

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 110—Fees

PROPOSED RULE

13 CSR 40-110.020 Federal Income Tax Refund Offset Fee

PURPOSE: This rule defines how the Family Support Division will collect a fee from custodians for whom the division submits past-due child and spousal support debts for collection through the federal income tax refund offset program in a IV-D, nonpublic assistance case.

(1) Definitions. For the purposes of this rule, the following definitions are applicable:

- (A) Division means the Family Support Division;
- (B) Support order means any judicial or administrative order for the support or maintenance of a child and the custodian of a child;
- (C) Support means any financial support that is due under a support order;
- (D) Custodian means the obligee and/or payee of a support order;
- (E) Obligor means a person who owes support under a support order being enforced by the division;
- (F) Case means an official record comprised of a custodian and dependent child(ren), associated with a particular obligor;
- (G) IV-D, nonpublic assistance case means a case in which the custodian and dependent child(ren) have not received Aid to Families with Dependent Children or Temporary Assistance for Needy Families benefits in Missouri and are not currently receiving Medicaid benefits in Missouri, but are receiving child support enforcement services pursuant to section 454.400, RSMo;
- (H) Federal income tax refund offset means a support payment collected through the interception of the obligor's federal income tax refund;
- (I) Distribute means the allocation of a support payment to a case.

(2) Federal Income Tax Refund Offset Fee. The division will collect a twenty-five dollars (\$25) fee for submitting past-due child and spousal support debts for collection through the federal income tax refund offset program.

- (A) The fee will be assessed only if the division collects past-due support on the case through a federal income tax refund offset.
- (B) The fee will be assessed only on IV-D, nonpublic assistance cases to which a federal income tax refund offset distributes.
- (C) The fee will be assessed each time a federal income tax intercept distributes to a IV-D, nonpublic assistance case.
- (D) The obligor will receive credit against the support order for the entire federal income tax refund offset. The fee will be collected from the custodian.
- (E) Prior to disbursement of the federal income tax refund offset payment to the custodian, the fee will be deducted from the amount payable to the custodian.
- (F) If the federal income tax refund offset amount payable to the custodian is less than twenty-five dollars (\$25), the fee amount will equal the offset amount payable to the custodian.

AUTHORITY: section 454.400.2(5), RSMo. Original rule filed Sept. 10, 2004.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions twenty thousand four hundred sixty-six dollars (\$20,466) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost private entities two hundred sixteen thousand seven hundred fifty dollars (\$216,750) per year.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Family Support Division, Denise Cross, Director, 615 Howerton Court, PO Box 2320, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 40-110.020 Federal Income Tax Refund Offset Fee
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate		
	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007
Family Support Division			
Notices mailed to eligible entities	\$20,466	N/A	N/A

III. WORKSHEET

Number of Notices	Postage Cost Per Notice	Total Mailing Cost
58,143	\$0.352	\$20,466

IV. ASSUMPTIONS

1. Federal income tax refund offset fees are collected at the case level.
2. Based on case data as of 6/30/2004, there are an estimated 58,143 cases that are or will become eligible for the fee.
3. Postage costs associated with mailing advance notices to eligible entities of the agency's intent to charge the fee is \$0.352 per notice for pre-sorted mail.
4. After implementation of the fee, notice to affected entities will be incorporated into existing agency forms/notices at no additional cost.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 40-110.020 Federal Income Tax Refund Offset Fee
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed 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:
8,670	Custodians	\$216,750

III. WORKSHEET

Projected eligible cases per year	Fee per eligible case	Projected annual fee collections
8,670	\$25	\$216,750

IV. ASSUMPTIONS

1. Federal income tax refund offset fees are collected at the case level.
2. Estimate in the aggregate is presented as the annual total for all affected custodians. The life of the rule is without end.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 14—Legal Expense Fund Coverage for
Attorneys Practicing Law Without Compensation

PROPOSED RULE

15 CSR 60-14.010 Definitions

PURPOSE: This rule defines terms used in section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).

