support waiver**—A set of services, not including residential services, for **[Medicaid] MO HealthNet** eligible individuals who have an intellectual **[disability (also called mental retardation)] developmental disorder** and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

~~(D)~~(**C**) **Comprehensive waiver**—A set of services, including residential services, for **[Medicaid] MO HealthNet**-eligible individuals who have an intellectual **[disability (also called mental retardation)] developmental disorder** and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

~~(E)~~(**F**) **Division**—Division of Developmental Disabilities.

~~(F)~~(**G**) **Intermediate care facility for [mental retardation] intellectual developmental disorder and/or a developmental disability**—Any facility certified under 42 CFR 440.150. These facilities are referred to as intermediate care facilities for developmental disabilities (ICF/DD) throughout this rule.

~~(G)~~(**H**) **Missouri [c]Children with [d]Developmental [d]Disabilities waiver (also called Sarah Jian Lopez waiver) MOCDD**—A set of services, not including residential services,

for children under the age of eighteen (18) living with their parents, who will qualify for *[Medicaid]* MO HealthNet by qualifying for the waiver, who have an intellectual *[disability (also called mental retardation)]* developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

[(H)](I) Partnership for Hope waiver – A set of services, not including residential services, for *[Medicaid]* MO HealthNet-eligible individuals who have an intellectual *[disability (also called mental retardation)]* developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD. The Partnership for Hope is a county-based waiver operational in any Missouri county with a levy authorized under section 205.968, RSMo, whose board of directors has authorized funds to support the Partnership for Hope waiver or in any Missouri county approved by the Centers for Medicare and Medicaid Services for inclusion in this waiver.

[(I)](J) Prioritization of Need (PON) scoring – A process that assigns a score to the level of need for an individual, as set forth in 9 CSR 45-2.017. PON scoring is used to determine access to services when funding is limited and shall be applied to all individuals prior to participation in any of the following programs:

1. Comprehensive waiver;
2. Community Support waiver;
3. Missouri *[c]*Children with *[d]*Developmental *[d]*Disabilities waiver (*also called Sarah Jian Lopez waiver*) MOCDD); or
- [4. Autism waiver; or]*

[5.]4. Community services funded with general revenue appropriations and purchased through the Department of Mental Health Purchase of Service (POS) system.

[(J)](K) Waiting list – A list of all people who have *[requested]* qualified for but are not currently receiving services from the division. The waiting list shall be subdivided into the following categories:

- [1. Children under the age of eighteen (18) with autism spectrum disorder who are not eligible for MO HealthNet;*
- 2. Youth who have reached their seventeenth birthday;*
- 3. Children and adults who are eligible for MO HealthNet who have needs that require the level of care in an ICF/DD and have an immediate need (within ninety (90) days) for residential services;*
- 4. Children and adults who are eligible for MO HealthNet who have needs requiring the level of care in an ICF/DD, who do not have an immediate need for residential services but have service needs beyond the scope of the Partnership for Hope waiver;*
- 5. Children and adults who are eligible for MO HealthNet, who have needs requiring the level of care in an ICF/DD, whose needs can be met safely with services in the Partnership for Hope waiver;*
- 6. Children age three through eighteen (3–18) with autism spectrum disorder who have needs requiring the level of care in an ICF/DD and who are eligible for MO HealthNet; and*
- 7. Children who have needs requiring the level of care in an ICF/DD and who are not eligible for MO HealthNet.]*

1. Children under the age of eighteen who are not eligible for MO HealthNet, who have needs that require the level of care in an ICF/DD, and who would otherwise be eligible for the MOCDD waiver;

2. Individuals who are eligible for MO HealthNet who have needs that require the level of care in an ICF/DD and are otherwise eligible for the comprehensive waiver; and

3. Individuals who are eligible for MO HealthNet who have needs requiring the level of care in an ICF/DD, who do not have an immediate need for residential services but have service needs beyond the scope of the Partnership for Hope waiver; and

4. Individuals who are eligible for MO HealthNet, who have needs requiring the level of care in an ICF/DD, whose needs can be met safely with services in the Partnership for Hope waiver.

(2) Prioritizing Access to State General Revenue-Funded *[Services]* Autism Project-Funded Services (defined at 9 CSR 45-3.060). People who are on *[the]* this waiting list shall be prioritized for access to general revenue funded services based on PON score. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority.

[(3) People with autism spectrum disorders may access services administered through the Autism Projects defined at 9 CSR 45-3.060.]

[(4)](3) The following sections describe how the waiting list for home and community-based waivers will be established and managed when funding is limited and establishes the methods used to determine which waiver is most appropriate to meet the needs of individuals when funding becomes available.

(A) Individuals who reside in a participating Partnership for Hope waiver county who would otherwise require care in a ICF/DD may be considered for enrollment in the waiver if the individual is experiencing crisis or meets other priority criteria as outlined below in this rule. When participation in the Partnership for Hope waiver is limited by available funds, individuals experiencing a crisis will be served first. If more than one (1) individual is experiencing a crisis, the individual who has been waiting the longest will be served first. If no one is experiencing a crisis, then individuals meeting other priority criteria will be served. If more than one (1) individual meets priority criteria, the individual who has been waiting the longest will be served first.

1. To be considered for access based on a crisis, an individual must be experiencing one (1) of the following:

- A. Health and safety conditions pose a serious risk of immediate harm or death to the individual or others;
- B. Loss of primary caregiver support or change in caregiver's status to the extent the caregiver cannot meet needs of the individual; or
- C. Abuse, neglect, or exploitation of the individual.

2. To be considered for access to the Partnership for Hope waiver when no one in that county who is on the waiting list is experiencing a crisis, individuals meeting the following criteria will be served on the basis of length of time on the waiting list:

A. The individual's circumstances or conditions necessitate substantial accommodation that cannot be reasonably provided by the individual's primary caregiver;

B. The individual has exhausted both their educational and Vocational Rehabilitation (VR) benefits or they are not eligible for VR benefits and they have a need for pre-employment or employment services;

C. Individual has been receiving supports (other than case management) from local funding for three (3) months or more and the services are still needed and the service can be covered by the waiver; and

D. Individual living in a non-Medicaid funded residential care facility chooses to transition to the community and has been determined to be capable of residing in a less restrictive environment with access to Partnership for Hope waiver services.

