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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 1 – Organization; General Provisions

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 226.008, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-1.020 Subpoenas **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 967). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.008 and 622.555, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.010 Skill Performance Evaluation Certificates For Commercial Drivers **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 967-968). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 142.617, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.030 Apportion Registration Pursuant to the International Registration Plan **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 968). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 142.617, 226.008, 226.130, and 301.275, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.070 Definitions **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 968). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 142.617, 226.008, 226.130, and 301.275, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.071 Application for International Fuel Tax Agreement License **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 968-969). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.008, 226.130, and 301.275, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.080 Investigation and Audits **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 969). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 10 – Missouri Highways and Transportation Commission
Chapter 25 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 142.617, 226.008, 226.130, and 301.275, RSMo 2016, the commission amends a rule as follows:

7 CSR 10-25.090 Appeals **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 969). 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 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 265 – Motor Carrier and Railroad Safety
Chapter 10 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 622.027, RSMo 2016, the commission amends a rule as follows:

7 CSR 265-10.017 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 970). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received a staff comment on the proposed amendment.

COMMENT #1: Staff commented that language for section (1) should not include the wording "herein" after "incorporated" as it is not needed.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has removed the language as needed.

7 CSR 265-10.017 Records of the Division

(1) The director of the Missouri Department of Transportation Motor Carrier Services division, or the director's designee, shall maintain a record of all proceedings filed with the Administrative Hearing Commission. Open records shall be available for public inspection and copying.

(A) The following records of the division, or possessed by the division, shall be closed records, and shall not be open to public inspection or copying, or made public, except as otherwise provided by order or permission of a court, the Administrative Hearing Commission, or when formally filed with the division in a hearing or proceeding, or when otherwise required to be made public under the rules of the division or Chapters 386–391, RSMo. The closure of records to public access under this subsection shall not be deemed to preclude lawful discovery of these records by a party in an administrative or court proceeding:

1. All records which may be closed records under Chapter 610, RSMo;

2. Under section 386.480, RSMo, all information furnished to the division or its employees by any motor carrier, their agents or employees, or by any corporation or person subject to the jurisdiction of the division, pursuant to the requirement of any statute or court order, any rule, order, or subpoena of the division or the Administrative Hearing Commission, or any audit, investigation, or discovery by the division staff, except that insurance certificates, surety bonds, endorsements, and cancellation notices filed pursuant to section 390.126, RSMo, or 7 CSR 265-10.030 shall be open records;

3. Under Title 49, United States Code (U.S.C.), section 523(c), which is incorporated by reference and made a part of this rule as published in 2021 by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, and

which does not incorporate any subsequent amendments or additions, all records or information acquired by division staff during an inspection of the equipment or records of a motor carrier or a lessor of equipment to such a carrier, if that inspection was delegated and funded or reimbursed by the Secretary of Transportation of the United States under Title 49 U.S.C., section 504, which is incorporated by reference and made a part of this rule as published in 2021 by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, and which does not incorporate any subsequent amendments or additions; and

4. Under section 387.310, RSMo, any fact or information received by the division or its staff during the course of any inspection or examination of common carriers.

Title 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 265 – Motor Carrier and Railroad Safety
Chapter 10 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 622.027, RSMo 2016, the commission amends a rule as follows:

7 CSR 265-10.025 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 970-971). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received two (2) staff comments on the proposed amendment.

COMMENT #1: Staff commented that the division and chapter titles need to be corrected.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has changed the division and chapter title.

COMMENT #2: Staff commented that language for section (1) should not include the word "in" as it is not needed.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has removed the language as needed.

7 CSR 265-10.025 Marking of Vehicles

(1) Vehicle Markings. Every motor vehicle operated by a motor carrier in intrastate commerce under any property carrier registration, certificate, or permit issued by the Missouri Highways and Transportation Commission shall be marked in conformity with the requirements of section 390.21 of Title 49, *Code of Federal Regulations* (CFR) Part 390. The commission incorporates by reference, and makes a part of this rule, the provisions of Title 49 CFR Part 390.21 as published by the United States Government Publishing Office, 732 North Capitol Street NW, Washington DC 20401, on August 14, 2019. This rule does not incorporate any subsequent amendments or additions to 49 CFR Part 390.21. Motor carriers operating a non-Commercial Driver's License (CDL) passenger-carrying vehicle having a capacity of fifteen (15) passengers or less, excluding the driver, may display on the vehicle's rear bumper, rear window, or otherwise on the rear of the vehicle, the United States Department of Transportation (USDOT) number assigned to the motor carrier, which shall be marked so it is readily legible during daylight hours from a distance of fifty feet (50') while a Commercial Motor Vehicle (CMV) is stationary and shall contrast sharply in color with the background on which the figures are placed.

Title 7 – MISSOURI DEPARTMENT OF TRANSPORTATION
Division 265 – Motor Carrier and Railroad Safety
Chapter 10 – Motor Carrier Operations

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 622.027, RSMo 2016, the commission amends a rule as follows:

7 CSR 265-10.035 Application for a Self-Insurer Status **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 971-973). 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 9 – DEPARTMENT OF MENTAL HEALTH
Division 10 – Director, Department of Mental Health
Chapter 5 – General Program Procedures

ORDER OF RULEMAKING

By the authority vested in the Director of the Department of Mental Health under sections 630.192 and 630.193 to 630.198, RSMo 2016, the department amends a rule as follows:

9 CSR 10-5.210 Exceptions Committee Procedures **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2022 (47 MoReg 1233). 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 13 – DEPARTMENT OF SOCIAL SERVICES
Division 70 – MO HealthNet Division
Chapter 15 – Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. 2022, the division amends a rule as follows:

13 CSR 70-15.010 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 973-989). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code*

of State Regulations.

SUMMARY OF COMMENTS: The MO HealthNet Division received two (2) comments on the proposed amendment.

COMMENT #1: MO HealthNet Division (MHD) staff requested the following – Add language to paragraph (4)(A)6. regarding federally deemed critical access hospitals not being held to the lower of cost or charges. Add language to subsection (6)(A) stating that free-standing rehabilitation hospitals, long-term acute care hospitals, and free-standing psychiatric hospitals are not eligible for the Acuity Adjustment Payment. Revise the public and private fiscal notes due to the impact of the Directed Payments being miscategorized between public and private entities.
RESPONSE AND EXPLANATION OF CHANGE: The MHD has added language to paragraph (4)(A)6. regarding federally deemed critical access hospitals not being held to the lower of costs or charges. The MHD has added language to subsection (6)(A) stating that free-standing rehabilitation hospitals, long-term acute care hospitals, and free-standing psychiatric hospitals are not eligible for the Acuity Adjustment Payment. The MHD has revised the public and private fiscal notes.

COMMENT #2: From Kim Dugan, Vice President of Medicaid and FRA, and Amy Volkart, Director of Medicaid and FRA with MHA Management Services Corporation. On behalf of the Missouri Hospital Association and the one hundred forty-one (141) hospitals that comprise the membership, the following comments are offered for your consideration on the proposed amendment to 13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Methodology. Under paragraph (3)(A)4., we believe a word is missing at the end of the statement, "Amended cost reports or other supplemental." Paragraphs (4)(A)l. and (4)(A)2., reference the hospital's Medicaid patient days from the base year cost report. It is not clear if these Medicaid days are only fee-for-service days or if they include Medicaid managed care days. We recommend that the MO HealthNet Division clarify in the rule which Medicaid days are used in this calculation. Paragraphs (4)(A)l., (7)(A)l., and (12)(A)l., reference "estimated Medicaid days for the current SFY." It is not clear how these estimated days are determined. We recommend that MHD include in its rule the methodology used to estimate Medicaid days for the current SFY. Subsections (6)(B), (6)(C), (8)(B), and (8)(C) reference "estimated Medicaid payments for the coming SFY." It is not clear how these estimated Medicaid payments were determined and whether the payments only include estimated fee-for-service per diem payments or if they include all estimated Medicaid payments. We recommend that MHD include in its rule the methodology used to estimate these payments. Under subsections (6)(B) and (6)(C), we believe the word "multiplied" is missing after "received" in the following sentence: "If the hospital's estimated Medicaid payments for the coming SFY plus the preliminary AAP exceeds the hospital's prior SFY Medicaid payments received multiplied by a stop-gain percentage .... " Paragraph (8)(B)1. and subsection (8)(C) state, "If the sum is greater than the total stop loss amount, each hospital's SLP shall be calculated by multiplying the total stop loss amount times the ratio of the hospital's decrease in Medicaid payments to the total stop loss amount." We believe each hospital's ratio is the hospital's decrease in Medicaid payments to the total decrease in Medicaid payments for all hospitals in the ownership group instead of the total stop loss amount. We recommend that MHD review its formula and clarify how the ratio is calculated. In addition, we believe MHD should also include in the rule how the stop loss payment is calculated for free standing psychiatric hospitals. Subsection (9)(A) states, "Total GME costs is multiplied by the ratio of Medicaid days to total days .... " It is not clear whether these Medicaid days are only fee-for-service days or if they include Medicaid managed care days. We recommend MHD clarify in the rule which Medicaid days are included in this calculation. Subsection (9)(B) states, "If the sum is greater than the total GME stop loss amount, each hospital's GME stop loss payment shall be calculated by multiplying the total GME stop loss amount times the ratio of the hospital's decrease in GME Medicaid payments to the total GME stop loss amount." We believe each hospital's ratio is the hospital's decrease in GME Medicaid payments to the total decrease in GME Medicaid payments for all GME hospitals instead of the total GME stop loss amount. We recommend that MHD review its formula and clarify how the ratio is calculated. Part (10)(B)1.B.(I) states, "The MIUR will be expressed as the ratio of total Medicaid days (TMD) provided under a state plan divided by the provider's total number of inpatient days (TNID)." It is not clear if these Medicaid days include Medicaid managed care days. Subparagraph (11)(A)2.A. clearly states what is included: "The MIUR will be expressed as the ratio of total Medicaid days (TMD) (including such patients who receive benefits through a managed care entity) .... " We recommend MHD uses consistent language in the rule to clarify what days are included. Under section (15), MHD is proposing that beginning July 1, 2022, "... the Missouri managed care organizations shall make inpatient and outpatient directed payments to in-network hospitals .... " It is our understanding that directed payments will only be made to in-state hospitals, including those that are out-of-network. Therefore, we believe the word "in-network" should be replaced with "in-state."
RESPONSE AND EXPLANATION OF CHANGE: The MHD has added clarifying language based on the above comments.