- (1) "Agency"—an agency of any federal, state, or local government.
- (2) "Agency of any federal, state, or local government"—a governmental agency located in the state of Missouri, existing under and deriving its powers from the federal or state constitution or federal or state law.
- (3) "Center"—a nonprofit community social services center.
- (4) "Licensed attorney"—a member of The Missouri Bar, including a member exempt from the payment of bar dues pursuant to Supreme Court Rule 6.01(d)(1), (2) or (3), but not including an attorney in the reduced enrollment fee category of Supreme Court Rule 6.01(j)(3).
- (5) "Nonprofit community social services center"—a nonprofit corporation, a benevolent corporation or an unincorporated association that provides legal services without charge to or on behalf of poor or indigent Missouri residents, that has applied for tax-exempt status under section 501(c)(3) of the *Internal Revenue Code* and has received a determination letter from the Internal Revenue Service recognizing the organization's tax exempt status.

AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. Original rule filed Sept. 2, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Attorney General, Attn. Brett Berri PO Box 899, Jefferson City, MO 65102-0899, by faxing (573) 751-0774 or via e-mail at brett.berri@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 14—Legal Expense Fund Coverage for
Attorneys Practicing Law Without Compensation

PROPOSED RULE

15 CSR 60-14.020 Contract Procedures

PURPOSE: This rule prescribes contract procedures for purposes of section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).

(1) An attorney practices law at or through a nonprofit community social services center or through any agency of any federal, state, or local government if:

(A) The attorney provides to the center or agency in writing his or her name, address, place of employment, if any, daytime telephone number and Missouri Bar number;

(B) The attorney is assigned clients, cases or matters by the center under procedures adopted by the center or agency, not to include clients assigned by court order;

(C) The attorney has no preexisting attorney client relationship with any client under which a fee has been collected or contracted for;

(D) The attorney agrees in writing at the outset of any representation or consultation that no fee will be charged, sought or accepted for representation or consultation regardless of the outcome of the representation or consultation; and

(E) The attorney does not discriminate in providing legal services on the basis of race, sex, religion, national origin or ethnic background.

(2) An attorney practices law without compensation at or through a nonprofit community social services center or through any agency of any federal, state, or local government if:

(A) Neither the attorney nor the center receives, or contracts for the receipt of a fee, donation or contribution of money, goods, services or any other thing of value in any way related to the attorney's legal representation;

(B) The attorney does not receive a salary, hourly wage or any other thing of value from the center or agency;

(C) The attorney does not receive a salary, hourly wage or any other thing of value from any person, firm, corporation, partnership or any other source in any way related to the attorney's practice of law at or through the center or agency; and

(D) No other individual or entity, other than the client and/or his or her heirs, assigns and beneficiaries, receives anything of value in any way related to the attorney's services at or through the center.

AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. Original rule filed Sept. 2, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Attorney General, Attn. Brett Berri PO Box 899, Jefferson City, MO 65102-0899, by faxing (573) 751-0774 or via e-mail at brett.berri@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 14—Legal Expense Fund Coverage for
Attorneys Practicing Law Without Compensation

PROPOSED RULE

15 CSR 60-14.030 Documentation of Legal Practice

PURPOSE: This rule prescribes procedures for documentation of legal practice for purposes of section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).

(1) A nonprofit community social services center through which any attorney practices law without compensation shall provide a copy of its federal tax exemption letter or other verification of tax exempt status under section 501(c)(3) of the *Internal Revenue Code* to the Attorney General.

(2) For each attorney who provides legal services without compensation at or through a nonprofit community social services center or through any agency of any federal, state, or local government or through any agency of any federal, state, or local government, the center or agency shall annually during the month of June provide to the Attorney General:

(A) The attorney's name, address, and daytime telephone number;

(B) The attorney's Missouri Bar number or other evidence that the attorney is licensed to practice law in Missouri;

(C) An estimate of the number of hours per year of legal services provided without compensation by the attorney through the center or agency;

(D) A general description of the area of practice engaged in by the attorney.