(B) Individuals who are determined to meet emergency criteria as described in 9 CSR 45-2.017(1)(E) and who require out-of-home residential services or for whom out-of-home residential care is imminent, and whose needs cannot be met

with services and supports other than residential services or whose needs for services is anticipated to be in excess of the cost limitations of other waivers shall receive priority consideration to participate in the Comprehensive waiver.

1. Individuals on the waiting list shall be enrolled in the Comprehensive waiver according to the PON score, as set forth in 9 CSR 45-2.017 as funding becomes available.

2. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority access to the Comprehensive waiver.

3. When individuals on the waiting list are offered and refuse waiver services a new PON assessment shall be completed.

(C) Individuals on the waiting list whose needs can be met without residential services, whose needs can be met safely in the community, and whose annual service costs is anticipated to be less than the cost limits of those waivers, shall be prioritized for access in waivers other than the Comprehensive waiver.

(D) Children under the age of eighteen (18) who would otherwise require care in an ICF/DD, but who are not otherwise eligible for MO HealthNet because of parental income and/or assets, may be considered for participation in the *[Sarah Jian Lopez]* MOCDD waiver, and shall be served from the waiting list as turnover occurs based on prioritized need. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority. When individuals on the waiting list are offered and refuse the service or services for which they were placed on the waiting list, *[a new PON assessment shall be completed. Determining prioritized need shall include reviewing the following:]* they are removed from the waiting list. **Should services be desired in the future, a new ISP and PON may be submitted.**

1. PON score(s);
2. Frequency of need for waiver services;
3. Family ability to otherwise meet needs;
4. Any emergency need (9 CSR 452.017); and
5. Access to other resources to meet needs.

(E) Children with autism spectrum disorder who have attained the age of three (3) but who have not yet reached their eighteenth birthday and who would otherwise require care in an ICF/DD may be considered for participation in the Autism waiver, and shall be served from the waiting list as turnover occurs based on PON. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority. When individuals on the waiting list are offered and refuse the service or services for which they were placed on the waiting list, a new PON assessment shall be completed. Determining prioritized need shall include reviewing the following:

1. Have a diagnosis of autism spectrum disorder (ASD) as defined in the most recent edition of the *Diagnostic and Statistics Manual of Mental Disorders, American Psychiatric Association*. (Includes autistic disorder, Asperger's syndrome, pervasive developmental disorder—not otherwise specified, childhood disintegrative disorder, and Rett's syndrome);
2. Lives with their family in the community;
3. Must have behavioral and/or social or communication deficits that require supervision, that impact the ability of the child's family providing care in the home, and that interferes with the child participating in activities in the community;
4. PON score;
5. Any emergency need (9 CSR 452.017); and
6. Access to other resources to meet needs.]

[(5)](4) Program Turnover.

(A) Funds becoming available due to participants leaving

(turnover) any programs listed under subsection (1)(I) shall first be used for individuals served in that program who have increased needs. When these needs are met, funds that become available from turnover may be used to enroll new individuals in the program.

[(B) When turnover occurs in an existing living arrangement, the regional office shall determine if an individual in the region, district, or state meeting emergency criteria or with the highest PON score would be appropriately served in the arrangement and chooses this living arrangement (including location), and if the agency providing supports is able to provide the supports to the individual.

1. If the arrangement is not appropriate or acceptable to an individual meeting emergency criteria or with the highest PON score, the regional office shall determine if the living arrangement is acceptable and appropriate for an individual with the next highest PON score on the waiting list. If it is not, the regional office may request approval for another individual on the waiting list to participate in the waiver according to prioritized need, who is agreeable to the living arrangement and is a compatible household member for current residents.]

[(6)](5) No individual shall receive services under more than one (1) home and community-based waiver at the same time, including home and community-based waivers operated by any other Missouri state agency. Any individual who is eligible for services under more than one (1) waiver and has priority access to services based on their score as set forth in 9 CSR 45-2.017, when funding is available under both programs, shall be offered a choice of the waiver that best meets their needs, including home and community-based waivers operated by any other Missouri state agency.

[(7)](6) An individual may receive services under a waiver and may also receive community services funded with general revenue appropriations and purchased through the Department of Mental Health Purchase of Service (POS) system with approval from the division director when there is a need that cannot be met with waiver services.

AUTHORITY: sections 630.050 and 633.110.2., RSMo [Supp. 2011] 2016. Emergency rule filed Oct. 1, 2004, effective Oct. 15, 2004, expired April 15, 2005. Original rule filed March 31, 2006, effective Nov. 30, 2006. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 26, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Mental Health, Denise Thomas, PO Box 687, Jefferson City, MO 65102 or by email to denise.thomas@dnh.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 9 – DEPARTMENT OF MENTAL HEALTH
Division 45 – Division of Developmental Disabilities
Chapter 2 – Eligibility for Services**

PROPOSED AMENDMENT

9 CSR 45-2.017 Utilization Review Process. The department is

amending sections (1) and (2), deleting sections (3), (7)-(9), (16), and (18), amending and renumbering remaining sections, and deleting the Utilization Review Committee Recommendations Form, Priority of Need Form.

PURPOSE: This amendment establishes the Missouri Adaptive Ability Scale (MAAS) for use in the prioritization of need and removes the requirement for a committee in the utilization review process

(1) Definitions.

