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

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified 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—The most recent version of the statute containing the section number and the date.

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 (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

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

**Title 1—OFFICE OF ADMINISTRATION
Division 35—Division of Facilities Management
Chapter 1—Facility Maintenance and Operation**

EMERGENCY AMENDMENT

1 CSR 35-1.050 Public Use of State Facilities. The Office of Administration is amending paragraphs (1)(D)1., (1)(D)2., (1)(D)3., (2)(B)9., and (4)(A)12., and adding a new section (5).

PURPOSE: This rule preserves a prohibition against carrying firearms or any other weapon readily capable of lethal use into certain state facilities. Exceptions are provided for law enforcement officers and other specific public officials acting in their official capacities.

EMERGENCY STATEMENT: For the purpose of immediately meeting and preserving a compelling governmental interest in prohibiting firearms or any other weapon readily capable of lethal use from state facilities, the Office of Administration, including the Division of Facilities Management, provides the following rule to ensure that state facilities are safe and secure. The rule requires an early effective date to protect public health, safety or welfare. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. 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 Office of Administration believes this emergency amendment is fair to all interested parties under the circumstances. This emergency amendment was filed October 9, 2003, effective October 19, 2003 and expires April 15, 2004.

(1) Facilities Subject to this Rule; Definitions.

(D) Other Public Buildings and Grounds.

1. As used in this rule, the term "other public buildings and grounds" means all property, except the Capitol Building and grounds, and except the Governor's Mansion and its grounds, which is owned, leased or occupied by an agency of the state of Missouri [and is managed by the Office of Administration, Division of Facilities Management].

2. It includes, but is not limited to, the following: the Jefferson Building, the Broadway Building, the Supreme Court Building, the Environmental Control Center, the Harry S Truman Office Building, the E.D.P. Building, the Health Lab, and the Missouri State Information Center, all in Jefferson City; the Wainwright State Office Building and the Midtown State Office Building in St. Louis; the Kansas City State Office Building; the St. Joseph State Office Building; the Springfield State Office Complex; and all parking lots or parking structures on the said sites [which are managed by the Division of Facilities Management]. Drawings showing the property lines of these sites are included as Appendix A to this rule.

3. In the case of multi-tenant buildings, the term "other public buildings and grounds" includes only the offices occupied by agencies of the state of Missouri and those portions of the common areas [that are controlled by state agencies].

(2) Public Use of Other Public Buildings and Grounds Occupied by State Agencies.

(B) Prohibited Activities. The following activities and conditions are not permitted in the common areas of any of the other public buildings and grounds which are occupied by a state agency:

1. Purely private social events, such as weddings, regardless of the type or content;

2. Commercial activities, including soliciting the sale of any goods or services and any other activities undertaken for the primary purpose of obtaining a financial return for the benefit of an individual or organization, whether organized for profit or not; except that this paragraph shall not prohibit vendors from soliciting state employees for the purpose of effecting sales of the vendors' products or services, if the products or services are offered to the state, or if they are offered to employees through a state-sponsored program;

3. Solicitation of any kind, including the solicitation of contributions, gifts or donations, the solicitation of signatures on petitions, and the solicitation of support for any political candidate or cause, except as otherwise specifically authorized in this rule;

4. The distribution of any leaflets or other materials, except for such materials as are distributed by the facility manager, and except that certified employee bargaining units may distribute written materials in the common areas of the buildings where the members of their unit are employed, if authorized by the facility manager to do so;

5. Any activity that obstructs the free ingress or egress of those wishing to enter or leave the public building;

6. A sound level, noise, or any other activity that disrupts the business of government in the public building;

7. Camping, including the use of the grounds for living accommodation purposes such as sleeping activities, making preparations for sleeping activities, making preparations to sleep (including the placement of bedding for the purpose of sleeping), storing personal belongings, making any fire, using any tents or other shelters for sleeping, doing any digging or earth-breaking or carrying on cooking activities;

8. The service or consumption of alcoholic beverages;

9. Guns or weapons of any kind, except as authorized *[by law]* in section (5) of this rule;

10. Wood, metal or plastic poles or standards shall not be used to support signs or banners and shall not be brought into the public building or onto the grounds;

11. Any other activity that presents a significant likelihood of damage to the public building; or

12. Any activity that is a violation of federal, state or local law.

(4) Public Use of the Capitol Building and Grounds.

