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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

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

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program**

EMERGENCY RULE

13 CSR 70-10.150 Enhancement Pools

PURPOSE: This rule creates enhancement pools to increase reimbursement to government-owned nursing facilities and all nursing facilities, in an amount not to exceed the Medicare upper limit payment for the Medicaid program.

EMERGENCY STATEMENT: This emergency rule creates enhancement pools to increase reimbursement to government-owned nursing facilities and all nursing facilities, in an amount not to exceed the Medicare upper limit payment for the Medicaid program. This emergency rule is necessary in order to protect the health and safety of senior Missourians who are living in nursing facilities by promoting quality of care through increased Medicaid reimbursement. The emergency amendment is also necessary to ensure compliance with the Medicaid State Plan as required by federal law. Absent this emergency rule, the Division will be precluded from maximizing federal participation in funding of the medical assistance program which will cause financial strain on all nursing facilities which serve Medicaid recipients. As a result, the Missouri Division of Medical Services finds an immediate danger to the public health and welfare and a compelling governmental interest which require emergency action. A proposed amend-

ment covering this same material is published in this Missouri Register to allow for public comment to assure fairness to all interested persons and parties. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in Missouri and United States Constitutions. The Division of Medical Services believes this emergency rule is fair to all interested persons and parties under the circumstances. The emergency rule was filed November 3, 2000, effective November 13, 2000, and expires May 11, 2001.

(1) Medicaid Enhancement Pools. Subject to federal approval, the Division of Medical Services shall administer two enhancement payment pools to pay for services covered by the Missouri Medicaid program. The total payment from the pools shall not exceed the difference between the Medicare upper limit and the per diem reimbursement for all Medicaid nursing facilities for services covered by the Missouri Medicaid program. The Medicaid enhancement pools shall be calculated and distributed in the manner described below.

(A) Government-owned nursing facilities may elect to participate in the funding and distribution of the first enhancement payment pool in accordance with an intergovernmental funds transfer agreement executed with the Department of Social Services.

1. The distribution from the first pool shall be calculated as a percentage, to be determined by the Department of Social Services, of the aggregate difference between the Medicare Upper Limit and per diem reimbursement for all Medicaid nursing facilities.

A. For State Fiscal Year 2001 the aggregate difference shall be calculated for the period August 1, 2000–June 30, 2001.

B. For State Fiscal Year 2002 the aggregate difference shall be calculated for the period July 1, 2001–June 30, 2002.

2. The pool shall be distributed to participating government-owned nursing facilities based on a quarterly amount, based on their pro-rata share of Medicaid patient-days.

(B) All Medicaid enrolled nursing facilities may participate in distributions from the second enhancement payment pool, for State Fiscal Year 2001.

1. The distributions from the second pool shall be calculated as a percentage, to be determined by the Department of Social Services, of the aggregate difference between the Medicare Upper Limit and per diem reimbursement for all Medicaid enrolled nursing facilities, for the period August 1, 2000–June 30, 2001.

2. The second pool shall be distributed based on a quarterly amount, made in addition to per diem payments, to all Medicaid enrolled nursing facilities, applicable to services provided in State Fiscal Year 2001, based on their pro-rata share of Medicaid days.

(C) The aggregate difference between the Medicare Upper Limit and the per diem reimbursement for Medicaid nursing facilities will be calculated on an annual basis. The per diem Medicaid rates used in the calculation will be those being paid at the time of the calculation and the Medicare Upper Limit will be based on the current RUGS system of Medicare nursing facility reimbursement with appropriate adjustments to assure comparability with the Medicaid rate. The difference will be calculated on a facility basis and multiplied by the reported Medicaid days at the particular nursing facility for the most recent cost report year. The product of all calculations will be added together to obtain the aggregate difference.

1. Medicaid days will be determined from the paid day report from Missouri's fiscal agent for pay cycles during the State's fiscal year 2000.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. Emergency rule filed Nov. 3, 2000, effective Nov. 13, 2000, expires May 11, 2001. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

EMERGENCY AMENDMENT

13 CSR 70-20.031 List of [Restricted] Excludable Drugs for Which Prior Authorization is Required. The division proposes to amend section (3).

PURPOSE: The Division of Medical Services is proposing to amend this rule by clarifying the language to more accurately define the products affected, and by moving two drug product entries to 13 CSR 70-20.034.

EMERGENCY STATEMENT: This emergency amendment establishes a list of excludable drugs for which prior authorization is required for reimbursement by the Division of Medical Services on behalf of patients eligible for any of the fee-for-service programs. As a result of new drugs, rapidly changing prescribing patterns, and increased expenditures in the Missouri Medicaid fee-for-service pharmacy program, the Medicaid program continues to implement a number of administrative measures to ensure the economic and efficient provisions of the Medicaid pharmacy benefit in order to protect the health and safety of those Medicaid recipients who depend on pharmacy services. These strategies have been developed through recommendations from a number of sources, including affected state agencies, provider groups, and the pharmaceutical industry. These initiatives, to make sure that Medicaid recipients get the right drug to meet their needs, in the right amount, for the right time period, must be implemented within very short time frames. As a result, the Missouri Division of Medical Services finds an immediate danger to the public health and welfare and a compelling governmental interest which requires emergency action. A proposed amendment covering this same material was published in the *Missouri Register* on August 1, 2000, allowing for a comment period to assure fairness to all interested persons and parties. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. Emergency Amendment filed November 21, 2000; effective December 1, 2000; expires May 29, 2001.