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Methodology

(4) Inpatient *Per Diem* Reimbursement Rate Computation. Effective for dates of service beginning July 1, 2022, each Missouri hospital shall receive a Missouri Medicaid *per diem* rate based on the following computation:

(A) The *per diem* shall be determined from the base year cost report in accordance with the following formula:

$$PER\ DIEM = ((TAC / MPD) * TI) + MIP\ FRA$$

1. MIP FRA – Medicaid inpatient share of FRA. The Medicaid inpatient share of the FRA Assessment will be calculated by dividing the hospital's Medicaid fee-for-service (FFS) and managed care (MC) inpatient days from the base year cost report by total hospital inpatient days from the base year cost report to arrive at the Medicaid utilization percentage. This percentage is then multiplied by the inpatient FRA assessment for the current SFY to arrive at the increased allowable Medicaid cost. This cost is then divided by the estimated Medicaid FFS and MC days for the current SFY to arrive at the increased Medicaid cost per day. The estimated Medicaid FFS and MC days are paid days from the second prior calendar year;

2. MPD – Medicaid FFS inpatient days from the base year cost report;

3. TI – Trend indices. The trend indices are applied to the TAC per day of the *per diem* rate. The trend index for the base year is used to adjust the TAC per day to a common fiscal year end of June 30. The adjusted TAC per day shall be trended through the current SFY;

4. TAC – Medicaid allowable inpatient routine and special care unit costs, and ancillary costs, from the base year cost report, will be added to determine the hospital's Medicaid total allowable cost (TAC);

5. The *per diem* for private free-standing psychiatric hospitals shall be the greater of one hundred percent (100%) of the SFY 2022 weighted average statewide *per diem* rate for private

free-standing psychiatric hospitals or the *per diem* as calculated in subsection (4)(A);

6. The *per diem* shall not exceed the average Medicaid inpatient charge *per diem* as determined from the base year cost report and adjusted by the TI, except for federally deemed critical access hospital's whose Medicaid FFS charges equal sixty percent (60%) or less of its Medicaid FFS costs;

7. The *per diem* shall be adjusted for rate increases granted in accordance with subsections (4)(C) and (4)(D);

8. If the hospital does not have a base year cost report, the inpatient *per diem* will be the weighted average statewide per diem rate as determined in section (5);

(6) Acuity Adjustment Payment (AAP).

(A) Beginning with SFY 2023, hospitals that meet the requirements set forth below shall receive an AAP. A hospital that is designated as a long term acute care hospital, free-standing psychiatric hospital, or a free-standing rehabilitation hospital does not qualify to receive an AAP. Ownership type of the hospital is determined based on the type of control reported on Schedule S-2, Part I, Line 21, Column 1 of the hospital's base year cost report. For purposes of this section, Medicaid payments received shall include the following payments:

1. For SFY 2022, the Medicaid *per diem* payments, direct Medicaid payments, GME payments, and CO payments;

2. For SFY 2023 and forward, the Medicaid *per diem* payments, AAP, PC payment, SLP, GME payments, and CO payments.

(B) Private ownership. A hospital shall receive an AAP if the hospital's MO HealthNet case mix index is greater than a threshold set annually by the division. The preliminary AAP is calculated by multiplying the hospital's MO HealthNet case mix index times the estimated Medicaid FFS claims payments for the coming SFY. If the hospital's estimated Medicaid FFS claims payments for the coming SFY plus the preliminary AAP exceeds the hospital's prior SFY Medicaid FFS payments received increased by a stop-gain percentage, the preliminary AAP will be reduced so the estimated Medicaid FFS claims payments for the coming SFY plus the final AAP is equal to the stop-gain percent of the hospital's prior SFY Medicaid FFS payments received. If no reduction is necessary, the preliminary AAP shall be considered final.

(C) Non-state government owned or operated (NSGO) ownership. A hospital shall receive an AAP if the hospital's MO HealthNet case mix index is greater than a threshold set annually by the division. The preliminary AAP is calculated by multiplying the hospital's MO HealthNet case mix index times the estimated Medicaid FFS claims payments for the coming SFY. If the hospital's estimated Medicaid FFS claims payments for the coming SFY plus the preliminary AAP exceeds the hospital's prior SFY Medicaid FFS payments received increased by a stop-gain percentage, the preliminary AAP will be reduced so the estimated Medicaid FFS claims payments for the coming SFY plus the final AAP is equal to the stop-gain percent of the hospital's prior SFY Medicaid FFS payments received. If no reduction is necessary the preliminary AAP shall be considered final.

(7) Poison Control (PC) Payment.

(A) The PC payment shall be determined for hospitals which operated a poison control center during the base year and which continues to operate a poison control center. The PC payment shall reimburse the hospital for the Medicaid share of the total poison control cost and shall be determined as follows:

1. The total poison control cost from the base year cost report will be divided by the total hospital days from the base year cost report to determine a cost per day. This cost per day will then be multiplied by the estimated Medicaid FFS and MC days for the SFY for which the PC payment is being calculated. The estimated Medicaid FFS and MC days are paid days from the second prior calendar year; and

2. The annual final PC payment will be calculated for each eligible hospital at the beginning of each SFY. The annual amount will be paid out over the number of financial cycles during the SFY.

(8) Stop Loss Payment (SLP).

(A) Beginning with SFY 2023 hospitals that meet the requirements set forth below shall receive a SLP. Ownership type of the hospital is determined based on the type of control reported on Schedule S-2, Part I, Line 21, Column 1 of the hospital's base year cost report. For purposes of this section, Medicaid payments received shall include the following payments:

1. For SFY 2022, the Medicaid *per diem* payments, direct Medicaid payments, GME payments, and CO payments; and

2. For SFY 2023 and forward, the Medicaid *per diem* payments, AAP, PC payment, SLP, GME payments, and CO payments.

(B) Private ownership. Total estimated Medicaid FFS payments for the coming SFY for each hospital shall include estimated Medicaid FFS claims payments, and any final AAP and PC payment. The total estimated Medicaid FFS payments for each hospital shall be subtracted from the hospital's prior SFY Medicaid FFS payments received then summed to calculate a total increase or decrease in payments for the entire private ownership group. A positive result represents a decrease in payments and a negative amount represents an increase in payments. If the result is a decrease in total payments to the private ownership group, this amount shall represent the total stop loss amount.

1. SLP will be made if a total stop loss amount was calculated in subsection (8)(B). Each hospital that shows a decrease in Medicaid payments shall receive a SLP in the amount of the decrease in payments unless the sum of each hospital's SLP is greater than the total stop loss amount. If the sum is greater than the total stop loss amount, each hospital's SLP shall be calculated by multiplying the total stop loss amount times the ratio of the hospital's decrease in Medicaid payments to the total decrease in payments for the entire private ownership group.

2. Privately owned free-standing psychiatric hospitals. Total estimated Medicaid FFS payments for the coming SFY for each hospital shall include estimated Medicaid FFS claims payments, and any final AAP and PC payment. The total estimated Medicaid FFS payments for each hospital shall be subtracted from the hospital's prior SFY Medicaid FFS payments received then summed to calculate a total increase or decrease in payments for the entire privately owned free-standing psychiatric hospital ownership group. A positive result represents a decrease in payments and a negative amount represents an increase in payments.

A. If a hospital has a decrease in payments as calculated in paragraph (8)(B)2., the hospital will receive a payment equal to the amount of payment decrease. If the hospital has an increase in payments as calculated in paragraph (8)(B)2., the hospital will not receive any additional payments.

(C) NSGO ownership. Total estimated Medicaid FFS payments for the coming SFY for each hospital shall include estimated Medicaid FFS claims payments, and any final AAP and PC payment. The total estimated Medicaid FFS payments for each hospital shall be subtracted from the hospital's prior SFY Medicaid FFS payments received then summed to calculate a total increase or decrease in payments for the entire NSGO ownership group. A positive result represents a decrease in payments and a negative amount represents an increase in payments. If the result is a decrease in total payments to the NSGO ownership group, this amount shall represent the total

stop loss amount.

1. SLP will be made if a total stop loss amount was calculated in subsection (8)(C). Each hospital that shows a decrease in Medicaid payments shall receive a SLP in the amount of the decrease in payments unless the sum of each hospital's SLP is greater than the total stop loss amount. If the sum is greater than the total stop loss amount, each hospital's SLP shall be calculated by multiplying the total stop loss amount times the ratio of the hospital's decrease in Medicaid payments to the total decrease in payments for the entire NSGO ownership group.

(9) Medicaid Graduate Medical Education (GME) Payments. Effective beginning with SFY 2023, a GME payment calculated as the sum of the intern and resident based GME payment and the GME stop loss payment, shall be made to any acute care hospital that provides graduate medical education.

(A) Intern and resident (I&R) based GME payment. The I&R based GME payment will be based on the per I&R Medicaid allocated GME costs not to exceed a maximum amount per I&R. The division will determine the number of full time equivalent (FTE) I&Rs. Total GME costs will be determined using Worksheet A of the base year cost report adjusted by the trend index. Total GME costs is multiplied by the ratio of Medicaid FFS and MC days to total days to determine the Medicaid allocated GME costs which is then divided by the number of FTE I&Rs to calculate the Medicaid allocated cost per I&R. The I&R based GME payment is calculated as the number of FTE I&Rs multiplied by the minimum established by the division or the Medicaid allocated cost per I&R.

(B) GME stop loss payment. The total I&R based GME payment for each hospital shall be subtracted from the hospital's prior SFY GME payments received then summed to calculate a total increase or decrease in payments for the entire group of hospitals that provide graduate medical education. A positive result represents a decrease in payments and a negative amount represents an increase in payments. If the result is a decrease in total payments to the hospitals, this amount shall represent the total GME stop loss amount. GME stop loss payments will be made if a total GME stop loss payment amount was calculated in the paragraph above. Each hospital that shows a decrease in GME Medicaid payments shall receive a GME stop loss payment in the amount of the decrease in payments unless the sum of each hospital's GME stop loss payment is greater than the total GME stop loss amount. If the sum is greater than the total GME stop loss amount, each hospital's GME stop loss payment shall be calculated by multiplying the total GME stop loss amount times the ratio of the hospital's decrease in GME Medicaid payments to the total decrease in GME Medicaid payments.

(10) Children's Outlier (CO) Payment.