(B) Budget—The total cost of services and supports **funded through the division** recommended or approved to meet an individual's needs identified in *[a service plan]* **an Individualized Support Plan. Services and supports paid for outside of the department billing system are excluded from the budget.**

(E) Emergency criteria consist of one (1) or more of the following:

1. The individual is in immediate need of life-sustaining services (food and shelter, or protection from harm) and there is no alternative to division funding or provision of those services;

2. The individual needs immediate services in order to protect self or another person from imminent physical harm;

3. The individual is residing in an intermediate care facility for persons who have developmental disabilities (ICF/DD) or a skilled nursing facility (SNF) and has been assessed as able to live in a less restrictive arrangement in the community, the individual wants to live in the community, and appropriate services and supports can be arranged through the waiver;

4. The individual had been receiving significant services through division **waiver-funded** programs and services, is evaluated to still need the significant level of services, but is no longer eligible for the program or services due to age *[or other criteria, such as Sarah Jian Lopez waiver and Autism waiver]; or*

5. The individual is in the care and custody of the Department of Social Services, Children's Division, which has a formal agreement in place with *[a]* the division *[regional office]* to fund the costs of waiver services for the specific individual*;* *or for individuals who are in a Voluntary Placement Agreement (VPA).*

[6. The individual is under age eighteen (18) and requires coordinated services through several agencies to avoid court action; or

7. The individual is subject to ongoing or pending legal action that requires immediate delivery of services.]

(F) Missouri Adaptive Ability Scale (MAAS)—A norm-referenced, standardized assessment of functional ability. **The MAAS shall be used to determine number and severity of functional limitations for eligibility, prioritization of need score, and rate setting.**

[(F)](G) Person-centered planning process—A process directed by the individual, with assistance as needed from a guardian, public administrator, the responsible party, or other person as freely chosen by the individual. The process may include other individuals freely chosen by the participant who are able to serve as important contributors to the process. The person-centered planning process enables and assists the individual to access a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes and the training, supports, therapies, treatments, and/or other services become part of the *[service plan]* ISP.

[(G)](H) Prioritization of need (PON) score—*[An assessment instrument that assigns a score to the level of need. Scoring is used to determine access to services.]* A component of

the MAAS that quantifies the level of impairment of an individual and is used to determine priority of access to services. The PON score is expressed on a one (1) to five (5) scale with five (5) being the highest possible score.

[(H)](I) Responsible party—The parent(s) of a minor child, spouse, court appointed guardian, public administrator, or any other person who has legal authority to make decisions for a person served by the division.

[(I)](J) Senate Bill 40 County Developmental Disability Boards (SB40 Board)—County boards established pursuant to section 205.970, RSMo, to provide services with voter approved tax levies to residents of that county who are handicapped persons as defined in sections 178.900 and 205.968, RSMo.

[(J)](K) *[Service plan]* Individualized Support Plan (ISP)—A document directed by the individual, with assistance as needed from a representative, in collaboration with *[an interdisciplinary]* a planning team. The *[service plan]* ISP identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. *[A service plan]* The ISP shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments, and/or other services to be provided for the individual become part of the *[service plan]* ISP.

[(K)](L) Service/Support—Informal and formal means of meeting needs identified in the *[service plan]* ISP.

[(L)](M) Utilization Review *[Committee (URC)]* (UR)—*[A formal committee established at each regional office or at an SB 40 Board to review PON assessments, proposed service plans, and budgets and make recommendations utilizing the form included herein before services are approved and authorized. If an SB 40 Board does not create a URC then they must use the regional office URC.]* A formal process at the regional office to review PON, proposed ISPs, and budgets and make recommendations for approval, modification, or denial of the requested services. The regional director or assistant regional director has the authority to review and approve recommended services and may designate individuals to review and approve recommended services. The authority to deny or modify requested services lies solely with the regional director or assistant regional director.

(2) Following the establishment of eligibility for division services in accordance with 9 CSR 45-2.010, the person-centered planning process begins. *[The prioritization of need (PON) form, included herein, shall be completed by the service coordinator through discussion with the individual and/or their guardian, and with input from others as directed by the individual and/or his or her guardian. A service plan is developed through discussion with the individual and/or their guardian and with input from others as directed by the individual and/or his or her guardian. A budget is completed identifying potential sources of support including both funded and natural supports. The PON, service plan, and the budget are then submitted to URC, and a copy of the PON, service plan, and the budget are provided to the individual and/or his or her guardian.]* An ISP is developed through discussion with the individual and/or guardian and with input from others as directed by the individual and/or guardian. The ISP, budget, and PON (if applicable), are then submitted to UR, and a copy of the ISP, budget, and PON (if applicable), is provided to the individual and/or guardian.

[(3) Each regional director shall appoint a URC. A SB 40 executive director may appoint a URC. URC members shall include the agency director or designee from senior management and service coordination. Membership may include other staff as designated by the regional director or

as designated by the SB 40 executive director and may also include a parent or guardian representative. A minimum of three (3) members shall be present in order for the URC to conduct official business.

(A) The URC shall meet a minimum of once per week or as needed to meet timelines.

(B) The URC shall review the documentation described in section (2) above, under the following circumstances:]

(A) A PON score is necessary when there is a request to begin participation in any waiver.

(B) A new assessment of PON shall be completed when an individual on a waiting list experiences a change in personal circumstances, environment, or family situation impacting level of need.

(C) UR is necessary under the following circumstances:

1. When individuals will be receiving funded services for the first time;

2. When the individual's [service plan] ISP and budget is amended by adding new services or increasing the dollar amount of a specific service;

3. When individuals who are participating in the Partnership for Hope waiver move from a participating county into one that does not participate in the Partnership for Hope waiver; or

[4. The individual is receiving services under a waiver, but the waiver is no longer meeting their needs due to a new need for a service not covered in that waiver or due to a cost limit in that waiver; or]

[5.4. Any other situation at the discretion of the [URC] regional director.

[(C)](D) [The URC shall not review changes to service plans with no increase in the total budget.] UR is not necessary when there is no change to the ISP or budget, but the ISP may be reviewed at the discretion of the regional director.

[(D)](E) In emergency situations as described in paragraphs (1)(E)1-5. of this rule, the regional director has the authority to approve an increase in [a service plan] an ISP to protect the health and safety of an individual and to subsequently report the decision to the [URC] support coordinator who will develop an ISP amendment.

[(4)](3) Following implementation of the initial [service plan] ISP and annually thereafter, two (2) months prior to the proposed [service plan] ISP and budget implementation, the service coordinator shall meet with the individual, the individual's family, and as appropriate the individual's responsible party to prepare [a service plan] an ISP and budget with justification for the individual's support needs.

(A) The [initial service plan] ISP and budget shall be agreed to and the [service plan] ISP shall be signed by the individual and/or responsible party.