(3) List of drugs or categories of **excludable** drugs which are restricted to require prior authorization for certain specified indications—

Drug or Category of Drug	Allowed Indications
Amphetamines	Attention Deficit Hyperactivity Disorder Narcolepsy
Barbiturates (with the exception of phenobarbital, mephobarbital and methabarbital which do not require prior authorization)	All medically accepted uses
Isotretinoin [Ketoralac, oral]	Noncosmetic uses [Short-term treatment of moderately severe acute pain following injection of same entity]
Orlistat	Dyslipidemia

Retinoic Acid, topical

[Sildenafil Citrate]

Noncosmetic uses

[Erectile dysfunction]

AUTHORITY: sections 208.153 and 208.201, RSMo [1994] 2000. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 1, 1996, effective Oct. 30, 1996. Amended: Filed May 27, 1999, effective Dec. 30, 1999. Amended: Filed June 29, 2000. Emergency amendment filed Nov. 21, 2000, effective Dec. 1, 2000, expires May 29, 2001.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

EMERGENCY RULE

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization is Required

PURPOSE: This rule establishes a listing of non-excludable drugs and categories of drugs for which prior authorization is required in order for them to be reimbursable under the Missouri Medicaid Pharmacy Program.

EMERGENCY STATEMENT: This emergency rule establishes a list of non-excludable drugs for which prior authorization is required by the Division of Medical Services on behalf of patients eligible for the Medicaid fee-for-service program. As a result of new drugs, rapidly changing prescribing patterns and increased expenditures in the Missouri Medicaid fee-for-service pharmacy program, the Medicaid program continues to implement a number of administrative measures to ensure the economic and efficient provisions of the Medicaid pharmacy benefit in order to protect the health and safety of those Medicaid recipients who depend on pharmacy services. These strategies have been developed through recommendations from a number of sources, including affected state agencies, provider groups, and the pharmaceutical industry. These initiatives, to make sure that Medicaid recipients get the right drug to meet their needs, in the right amount, for the right time period, must be implemented within very short time frames. As a result, the Missouri Division of Medical Services finds an immediate danger to the public health and welfare and a compelling governmental interest which requires emergency action. A proposed amendment covering this same material was published in the *Missouri Register* on August 1, 2000, allowing for a comment period to assure fairness to all interested persons and parties. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Division of Medical Services believes this emergency rule is fair to all interested persons and parties under the circumstances. Emergency Rule filed November 21, 2000; effective December 1, 2000; expires May 29, 2001.

(1) As specified in Section 1927(d)(1) of the Social Security Act, state may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of Sections 1927(d)(5) of the Social Security Act.

(2) List of drugs or categories of drugs which are restricted to require prior authorization for certain specified indications—

Drug or Category of Drug	Allowed Indications
Abortifacients	Termination of pregnancy resulting from an act of rape or incest or when necessary to protect the life of the mother

Butorphanol, nasal spray	Override of quantity restriction allowed for medically accepted uses
Drugs used to treat sexual dysfunction	Sexual dysfunction
Histamine 2 Receptor Antagonists	Medically accepted uses
Ketorolac, oral	Short term treatment of moderately severe acute pain following injection of same entity
Linezolid, oral	Medically accepted uses
Modafanil	Narcolepsy
Proton Pump Inhibitors	Medically accepted uses

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 2000. Original rule filed June 29, 2000. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expires May 29, 2001.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

EMERGENCY RULE

13 CSR 70-20.045 Thirty-One (31) Day Supply Maximum Restriction on Pharmacy Services Reimbursed by the Division of Medical Services

PURPOSE: The purpose of this emergency rule is to establish a thirty-one (31) day supply maximum restriction per dispensing on pharmacy services reimbursed by the Division of Medical Services on behalf of patients eligible for any of the fee-for-service programs.

EMERGENCY STATEMENT: This emergency rule establishes a thirty-one (31) day supply maximum restriction per dispensing on pharmacy services reimbursed by the Division of Medical Services on behalf of patients eligible for any of the fee-for-service programs, with exemptions for specific drugs and categories of medications, and exemptions with prior authorization to prevent a higher level of care. As a result of new drugs, rapidly changing prescribing patterns and increased expenditures in the Missouri Medicaid fee-for-service pharmacy program, the Medicaid program continues to implement a number of administrative measures to ensure the economic and efficient provisions of the Medicaid pharmacy benefit in order to protect the health and safety of those Medicaid recipients who depend on pharmacy services. These strategies have been developed through recommendations from a number of sources, including affected state agencies, provider groups, and the pharmaceutical industry. These initiatives, to make sure that Medicaid recipients get the right drug to meet their needs, in the right amount, for the right time period, must be implemented within very short time frames. As a result, the Missouri Division of Medical Services finds an immediate danger to the public health and welfare and a compelling governmental interest which requires emergency action. A proposed amendment covering this same material was published in the Missouri Register on August 1, 2000 allowing for a comment period to assure fairness to all interested persons and parties. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Division of

Medical Services believes this emergency rule is fair to all interested persons and parties under the circumstances. Emergency Rule filed November 21, 2000; effective December 1, 2000; expires May 29, 2001.

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

(2) Drugs and/or categories of medications which are exempt from the thirty-one (31) day supply limitation and therefore may be dispensed in quantities exceeding a thirty-one (31) day supply are as follows:

<u>Drug or Category</u>	<u>Maximum Limitation, if applicable</u>
Antiretroviral Agents	
Contraceptives, Oral	One year
Drug products limited by packaging requirements	Packaging requirements
Vitamins, Children's	100 days
Vitamins, Prenatal	100 days

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

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 2000. Original rule filed June 29, 2000. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expires May 29, 2001.