(3) An attorney practicing law at or through a nonprofit community social services center may maintain records documenting client representation or consultation at the center if, in the attorney's professional judgement, the center has a physical location with record keeping capabilities adequate to preserve the records and to safeguard attorney client confidences. If the center does not have an adequate physical location, the attorney shall maintain such records at his or her place of business, home or other location appropriate for securing client records.

(4) Documentation of coverage shall be maintained by the Attorney General.

AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. Original rule filed Sept. 2, 2004.

PUBLIC COST: This proposed rule will cost state agencies and political subdivisions five thousand ninety dollars (\$5,090) per year over the life of the rule in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Attorney General, Attn. Brett Berri PO Box 899, Jefferson City, MO 65102-0899, by faxing (573) 751-0774 or via e-mail at brett.berri@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
 PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	15 CSR 60-14.030 - Documentation of Legal Practice
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Office of the Attorney General	\$5,090 per year over the life of the rule

III. WORKSHEET

The Attorney General's Office maintains certain databases and registries (e.g. No-Call, racial profiling, charitable organizations, health spas) and based on the workload in those areas, estimates that a paralegal would spend approximately 250 hours per year maintaining documentation on 1,250 attorneys practicing law without compensation. The salary for a paralegal is \$22,500 x 0.125 = \$2,812.50, associated fringe benefits = \$1,164.00, expense and equipment = \$1,114.00.

IV. ASSUMPTIONS

The costs stated herein do not include the cost of defending claims against the Legal Expense Fund or the costs to the Legal Expense Fund as a result of successful claims, because this rule neither creates the Fund's liability to pay claims nor the Attorney General's duty to defend claims against it. The rule requires the Office of the Attorney General to file and maintain certain documentation from nonprofit and governmental entities. Although the number of filings is unknown at this time, based upon conversations with various nonprofit and governmental entities, the Attorney General's Office assumes documentation for between 500 and 2,000 attorneys will be filed each year. Certain governmental agencies utilizing volunteer attorneys might incur some de minimus costs in making the required filing with the Attorney General's Office; any such cost is not included in the calculation.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES**

**Division 20—Division of Environmental Health and
Communicable Disease Prevention
Chapter 3—General Sanitation**

PROPOSED RESCISSION

19 CSR 20-3.080 Description of Persons Qualified to Perform Percolation Tests of Soils Morphology Examinations in Determining Soil Properties for On-Site Sewage Disposal Systems. This rule established a list describing those persons qualified to perform percolation tests or soils morphology examinations in determining soil properties for on-site sewage disposal systems. This listing is authorized and mandated by section 701.040(2), RSMo.

PURPOSE: This rule is being rescinded because a new rule, 19 CSR 20-3.080, has been developed to establish the criteria for inclusion on the lists describing those persons registered to perform percolation tests and/or soils morphology examinations in determining soil properties for on-site wastewater treatment systems and for inclusion on the registered on-site wastewater treatment system installers list in accordance with sections 701.025 through 701.059, RSMo and 19 CSR 20-3.060.

AUTHORITY: section 701.040(2), RSMo 1994. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Emergency amendment filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. Rescinded: Filed Sept. 2, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Bryant McNally, Division Director, Missouri Department of Health; Division of Environmental Health and Communicable Disease Prevention; PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearings will be held.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES**

**Division 20—Division of Environmental Health and
Communicable Disease Prevention
Chapter 3—General Sanitation**

PROPOSED RULE

19 CSR 20-3.080 Requirements for Percolation Testers or On-Site Soils Evaluators and Registered On-Site Wastewater Treatment System Installers

PURPOSE: This rule establishes the criteria for inclusion on the lists of those persons qualified to perform percolation tests and/or soils morphology evaluations in determining soil properties for on-site wastewater treatment systems and for inclusion on the registered on-site wastewater treatment system installers list in accordance with sections 701.025 through 701.059, RSMo.