[(5)](4) One (1) month prior to the proposed [service plan] ISP and budget implementation, the service coordinator shall submit the signed [service plan] ISP to the [URC] regional director or the regional director's designee for approval. Plans submitted that include services with a start date less than thirty (30) days from the implementation date shall not expedite approval timelines.

(A) If the [service plan] ISP and budget submission to [the] UR[C] shall otherwise be delayed due to the inability of the service coordinator to obtain the signature of the individual or responsible party, then the [service plan] ISP and budget shall be forwarded to [the] UR[C] without the signature and a copy of the [service plan] ISP and budget shall be mailed to the individual or responsible party.

[(6)](5) [The] UR[C] shall [consider] recommend for approval a

service/support for inclusion on a prioritized waiting list if the service/support meets each of the following criteria:

(A) Need for the service/support is documented in the [service plan] ISP as necessary for the individual's health, safety, and/or independence and alternative funding or programs are not available to meet the need;

(B) Need for the service/support is specifically related to the person's disability (i.e., not something that would be needed regardless of the person's disability); and

(C) Individuals evaluated with needs meeting emergency criteria receive highest priority in receiving funding for services.

[(7) The URC shall review the service plan and budget within six (6) working days of receipt.

(A) The URC shall review the form as completed by the service coordinator and shall verify the score or shall request additional information if the score cannot be verified based on what was submitted. A copy of the form and final score approved by the URC shall be provided to the individual and/or his or her guardian.

(B) If no additional information is required, the URC shall send a recommendation to the regional director or designee to approve or disapprove the service plan and budget. If more information is needed to review the service plan or changes are necessary in the budget or service authorization associated with a service plan, that information shall be requested from the service coordinator, who has ten (10) working days to respond to the URC.

(C) The URC shall submit the completed recommendation form, included herein, to the regional director or designee to approve or disapprove the service plan and budget no later than six (6) working days following receipt of all needed information.

(8) The regional director or designee shall approve, amend, or disapprove the URC recommendation within five (5) working days of receipt.

(9) Upon final action by the regional director or designee to approve, amend, or disapprove a service plan and budget, a copy of the final decision letter and the completed service plan and budget shall be provided within ten (10) days of the decision to the individual and/or responsible party, service coordinator, and provider(s) by regular mail, fax, or hand delivery. If the regional director or designee disapproves a service plan and budget, the regional director or designee shall include in the final decision letter the reasons for the disapproval or amendment.]

(6) The Division shall maintain a waitlist for entry into the Division of Developmental Disabilities waiver-funded services. The regional office enters individuals on a prioritized waiting list when services requested in an approved ISP require entry into a waiver. Individuals evaluated with needs meeting emergency criteria receive highest priority in receiving funding for services.

(7) UR shall review the ISP, budget and PON (when required) within six (6) business days of receipt. A PON score based on the emergency criteria will be reviewed by the regional director or their designee for verification.

(A) If sufficient information is submitted, the regional director or the designee may approve the ISP and budget. The regional director or designee has five (5) business days to render a decision.

(B) If more information is needed or changes are necessary in the budget or service authorization associated with an ISP, that information shall be requested from the service coordinator, who has ten (10) business days to

respond. Upon receipt of the requested information or following the conclusion of these ten (10) business days, the regional director or designee will then have five (5) business days to render a decision.

(8) Following the decision by the regional director or designee, a decision letter and the completed ISP and budget shall be provided within ten (10) business days of the decision to the individual and/or responsible party, service coordinator, and provider(s). If the regional director disapproves or modifies an ISP and budget, the regional director shall include in the decision letter the reason(s) for the disapproval or modification and must provide information on rights to appeal.

[(10)](9) The individual or responsible party may appeal the [final] decision, in writing or verbally, to the regional director or assistant regional director within thirty (30) calendar days from the date of the [final] decision letter.

(A) If necessary, appropriate staff shall assist the individual or responsible party in making the appeal.

(B) The regional director or designee may meet with the individual or responsible party and any staff to [obtain] consider any [newly discovered] information relevant to the final decision and to hear any comments or objections related to the [final] decision.

(C) Within ten (10) [working] business days after receiving the appeal, the regional director or designee shall notify the individual or responsible party in writing of [his/her final] the decision.

[(11)](10) When the [final] decision, as set forth in section [(10)](8) above, results in any individual being denied service(s) based on a determination the individual is not eligible for the service(s) or adversely affects a waiver service for an individual, the individual and/or responsible party may appeal in accordance with the procedures set forth in 9 CSR 452.020(3)(C).

(A) An individual and/or responsible party participating in a Division MO HealthNet/Medicaid waiver program has appeal rights through both the Department of Mental Health and the Department of Social Services. Those individuals may appeal to Department of Social Services before, during, or after exhausting the Department of Mental Health appeal process. Once the appeal process through Department of Social Services begins, appeal rights through the Department of Mental Health cease. Individuals appealing to the Department of Social Services must do so in writing within ninety (90) calendar days of written notice of the adverse action to request an appeal hearing. Requests for appeal to the Department of Social Services should be sent to:] MO HealthNet Division, Constituent Services Unit, PO Box 6500, Jefferson City, MO 65102-6500, or call Constituent Services Unit at 1 (800) 392-2161.

[(12)](11) If an individual and/or responsible party timely files an appeal of a [final] decision, services currently being provided under an existing [service plan] ISP will not be suspended, reduced, or terminated pending a hearing decision unless the individual or legal representative requests in writing that services be suspended, reduced, or terminated.

(A) The individual and/or responsible party may be responsible for repayment of any federal or state funds expended for services while the appeal is pending if the hearing decision upholds the director's decision.

[(13)](12) The service coordinator shall provide guidance to the individual, family, and the responsible party about any

alternative resources potentially available to support needs that are not approved through the UR/C process.

[(14)](13) New services/supports that result in an increase in the total budget shall not begin before the [service plan] ISP and budget are approved through the UR/C process and approved by the regional director or designee, except in an emergency situation approved by the regional director or designee. Services approved due to an emergency situation may not exceed sixty (60) calendar days. An extension of up to an additional sixty (60) calendar days may be requested in writing and may be approved in writing at the discretion of the regional office director.