(A) The outlier year is based on a discharge date between July 1 and June 30.

(B) Beginning July 1, 2022, for fee-for-service claims only, outlier payments for medically necessary inpatient services involving exceptionally high cost or exceptionally long lengths of stay for MO HealthNet-eligible children under the age of six (6) will be made to hospitals meeting the federal DSH requirements in paragraph (10)(B)1. and for MO HealthNet-eligible infants under the age of one (1) will be made to any other Missouri Medicaid hospital.

1. The following criteria must be met to be eligible for outlier payments for children one (1) year of age to children under six (6) years of age:

A. If the facility offered nonemergency obstetric services as of December 21, 1987, there must be at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to these services under the Missouri Medicaid plan. In the case of a hospital located in a rural area (area outside of a metropolitan statistical area, as defined by the federal Executive Office of Management and Budget), the term obstetrician includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. This section does not apply to hospitals either with inpatients predominantly under eighteen (18) years of age or which did not offer nonemergency obstetric services as of December 21, 1987;

B. As determined from the base year audited Medicaid cost report, the hospital must have either –

(I) A Medicaid inpatient utilization rate (MIUR) at least one (1) standard deviation above the state's mean MIUR for all Missouri hospitals. The MIUR will be expressed as the ratio of total Medicaid days (TMD) (including such patients who receive benefits through a managed care entity) provided under a state plan divided by the provider's total number of inpatient days (TNID). The state's mean MIUR will be expressed as the ratio of the sum of the total number of the Medicaid days for all Missouri hospitals divided by the sum of the total patient days for the same Missouri hospitals. Data for hospitals no longer participating in the program will be excluded;

$$MIUR = TMD / TNID$$

or

(II) A low-income utilization rate (LIUR) in excess of twenty-five percent (25%). The LIUR shall be the sum (expressed as a percentage) of the fractions, calculated as follows:

(a) Total MO HealthNet patient revenues (TMPR) paid to the hospital for patient services under a state plan plus the amount of the cash subsidies (CS) directly received from state and local governments, divided by the total net revenues (TNR) (charges minus contractual allowances, discounts, and the like) for patient services plus the CS; and

(b) The total amount of the hospital's charges for patient services attributable to charity care (CC) less CS directly received from state and local governments in the same period, divided by the total amount of the hospital's charges (THC) for patient services. The total patient charges attributed to CC shall not include any contractual allowances and discounts other than for indigent patients not eligible for MO HealthNet under a state plan.

$$LIUR = ((TMPR + CS) / (TNR + CS)) + ((CC - CS) / THC)$$

2. The following criteria must be met for the services to be eligible for outlier review:

A. The patient must be a MO HealthNet-eligible infant under the age of one (1) year, or for hospitals that meet the federal DSH requirements, a MO HealthNet-eligible child under the age of six (6) years, as of the date of discharge; and

B. One (1) of the following conditions must be satisfied:

(I) The total reimbursable charges for dates of service must be at least one hundred fifty percent (150%) of the sum of claim payments for each claim; or

(II) The dates of service must exceed sixty (60) days and less than seventy-five percent (75%) of the total service days were reimbursed by MO HealthNet.

3. Claims eligible for outlier review must –

A. Have been submitted in their entirety for claims processing; and

B. The claim must have been paid; and

C. An annual outlier file, for paid claims only, must be submitted to the division no later than December 31 of the second calendar year following the end of the outlier year (i.e., claims for outlier year 2022 are due no later than December 31, 2024).

4. After the review, reimbursable costs for each claim will be determined using the following data from the audited

Medicaid hospital cost report for the year ending in the same calendar year as the outlier year (i.e., Medicaid hospital cost reports ending in 2022 will be used for the 2022 outlier year):

A. Average routine (room and board) costs for the general and special care units for all days of the stay eligible per the outlier review; and

B. Ancillary cost-to-charge ratios applied to claim ancillary charges determined eligible for reimbursement per the outlier review.

5. The outlier payments will be determined for each hospital as follows:

A. Sum all reimbursable costs for all eligible outlier claims to equal total reimbursable costs;

B. Subtract total claim payments, which includes MO HealthNet claims payments, third-party payments, and copays, from total reimbursable costs to equal excess cost; and

C. Multiply excess costs by fifty percent (50%).

(11) Safety Net Hospitals.

(A) Inpatient hospital providers may qualify as a safety net hospital based on the following criteria. Hospitals shall qualify for a period of only one (1) SFY and must requalify at the beginning of each SFY to continue their safety net hospital designation.

1. If the facility offered non-emergency obstetric services as of December 21, 1987, there must be at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to those services under the Missouri Medicaid plan. In the case of a hospital located in a rural area (area outside of a metropolitan statistical area, as defined by the federal executive Office of Management and Budget), the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures. This section does not apply to hospitals either with inpatients predominantly under eighteen (18) years of age or which did not offer non-emergency obstetric services as of December 21, 1987;

2. As determined from the audited base year cost report, the facility must have either –

A. A Medicaid inpatient utilization rate (MIUR) at least one (1) standard deviation above the state's mean MIUR for all Missouri hospitals. The MIUR will be expressed as the ratio of total Medicaid days (TMD) (including such patients who receive benefits through a managed care entity) provided under a state plan divided by the provider's total number of inpatient days (TNID). The state's mean MIUR will be expressed as the ratio of the sum of the total number of Medicaid days for all Missouri hospitals divided by the sum of the total patient days for the same Missouri hospitals. Data for hospitals no longer participating in the program will be excluded;

$$MIUR = TMD / TNID$$

or

B. A low income utilization rate in excess of twenty-five percent (25%).

(I) The low-income utilization rate (LIUR) shall be the sum (expressed as a percentage) of the fractions, calculated as follows:

(a) Total Medicaid patient revenues (TMPR) paid to the hospital for patient services under a state plan (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) plus the amount of the cash subsidies (CS) directly received from state and local governments, divided by the total net revenues (TNR) (charges minus contractual allowances, discounts, etc.) for patient services plus the cash subsidies; and

(b) The total amount of the hospital's charges for patient services attributable to charity care (CC) less cash subsidies directly received from state and local governments in the same period, divided by the total amount of the hospital's charges (THC) for patient services. The total patient charges attributed to charity care shall not include any contractual allowances and discounts other than for indigent patients not eligible for medical assistance under a state plan.

$$LIUR = ((TMPR + CS) / (TNR + CS)) + ((CC – CS) / THC)$$

3. As determined from the audited base year cost report –

A. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for less than fifty (50) inpatient beds; or

B. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of more than forty percent (40%); or

C. A public non-state governmental acute care hospital with an LIUR of at least forty percent (40%) and an MIUR greater than one (1) standard deviation from the mean, and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of at least forty percent (40%); or

D. The hospital is owned or operated by the Board of Curators as defined in Chapter 172, RSMo; or

E. The hospital is a public hospital operated by the Department of Mental Health primarily for the care and treatment of mental disorders.

(15) Directed Payments. Effective July 1, 2022, the Missouri Medicaid managed care organizations shall make inpatient and outpatient directed payments to in-state in-network hospitals pursuant to 42 CFR 438.6(c) as approved by the Centers for Medicare & Medicaid Services.

REVISED PUBLIC COST: Fee For Service: This proposed amendment is estimated to cost the state approximately $897.4 million (State Share: $302.9 million FRA and $2.6 million IGT for DMH) for SFY 2023. This proposed amendment is estimated to increase payments to public entities by approximately $130.6 million for SFY 2023.
Directed Payments: This proposed amendment is estimated to save the state approximately $19 million (State Share: $6.5 million FRA and $0 million IGT for DMH) for SFY 2023. This proposed amendment is estimated to cost public entities by approximately $5.7 million for SFY 2023.

REVISED PRIVATE COST: Fee For Service: This proposed amendment is estimated to increase payments to in-state private entities by approximately $766.8 million for SFY 2023.
Directed Payments: This proposed amendment is estimated to cost in-state private entities approximately $13.4 million for SFY 2023.

FISCAL NOTE
PUBLIC COST

I. **Department Title:** 13 Social Services
Division Title: 70 MO HealthNet Division
Chapter Title: 15 Hospital Program

Rule Number and Name:	13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Methodology
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Other Government (Public) & State Hospitals enrolled in MO HealthNet - 38 **Department of Social Services, MO HealthNet Division**	**Fee-For-Service Impacts** **Estimated impact for SFY 2023: $130.6 million** **Estimated cost for SFY 2023: Total $897.4 million; State Share $302.9 million (FRA) State Share $2.6 million (IGT)**
Other Government (Public) & State Hospitals enrolled in MO HealthNet - 32 **Department of Social Services, MO HealthNet Division**	**Directed Payments Impacts** **Estimated cost for SFY 2023: $5.7 million** **Estimated savings for SFY 2023: Total $19 million; State Share $6.5 million (FRA) State Share $0 million (IGT)**

III. WORKSHEET

Fee-for-Service Impact:

Other Government (Public) & State Hospitals Impact:

Estimated Impact for 6 Months of SFY 2023:

	FRA Fund	IGT Fund	Total
Estimated Impact to State Hospitals	$36,643,472	$7,757,025	$44,400,497
Estimated Impact to Other Government (Public) Hospitals	$86,153,841	$0	$86,153,841
Total Estimated Impact	$122,797,313	$7,757,025	$130,554,338
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share	$41,815,555	$2,641,461	$44,457,016

Updated 01/31/2021

Department of Social Services, MO HealthNet Division Cost:			
Estimated Cost for 6 Months of SFY 2023:			
	FRA Fund	IGT Fund	Total
Estimated Cost	$889,626,168	$7,757,025	$897,383,193
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share Cost	$302,939,951	$2,641,461	$305,581,412

Directed Payment Cost:			
Other Government (Public) & State Hospitals Cost:			
Estimated Cost for 6 Months of SFY 2023:			
	FRA Fund	IGT Fund	Total
Estimated Cost to State Hospitals	$4,084,472	$0	$4,084,472
Estimated Cost to Other Government (Public) Hospitals	$1,570,094	$0	$1,570,094
Total Estimated Cost	$5,654,566	$0	$5,654,566
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share	$1,925,521	$0	$1,925,521

Department of Social Services, MO HealthNet Division Savings:			
Estimated Savings for 6 Months of SFY 2023:			
	FRA Fund	IGT Fund	Total
Estimated Savings	$19,046,694	$0	$19,046,694
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share Savings	$6,485,875	$0	$6,485,875

IV. ASSUMPTIONS

The following regulations are impacted by the change to the hospital reimbursement methodology and the impact of all the regulations should be netted to arrive at the total impact. The net impact is a cost to the state of $7.6 million for SFY 2023.