(1) The following definitions shall apply to this rule:

(A) Administrative authority—The governing body which may include, but is not limited to, county health departments, planning and zoning commissions, county building departments, county public works department, sewer districts, municipalities and the Missouri Department of Health and Senior Services which has, as authorized by statute, charter or other form of enabling authority, adopted regulations equal to or greater than sections 701.025 through 701.059, RSMo for individual on-site wastewater treatment systems;

(B) Advanced on-site wastewater treatment system (OWTS) installer—A person registered by the department to install advanced OWTS as listed by the department;

(C) Department—The Missouri Department of Health and Senior Services;

(D) Installer—Any person defined in section 701.025, RSMo as an “on-site sewage disposal system contractor”;

(E) On-site soil evaluators (OSE)—Individuals including soil scientists, as defined by section 701.040.1(2), RSMo; licensed engineers, and registered geologists as defined by section 701.040.1(2), RSMo with ten (10) semester hours of soils course work including three (3) semester hours of course work in soil morphology and interpretations; and meeting the requirements of this rule;

(F) On-site wastewater treatment system (OWTS)—Any system defined in section 701.025(8), RSMo as an “on-site sewage disposal system”;

(G) Regular on-site wastewater treatment system (OWTS) installer—A person registered by the department to install regular OWTS as listed by the department; and

(H) Soil morphology evaluation—The method of testing or evaluating absorption qualities of the soil by physical examination of the soils’ color, mottling, texture, structure, topography and hill-slope position.

(2) A person must be registered by the department to conduct any part of a percolation test or soil morphology evaluation in which results are intended for use in the design of an OWTS or to install an OWTS according to the standards set forth in sections 701.025 through 701.059, RSMo and 19 CSR 20-3.060.

(A) Percolation Tests.

1. To obtain registration from the department to conduct a percolation test, a person shall:

A. Successfully complete a training course conducted by or approved by the department. This training course shall include, at a minimum, course work, field work, a written examination and a practical examination; or

B. Submit documentation that he/she meets the definitions of OSE, licensed engineer or registered geologist; and

C. Complete the department’s registration process described in section (3).

(B) Soil morphology evaluations shall be conducted by individuals meeting the definition of an OSE and meeting the requirements of this rule.

1. To obtain registration from the department to perform soils morphology evaluations, a person shall:

A. Provide the following information:

(I) An original transcript from the school or university attended mailed directly from the registrar to the department in Jefferson City;

(II) Course descriptions from the school attended to verify the nature of the course work if requested; and

(III) A copy of current applicable professional registration for licensed engineers or registered geologists indicating the registrant is in good standing;

B. Complete a written and a field test conducted by or approved by the department with a score of seventy percent (70%) or higher on each section; and

C. Complete the department registration process described in section (3).

(C) Installation of On-Site Wastewater Treatment Systems. The installation of any OWTS can only be done by a person registered with the department, with the exception of a property owner meeting the requirements of section 701.055, RSMo. After July 1, 2005, only persons registered as advanced OWTS installers shall install systems listed by the department as advanced OWTS.

1. To obtain registration from the department as a regular OWTS installer, a person shall:

A. Complete a training course conducted by or approved by the department with a score of seventy percent (70%) or higher; and

B. Complete the department registration process described in section (3).

2. To obtain registration from the department as an advanced OWTS installer, a person shall:

A. Possess a regular OWTS installer's registration in good standing;

B. Complete an advanced OWTS installer training course approved by the department with a score of seventy percent (70%) or higher; and

C. Complete the department registration process described in section (3).

(3) Department Registration Process.

(A) To complete the department registration process, a person shall:

1. Complete an application on a form approved by the department;

2. Pay the registration or registration renewal fee at the time the application is submitted. Payment shall be made in the form of a personal check, certified or cashier's check or money order made payable to the Department of Health and Senior Services. This is a nonrefundable processing fee;

3. Pay a late charge of ten dollars (\$10) in addition to the registration renewal fee if an application is submitted more than fifteen (15) days after the previous registration expires. Registration renewal applications will not be accepted if more than forty-five (45) days after the previous registration expires. Persons submitting registration renewal applications more than forty-five (45) days after expiration of their registration will be required to complete the original registration process, including any department training requirements for original registration; and

4. Each renewal application shall include a list of all continuing education units (CEU) completed for the thirty-six (36)-month period prior to the application. The department shall not grant a renewal of the registration unless the applicant provides documentation of successful completion of at least twenty (20) hours of department-approved CEU, four (4) hours of which shall be provided by the department, within the thirty-six (36)-month period prior to the application.