(A) The following activities and conditions are not permitted in or about the Capitol Building and grounds, as defined in section (1) of this rule:

1. Purely private social events, such as weddings, regardless of the type or content;

2. The service or consumption of alcoholic beverages, except as provided in paragraph (4)(A)3.;

3. Box lunches, buffet style or "sit down" food service, or any other service of food or beverage is prohibited in the rotunda, except that the service of food and beverage, including alcoholic beverages, is permitted if it is part of a state government function and is approved by the Board of Public Buildings. The service of food or beverage on the Capitol grounds is prohibited unless approved by the facility manager and the food or beverage is served without charge;

4. In order to minimize damage to the rotunda floor, dance events, including demonstrations such as clogging, square dancing and other such activity, are prohibited in the rotunda, unless the events are part of a state government function and are approved by the Board of Public Buildings;

5. Commercial activities, including the sale of any goods or services and any other activities undertaken for the primary purpose of obtaining a financial return for the benefit of an individual or organization, whether organized for profit or not, except as otherwise authorized in this rule;

6. The solicitation of contributions, gifts or donations is prohibited in all common areas of the Capitol Building, and the distribution of leaflets or other materials and all other forms of solicitation, including solicitation of support for any political candidate or cause is prohibited in all common areas of the Capitol Building except the rotunda and the south steps.

7. Making any speech or conducting any organized activity involving two (2) or more persons without first obtaining a permit from the facility manager, or distributing leaflets or other materials which have not been provided to the facility manager in conjunction with an application for a permit, or leaving leaflets or other materials unattended;

8. Any activity that obstructs the free ingress or egress of those wishing to enter or leave the rotunda or other portions of the Capitol;

9. A sound level, noise, or any other activity that disrupts the business of government in the Capitol;

10. The use of balloons of any kind in the rotunda;

11. Smoking in any of the common areas inside the Capitol Building, except in those areas that have specifically been designated as "smoking areas";

12. Guns or weapons of any kind, except as authorized *[by law]* in section (5) of this rule;

13. The use, in the rotunda, of lighted candles or other devices which produce flames;

14. Signs, banners and like material shall not be fastened in any way to the walls, surfaces, or railing surrounding the rotunda. Wood, metal or plastic poles or standards shall not be used to support signs or banners and shall not be brought onto the Capitol grounds. Signs displayed during an activity shall not contain any obscene words or symbols;

15. Any other activity that presents a significant likelihood of damage to the rotunda or other portions of the Capitol;

16. Camping, as previously defined in this rule; and

17. Any activity that is a violation of federal, state or local law.

(5) Weapons Capable of Lethal Use Prohibited; Exceptions.

(A) Carrying a firearm or any other weapon readily capable of lethal use into the Capitol Building and grounds as defined in subsection (1)(B), the offices in the Capitol Building occupied by the Governor and Governor's administration, the offices in the Capitol Building of the Lieutenant Governor, the offices in the Capitol Building of the State Auditor, the offices in the Capitol Building of the State Treasurer, any other building and grounds as defined in subsection (1)(D), or the Governor's Mansion and grounds, is prohibited. This prohibition shall not apply to state and federal law enforcement officers, peace officers, probation and parole officers, wardens and superintendents of prisons or penitentiaries, members of the armed forces and national guard, persons vested with judicial authority by the state or federal court, and members of the state General Assembly, acting in their official capacity. Possession of a firearm by a person holding a valid state concealed carry endorsement in a vehicle located in a parking area upon the premises of any area referenced in this rule shall not be prohibited so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

AUTHORITY: sections 8.110, 8.320, [RSMo 1994 and] 34.030, 37.005, 536.023.3, and 536.025, RSMo [Supp. 1997] 2000. Original rule filed April 23, 1998, effective Nov. 30, 1998. Emergency amendment filed Oct. 9, 2003, effective Oct. 19, 2003, expires April 15, 2004. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 1—OFFICE OF ADMINISTRATION
Division 35—Division of Facilities Management
Chapter 2—Leasing**

EMERGENCY AMENDMENT

1 CSR 35-2.030 Administration of the Leasing Process. The Office of Administration is adding a new section (4).

PURPOSE: This amendment preserves a prohibition against carrying firearms or any other weapon readily capable of lethal use into real property leased by the state under the authority of the Office of Administration. Exceptions are provided for law enforcement officers and other specific public officials acting in their official capacities.