[(15)](14) Budgets are determined by the total cost of all services and supports paid through the billing system of the department. Services and supports paid for outside of the department billing system are excluded.

(A) When multiple family members are receiving division services, this shall be noted. All of the budgets shall be considered together in the utilization review process in order to have a comprehensive picture of all services/supports going into a single home so the necessary level of services can be determined. This does not require each family member's [service plan] ISP be on the same plan year, but does require all of the current supports in the home be considered.

(B) Applicable Medicaid State Plan services shall be accessed first when the individual is [Medicaid] MO HealthNet-eligible and the services will meet the individual's needs.

[(16)] Once a budget is approved through the utilization review process, any request for additional funds shall be added to the approved budget (the total cost of all services/supports—including department, SB 40 Board funds, and non-waiver match, and Medicaid waiver match dollars) to determine the new utilization review level. The additional request may not be considered in isolation of other services/supports the individual and family are receiving.]

[(17)](15) A review [of a single], modification in units, or denial of a service should not delay the implementation of other services in the plan.

[(18)] A new prioritization of need form shall be completed and a new score assigned upon occurrence of any of the following:

(A) A new service is requested that increases the total budget;

(B) A request for an increase of current service levels;

(C) A change in any of the categories of need for which scores may be assigned; or

(D) Any other change in the individual's personal circumstances, environment, or family situation impacting their level of need.]

[(19)](16) Other [service plan] ISP and budget reviews shall continue to be completed by the service coordinator and/or service coordination supervisor, as directed by the regional director.

AUTHORITY: sections 630.050 and 633.110.2., RSMo [Supp. 2011] 2016. Original rule filed March 31, 2006, effective Nov. 30, 2006. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 27, 2022.

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

PRIVATE COST: This proposed amendment will not cost private

entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Mental Health, Denise Thomas, PO Box 687, Jefferson City, MO 65102 or by email to denise.thomas@dmh.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 9 – DEPARTMENT OF MENTAL HEALTH
Division 45 – Division of Developmental Disabilities
Chapter 2 – Eligibility for Services**

PROPOSED AMENDMENT

9 CSR 45-2.020 Appeals Procedures for Service Eligibility Through the Division of Developmental Disabilities. The department is amending sections (1)-(4).

PURPOSE: This amendment updates terminology.

(1) As used in this rule, the following terms mean:

(A) Appeals referee[,]- shall be an impartial, neutral, trained decision maker not employed with the Division of Developmental Disabilities;

(B) Applicant[,]- a person suspected to have an intellectual [disability (also called mentally retarded)] **developmental disorder** or developmental disability and for whom application has been made for regional office services or the person's representative;

(C) Client[,]- a person who receives services of the Division of Developmental Disabilities or their representative. Clients will be referred to as individuals hereafter in this rule;

(D) Representative[,]- shall include[,], but not necessarily be limited to[,], the applicant's/individual's legal guardian, parent of a minor applicant, or individual and protector (as defined by 9 CSR 45-3.040); and

(E) Supervisor[,]- a supervisor of service coordinators in a regional office or a unit director in a developmental disability facility.

(2) Any person who is suspected to have an intellectual [disability (also called mentally retarded)] **developmental disorder** or developmental disability shall be eligible for initial diagnostic and counseling services through the regional office.

(B) Decisions as to an applicant's eligibility for services, or an individual's eligibility for continued services, shall be based on an assessment of the applicant's/individual's eligibility as determined by Missouri statutes. In making their determinations, staff (for example, members of the assessment team, service coordinators, [heads of the facilities] **regional director or their designee**, appeals referees, and the director of the Missouri Department of Mental Health (DMH)) shall consider[,], but need not be limited to[,], each of the following factors and the appeals referee shall include in his/her written decision findings of fact and conclusions of law on each criterion considered:

1. The best interest of the individual/applicant;

2. The person's level of adaptive behavior and functioning, including the effect upon the individual's ability to function at either the same or an improved level of interpersonal and functional skills if support from the DMH and contracting private providers is withdrawn or denied; and

3. Whether the individual is eligible for services under the laws of Missouri.

(3) If the applicant, based upon the initial diagnostic evaluation or comprehensive evaluation, or if a individual, based upon a reevaluation, has been determined ineligible for regional office services, the applicant or individual may appeal the decision on eligibility.

(A) Appropriate, effective notice of the eligibility determination shall be given to the applicant/individual. This notice shall be given in writing, and verbally, when possible, on a standard DMH form within ten (10) [working] **business** days of the ineligibility decision. The written notice shall include a specific statement of the factual and legal reasons for ineligibility, a statement that the applicant/individual has the right to appeal that decision and the name, address, and telephone number of the [facility] **regional office** staff person to contact for further information about the decision, the appeals process, or both. In addition to the notice, the applicant/individual shall receive a brochure which explains the appeals process and the appeals procedures open to the applicant/individual. If there is any question about the applicant's/individual's ability to understand either the form or the brochure after s/he receives his/her notice in person or by telephone, the Missouri Division of Developmental Disabilities staff person shall verbally explain the basis for the denial of eligibility and the appeals process to the applicant/individual and shall assist the applicant/individual in initiating an appeal and contacting Missouri Protection and Advocacy Services. Notice shall be hand-delivered or shall be sent by registered or certified United States mail, return receipt requested, and given verbally, where appropriate, at least thirty (30) **calendar** days prior to the effective date of the proposed action.

(B) The applicant or individual may appeal the decision, in writing or verbally, to the [facility] **regional office** staff within thirty (30) **calendar** days from the date of receiving the written notice.

1. If necessary, appropriate staff shall assist the applicant/individual in making the appeal.

2. The applicant or individual may present any information relevant to the appeal. The [head of the facility or his/her designee] **regional director or their designee** shall meet with the applicant/individual and any staff to attempt to resolve differences and receive information on the matter.

3. Within ten (10) [working] **business** days after receiving the appeal, the [head of the facility] **regional director or their designee** shall notify the applicant verbally, when possible, and in writing of his/her findings and decision and of the right to appeal, including notice of where and how to direct appeal.

