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

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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. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are cited 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.



FROM THIS ANGLE....

Finally -- the date for the release of the Rulemaking Manual has arrived!!!

Secretary Blunt will be presenting the new rulemaking manual, *Rulemaking 1-2-3, Missouri Style*, on Thursday, October 11, 2001, at 2:00 p.m. in the Interpretative Center here at Kirkpatrick State Information Center. Please plan to attend and receive your copy. So that we are certain to have enough manuals available, please call our main line at 573-751-4015 and advise if you will attend. We are *very* anxious to get the manual in your hands! Thanks for your patience -- this has been a tremendous undertaking by the Administrative Rules staff -- but we believe you will like what you see -- and believe it has been worth the wait!!

Why a different Publisher's Note?

You will note we are now publishing a *new* publisher's note. The *new and improved language* is an attempt by our office to clear up a misunderstanding that seems to exist with some of our customers. Formerly we would receive many calls inquiring why we were not printing a rule in its entirety -- and where the same could be accessed -- when we were incorporating material by reference. In fact, the entire content of the rule *is* published -- it is the incorporated material that *is not* published in its entirety. The new publisher's note -- which is shown below -- is intended to clear up any misunderstanding in this regard.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

SUGGESTIONS, PLEASE!

The next time you are in the office to file rules, please let us have your suggestions. As we strive to better serve you, we are always open to your suggestions! Please feel free to drop your suggestions in the "Suggestions Box" located at our front desk, and, either sign your name or leave your comment anonymously. We are here to help you and want to be attentive to your thoughts and suggestions.

Rule revisions???

Were you aware that we can furnish you with an exact copy of your rule(s) as it appears in Code? Call us and we can send you an electronic e-mail copy; a copy on diskette, or a copy on CD -- your preference. We have found this to be a very helpful service for agencies. Many of our customers feel that utilizing the most current copy of their rule as it currently exists in Code eliminates confusion and makes their amendments, revisions, etc. go much smoother. Give us a call

Please contact us if we may be of assistance to you.



Lynne C. Angle,
Director, Administrative Rules Division

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 AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance.
The division is amending section (1) and section (2).

PURPOSE: This amendment provides for the Nursing Facility Reimbursement Allowance of \$7.30 per patient occupancy day, effective for dates of service beginning July 1, 2001. It also clarifies the NFRA for nursing facilities that merge and payment of the NFRA.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the Nursing Facility Reimbursement Allowance (NFRA) for providers of nursing facility services for State Fiscal Year 2002. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to the 25,817 Medicaid patients in nursing facilities. The Division of Medical Services finds an immediate danger to public health which requires emergency action and the amendment is necessary to preserve a compelling governmental interest that requires an early effective date. A proposed amendment covering this same material is published in this issue of the *Missouri Register* to allow for public comment to assure fairness to all interested persons and par-

ties. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protection extended by the Missouri and United States Constitutions. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed August 29, 2001, effective September 8, 2001, expires March 6, 2002.

(1) Nursing Facility Reimbursement Allowance (NFRA). NFRA shall be assessed as described in this section.

(B) Each nursing facility, except any nursing facility operated by the Department of Mental Health, engaging in the business of providing nursing facility services in Missouri shall pay a Nursing Facility Reimbursement Allowance (NFRA).

1. The NFRA owed for existing nursing facilities shall be calculated by multiplying the NFRA rate by the annualized level of patient occupancy days from the applicable Division of Aging ICF/SNF Certificate of Need Quarterly Survey. The NFRA shall be divided by and collected over the number of months for which each NFRA rate is effective. The NFRA rates, effective dates and applicable quarterly surveys are set forth in section (2).

A. Exceptions.

(I) If an existing nursing facility's applicable quarterly survey, as set forth in section (2), does not represent a full quarter's worth of days due to a termination, temporary closure, change of ownership, etc., the patient occupancy days used to determine the NFRA shall be the greater of:

(a) The quarterly survey immediately prior to the applicable quarterly survey, if it represents a full quarter's worth of days; or

(b) Fifty percent (50%) of licensed beds.

(II) If an existing nursing facility did not have patient occupancy information included on the applicable quarterly survey due to a termination, temporary closure, change of ownership, etc., the patient occupancy days used to determine the NFRA shall be the greater of:

(a) The quarterly survey immediately prior to the applicable quarterly survey, if it represents a full quarter's worth of days; or

(b) Fifty percent (50%) of licensed beds.

(III) If a nursing facility has ICF licensed beds and SNF licensed beds and none of the beds are Medicaid certified, only the SNF beds are subject to NFRA. The patient occupancy days used to determine the NFRA shall be determined by multiplying the occupancy percentage from the applicable quarterly survey by the annualized level of patient occupancy days based on the SNF licensed beds.