EMERGENCY STATEMENT: For the purpose of immediately meeting and preserving a compelling governmental interest in prohibiting firearms or any other weapon readily capable of lethal use from real property leased by the state under the authority of the Office of Administration (hereinafter "O.A."), O.A. provides the following rule to ensure that state facilities are safe and secure. The rule requires an early effective date to protect public health, safety or welfare. 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 Office of Administration believes this emergency amendment is fair to all interested parties under the circumstances. This emergency amendment was filed October 9, 2003, effective October 19, 2003 and expires April 15, 2004.

(4) All leases entered into by the Office of Administration shall prohibit carrying a firearm or other weapon readily capable of lethal use into the leased premises. This prohibition shall not apply to state and federal law enforcement officers, peace officers, probation and parole officers, wardens and superintendents of prisons or penitentiaries, members of the armed forces and national guard, persons vested with judicial authority by the state or federal court, and members of the state General

Assembly, acting in their official capacity. Possession of a firearm by a person holding a valid state concealed carry endorsement in a vehicle located in a parking area upon the premises of any area referenced in this rule shall not be prohibited so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

AUTHORITY: sections 8.110, 8.320, 34.030, 37.005, 536.023.3, and 536.025, RSMo [1998] 2000. Original rule filed April 15, 1998, effective Nov. 30, 1998. Emergency amendment filed Oct. 9, 2003, effective Oct. 19, 2003, expires April 15, 2004. A proposed amendment 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 10—Nursing Home Program**

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the director of the Division of Medical Services under sections 208.153, 208.159 and 208.201, RSMo 2000, the director hereby terminates an emergency amendment effective October 29, 2003, as follows:

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services is **terminated**.

A notice of rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on November 3, 2003 (28 MoReg 1894-1897).

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

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the director of the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, the director hereby terminates an emergency amendment effective October 29, 2003, as follows:

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services is **terminated**.

A notice of rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on November 3, 2003 (28 MoReg 1897-1898).

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

ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the director of the Division of Medical Services under sections 198.403 and 208.201, RSMo 2000, the director hereby terminates an emergency amendment effective October 29, 2003, as follows:

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance is **terminated**.

A notice of rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on November 3, 2003 (28 MoReg 1898).

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 54—Exemptions and Federal Covered Securities**

EMERGENCY RULE

15 CSR 30-54.175 Solicitation of Interest

PURPOSE: This rule prescribes the procedures and the record that needs to be provided to offerees to comply with section 409.2-202(17) of the Missouri Securities Act of 2003.

EMERGENCY STATEMENT: This emergency rule brings the rule into compliance with the Missouri Securities Act of 2003. This emergency rule is necessary to protect the health, safety and welfare by having a regulation that describes the procedures and record for the exemption under section 409.2-202(17) of the Missouri Securities Act of 2003. As a result, the Securities Division finds an immediate danger to the public health, safety and/or welfare and a compelling governmental interest, which requires this emergency action. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and the procedures used by the Securities Division comply with the protections extended in the Missouri and United States Constitutions. The Securities Division believes that it used procedures best calculated to assure fairness to all interested persons and parties. This emergency rule was filed October 10, 2003, effective November 3, 2003 and expires April 30, 2004.

(1) Scope of the Exemption. The solicitation of interest exemption under section 409.2-202(17) of the Missouri Securities Act of 2003 (the Act) is only available to issuers that are eligible, and relying on an exemption under the Securities Act of 1933.

(2) Form and Content. The record to offerees shall consist of a preliminary offering document that meets the following requirements:

(A) The outside front cover page shall comply with subsection 230.255(a)(1) of regulation A under the Securities Act of 1933 or shall state—

A registration statement pursuant to the Missouri Securities Act of 2003 relating to these securities has been filed with the Missouri Securities Division. This Preliminary Offering Document is being distributed pursuant to the exemption under section 409.2-202(17) of the Missouri Securities Act of 2003.

Information contained in this Preliminary Offering Document is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering document, which is not designated as a Preliminary Offering Document, is delivered and the offering statement filed with the division becomes qualified. This Preliminary Offering Document shall not constitute an offer to sell or the solicitation of an offer to buy. Under no circumstances shall the issuer collect any funds for the securities while relying upon the exemption under section 409.2-202(17) of the Missouri Securities Act of 2003.

and

(B) The preliminary offering document shall contain substantially the information required in an offering circular under the form 1-A or form U-7.