(C) If the applicant/individual disagrees with the decision of the [head of the facility] **regional director or their designee**, the applicant/individual, verbally or in writing, may notify the [facility] **regional office** staff within thirty (30) **calendar** days of the date of receipt of the decision that the applicant/individual wishes to present the case to an appeals referee. If the applicant/individual verbally requests an appeal to the appeals referee, [facility] **regional office** staff shall send the person a notice via registered or certified mail, return receipt requested, verifying that the applicant/individual has verbally requested an appeal. The [facility] **regional office** staff also shall forward the verification notice to the appeals referee.

1. The referee shall be an employee of the department. The referee shall hear all appeals.

2. The appeals referee shall notify the applicant or individual in writing of the date, time, and location of the hearing before the referee. Effective notice of the hearing shall be given at least thirty (30) **calendar** days prior to the date of the hearing and shall contain a statement of the issues to be determined at the hearing. If any party has good cause for postponement or rescheduling, the request shall be granted. Absent good cause, the hearing shall be held no later

than sixty (60) **calendar** days from the date of the claimant's request for a hearing. The hearing shall be held at a location convenient for the individual/applicant, usually the *[facility]* **regional office** identified in the appeal.

3. The applicant/individual shall have the right to representation either by an attorney or another advocate. Upon written notice that an individual is represented by an attorney/advocate, the attorney/advocate shall be provided with copies of notices, and the like. Upon request of the individual/applicant or his/her attorney/advocate, copies of all documents relevant to the appeal shall be made available without charge within five (5) *[working]* **business** days of the date of the request. An individual or his/her attorney/advocate shall have the right to inspect and copy all relevant Missouri DMH documents, including[,] but not necessarily limited to[,] department rules and applicant/individual records if release is authorized in writing by the applicant/individual, including third-party individual records in the custody of the department that were utilized in making the decision on eligibility.

4. The appeals referee shall rest his/her decision solely on the evidence presented at the hearing. The referee shall not review any documents concerning the applicant's/individual's eligibility that are not properly submitted on the record during the hearing. The appeals referee, in addition, shall not discuss the applicant's/individual's appeal with any party other than in the context of the hearing, questioning witnesses on the record, or both. The referee shall assure that the claimant receives a full and fair hearing. After the conclusion of the hearing, the referee shall issue a written decision, including findings of fact and conclusions of law, within thirty (30) **calendar** days of the close of the hearing. The decision shall be mailed to the *[facility]* **regional office** and to the claimant and his/her attorney/advocate, if any, by registered or certified mail, return receipt requested. Upon request of the claimant, *[facility]* **regional office** staff may be consulted by the claimant for an explanation of the decision and its implications. The decision also shall contain a brief description of further appeal rights provided by this rule. Within thirty (30) **calendar** days of the decision, the referee shall have the authority to vacate or amend his/her decision at the request of the claimant or his/her attorney/advocate or the head of the *[facility]* **regional office** with notice to the others for good cause shown.

5. The head of the *[facility]* **regional office** shall have the burden of proof and burden of going forward to either establish that *[either]* the applicant does not meet the state's statutory criteria for services eligibility or that the individual has so improved that s/he no longer would benefit from the level of services which had been previously provided.

6. During the hearing, the applicant/individual or the head of the *[facility]* **regional office** shall have the right to speak on behalf of self, to present witnesses, to be represented by an attorney or other advocate, to submit any additional information, and to cross examine witnesses who have appeared on behalf of the *[facility]* **regional office**.

A. If the applicant or individual is represented by legal counsel, the claimant or his/her counsel shall notify the head of the *[facility]* **regional office** within ten (10) **calendar** days from the date that counsel is retained for the hearing.

B. If the applicant or individual is represented by legal counsel at the hearing, the head of the *[facility]* **regional office** shall request representation from the attorney general's office. The request for representation should be made to the attorney general's office as soon as practicable. Notice to the applicant/individual and attorney that the attorney general's office will appear in the case should be made at least five (5) **calendar** days before the hearing.

7. Unless otherwise provided in this rule, the hearing shall be conducted by the provisions of Chapter 536, RSMo.

8. The referee shall electronically record the hearing. The recording of the hearing shall be kept for one (1) year after the date of the hearing. The recording shall be available to the individual/applicant or his/her attorney/advocate or the regional office director for purposes of review for further appeal.

(4) If an individual disagrees with the decision made by *[facility]* **regional office** staff regarding eligibility for a specified service through the division, except referral for community placement from a department developmental disability facility, the individual may appeal the decision.

(A) The appeal may be presented orally or in writing to the appropriate supervisor within thirty (30) **calendar** days from receipt of the oral or written notice, whichever is earlier.

1. If necessary, the appropriate staff shall assist the individual in making the appeal.

2. The individual may present, and the supervisor shall accept and consider, any information relevant to the appeal. The supervisor may meet with the individual and any staff to discuss and resolve differences.

3. Within ten (10) *[working]* **business** days after receiving the information presented by the individual, the supervisor shall notify the individual in writing and verbally of the supervisor's finding and decision and the right of the individual to appeal to the *[head of the facility]* **regional office director or their designee**.

(B) If the individual disagrees with the decision of the supervisor, the individual shall be entitled to utilize the same appeal procedures to the *[head of the facility]* **regional office director or their designee**, the appeals referee, and the circuit court as provided in section (3) of this rule.

AUTHORITY: section 630.050, RSMo [Supp. 2011] 2016. This rule was previously filed as 9 CSR 50-3.705. Original rule filed April 17, 1987, effective Oct. 1, 1987. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 27, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Mental Health, Denise Thomas, PO Box 687, Jefferson City, MO 65102 or by email to denise.thomas@dmh.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 11 – DEPARTMENT OF PUBLIC SAFETY Division 45 – Missouri Gaming Commission Chapter 9 – Internal Control System

PROPOSED AMENDMENT

11 CSR 45-9.112 Minimum Internal Control Standards (MICS) – Chapter L. The commission is amending section (1).

PURPOSE: This amendment incorporates internal audit procedures for new technologies, clarifies existing procedures, and revises procedures based on identified areas of risk.