(IV) If two (2) existing nursing facilities merge, with one (1) nursing facility terminating and transferring its beds to the remaining facility, the NFRA for the two (2) previously independent nursing facilities shall be added together and assessed to the remaining facility.

2. The initial NFRA owed by a newly licensed nursing facility that just opened as a result of receiving a Certificate of Need (CON) for a new nursing facility shall be calculated by multiplying the NFRA rate by the annualized level of patient occupancy days based on fifty percent (50%) of licensed beds. The NFRA shall be prorated for the number of months remaining in the NFRA period. If a nursing facility's licensure date is after the first day of a month, the NFRA will be collected beginning with the first day of the month following the actual licensure date.

3. If a nursing facility ceases to provide nursing facility services, the nursing facility is not required to pay the NFRA during the months in which it does not have residents, even though it may retain a license due to temporary closure for renovations, replacement, etc. If the facility reopens, it shall resume paying the NFRA.

It shall owe the same NFRA as it did prior to closing, if the NFRA has not changed per section (2) below. If the NFRA has changed, the facility shall be assessed in accordance with paragraph (1)(B)1. above.

(D) The department shall prepare a confirmation schedule of the information from each nursing facility's 1994 second quarterly survey from the Division of Aging and provide each nursing facility with this schedule.

1. This schedule shall include:

- A. Provider name;
- B. Provider number; and
- C. Total patient occupancy days.

2. Each nursing facility required to pay the Nursing Facility Reimbursement Allowance shall review the information in the schedule referenced in paragraph (1)(D)1. of this regulation and provide the department with correct information. If the information supplied by the department is incorrect, the facility within thirty (30) calendar days of receiving the confirmation schedule must notify the division and explain the corrections. If the division does not receive corrected information within thirty (30) calendar days, it will be assumed to be correct, unless the nursing facility files a protest in accordance with subsection (1)(E)/(F) of this regulation.

(3)/(E) Payment of the NFRA.

1. Offset. Each nursing facility may request that their Nursing Facility Reimbursement Allowance be offset against any Missouri Medicaid payment due to that nursing facility. A statement authorizing the offset must be on file with the division before any offset may be made relative to the nursing facility reimbursement allowance by the nursing facility. Assessments shall be allocated and deducted over the **applicable service period [covering services January 1995 through September 1995]. Any balance due after the offset shall be remitted by the nursing facility to the department. The remittance shall be made payable to the Director of the Department of Revenue and deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund. If the remittance is not received before the next Medicaid payment cycle, the Division shall offset the balance due from that check.**

2. Check. If no offset has been authorized by the nursing facility, the division will begin collecting the nursing facility reimbursement allowance on *[January 1, 1995, and]* the first day of each month *[thereafter]*. **The NFRA shall be remitted by the nursing facility to the department. The remittance shall be made payable to the Director of the Department of Revenue and deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund.**

3. Failure to pay the NFRA. If a nursing facility fails to pay its NFRA within thirty (30) days of notice, the NFRA shall be delinquent. For any delinquent NFRA, the department may proceed to enforce the state's lien of the property of the nursing facility, may cancel or refuse to issue, extend or reinstate the Medicaid provider agreement or may seek denial, suspension or revocation of license granted under Chapter 198, RSMo. The new owner, as a result of a change in ownership, shall have his/her NFRA paid by the same method the previous owner elected.

[4. The nursing facility reimbursement allowance owed or, if an offset has been requested, the balance due, if any, after such offset, shall be remitted by the nursing facility to the department monthly beginning with January 1995, and each month thereafter. The remittance shall be made payable to the Director of the Department of Revenue. The amount remitted shall be deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund.]

(E)/(F) Each nursing facility, upon receiving written notice of the final determination of its Nursing Facility Reimbursement Allowance may file a protest with the director of the department

setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the department. The director of the department shall reconsider the determination and, if the nursing facility so requested, the director or the director's designee shall grant the nursing facility a hearing to be held within forty-five (45) days after the protest is filed, unless extended by agreement between the nursing facility and the director. The director shall issue a final decision within forty-five (45) days of the completion of the hearing. After a final decision by the director, a nursing facility's appeal of the director's final decision shall be to the administrative hearing commission in accordance with sections 208.156, RSMo and 62.055, RSMo.

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(H) The NFRA will be seven dollars and thirty cents (\$7.30) per patient occupancy day, effective July 1, 2001. The applicable quarterly survey for this period shall be the Division of Aging's December 2000 quarterly survey.

AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, [and] 198.436[, RSMo Supp. 1999] and 208.201, RSMo [1994] 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 29, 2001, effective Sept. 8, 2001, expires March 6, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.