(3) Filing. The issuer shall file the preliminary offering document and all related documents with the Securities Division as part of the registration statement prior to making any solicitations of interest under the exemption of section 409.2-202(17).

(4) No funds can be collected by the issuer for the securities while relying upon the exemption under section 409.2-202(17).

AUTHORITY: sections 409.2-202(17), 409.6-605 and 409.6-608, RSMo Supp. 2003. Emergency rule filed Oct. 10, 2003, effective Nov. 3, 2003, expires April 30, 2004. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 82—General Licensure Requirements

EMERGENCY AMENDMENT

19 CSR 30-82.060 Hiring Restrictions—Good Cause Waiver. The department proposes to amend sections (1)–(16), add new sections (5), (15) and (18), renumber sections accordingly and remove the forms that follow the rule in Code.

PURPOSE: This amendment sets forth the amended procedures for an employee or prospective employee of an in-home services provider agency or home health agency to request a waiver of the hiring restrictions imposed by section 660.317.7, RSMo, as included in Senate Bill No. 4 passed by the Second Extraordinary Session of the 92nd General Assembly. These amended procedures supplement the existing procedures to request a waiver of the hiring restrictions set forth in section 660.317.6, RSMo.

EMERGENCY STATEMENT: During the First Regular Session of the 92nd General Assembly, House Committee Substitute for Senate Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 556 and 311 was passed. This legislation included a provision that any in-home services provider agency or home health agency that knowingly employs a person who refuses to register with the Family Care Safety Registry (FCSR) or who is listed on any of the background checklists in the FCSR, is guilty of a class A misdemeanor. In the same session of the General Assembly, Senate Bill 184 expanded the FCSR to include all felonies and misdemeanors wherever they might be defined (either within the criminal code or defined elsewhere in statute). Prior to the passage of Senate Bill 184, the FCSR contained criminal records of convictions, pleas of guilty or nolo contendere, or suspended execution of sentence only to felonies defined in Chapter 198 (relating to long-term care facilities), Chapter 334 (relating to health care providers), Chapter 560 (relating to fines), Chapter 565 (offenses against the person), Chapter 566 (sexual offenses), Chapter 568 (offenses against the family), Chapter 569 (robbery, burglary, arson and related offenses), Chapter 573 (pornography), Chapter 575 (offenses against the administration of justice) and Chapter 578 (miscellaneous offenses), RSMo. Senate Bills Nos. 556 and 311 did not allow for any consideration of whether FCSR findings are indicative of whether the employee or prospective employee presents a risk to the health or safety of patients or clients. During the Second Extraordinary Session of the 92nd General Assembly, Senate Committee Substitute for Senate Bill No. 4 was passed. This legislation clarified the laws regarding disqualification of employees of in-home service provider agencies and in-home health care agencies and allows employees or prospective employees of such agencies to request a good cause waiver for findings reported on the FCSR. A good cause waiver is granted when the Department of Health and Senior Services determines by examining the good cause waiver applicant's prior work history and other relevant factors that the applicant does not present a risk to the health or safety of residents or clients. This legislation was declared to be an emergency act and was effective upon its passage and approval because it was necessary for the immediate preservation of the public health, welfare, peace and safety. It is necessary to have rules regarding the good cause waiver process both to ensure that recipients of in-home services and home health services are protected from employees or prospective employees who might present a danger to

those recipients—and to ensure that recipients of in-home services and home health services receive services uninterrupted by disruptions in the labor force caused by an inflexible application of the disqualification. Of the current in-home and home health employees who would be included on the background checklists in the FCSR, it is estimated that over five hundred may be eligible for a good cause waiver. Without the ability to receive a good cause waiver, these individuals will no longer be available to provide in-home and home health clients with the care they need to remain in their homes. As a result, the Department of Health and Senior Services finds an immediate danger to the public health, safety and welfare and a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. 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 Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed October 15, 2003, effective October 26, 2003 and expires April 22, 2004.

(1) Definitions.

(A) Applicant means a person who has been or would be rejected for employment by a provider due to the hiring restrictions found in section 660.317, RSMo [Supp. 1998].

(B) Department means the Department of Health and Senior Services.