(1) The commission [shall adopt and publish] has established minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards* (MICS) Chapter L—Internal Audit, which [has been] is incorporated by reference [herein, as] and made part of this rule as adopted by the commission on September 28, 2022, and published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter L does not incorporate any subsequent amendments or additions [as adopted by the commission on October 29, 2014].

AUTHORITY: sections 313.004, [RSMo 2000, and sections 313.800, 313.805, 313.812,] 313.817, 313.824, and 313.830, RSMo [Supp. 2014] 2016, and sections 313.800, 313.805, and 313.812, RSMo Supp. 2022. Emergency rule filed July 31, 2014, effective Aug. 28, 2014, expired Feb. 26, 2015. Original rule filed July 31, 2014, effective Feb. 28, 2015. Amended: Filed Sept. 29, 2022.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment via email to MGCPolicy@mgc.dps.mo.gov, or by mail to the Missouri Gaming Commission, Policy Section, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for December 29, 2022, at 10 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, MO.

Title 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 10 – Office of the Director
Chapter 15 – Abortions

PROPOSED AMENDMENT

19 CSR 10-15.010 [Report of Induced Termination of Pregnancy] Abortion Report. The Department of Health and Senior Services is amending the title of this rule and section one (1).

PURPOSE: This amendment modifies the title of this rule, the incorporated ITOP Report, and language within, to align with the new abortion requirement following enactment of section 188.017, RSMo, subsequent to *Roe v. Wade* being overturned. The Abortion Report will now require the physician's certification that a medical emergency of the pregnant woman existed, necessitating the abortion.

(1) The **abortion** report [of induced termination of pregnancy] will include the following items: name of abortion facility or hospital; the city, town, or location of the abortion facility or hospital; county where the abortion facility or hospital is located; patient identification number; age of patient; marital status of patient; date of [pregnancy termination] **abortion**; residence of patient (state, county, city or town, inside city limits (yes or no), and zip code); patient's race; patient's ethnicity; patient's education; previous pregnancy history; number of live births now living; number of live births now dead; number of spontaneous terminations and number

of induced terminations; **procedure used to complete abortion**; type of termination procedure[s] used (**check only one (1)**); date last normal menses began; clinical estimate of gestation; method of estimating gestational age; biparietal diameter measurement (if gestation age greater than or equal to eighteen (18) weeks by date of last normal menses or clinical estimate); name and signature of attending physician; physician's Missouri license number; name of person completing report; fetus viable (yes or no); [name and signature of concurring physician, if the fetus is viable; and license number of concurring physician.] **certifications of the physician who performed or induced the abortion: physician certification they have no knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or of the potential of Down Syndrome in the unborn child (yes or no); physician certification they have no knowledge that the woman sought the abortion solely because of the sex or race of the unborn child (yes or no); physician certification that the abortion was due to a "medical emergency," a condition which, based on reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman (yes or no); 1) Has the patient ever served on active duty in the Armed Forces of the United States and separated from such service under conditions other than dishonorable (yes or no); and 2) If the patient has answered question (1) in the affirmative, would the patient like to receive information and assistance regarding the agency's veteran services (yes or no).** The information shall be reported on the **Abortion Report [of Induced Termination of Pregnancy]**, which is incorporated by reference in this rule as published [October 2017] **October 2022** and may be obtained at www.health.mo.gov or by calling (573) 751-6387. **Within 45 days from the date of abortion, submit this form to: Department of Health and Senior Services, Attention: Bureau of Vital Records, PO Box 570, Jefferson City, MO 65102.** This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections [188.052,] 188.055[,] and 192.006, RSMo 2016, and section 188.052, RSMo Supp. 2022. This rule was previously filed as 13 CSR 50-151.010 and 19 CSR 30-15.010. Original rule filed Sept. 30, 1980, effective Jan. 12, 1981. Changed to 19 CSR 10-15.010, July 30, 1998. Amended: Filed Oct. 24, 2017, effective April 30, 2018. Amended: Filed Sept. 27, 2022.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Health and Senior Services, Attention: Mindy Laughlin, RN, BSN, Deputy Director, Division of Community and Public Health, PO Box 570, 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 20 – DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2063 – Behavior Analyst Advisory Board
Chapter 2 – Licensure Requirements**

PROPOSED AMENDMENT

20 CSR 2063-2.005 Application for Licensure. The board is deleting section (5), and renumbering as necessary.

PURPOSE: This rule is being amended to remove the temporary licensure method due to the originating statute section 324.008, RSMo, being repealed by House Bills 1511 and 1452 in 2020.

[(5) Temporary Courtesy License for Nonresident Military Spouses.

(A) The board shall grant a temporary courtesy license to practice behavior analysis without examination to the “nonresident military spouse” as defined in section 324.008.1, RSMo, who provides the board office the following:

- 1. A completed application form;*
- 2. A non-refundable application fee, as established by the board pursuant to rule, made payable to the board;*
- 3. Verification sent directly to the board office from the state, district, or territory from where the applicant holds a current and active license verifying that the applicant holds a current and active license;*

4. Proof that the applicant has been engaged in active practice in the state, district, or territory of the United States in which the applicant is currently licensed for at least two (2) years in the five (5) years immediately preceding this application;

5. Verification sent directly to the board office from each state, district, or territory of the United States in which the applicant has ever been licensed verifying that—

A. The applicant is, or was at the time of licensure, in good standing;

B. The applicant has not committed an act in any jurisdiction where the applicant has or had a license that would have constituted grounds for the refusal, suspension, or revocation of a license or certificate to practice at the time the act was committed; and

C. The applicant has not been disciplined by a licensing or credentialing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding by a licensing or credentialing entity in another jurisdiction;

6. If the board is unable to determine if the licensing requirements of the state, district, or territory in which the applicant is currently licensed are equivalent to Missouri’s licensing requirements, the applicant shall submit documentation regarding the licensing requirements equivalency;

7. Such additional information as the board may request to determine eligibility for a temporary courtesy license; and

8. Temporary licenses shall expire upon issuance of a permanent license or denial of the application but no later than one hundred eighty (180) days from issuance of the temporary license.]

[(6)](5) Provisional License – Behavior Analyst and Assistant Behavior Analyst.