13 CSR 70-15.010
13 CSR 70-15.015
13 CSR 70-15.220
13 CSR 70-15.230

The fiscal impact is estimated based on historical utilization and enrollment. Other variables such as the length of the Federal Public Health Emergency and Medicaid Expansion enrollment may indirectly affect the hospital utilization both positively and negatively. Due to the uncertainty of these variables, the state will continue to monitor the impacts to the Managed Care Organizations and hospitals.

FISCAL NOTE
PRIVATE COST

I. **Department Title:** 13 Social Services
Division Title: 70 MO HealthNet Division
Chapter Title: 15 Hospital Program

Rule Number and Title:	13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Methodology
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:
In-State Hospitals – 100	**Private Hospitals enrolled in MO HealthNet**	**FFS Estimated impact for SFY 2023: $766.8 million**
In-State Hospitals - 100	**Private Hospitals enrolled in MO HealthNet**	**Directed Payment Estimated cost for SFY 2023: $13.4 million**

III. WORKSHEET

Fee-for-Service Impact:

In-State Private Hospitals Impact:

Estimated Impact for SFY 2023:

	FRA Fund	IGT Fund	Total
Estimated Impact to In-State Private Hospitals	$766,828,855	$0	$766,828,855
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share	$261,124,396	$0	$261,124,396

Directed Payment Impact:

In-State Private Hospitals Impact:

Estimated Cost for SFY 2023:

	FRA Fund	IGT Fund	Total
Estimated Cost to In-State Private Hospitals	$13,392,128	$0	$13,392,128
State Share Percentage	34.0525%	34.0525%	34.0525%
Estimated State Share	$4,560,354	$0	$4,560,354

IV. ASSUMPTIONS

The following regulations are impacted by the change to the hospital reimbursement methodology and the impact of all the regulations should be netted to arrive at the total impact.

13 CSR 70-15.010
13 CSR 70-15.015
13 CSR 70-15.220
13 CSR 70-15.230

The fiscal impact is estimated based on historical utilization and enrollment. Other variables such as the length of the Federal Public Health Emergency and Medicaid Expansion enrollment may indirectly affect the hospital utilization both positively and negatively. Due to the uncertainty of these variables, the state will continue to monitor the impacts to the Managed Care Organizations and hospitals.

Title 13 – DEPARTMENT OF SOCIAL SERVICES
Division 70 – MO HealthNet Division
Chapter 15 – Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.153, 208.158, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. 2022, the division amends a rule as follows:

13 CSR 70-15.220 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2022 (47 MoReg 1085-1096). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The MO HealthNet Division received one (1) comment on the proposed amendment.

COMMENT #1: Kim Dugan, Vice President of Medicaid and FRA, and Amy Volkart, Director of Medicaid and FRA: On behalf of the Missouri Hospital Association and the one hundred forty-one (141) hospitals that comprise the membership, the following comments are offered for your consideration on the proposed amendment to 13 CSR 70-15.220 Disproportionate Share Hospital (DSH) Payments.

Part (7)(A)5.D.(II) of the proposed amendment contains the following sentence: "If circumstances found in items (7)(A)5.D.(II)(a)I.-III. below are applicable, the facility may complete and submit the applicable alternate data." We believe the reference in this sentence should include the criteria under (7)(A)5.D.(II)(a)IV. as well.

Subpart (7)(A)5.D.(II)(d) of the proposed amendment contains the word "or" at the end of the paragraph that does not appear to be needed.

The MO HealthNet Division is proposing to remove part (7)(A)5.D.(IV) which allows a provider that met the criteria to use alternate data for an interim DSH payment adjustment in the previous year to continue to use alternate data until the required state DSH survey reflects the impact of the change. MHA staff believe that removing this provision entirely will result in allowable uncompensated care costs being recognized in one year but then not recognized until four years later. Staff recommend that this provision instead be amended as follows.

(IV) If a provider received an exception that allows it to use alternate data for interim DSH payment purposes under paragraph (7)(A)5. in the prior state fiscal year, it may continue to use alternate data for its interim DSH payment until the required state DSH survey reflects the annual impact of the change. Once the most recent cost report on file with the division reflects the annual impact of the change, it must be used rather than the alternate state DSH survey supplemental schedule. Both the required state DSH survey and the applicable alternate data must be submitted to the independent DSH auditor and the division, respectively, no later than March 1 preceding the beginning of each SFY for which the interim DSH payments are being made.

RESPONSE AND EXPLANATION OF CHANGE: The MHD has made changes based on the above comments.

13 CSR 70-15.220 Disproportionate Share Hospital (DSH) Payments

(7) State DSH Survey Reporting Requirements.

(A) Beginning in SFY 2016, each hospital must complete and submit the state DSH survey set forth in paragraph (2)(X)1. (i.e., required state DSH survey) to the independent DSH auditor, the MO HealthNet Division's authorized agent, in order to be considered for an interim DSH payment for the subsequent SFY (i.e., DSH surveys collected during SFY 2016 will be used to calculate SFY 2017 interim DSH payments). The independent DSH auditor will distribute the state DSH survey template to the hospitals to complete and will notify them of the due date, which shall be a minimum of thirty (30) days from the date it is distributed. However, the state DSH survey is due to the independent DSH auditor no later than March 1 preceding the beginning of each state fiscal year for which the interim DSH payment is being calculated (i.e., the state DSH survey used for SFY 2017 interim DSH payments will be due to the independent DSH auditor no later than March 1, 2016). Hospitals that do not submit the state DSH survey by March 1 will not be eligible to receive an interim DSH payment for that SFY. The division may grant an industry-wide extension on the March 1 deadline due to unanticipated circumstances that affect the industry as a whole. The independent DSH auditor may perform an initial review of the required state DSH survey submitted by the hospital and make preliminary adjustments for use in calculating the interim DSH payment. The independent DSH auditor shall provide the hospital with any preliminary adjustments that are made for review and comment prior to the data being provided to MHD for use in calculating the interim DSH payment for the SFY. Additional or revised audit adjustments may be made to the DSH survey for purposes of the independent DSH audit.

1. A new facility that does not have cost report data for the fourth prior year may complete the state DSH survey using actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division.

2. A new facility that has not yet filed a twelve- (12-) month Medicaid cost report with the division may complete the state DSH survey using facility projections to reflect anticipated operations for the interim DSH payment period. Trends shall not be applied to the data used to complete the state DSH survey. Interim DSH payments determined from this state DSH survey are limited to the industry average estimated interim DSH payment as set forth in subsection (3)(F).

3. Hospitals may elect not to receive an interim DSH payment for a SFY by completing a DSH waiver form. Hospitals that elect not to receive an interim DSH payment for a SFY must notify the division, or its authorized agent, that it elects not to receive an interim DSH payment for the upcoming SFY. If a hospital does not receive an interim DSH payment for a SFY, it will not be included in the independent DSH audit related to that SFY, and will not be eligible for final DSH audit payment adjustments related to that SFY unless it submits a request to the division to be included in the independent DSH audit. If the request is approved by the division, the hospital must submit all necessary data elements to the independent DSH auditor in order to be included in the audit and eligible for final DSH payment adjustments.

4. If a hospital received an interim DSH payment and later determined that it did not have uncompensated care costs for Medicaid and the uninsured to support part or all the interim DSH payment that it received or is receiving, the hospital may request that the interim DSH payments be stopped or it may return the entire interim DSH payment it received.

5. Exceptions process to use alternate data for interim DSH payment.

A. A hospital may submit a request to the division to have its interim DSH payment based on alternate data as set forth below rather than the state DSH survey required to be submitted for the year (i.e., required state DSH survey) if it meets the criteria for any of the circumstances detailed below in subparagraph (7)(A)5.D. The request must include an explanation of the circumstance, the impact it has on the

required state DSH survey period, and how it causes the data to be materially misstated or unrepresentative. The division shall review the facility's request and may, at its discretion and for good cause shown, use the alternate data in determining the interim DSH payment for the SFY. The division shall notify the facility of its decision regarding the request.

(I) Alternate state DSH survey. A state DSH survey completed using the actual, untrended cost and payment data from the most recent twelve- (12-) month cost report filed with the division. Any hospital requesting an exception must complete an alternate state DSH survey. If the most recent full-year cost report filed with the division does not reflect the impact of any material changes, a supplemental schedule, as defined below, may be completed and submitted in addition to the alternate state DSH survey. If the impact of any changes is reflected in the most recent full-year cost report filed with the division, the facility may only use the alternate state DSH survey.

(II) Alternate state DSH survey supplemental schedule. A supplemental schedule developed by the division to recognize material changes that have occurred at a hospital that are not yet reflected in the hospital's alternate state DSH survey. The supplemental schedule uses the data from the alternate state DSH survey as the basis and includes additional fields to reflect changes that occurred subsequent to the alternate state DSH survey period through the SFY for which the interim DSH payment is being calculated. The blank alternate state DSH survey supplemental schedule is referred to as the alternate state DSH survey supplemental template.

B. The provider must submit both the required state DSH survey and the alternate data for review to determine if the facility meets the criteria set forth below in subparagraph (7)(A)5.D.

C. The interim DSH payment based on the applicable alternate data shall be calculated in the same manner as the interim DSH payment based on the required state DSH survey, except for the trends applied to the alternate data as noted below in parts (7)(A)5.C.(I) and (II). The allocation percentage calculated at the beginning of the SFY year as set forth in part (3)(B)4.A.(I) shall be applied to the estimated UCC net of OOS DSH payments based on the alternate data to determine the preliminary interim DSH payment.

(I) Alternate state DSH survey. The trends applied to the alternate state DSH survey shall be from the year subsequent to the alternate state DSH survey period to the current SFY for which the interim DSH payment is being determined.

(II) Alternate state DSH survey supplemental schedule. Trends shall not be applied to an alternate state DSH survey supplemental schedule since it incorporates changes from the full-year cost report period through the SFY for which the interim DSH payment is being calculated.