[(B)] (C) Determination means the decision issued by the director of the [division] Department of Health and Senior Services or the director's designee based on the factual, procedural or causal issues of the request for waiver.

[(C)] (D) Director means the director of the [Division of Aging] Department of Health and Senior Services.

[(D) Division means the Division of Aging of the Missouri Department of Social Services.]

(E) Good cause waiver means a finding that it is reasonable to believe that the restrictions imposed by section 660.317, RSMo [Supp. 1998], on the employment of an applicant may be waived after an examination of the applicant's prior work history and other relevant factors is conducted and demonstrates that such applicant does not present a risk to the health or safety of residents, patients or clients if employed by a provider.

(F) Provider means any person, corporation or association who—

1. Is licensed as an operator pursuant to Chapter 198, RSMo;
2. Provides in-home services under contract with the Department of [Social] Health and Senior Services;
3. Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;
4. Is an entity licensed pursuant to Chapter 197, RSMo; *or*
5. Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the Department of Mental Health/.; *or*
6. Is a licensed adult day care provider.

(2) Any person who is not eligible for employment by a provider due to the hiring restrictions found in section 660.317, RSMo [Supp. 1998], may apply to the [division] director for a good cause waiver. If the [division] director, or the director's designee, determines that the applicant has demonstrated good cause, such restrictions prohibiting such persons from being hired by a provider shall be waived and such persons may be so employed unless rejected for employment on other grounds. **Hiring restrictions based on the Department of Health and Senior Services' employee disqualification list established pursuant to section 660.315, RSMo, are not subject to a waiver.**

(3) The [division] director, or the director's designee, shall accept an application for a good cause waiver only if the application—

(A) Is submitted in writing by the applicant on the form provided by the *[division]* department;

(C) Is signed by the applicant *[under oath or affirmation]*;

(D) Includes an indication of the type of waiver that is being requested;

(E) Includes a complete history of residency since the earliest disqualifying offense or incident;

(F) Includes a complete employment history since the age of eighteen (18) years;

[[D]] (G) Includes an attached explanation written by the applicant as to why the applicant believes he or she no longer poses a risk to the health, safety or welfare of residents, patients or clients;

(H) Includes an attached description written by the applicant of the events that resulted in each disqualifying offense or incident;

[[E]] (I) Includes attached documentation on the applicant's professional, vocational or occupational licensure, certification or registration history and current status, if any, in this state and any other state; *[and]*

[[F]] (J) Includes at least one (1) reference letter from a sponsor. If the applicant is not able to obtain a sponsor, the applicant shall so state, shall identify those potential sponsors who have been approached by the applicant, and shall submit three (3) reference letters from individuals knowledgeable of the applicant's character or work history who are not related to or residing with the applicant./;

(K) Includes a criminal history record from the Missouri State Highway Patrol if requesting a waiver of disqualifying criminal offenses;

(L) Includes a certified court document for each disqualifying criminal offense. If such document is not obtainable, a written and signed statement from the court indicating that no such record exists must be submitted;

(M) Includes certified investigative reports from the Department of Social Services if requesting a waiver of child abuse or neglect findings or a waiver of foster parent license denial, revocation, or involuntary suspension;

(N) Includes certified investigative reports or other documentation of the incident(s) which resulted in the applicant's inclusion on all other lists in the Family Care Safety Registry for which waiver is requested; and

(O) If in addition to the criminal offense(s) for which the applicant is requesting a waiver the applicant has any pending felony or misdemeanor charges, includes a statement explaining the circumstances and certified copies of the charging documents for all pending criminal charges; and, in the case of an applicant seeking a position with an in-home services provider agency or home health agency, if in addition to the circumstances related to the listing on any of the background checklists of the Family Care Safety Registry for which the applicant is requesting a waiver the applicant has any pending circumstances which if established would lead to an additional listing on any of the background checklists of the Family Care Safety Registry, includes a statement explaining the circumstances and certified copies of documents relating to those circumstances.

(4) The *[division]* director, or the director's designee, will not consider any application for a good cause waiver unless it is fully completed, *[properly attested to or affirmed]* signed by the applicant, and contains all required attachments.

(5) Each completed application will be reviewed by a good cause waiver committee of two (2) or more employees of the department. The director shall determine the size of the committee and shall, from time to time, appoint members to serve on the committee.