(A) Applicants for provisional licensure shall submit –

- 1. A completed application for licensure which is typewritten or printed in black ink, signed, and notarized;*
- 2. The appropriate licensure fee pursuant to 20 CSR 2063-1.015;*
- 3. One (1) recent photograph, pursuant to section 337.315.1, RSMo, of the applicant’s head and shoulders (commonly known as passport style) that fairly depicts the applicant’s*

appearance;

4. Proof of submission of fingerprints to the Missouri State Highway Patrol’s approved vendor for both a Missouri State Highway Patrol and FBI fingerprint background check. Any fees due for fingerprint background checks shall be paid by the applicant; and

5. Proof the applicant will be directly supervised by a licensed behavior analyst on a form provided by the board.

[(7)](6) The applicant shall be informed in writing of the decision regarding the application for licensure.

[(8)](7) The board or committee may delegate the preliminary review of license applications to the executive director.

AUTHORITY: sections [324.008] 337.050 and 337.315, RSMo Supp. [2012] 2022. Emergency rule filed Nov. 30, 2010, effective Dec. 10, 2010, expired June 7, 2011. Original rule filed Nov. 30, 2010, effective May 30, 2011. Amended: Filed May 22, 2013, effective Nov. 30, 2013. Amended: Filed Oct. 3, 2022.

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 Behavior Analyst Advisory Board, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-0661, or via email at scop@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 20 – DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2063 – Behavior Analyst Advisory Board
Chapter 2 – Licensure Requirements**

PROPOSED AMENDMENT

20 CSR 2063-2.010 Renewal of License, Inactive License, and Reactivation of License. The board is amending sections (1) and (3).

PURPOSE: This amendment clarifies renewal and reactivation requirements.

(1) Renewal of License.

(D) Any licensed behavior analyst who fails to renew his/her license by October 31 of each odd-numbered year or any assistant behavior analyst who fails to renew his/her license by November 30 of each odd-numbered year and, within two (2) years of the registration renewal date, wishes to restore his/her license, shall –

- 1. Submit a completed **renewal** application;*
- 2. Pay the renewal fee and delinquent fee; and*
- 3. Submit proof, **if requested**, of active certification and fulfillment of all requirements for renewal and recertification with the certifying entity as defined pursuant to 20 CSR 2063-1.010.*

(3) Reactivation of License.

(A) Individuals who request to reactivate the inactive license shall –

1. Submit a completed application on a form provided by the board;
2. Pay the reactivation fee as provided in 20 CSR 2063-1.015; and
3. Submit proof of current certification from a certifying **[body] entity** as established in 20 CSR 2063-1.010.

AUTHORITY: sections 324.001, [337.030,] 337.050, and 337.320, RSMo Supp. [2020] 2022. Original rule filed Nov. 30, 2010, effective May 30, 2011. Amended: Filed Oct. 27, 2020, effective April 30, 2021. Amended: Filed Oct. 3, 2022.

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 Behavior Analyst Advisory Board, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-0661, or via email at scop@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 20 – DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2145 – Missouri Board of Geologist
Registration
Chapter 2 – Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2145-2.065 Temporary Courtesy License. This rule stated the requirements and procedures for a nonresident spouse of an active duty member of the military who was transferred to this state in the course of the member's military duty to obtain a temporary courtesy license to practice geology for one hundred eighty (180) days.

PURPOSE: This rule is being rescinded due to the originating statute section 324.008, RSMo, being repealed by House Bills 1511 and 1452 in 2020.

AUTHORITY: section 256.462.3, RSMo 2000, and section 324.008.1, RSMo Supp. 2013. Original rule filed May 22, 2013, effective Jan. 30, 2014. Rescinded: Filed Oct. 3, 2022.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Board of Geologist Registration, PO Box 1335, Jefferson City, MO 65102-1335, by facsimile at (573) 526-0661, or via email at geology@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted that has been changed from the text contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments that are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 2 – DEPARTMENT OF AGRICULTURE
Division 80 – State Milk Board
Chapter 2 – Grade “A” Pasteurized Milk Regulations**

ORDER OF RULEMAKING

By the authority vested in the State Milk Board under section 196.939, RSMo 2016, the board amends a rule as follows:

2 CSR 80-2.190 State Milk Board Grade “A” Milk Policies is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2022 (47 MoReg 966). No changes have been made to the text of the proposed amendment, so it is not reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

**Title 2 – DEPARTMENT OF AGRICULTURE
Division 80 – State Milk Board
Chapter 5 – Inspections**

ORDER OF RULEMAKING

By the authority vested in the State Milk Board under section 196.939, RSMo 2016, the board amends a rule as follows:

2 CSR 80-5.010 Inspection Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2022 (47 MoReg 966-967). No changes have been made to the text of the proposed amendment, so it is not reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENT: No comments were received.

**Title 5 – DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20 – Division of Learning Services
Chapter 500 – Office of Adult Learning and Rehabilitation Services**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 178.600, 178.610, and 178.620, RSMo 2016, the board amends a rule as follows:

5 CSR 20-500.250 Training is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2022 (47 MoReg 780-783). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 163.043, and 163.087, RSMo 2016, and sections 160.415 and 163.031, RSMo Supp. 2022, the board amends a rule as follows:

5 CSR 30-660.090 Charter School Local Education Agency (LEA) Attendance Hour Reporting is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2022 (47 MoReg 784). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

**Title 19 – DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60 – Missouri Health Facilities
Review Committee
Chapter 50 – Certificate of Need Program**

**NOTIFICATION OF REVIEW:
APPLICATION REVIEW SCHEDULE**

The Missouri Health Facilities Review Committee has initiated review of the CON application listed below. A decision is tentatively scheduled for November 22, 2022. This application is available for public inspection at the address shown below.

Date Filed

Project Number: Project Name
City (County)
Cost, Description

10/7/2022

#5979 HT: University Health
Kansas City (Jackson County)
\$1,060,493, Replace cardiac cath lab

Any person wishing to request a public hearing for the purpose of commenting on this application must submit a written request to this effect, which must be received by November 12, 2022. All written requests and comments should be sent to –

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
PO Box 570
Jefferson City, MO 65102
For additional information, contact Alison Dorge at alison.dorge@health.mo.gov.