D. Following are the circumstances for which a provider may request that its interim DSH payment be based on alternate data rather than the required state DSH survey, including the criteria and other requirements:

(I) Twenty percent (20.00%) DSH outlier. A provider may request that the alternate state DSH survey be used prior to the interim DSH payment being determined for the SFY if the untrended total estimated net cost from the alternate state DSH survey is at least twenty percent (20.00%) higher than the trended total estimated net cost from the required state DSH survey (i.e., the increase is at least twenty percent (20.00%) rounded to two (2) decimal places).

(a) Both the required state DSH survey and the alternate state DSH survey must be submitted to the independent DSH auditor and the division, respectively, no later than March 1 preceding the beginning of each SFY for which interim DSH payments are being made;

(II) Extraordinary circumstances. A provider may request that alternate data be used if the facility experienced an extraordinary circumstance during or after the required state DSH survey report period up to the SFY for which the interim DSH payment is being calculated that caused the required DSH survey report period to be materially misstated and unrepresentative. If circumstances found in items (7)(A)5.D.(II)(a)I.-IV. below are applicable, the facility may complete and submit the applicable alternate data.

(a) Extraordinary circumstances include unavoidable circumstances that are beyond the control of the facility and include the following:

I. Act of God (i.e., tornado, hurricane, flooding, earthquake, lightning, natural wildfire, etc.);

II. War;

III. Civil disturbance; or

IV. If the data to complete the required state DSH survey set forth in paragraph (2)(X)1. is not available due to a change in ownership because the prior owner is out of business and is uncooperative and unwilling to provide the necessary data.

(b) A change in hospital operations or services (i.e., terminating or adding a service or a hospital wing; or, a change of owner, except as noted in item (7)(A)5.D.(II)(a)IV., manager, control, operation, leaseholder or leasehold interest, or Medicare provider number by whatever form for any hospital previously certified at any time for participation in the MO HealthNet program, etc.) does not constitute an extraordinary circumstance.

(c) Both the required state DSH survey and the alternate data must be submitted to the independent DSH auditor and the division, respectively, no later than March 1 if the alternate data is to be used to determine the interim DSH payment at the beginning of the SFY.

(d) A hospital may submit a request to use alternate data due to extraordinary circumstances after March 1, but the alternate data and the resulting interim DSH payment will be subject to the same requirements as the interim DSH payment adjustments noted below in subparts (7)(A)5.D.(III)(b)-(d). The requests relating to extraordinary circumstances received after the March 1 deadline will be included with the interim DSH payment adjustments requests in part (7)(A)5.D.(III) in distributing the unobligated DSH allotment and available state funds remaining for the SFY;

(III) Interim DSH payment adjustment.

(a) After the interim DSH payment has been calculated for the current SFY based on the required state DSH survey, a provider may request that alternate data be used if the untrended total estimated net cost from the alternate data is at least twenty percent (20.00%) higher than the trended total estimated net cost from the required state DSH survey (i.e., the increase is at least twenty percent (20.00%) rounded to two (2) decimal places).

(b) The division will process interim DSH payment adjustments once a year. After all requests are received, the division will determine whether revisions to the interim DSH payments are appropriate. Any revisions to the interim DSH payments are subject to the unobligated DSH allotment remaining for the SFY and availability of state funds.

(c) The request, including the alternate data, must be submitted to the division by December 31 of the current SFY for which interim DSH payments are being made.

(d) To the extent that state funds are available, the DSH allotment for the SFY that has not otherwise been obligated will be distributed proportionally to the hospitals determined to meet the above criteria, based on the difference between the preliminary interim DSH payment based on the alternate data and the original interim DSH payment; and

(IV) If a provider received an exception that allows it to use alternate data for interim DSH payment purposes under

paragraph (7)(A)5. in the prior SFY, it may continue to use alternate data for its interim DSH payment until the required state DSH survey reflects the annual impact of the change. The alternate state DSH survey supplemental schedule should be used until the most recent cost report on file with the division reflects the annual impact of the change. Both the required state DSH survey and the applicable alternate data must be submitted to the independent DSH auditor and the division no later than March 1 preceeding the beginning of each SFY for which the interim DSH payment is being made.

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

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.153, 208.201, and 660.017, RSMo 2016, the MO HealthNet Division withdraws a proposed rule as follows:

13 CSR 70-20.042 Automatic Refill Programs and Medication Synchronization Programs **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 3, 2022 (47 MoReg 1437-1438). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: No comments were received.

Title 16 – RETIREMENT SYSTEMS
Division 10 – The Public School Retirement System of Missouri
Chapter 5 – Retirement, Options and Benefits

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2022, the board of trustees hereby amends a rule of the Public School Retirement System of Missouri as follows:

16 CSR 10-5.010 Service Retirement **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2022 (47 MoReg 1300-1301). 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 16 – RETIREMENT SYSTEMS
Division 10 – The Public School Retirement System of Missouri
Chapter 6 – The Public Education Employee Retirement System of Missouri

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2022, the board of trustees hereby amends a rule of the Public School Retirement System of Missouri as follows:

16 CSR 10-6.060 Service Retirement **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2022 (47 MoReg 1301-1305). 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 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30 – Division of Regulation and Licensure
Chapter 100 – Safe Place for Newborns

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under section 210.950, RSMo Supp. 2022, the Department of Health and Senior Services adopts a rule as follows:

19 CSR 30-100.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2022 (47 MoReg 1305-1315). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Health and Senior Services received eight (8) comments on the proposed rule.

COMMENT #1: Sarah Schappe, director for the Joint Committee on Administrative Rules, comments that the citation of 21 CFR 880.5145 in paragraph (2)(A)1. should be incorporated by reference.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has made the change to incorporate by reference section 21 CFR 880.5145.

COMMENT #2: Sarah Schappe, director for the Joint Committee on Administrative Rules, comments that the last sentence in subsection (5)(C) is too ambiguous.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has made the change in subsection (6)(C) to require new registration forms to be filled out whenever a newborn safety incubator/device has been moved/relocated.

COMMENT #3: Sarah Schappe, director for the Joint Committee on Administrative Rules, comments that you may want to make the fiscal costs more open-ended since you may not know the number of registered facilities.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has amended the public and private fiscal notes to say $0 if there are no registered facilities up to the range of the number of private and public facilities that have expressed an interest to the department in installing the newborn safety incubators/devices for the first year. The department has also added annually thereafter costs.

COMMENT #4: Monica Kelsey, Founder/CEO of Safe Haven

Baby Boxes Inc., and Cathie Humbarger, the Director of Public Policy with Safe Haven Baby Boxes Inc., comment that the requirement that every registered facility have at least one individual trained, present, and on duty in the facility at all times, twenty-four (24) hours a day, seven (7) days a week to take possession of a newborn placed in the newborn safety incubator will limit fire stations from being able to become a registered facility.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has made changes to subsection (5)(B), so that an individual who is trained and on duty may be away from the registered facility at times. The department will require a registered facility to submit a back-up plan to the department for approval to verify who and how an individual will respond if the alarm goes off in the facility and/or the alarm system calls 911 and the relevant training this individual has related to the newborn safety incubator/device and how the individual will be able to access the newborn safety incubator/device.

COMMENT #5: Monica Kelsey, Founder/CEO of Safe Haven Baby Boxes Inc., comments that the fiscal note and public cost estimates are escalated as her organization has assisted in one hundred fourteen (114) baby box installations with licensed contractors in multiple states and the cost has never been over $30,000.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has changed the public fiscal note to reflect the cost of installing newborn safety devices is now $30,000. The department only included this cost on the public fiscal notes because the fire stations are more likely to install a newborn safety device rather than a newborn safety incubator.

COMMENT #6: Monica Kelsey, Founder/CEO of Safe Haven Baby Boxes Inc., and Cathie Humbarger, the Director of Public Policy with Safe Haven Baby Boxes Inc., comment that the rule should include a newborn safety device instead of just a newborn safety incubator. The Food and Drug Administration has determined that the Safe Haven Baby Box is not a medical device under federal law. Additionally, the rule should be modified to accommodate if a newborn safety device is installed on a structural wall in a building that has a lobby.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has changed the title of this rule, the purpose of this rule, the rule and forms included herein to indicate newborn safety incubator/device. The department has also defined newborn safety device and required any facility using a newborn safety device to design the newborn safety device in accordance with United States Patent Number 10,632,035 B1. Additionally, the department has set forth separate requirements for newborn safety devices and newborn safety incubators. Finally, the department has added that the access portal door/opening of the device can be on a structural wall in a lobby area for both newborn safety incubators and newborn safety devices.

COMMENT #7: The Missouri Department of Health and Senior Services, realized that it did not include the date of publication and the incorporation by reference language in order to incorporate by reference patent number 10,632,035 B1 into 19 CSR 30-100.010.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has included the publication/date the patent was obtained and incorporation by reference language in order to incorporate by reference patent number 10,632,035 B1 into 19 CSR 30-100.010.

COMMENT #8: The Missouri Department of Health and Senior Services does not think the following sentence in subsection (5)(F) is clear enough: "The facility shall complete documentation of this required testing of the access portal door/opening where the newborn is placed automatic locking system."

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has changed the sentence in subsection (5)(F) as follows: "The facility shall complete documentation of this required testing of the locking system for the access portal door/opening where the newborn is placed."

19 CSR 30-100.010 Newborn Safety Incubators/Devices

PURPOSE: This rule establishes the specifications governing the installation, maintenance, and oversight of newborn safety incubators and newborn safety devices.

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

(A) Department shall mean the Department of Health and Senior Services;

(B) Facility shall mean the entity registered with the Department of Health and Senior Services and approved to utilize an installed newborn safety incubator/device;

(C) Newborn safety device shall mean a device which is installed in an exterior wall of a facility or structure wall in a lobby area registered with the department and which has an exterior point of access that allows a relinquishing parent to place a newborn infant inside and an interior point of access that allows individuals inside the building of the facility to safely retrieve the newborn infant. A newborn safety device used to maintain an optimal environment for the care of a newborn infant shall be designed and constructed in accordance with United States Patent Number 10,632,035 B1;

(D) Newborn safety incubator shall mean a medical device used to maintain an optimal environment for the care of a newborn infant; and

(E) Relinquishing parent shall mean the biological parent or person acting on such parent's behalf who leaves a newborn infant in a newborn safety incubator/device.

(2) Specifications for a newborn safety incubator/device.