(A) If the applicant seeks a good cause waiver of placement on the disqualification list maintained by the Department of Mental Health, the director shall appoint an employee of the Department

of Mental Health recommended by the director of the Department of Mental Health to serve on the good cause waiver committee.

(B) A member of the good cause waiver committee shall recuse himself or herself in a good cause waiver review in which the member's impartiality might reasonably be questioned, including but not limited to instances where the committee member has a personal bias or prejudice concerning the applicant, or personal knowledge of evidentiary facts concerning the application for good cause waiver.

[[5]] (6) The *[division]* department may, at any time during the application process or review thereof, request additional information from the applicant. If the applicant fails to supply any requested additional information within thirty (30) calendar days of the date of the request, unless the applicant requests and the *[division]* department grants an extension, the *[division]* department will consider the application for good cause waiver to be withdrawn by the applicant.

[[6]] (7) The *[division shall review each completed application and]* department may request the applicant, prior to the completion of the review, to appear in person to answer questions about his or her application. If the applicant is requested to appear in person, the department, in its sole discretion, shall determine the location for the appearance and may conduct any such proceedings using electronic means, including but not limited to telephonic or video conferencing. The *[division]* department shall review and may investigate the information contained in each application for completeness, accuracy and truthfulness. The burden of proof shall be upon the applicant to demonstrate that he or she no longer poses a risk to the health, safety or welfare of residents, patients or clients. The following factors shall be considered in determining whether a good cause waiver should be granted:

(A) The applicant's age at the time the crime was committed or at the time the incident occurred that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry;

(B) The circumstances surrounding the crime or surrounding the incident that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry;

(C) The length of time since the conviction or since the occurrence of the incident that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry;

(D) The length of time since the applicant completed his or her sentence for the disqualifying conviction(s), whether or not the applicant was confined, conditionally released, on parole or probation;

(E) The applicant's entire criminal history and entire history of all incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, including whether *[it]* that history shows a repetitive pattern of offenses or incidents;

(F) The applicant's prior work history;

(G) Whether the applicant had been employed in good standing by a provider but subsequently became ineligible for employment due to the hiring restrictions in section 660.317, RSMo *[Supp. 1998]*;

(H) Whether the applicant has been convicted or found guilty of, or pled guilty or *nolo contendere* to any offense displaying extreme brutality or disregard for human welfare or safety;

(I) Whether the applicant has omitted a material fact or misrepresented a material fact pertaining to his or her criminal or employment history or to his or her history of incidents that resulted in his or her being listed on the background checklists in the Family Care Safety Registry;

(J) Whether the applicant has ever been listed on the Employee Disqualification List maintained by the *[division]* department as provided in section 660.315, RSMo *[1994]*;

(K) Whether the applicant's criminal offenses were committed, or the incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry occurred, during the time he or she was acting as a provider or as an employee for a provider;

(L) Whether the applicant has, while disqualified from employment by a provider, obtained employment by fraud, deceit, deception or misrepresentation, including misrepresentation of his or her identity;

(M) Whether the applicant has ever had a professional or occupational license, certification, or registration revoked, suspended, or otherwise disciplined;

[(M)] (N) Any other information relevant to the applicant's employment background or past actions indicating whether he or she would pose a risk to the health, safety or welfare of residents, patients or clients; and

[(N)] (O) Whether the applicant has supplied all information requested by the [division] department.

[(7)] (8) If, at the time of an application for a waiver, or during the waiver consideration process, the applicant has been charged or indicted for, but not convicted of, any of the crimes covered under the provisions of section 660.317, RSMo, the [division] department will hold the request for waiver in abeyance while such charges are pending or until a court of competent jurisdiction enters a judgment or order disposing of the matter.

[(8)] (9) Each applicant who submits a waiver application meeting the requirements of section (3) of this rule shall be notified in writing by the director, [of the division] or the director's designee, as to whether his or her application has resulted in a determination of good cause or no good cause. Such notification shall be effective if sent to the applicant's address given on the application.

[(9)] (10) Any good cause waiver granted to an applicant applies only to:

(A) [t]The specific disqualifying conviction(s), finding(s) of guilt, plea(s) of guilty or *nolo contendere*, as contained in the certifying copies of the court documents which are required in the [A]application [for a Good Cause Waiver (MO Form 886-3654).]; and/or

(B) The incident(s) that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, as contained in the investigative reports or other supporting documentation required in the application or subsequently requested by the department.