(B) All individuals certified, listed, or registered with the department before August 28, 2004, will receive a registration during the first year of implementation of this rule, valid for not more than thirty-six (36) months which shall be renewable upon completion of the department registration process as described in section (3) and paying a fee not to exceed ninety dollars (\$90). Each registration issued during the first year will be assigned an expiration date by the department.

(C) After August 28, 2004, persons registering for the first time and paying a ninety-dollar (\$90) fee, will receive a registration valid for thirty-six (36) months, unless otherwise suspended, revoked or surrendered, and shall be renewable upon completion of the department registration process described in section (3), and paying a fee not to exceed ninety dollars (\$90).

(D) After August 28, 2004, the department may issue a one (1)-time temporary regular OWTS installer registration, valid for no more than one hundred eighty (180) days for work in a specific county or counties. The temporary regular OWTS registration will be converted to a regular OWTS installer registration upon completion of a department-approved training program and completion of the department registration process as described in section (3). Failure to complete the training or the department registration process will result in termination of the person's temporary regular OWTS installer registration.

(E) After August 28, 2004, the department may issue a probationary regular OWTS installer registration for work in a specific county or counties. This registration will be valid for a specific period of time, as determined by the department, and will be dependent on the registered person meeting and maintaining specific requirements as established by the department.

(4) Standards of Practice—Percolation Testers, OSE or OWTS Installers.

(A) A percolation tester or OSE shall:

1. Possess a current registration with the department before performing any activities related to a percolation test or morphology evaluation;

2. Record their registration number on all bids, proposals, contracts, invoices, soil evaluation reports, or other correspondence with the homeowner and administrative authority;

3. Provide true and accurate information on any application, percolation test report, soil evaluation report and any other OWTS documentation;

4. Maintain a current address and phone number with the department and submit any address or phone number changes to the department in writing within thirty (30) days of the change taking place;

5. Percolation tests must be conducted in accordance with section (2) of 19 CSR 20-3.060; and

6. Site/soil morphology evaluations completed by an OSE must comply with the standards detailed in sections (2) and (7) of 19 CSR 20-3.060 including but not limited to the following items:

A. Evaluate the nine (9) items listed in paragraphs (2)(A) 2.-10.;

B. Evaluate and classify six (6) site factors listed in subsection (7)(C), as suitable, provisionally suitable, or unsuitable according to subsections (7)(E) through (L);

C. Include a diagram showing location and extent of the area(s) evaluated;

D. Make recommendations regarding the use or effectiveness of water lowering systems when there is evidence of a high water table; and

E. Based on subsection (7)(M) and Tables 13 and 14, for horizons that are not classified as unsuitable, assign a conventional soil loading rate for each horizon and assign an alternative soil loading rate for each horizon at least to a depth of twelve inches (12") below the likely depth of an alternative system.

(B) A registered regular OWTS installer or a registered advanced OWTS installer shall:

1. Possess a current regular OWTS installer registration or advanced OWTS installer registration with the department before beginning construction of an on-site wastewater treatment system;

2. Record their registration number on all bids, proposals, contracts, invoices, permit application construction drawings, or other correspondence with the homeowner and administrative authority;

3. Provide true and accurate information on any application and any other OWTS documentation;

4. Begin the construction of an OWTS only after obtaining approval from the administrative authority, unless approval is not required;

5. Construct the OWTS meeting the construction and permit criteria required by sections 701.025–701.059, RSMo and any rule adopted thereunder or the more stringent requirements of the administrative authority, if applicable;

6. Construct the OWTS that has been authorized by the administrative authority for the specific location identified in the application;

7. Be present at the construction site during construction and supervise all construction activities;

8. Submit complete and accurate “certification without on-site inspection form,” when requested; and

9. Maintain a current address and phone number with the department and submit any address or phone number changes to the department in writing within thirty (30) days of the change taking place.