(A) Each newborn safety incubator shall –

1. Be a medical bassinet in compliance with 21 CFR 880.5145 with the exception of bassinet wheels. Section 21 CFR 880.5145 is incorporated by reference in this rule as last amended on December 19, 2016, and published by the Office of the Federal Register, 732 N. Capitol Street NW, Washington, DC 20401 or can be found at https://govinfo.gov. This rule does not incorporate any subsequent amendments or additions. The bassinet wheels shall be removed for installation in compliance with paragraph (2)(A)2.;

2. Have the supporting frame of the medical bassinet physically anchored to a position that aligns the plastic basket or bed portion of the bassinet with the wall directly beneath the access portal door and prevents movement of the unit as a whole; and

3. Provide a safe sleep environment which includes:

A. A firm flat bassinet mattress;

B. A bassinet mattress sheet that fits snugly on a mattress and overlaps the mattress, so it cannot be dislodged by pulling on the corner of the sheet; and

C. Is free from any bedding, including pillows, bumpers, and blankets; or

(B) Each newborn safety device shall –

1. Be a device designed in accordance with United States Patent Number 10,632,035 B1;

2. Provide a safe sleep environment which includes:

A. A firm flat mattress;

B. A mattress sheet that fits snugly on a mattress and overlaps the mattress, so it cannot be dislodged by pulling on the corner of the sheet; and

C. Is free from any bedding, including pillows, bumpers, and blankets.

(3) Installation of a newborn safety incubator.

(A) Access portal door.

1. The newborn safety incubator shall have an access portal door. This access portal door shall only be installed on an exterior wall or structure wall in a lobby area that ensures anonymity of the relinquishing parent and provides access to an area within the interior of the building. The newborn safety incubator access portal door shall only be installed in a manner within the interior of the building that provides unencumbered access from the exterior of the building or structure wall through the access portal door for the surrender of the child into the medical bassinet. The access portal door shall have a lock that can lock automatically upon closure by the relinquishing parent after the newborn has been placed in the newborn safety incubator. The placement of the newborn safety incubator access portal door and the medical bassinet within the interior of the building shall provide unencumbered access to the medical bassinet so a facility-trained individual can respond to an alarm notification that a child has been surrendered into the newborn safety incubator.

2. The access portal door shall –

A. Lock automatically upon closure;

B. May only be unlocked from the interior of the building;

C. Trigger a series of alarms that, at a minimum, shall include –

(I) An audible alarm triggered to a central location within the facility one (1) minute after the opening of the access portal door; and

(II) An automatic call to 911 triggered from the alarm system if the alarm is not turned off from within the facility within one (1) minute of the commencement of the initial alarm.

3. The installation of the access portal door shall be completed by a general contractor who shall affirm in the *General Contractor Attestation* form, included herein, that the access portal door and the area where the newborn safety incubator is located meets the requirements of subsections (3)(A) and (3)(B). The general contractor signing the form maintains ultimate responsibility for all work performed in the process of the construction of the access portal door and the area where the newborn safety incubator is located.

(B) Interior of the building.

1. The interior of the building shall provide a monitored climate controlled environment, including temperature control within the range of sixty-eight (68) to seventy-five (75) degrees.

2. The interior of the building shall provide air circulation that is free from pollutants, exhaust, chemical fumes, and smoke.

3. The interior of the building shall have an automated external defibrillator (AED) within close vicinity to the newborn safety incubator.

4. The interior of the building shall have appropriate lighting for relinquishing parents and staff to be able to see the newborn safety incubator and signage. This lighting shall have battery backup in the event that the electricity is out.

(C) Alarm system.

1. There shall be an alarm system installed in relation to the access portal door and the location where the newborn safety incubator is located that will alert a facility-trained individual overseeing the newborn safety incubator that the access portal door has been opened, so that the facility-trained individual can then check to see if a newborn has been placed in the newborn safety incubator.

2. The access portal door alarm shall only be capable of being turned off from within the facility once a response is made to the newborn safety incubator.

3. The access portal door alarm shall be –

A. Wired into the existing structure's electrical or telecommunications system;

B. If wired into the structure's existing electrical system –

(I) Be in compliance with the NFPA 70, National Electrical Code (NEC), and NFPA 1, Fire Code if applicable. The NFPA 70, NEC, Revised 2020, and NFPA 1, Fire Code, Revised 2021, are incorporated by reference in this rule as published by the National Fire Protection Agency, 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471, or can be found at www.nfpa.org. This rule does not incorporate any subsequent amendments or additions;

(II) Be installed by a licensed electrical contractor; and

(III) If the facility has a secondary or back-up power supply, then the alarm system shall be wired into the secondary or back-up power supply to ensure continued operation of the alarm system during outages of the structure's primary power supply. If the facility does not have a secondary or back-up power supply, then the alarm system shall have battery back-up; and

C. Tested following installation to ensure the activation of the audible, 911, and disarming components of the system.

4. The installation of the alarm system shall be completed by either a licensed electrical contractor/electrician if wired into the structure's existing electrical system and the facility's secondary or back-up power supply if applicable or a telecommunications installation professional if wired into the structure's existing telecommunications network. The licensed electrical contractor/electrician or telecommunications installation professional who completes the installation of the alarm system shall affirm in the *Licensed Electrical Contractor/Electrician or Telecommunications Installation Professional Attestation* form, included herein, that the alarm system meets the requirements of paragraph (3)(A)2. and subsection (3)(C) in this rule. The licensed electrical contractor/electrician or the telecommunications installation professional who signs the form maintains ultimate responsibility for all work performed in the process of the installation of the alarm system.

(D) Signage.

1. Each location where a newborn safety incubator is installed shall post signage that clearly identifies the newborn safety incubator access portal door and provides both written and pictorial instruction to the relinquishing parents. This written signage shall be in both English, Spanish, and any other language that is commonly used in the community. The written and pictorial instruction shall depict how to do the following:

A. Open the access portal door;

B. Place the infant inside the medical bassinet; and

C. Close the access portal door to engage the lock.

2. The written signage shall also provide contact information for the Children's Division at the Missouri Department of Social Services, including the hotline number, in order to direct any questions the relinquishing parent(s) may have regarding the newborn after the newborn is placed in the newborn safety incubator to the Children's Division.

(4) Installation of a newborn safety device.

(A) A newborn safety device used to maintain an optimal

environment for the care of a newborn infant shall be designed and constructed in accordance with United States Patent Number 10,632,035 B1. United States Patent Number 10,632,035 B1 is incorporated by reference in this rule as published/obtained by Safe Haven Baby Boxes on April 28, 2020, and is available at Safe Haven Baby Boxes at PO Box 185, Woodburn, Indiana or online at www.shbb.org. This rule does not incorporate any subsequent amendments or additions.

(B) The installation of the newborn safety device shall be completed by a general contractor who shall affirm in the General Contractor Attestation form, included herein, that the newborn safety device and the area where the newborn safety device is located meets the requirements of subsections (4)(A) and (4)(C). The general contractor signing the form maintains ultimate responsibility for all work performed in the process of the construction of and the area where the newborn safety device is located.

(C) Interior of the building.

1. The interior of the building shall provide a monitored climate controlled environment, including temperature control within the range of sixty-eight (68) to seventy-five (75) degrees.

2. The interior of the building shall provide air circulation that is free from pollutants, exhaust, chemical fumes, and smoke.

3. The interior of the building shall have an automated external defibrillator (AED) within close vicinity to the newborn safety device.

4. The interior of the building shall have appropriate lighting for relinquishing parents and staff to be able to see the newborn safety device and signage. This lighting shall have battery backup in the event that the electricity is out.

(D) Alarm system.

1. There shall be an alarm system installed in relation to where the newborn safety device is located that will alert a facility-trained individual overseeing the newborn safety device that the newborn safety device has been opened, so that the facility-trained individual can then check to see if a newborn has been placed in the newborn safety device.

2. The alarm shall only be capable of being turned off from within the facility once a response is made to the newborn safety device.

3. The alarm shall be –

A. Wired into the existing structure's electrical or telecommunications system;

B. If wired into the structure's existing electrical system –

(I) Be in compliance with the NFPA 70, National Electrical Code (NEC), and NFPA 1, Fire Code if applicable. The NFPA 70, NEC, Revised 2020, and NFPA 1, Fire Code, Revised 2021, are incorporated by reference in this rule as published by the National Fire Protection Agency, 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471, or can be found at www.nfpa.org. This rule does not incorporate any subsequent amendments or additions;

(II) Be installed by a licensed electrical contractor; and

(III) If the facility has a secondary or back-up power supply, then the alarm system shall be wired into the secondary or back-up power supply to ensure continued operation of the alarm system during outages of the structure's primary power supply. If the facility does not have a secondary or back-up power supply, then the alarm system shall have battery back-up; and

C. Tested following installation to ensure the activation of the audible, 911, and disarming components of the system.

4. The installation of the alarm system shall be completed by either a licensed electrical contractor/electrician if wired into the structure's existing electrical system and the facility's secondary or back-up power supply if applicable or a telecommunications installation professional if wired into the structure's existing telecommunications network. The licensed electrical contractor/electrician or telecommunications installation professional who completes the installation of the alarm system shall affirm in the *Licensed Electrical Contractor/Electrician or Telecommunications Installation Professional Attestation* form, included herein, that the alarm system meets the requirements of subsections (4)(A) and (4)(D) in this rule. The licensed electrical contractor/electrician or the telecommunications installation professional who signs the form maintains ultimate responsibility for all work performed in the process of the installation of the alarm system.

(E) Signage.

1. Each location where a newborn safety device is installed shall post signage that clearly identifies the newborn safety device front opening in which the newborn should be placed and provides both written and pictorial instruction to the relinquishing parents. This written signage shall be in both English, Spanish, and any other language that is commonly used in the community. The written and pictorial instruction shall depict how to do the following:

A. Open the newborn safety device;

B. Place the infant inside the newborn safety device; and

C. Close the newborn safety device to engage the lock.

2. The written signage shall also provide contact information for the Children's Division at the Missouri Department of Social Services, including the hotline number, in order to direct any questions the relinquishing parent(s) may have regarding the newborn after the newborn is placed in the newborn safety device to the Children's Division.

(5) Maintenance/staff.

(A) Each registered facility shall have a medical contact in order to obtain the required newborn safety incubator. The newborn safety incubator is a prescription device per 21 CFR 880.5145.