[(10)] (11) Any good cause waiver granted to an applicant applies only to those disqualifying criminal convictions or incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, as covered under the provisions of section 660.317, RSMo [Supp. 1998], and shall not apply to any other hiring restriction or exclusion imposed by any other federal or state laws or regulations.

[(11)] (12) The [division] director, or the director's designee, may withdraw a good cause waiver if it receives information or finds that—

(A) The applicant has omitted a material fact or misrepresented a material fact in seeking a good cause waiver;

(B) The applicant has been subsequently convicted or found guilty of, or pled guilty or *nolo contendere* to any class A or B felony violation of Chapter 565, 566, or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo, in this state or any other state;

(C) Such applicant is a prospective or current employee of an in-home services provider or home health agency and has been subsequently involved in an incident that results in the applicant being listed on any of the background checklists in the Family Care Safety Registry;

[(C)] (D) The applicant has omitted, misrepresented or failed to disclose or provide any of the information required by section 660.317, RSMo [Supp. 1998], or the provisions of this rule; or

[(D)] (E) There has been a material change in the circumstances upon which the good cause waiver was granted.

[(12)] (13) If the good cause waiver is withdrawn by the [division] department, the notice of such withdrawal shall be mailed by the [division] department to the applicant's last known address, with a copy of the notice sent to the applicant's last known employer, if any.

[(13)] (14) No applicant may be employed in a direct care or direct service position with a provider during the pendency of a request for waiver unless the applicant has been continuously employed by that provider prior to August 28, [1997] 2003. If an applicant is employed on or after August 28, 2003, he or she may be employed following submission of a completed waiver application on a conditional basis to provide in-home services or home health services to any in-home services client or home health patient during the pendency of that waiver application if:

(A) The disqualifying crime is not one that would preclude employment pursuant to subsection 6 of section 660.317, RSMo; and

(B) The applicant is not listed on the Department of Health and Senior Services' employee disqualification list established pursuant to section 660.315, RSMo.

(15) If a waiver is denied to an applicant employed on or after August 28, 2003, on a conditional basis, the conditional employment shall immediately terminate.

[(14)] (16) Applicants who have been denied a good cause waiver, or who have had their good cause waivers withdrawn by the [division] department, may reapply one (1) time every twelve (12) months, or whenever the circumstances related to the disqualifying conviction(s) have changed.

[(15)] (17) Each provider shall be responsible for—

(A) Requesting criminal background checks on all [employment applicants] prospective employees, regardless of waiver status, in accordance with the provisions of sections 660.317 and 43.540, RSMo [Supp. 1998]; and

(B) Contacting the [division] department to confirm the validity of a[n applicant's] prospective employee's good cause waiver prior to hiring the [applicant] prospective employee if the prospective employee reveals the existence of a good cause waiver or reveals the existence of an otherwise disqualifying circumstance.

(18) Each in-home services provider or home health provider shall also be responsible for—

(A) Requesting Family Care Safety Registry background screenings on all prospective employees, regardless of waiver status, in accordance with the provisions of section 660.317.7, RSMo; and

(B) Contacting the department to confirm the validity of a prospective employee's good cause waiver prior to hiring the prospective employee if the prospective employee reveals the existence of a good cause waiver or reveals the existence of an otherwise disqualifying circumstance.

[(16)] (19) All applications for good cause waivers and related documents shall become permanent records maintained by the [division] department.

AUTHORITY: sections 660.017, RSMo 2000, 660.050, and 660.317, RSMo Supp. [1998] 2003. This rule was originally filed as 13 CSR 15-10.060. Emergency rule filed March 1, 1999, effective March 30, 1999, expired Jan. 10, 2000. Original rule filed March 1, 1999, effective Sept. 30, 1999. Moved to 19 CSR 30-82.060, effective Aug. 28, 2001. Emergency amendment filed Oct. 15, 2003, effective Oct. 26, 2003, expires April 22, 2004. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

EXECUTIVE ORDER 03-21

TO ALL DEPARTMENTS AND AGENCIES:

This is to advise that state offices will be closed Friday, November 28, 2003 and Friday, December 26, 2003.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 24th day of October, 2003.

Bob Holden
Governor

ATTEST:

Matt Blunt
Secretary of State