(B) Each registered facility shall have at least one (1) individual trained and on duty at all times, twenty four (24) hours a day, seven (7) days a week to take possession of a newborn placed in the newborn safety incubator/device. If a trained individual is on duty, but may at times be away from the facility, then the facility shall submit a back-up plan to the department for approval detailing who will respond, how the individual(s) will respond if the alarm goes off in the facility and/or an automatic call to 911 is placed by the alarm system, including gaining access to the newborn safety incubator/device and the training that the individual(s) has received. Training shall occur before the individual is initially placed on duty with the facility and as needed as issues/problems arise. Training shall consist of compliance with this rule including at least what to do when taking possession of a newborn from a newborn safety incubator/device –

1. How to care for the newborn before the newborn is transferred to the hospital;

2. Who to call for immediate transportation of the newborn to the nearest hospital;

3. How to test the alarm system, how to recognize the alarm, how to silence the alarm, how to check the newborn safety incubator/device twice a day for debris;

4. How to clean and sanitize the newborn safety incubator/device;

5. How to access the newborn safety incubator/device from the interior of the building;

6. How to complete required paperwork; and

7. Who to contact if there are any problems related to the relinquishment of a newborn.

(C) Staff shall also be current in cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) certification which includes CPR and AED use specifically for infants. The facility shall complete documentation of the required training and maintain a list of individuals trained to be on duty. The facility shall also complete documentation regarding the individuals on duty each day. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. Documentation of the required training, the list of trained individuals and which individuals were on duty shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(D) Upon taking possession of a newborn from a newborn safety incubator/device, facility staff shall arrange for the immediate transportation of the child to the nearest hospital licensed pursuant to Chapter 197, RSMo.

(E) The facility shall test the alarm system a minimum of once a week to ensure the activation of the audible, 911, and disarming components of the system are properly working. The facility shall complete documentation of this required testing of the alarm system. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. Documentation of the required testing shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(F) The facility shall test the access portal door/the opening where the newborn is placed locking system at least once a week to ensure the activation of the automatic locking system. The facility shall complete documentation of this required testing of the locking system for the access portal door/opening where the newborn is placed. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. Documentation of the required testing shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(G) The newborn safety incubator/device shall be checked a minimum of twice daily for debris. The facility shall complete documentation of this twice daily check for debris. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. Documentation of the required twice daily check for debris shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(H) The newborn safety incubator/device shall be cleaned at least weekly and after any child surrender. The cleaning of the bassinet shall include:

1. An inspection for breaks in integrity that would impair either cleaning or disinfection/sterilization;

2. Sanitization of the basket or bed portion of the bassinet with an EPA-registered hospital disinfectant (e.g., phenolics) using the label's safety precautions and directions. The surfaces of the bassinet shall be rinsed with water after sanitizing and then dried before being returned to use; and

3. The facility shall complete documentation of this required cleaning and sanitization. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. Documentation of the required cleaning and sanitization shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(I) The facility shall keep track of the number of newborns placed into the newborn safety incubator/device at its facility. This documentation shall be maintained onsite and current as long as the newborn safety incubator/device is registered at that facility's location. This documentation shall be made available to the department upon the department's request. This documentation shall be maintained for a period of five (5) years.

(6) Oversight.

(A) Prior to utilizing an installed newborn safety incubator/device, each facility that has a newborn safety incubator/device installed at a location shall register with the department. This registration shall include –

1. A completed *Newborn Safety Incubator/Device – Location, Contact Information and Attestation of Compliance* registration form, included herein;

2. A completed *General Contractor Attestation* form, included herein, completed by the general contractor; and

3. A completed *Licensed Electrical Contractor/Electrician or Telecommunications Installation Professional Attestation* form, included herein, completed by the licensed electrical contractor/electrician or telecommunications installation professional.

(B) After receiving a completed registration packet, the department shall complete an inspection of the facility to confirm compliance with this rule. If the department finds any deficiencies during the inspection that do not conform with this rule, the department will provide the facility written notice of all deficiencies. The facility shall send the department a plan of corrections within ten (10) calendar days to demonstrate how the facility has corrected or is planning to correct the deficiencies set forth by the department.

(C) Once all deficiencies have been corrected by the facility and approved by the department, then the facility may begin utilizing the installed newborn safety incubator/device at the location and area of the facility that was reviewed and approved by the department. If the facility changes the location of the newborn safety incubator/device, then the facility shall immediately contact the department within twenty-four (24) hours and shall not use the newborn safety incubator/device until the department has inspected and approved the new location. The facility shall complete new registration forms set forth in subsection (6)(A) and send to the department prior to the department inspecting and approving of the new location.

(D) The department will post the location of approved facilities on its website at www.health.mo.gov.

(E) The facility shall make the department aware of any change(s) in the contact or contact information listed on the *Newborn Safety Incubator/Device–Location, Contact Information and Attestation of Compliance* registration form within ten (10) days of any change(s) occurring by completing a new *Newborn Safety Incubator/Device–Location, Contact Information and Attestation of Compliance* registration form and submitting it to the department.

(F) The facility shall annually complete a *Newborn Safety Incubator/Device–Location, Contact Information and Attestation of Compliance* registration form and submit this completed form to the department within thirty (30) days of the anniversary of the initial or previous renewal registration date.

(G) The department may, at any time, request additional information that the department determines to be necessary to assess compliance with the applicable criteria, standards, and requirements established by this rule. The facility shall submit any additional information requested by the department within thirty (30) days of the department's request. The department may require any additional information requested to be submitted in less than thirty (30) days if health or safety is of concern.

(H) Any facility that has a newborn safety incubator/device registered with the department may choose to voluntarily terminate their registration by doing the following:

1. Removing the newborn safety incubator/device from use by locking the access portal door/the opening where the newborn is placed and removing all signage for the newborn safety incubator/device; and

2. Notifying the department within seven (7) days of removing the newborn safety incubator/device from use, so the department can close out the registration and remove the facility's name and location from the department's website.

(I) The department may inspect the facility at any time to determine compliance with the requirements of this rule. If the department finds any deficiencies during the inspection that do not conform with this rule, the department will provide the facility written notice of all deficiencies. The facility shall send the department a written plan of corrections within ten (10) calendar days to demonstrate how the facility has corrected or is planning to correct the deficiencies set forth by the department. The plan of corrections shall include the date and time the facility plans to resume normal operation of the newborn safety incubator/device and what measures will be taken to mitigate any risk identified by cited deficiencies until the deficiency or deficiencies are corrected. Failure of the facility to be in compliance with the requirements of this rule may result in legal action against the facility by the department.

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE

NEWBORN SAFETY INCUBATOR/DEVICE- LOCATION, CONTACT INFORMATION AND ATTESTATION OF COMPLIANCE

REGISTRATION OF NEWBORN SAFETY INCUBATORS/DEVICES

There is/are_____(number) newborn safety incubator/s/devices located at the following location in Missouri:

_____ Name of Facility

_____ Street Address of Facility

_____ City and Zip Code

Please also list the mailing address if it is different from the address above, which may include PO Boxes

_____ Name of Facility

_____ Address of Facility, which may include PO Boxes

_____ City, State, and Zip Code

Please also provide additional contact information:

_____ Name of CEO/COO/Administrator

_____ Email address of CEO/COO/Administrator

_____ Fax number (if applicable)

_____ Phone number of CEO/COO/Administrator

_____ Phone number of facility which can be reached 24 hours a day

ATTESTATION OF COMPLIANCE

I have read and reviewed 19 CSR 30-100.010 and 210.950, RSMo, and agree to ensure compliance with 19 CSR 30-100.010 and 210.950, RSMo. I will make the Department aware of any change(s) in the contact or contact's information listed on this form within ten (10) days of the change(s) occurring. If I change the location of the newborn safety incubator/device, then I agree to immediately contact the Department within twenty-four (24) hours and to not use the newborn safety incubator/device until the Department has inspected and approved the new location. I agree to annually complete this form and send it to the Department within thirty (30) days of the anniversary of the initial or previous renewal registration date. In the event that I decide to voluntarily terminate my registration of a newborn safety incubator/deviceand stop using the newborn safety incubator/device, I agree to remove the newborn safety incubator/device from use by locking the access portal door/opening of the device where the newborn is placed and removing all signage for the newborn safety incubator/device . I will also notify the department within seven (7) days of removing the newbornsafety incubator/device from use so the Department can close out the registration and remove the facility's name and location from its website.

SIGNATURE OF COO/CEO/ADMINISTRATOR	DATE

Please return this form to the following email or mailing address:

Missouri Department of Health and Senior Services
Bureau of Emergency Medical Services
P.O. Box 570
920 Wildwood Drive
Jefferson City, MO 65102-0570
emslicensing@health.mo.gov

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE

LICENSED ELECTRICAL CONTRACTOR/ELECTRICIAN OR TELECOMMUNICATIONS INSTALLATION PROFESSIONAL ATTESTATION

ATTESTATION

This form shall be completed and signed by the licensed electrical contractor/electrician or telecommunications installation professional who completed the installation of the alarm system.

The installation of the alarm system was completed on_____.
DATE

I affirm that the alarm system complies with the following requirements in 19 CSR 30-100.010(3)(A)2 and (3)(C) or (4)(A) and (4)(D).

1. The alarm system installed in relation to the access portal door and the location where the newborn safety incubator/device is located will alert a facility trained individual overseeing the newborn safety incubator/device that the access portal door has been opened.
2. The access portal door alarm is only capable of being turned off from within the facility once a response is made to the newborn safety incubator/device.
3. The access portal door alarm is wired into the existing structure's: (please check one)
   ☐ electrical
   ☐ telecommunications system
   If wired into the structure's existing electrical system, then I attest that a licensed electrical contractor installed this wiring and the wiring is in compliance with the NFPA 70, National Electrical Code and NFPA 1, Fire Code (if applicable).
4. The facility (please check one)
   ☐ does have a secondary power supply
   ☐ does have a back-up power supply
   ☐ does not have a secondary or back-up power supply
   If the facility has a secondary or back-up power supply, the alarm system was wired into the secondary or back-up power supply by a licensed electrical contractor/electrician to ensure continued operation of the alarm system during outages of the structure's primary power supply.
5. A series of alarms trigger within one (1) minute after opening the access portal door (both an audible alarm triggered to a central location within the facility and an automatic call to 911 triggered from the alarm system if the alarm is not turned off from within the facility within one (1) minute of the commencement of the initial alarm).
6. The audible alarm, automatic call to 911 and the disarming component for the alarm system have been tested and are working appropriately.

By signing this form, I attest that the installation of the access portal door complies with the requirements set forth in 19 CSR 30-100.010(3)(A)2 & (3)(C) or (4)(A) & (4)(D).

SIGNATURE OF ELECTRICAL CONTRACTOR/ELECTRICIAN OR TELECOMMUNICATIONS INSTALLATION PROFESSIONAL WHO COMPLETED THE INSTALLATION OF THE ACCESS PORTAL DOOR/OPENING OF DEVICE	DATE

BUSINESS NAME (IF APPLICABLE)

STREET ADDRESS

CITY, STATE AND ZIP CODE

LICENSE NUMBER/JURISDICTION FOR THIS PROJECT (IF APPLICABLE)

PHONE NUMBER AND EMAIL ADDRESS (IF APPLICABLE)

Please return this form to the following email or mailing address:

Missouri Department of Health and Senior Services
Bureau of Emergency Medical Services
P.O. Box 570
920 Wildwood Drive
Jefferson City, MO 65102-0570
emslicensing@health.mo.gov

MO 580-3387 (7-2022)

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE

GENERAL CONTRACTOR ATTESTATION

This form shall be filled out and signed by the general contractor who completed the installation of the access portal door/device.

The installation of the access portal door/device was completed on_____.
DATE

I affirm that the access portal door/device complies with the following requirements in 19 CSR 30-100.010(3)(A) & (B) or (4)(A) & (4)(C):

1. The newborn safety incubator has an access portal door/opening to place the newborn.
2. The access portal door/device was installed on an exterior or structure wall and provides access to an area within the interior of the building.
3. There is unencumbered access from the exterior of the building/structure wall through the access portal door/device.
4. The access portal door/device has a lock that can be engaged by the relinquishing parent after the newborn has been placed in the newbornsafety incubator/device. The access portal door/device locks automatically upon closure. This lock may only be unlocked from the interior of the building.
5. A series of alarms trigger within one (1) minute after opening the access portal door/device (both an audible alarm triggered to a central location within the facility and an automatic call to 911 triggered from the alarm system if the alarm is not turned off from within the facility within one (1) minute of the commencement of the initial alarm).

By signing this form, I attest that the installation of the access portal door/device complies with the requirements set forth in 19 CSR 30-100.010(3)(A) & (B) or (4)(A) & (4)(C).

GENERAL CONTRACTOR'S SIGNATURE	DATE

GENERAL CONTRACTOR'S BUSINESS (IF APPLICABLE)

GENERAL CONTRACTOR'S STREET ADDRESS

GENERAL CONTRACTOR'S CITY, STATE AND ZIP CODE

GENERAL CONTRACTOR'S LICENSE NUMBER/JURISDICTION FOR THIS PROJECT (IF APPLICABLE)

GENERAL CONTRACTOR'S PHONE NUMBER AND EMAIL ADDRESS (IF APPLICABLE)

Please return this form to the following email or mailing address:

Missouri Department of Health and Senior Services
Bureau of Emergency Medical Services
P.O. Box 570
920 Wildwood Drive
Jefferson City, MO 65102-0570
emslicensing@health.mo.gov

REVISED PUBLIC COST: The public cost may range from zero to seven hundred eighty-one thousand four hundred thirty dollars ($0-$781,430) in the first year if there are no facilities up to two (2) facilities which install newborn safety devices and $0 annually thereafter if no newborn safety devices are installed up to seven hundred twenty-six thousand four hundred thirty dollars ($0-$726,430) annually thereafter if two (2) facilities install newborn safety devices versus the nine hundred five thousand nine hundred thirty dollars ($905,930) cost in the aggregate which was submitted in the original estimate.

REVISED PRIVATE COST: The public cost may range from zero to four hundred forty-seven thousand nine hundred sixty-five dollars ($0-$447,965) in the first year if no facilities up to one (1) facility installs a newborn safety incubator and $0 annually thereafter if no newborn safety devices are installed up to three hundred fifty-three thousand two hundred fifteen dollars ($0-$353,215) annually thereafter if one (1) facility installs a newborn safety incubator versus the four hundred forty-seven thousand nine hundred sixty-five dollars ($447,965) cost in the aggregate which was submitted in the original estimate.

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: 19 CSR 30-100.010 Newborn Safety Incubators.

Rule Number and Title:	19 CSR 30-100.010 Newborn Safety Incubators
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
(2) Entities/Facilities with Newborn Safety Incubators	$771,430 for the first year
(1) DHSS Inspector	$10,000 for the first year
TOTAL COSTS =	**Costs may range from $0 if no public facilities install a newborn safety device to $781,430 in the first year if the two (2) facilities install newborn safety devices and $0 annually thereafter if no newborn safety devices are installed up to $726,430 annually thereafter if two (2) facilities install newborn safety devices.**

III. WORKSHEET

Costs for each entity

Installation of a newborn safety device- $30,000.

Staff on duty
One (1) staff X $15.00 X 24 hours/day X 7 days/week X 52 weeks/year = $131,040

Benefits for five staff to rotate 24/7 schedule
$40,000 benefits X (5) staff for each entity = $200,000/year

Paid training to train new and current staff
Paid training to train new and current staff= $3,000

CPR with AED training
Class to train staff for CPR and AED $35.00 X five (5) staff = $175

AED machine
AED machine= $2,500

Supervisor to train staff, ensure inspections are completed and fill out paperwork
1/8 of supervisor's duties for entity= $15,000

Maintenance and testing of access portal door and audible alarm system
Maintenance and testing of access portal door and audible alarm system= $4,000

Total for costs for public entities = $30,000 (installation of newborn safety device) + $131,040 (staff on duty) + $200,000 (benefits for five staff) + $3,000 (paid training to train new and current staff) + $175 (CPR with AED training) + $2,500 (AED machine) + $15,000 (supervisor to train) + $4,000 (maintenance and testing of access portal door and audible alarm system) = $385,715 annually X 2 facilities/entities = $771,430 1st year.

Department Inspector
Department inspector 1/8 of current job duties - $10,000.

Annually thereafter
$131,040 (staff on duty) + $200,000 (benefits for five staff) + $3,000 (paid training to train new and current staff) + $175 (CPR with AED training) + $15,000 (supervisor to train) + $4,000 (maintenance and testing of access portal door and audible alarm system) + $10,000 (Department inspector) = $363,215 annually X 2 facilities/entities= $726,430 annually thereafter.

IV. ASSUMPTIONS

The Department has heard of two public entities that may be interested in installing newborn safety devices. The Department is estimating the installation of newborn safety devices instead of newborn safety incubators.

The Department is estimating a staff of at least five (5) individuals to rotate through a 24/7 schedule. The pay is estimated at the federal minimum wage of $15.00. The Department is also estimating that a supervisor that already works for the entity/facility will conduct the training with the staff and ensure that inspections and paperwork is completed.

The Department has estimated the construction costs and the set-up of the alarm system in these costs. After the first year, these costs will not be incurred again. However, in subsequent years, there will be costs for the maintenance and testing of the systems (access portal door and audible alarm system).

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: 19 CSR 30-100.010 Newborn Safety Incubators

Rule Number and Title:	19 CSR 30-30-100.010 Newborn Safety Incubators
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
(1)	Entity/Facility with Newborn Safety Incubators	$447,965 for the first year
	TOTAL COSTS =	**Costs may range from $0 if no private facilities install a newborn safety incubator to $447,965 for the first year if 1 facility installs a newborn safety incubator and $0 annually thereafter if no newborn safety incubators are installed up to $353,215 annually thereafter if one (1) facility installs a newborn safety incubator.**

III. WORKSHEET

Costs for the entity

Medical bassinet
Medical bassinet, mattress and sheets = $1750

Signage
Sign to post by the newborn safety incubator = $500

Room addition or renovation of space for newborn safety incubator
Construction of a room or renovation of space to place the newborn safety incubator including the costs of the general contractor, the access portal door on the exterior wall,

locking system for the access portal door, climate controlled environment with a proper air circulation system and lighting including battery backup = $75,000.

Audible alarm system
Audible alarm system with automatic call capability to 911 if the alarm is not disarmed within one (1) minute, costs for licensed electrical contractor and potentially a telecommunications installation professional to install and wire the alarm system, wiring of electrical access portal door alarm into the existing electrical system, and alarm system wired into secondary backup supply or battery backup = $15,000.

Staff on duty
One (1) staff X $15.00 X 24 hours/day X 7 days/week X 52 weeks/year = $131,040

Benefits for five staff to rotate 24/7 schedule
$40,000 benefits X (5) staff for each entity = $200,000/year

Paid training to train new and current staff
Paid training to train new and current staff= $3,000

CPR with AED training
Class to train staff for CPR and AED $35.00 X five (5) staff = $175

AED machine
AED machine= $2,500

Supervisor to train staff, ensure inspections are completed and fill out paperwork
1/8 of supervisor's duties for entity= $15,000

Maintenance and testing of access portal door and audible alarm system
Maintenance and testing of access portal door and audible alarm system= $4,000

Total for costs for private entity = $1750 (medical bassinet) + $500 (signage) + $75,000 (room renovation or addition) + $15,000 (audible alarm system) + $131,040 (staff on duty) + $200,000 (benefits for five staff) + $3,000 (paid training to train new and current staff) + $175 (CPR with AED training) + $2,500 (AED machine) + $15,000 (supervisor to train) + $4,000 (maintenance and testing of access portal door and audible alarm system) = $447,965

Annually thereafter
$131,040 (staff on duty) + $200,000 (benefits for five staff) + $3,000 (paid training to train new and current staff) + $175 (CPR with AED training) + $15,000 (supervisor to train) + $4,000 (maintenance and testing of access portal door and audible alarm system) = $353,215 annually thereafter.

IV. ASSUMPTIONS

The Department has heard of one private facility that may be interested. However, the Department is unsure if this facility will pursue the installation of the newborn safety incubator/device.

The Department is estimating that the private facility will install a newborn safety incubator.

The Department is estimating a staff of at least five (5) individuals to rotate through a 24/7 schedule. The pay is estimated at the federal minimum wage of $15.00. The Department is also estimating that a supervisor that already works for the entity/facility will conduct the training with the staff and ensure that inspections and paperwork is completed.

The Department has estimated the construction costs and the set-up of the alarm system in these costs. After the first year, these costs will not be incurred again. However, in subsequent years, there will be costs for the maintenance and testing of the systems (access portal door and audible alarm system).