(5) The department may audit the work of a percolation tester, OSE, registered regular OWTS installer or registered advanced OWTS installer at any time to determine whether the standards of practice, as defined by this rule are being met. Failure to adhere to department standards may be cause for placement on probation, suspension, or revocation of the registration, or for mandatory successful completion of a training course and/or testing as described in section (2). The audit may be an unannounced visit to the property on which the percolation test, soil morphology examination or on-site sewage system installation was conducted, which may include an independent soil percolation test or soil morphology examination, or a visit within the period of a soil percolation test, soil morphology examination or on-site sewage system installation with or without prior appointment with the registered person.

(6) A percolation tester, or OSE or registered regular OWTS installer or registered advanced OWTS installer may have their registration placed on probation, suspended, or revoked if the person:

(A) Fails to meet the registration renewal requirements;

(B) Fails an audit or refuses to participate in an audit;

(C) Fails to submit reports, submits false reports or allows another individual to use his/her license;

(D) Is convicted of a violation of any provisions of sections 701.025 through 701.059, RSMo or any rules promulgated under these statutes;

(E) Has plead guilty or has been found guilty of an infraction, misdemeanor or felony involving misrepresentation, fraud or other crime relating to activities of percolation testing, soil morphology evaluations, installing, repairing, inspecting or otherwise associated with on-site sewage disposal systems;

(F) Directs or allows an unregistered person to conduct a percolation test, or soil morphology examination;

(G) Directs or allows an unregistered person to install an on-site wastewater treatment system without direct supervision; or

(H) Fails to comply with standards of practice established by this rule.

(7) The suspension or revocation of a percolation tester’s or OSE’s registration shall be served in writing by certified mail or personal service to the affected person or his/her representative. The decision of the department may be appealed to the Administrative Hearing Commission as provided in Chapters 536 and 621, RSMo.

(8) Any person whose registration has been revoked may not reapply for registration for at least one (1) year from date of revocation, and must complete the department training requirements for registration described in section (2) and complete the department registration process as described in section (3) above.

(9) A person may be permanently barred from reapplying for registration if—

(A) The person has plead guilty or has been found guilty of an infraction, misdemeanor or felony involving misrepresentation, fraud or other crime relating to activities associated with an OWTS; or

(B) The person has his/her registration revoked a second time within five (5) years.

(10) No person as defined in section 701.025, RSMo may authorize, permit, or knowingly allow the installation of an on-site wastewater treatment system by an unregistered person other than the property owner.

AUTHORITY: sections 701.033, RSMo Supp. 2004 and 701.040, RSMo 2000. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Emergency amendment filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. Rescinded and readopted: Filed Sept. 2, 2004.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions two thousand five hundred seventy-seven dollars (\$2,577) in the first year and eighty-three dollars (\$83) annually thereafter in the aggregate.

PRIVATE COST: This proposed rule will cost private entities three hundred twenty-two thousand dollars (\$322,000) annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Bryant McNally, Division Director, Missouri Department of Health and Senior Services; Division of Environmental Health and Communicable Disease Prevention; PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title: 19-DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division: 20-Environmental Health & CD Prevention

Chapter: 3-General Sanitation

Type of Rule Making: Proposed Rule

Rule Number and Name: 19 CSR 20-3.080 Requirements for Percolation Testers or On-site Soils Evaluators and Registered On-site Wastewater Treatment System Installers.

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision:	Estimated Cost of Compliance in the Aggregate:
Missouri Department of Health and Senior Services	\$2,577 (first year) and \$83 (annually thereafter)
Local Public Health Agencies	\$0

III. WORKSHEET

Installer registrations:

Using standard fiscal note costs, the cost of a Health Program Representative I to review regular and advanced onsite wastewater treatment system installer registration applications and issue registrations full-time would be \$59,577 for the first year, and \$56,767 for the second year.

Fees are expected to generate \$57,000 per year, resulting in a net cost of:

$\$59,577 - \$57,000 = \$2,577$ for the first year.

After the first year, installer registration fees would cover administrative costs associated with registration activities, resulting in no net cost to the Missouri Department of Health and Senior Services.

Percolation testers and Onsite soil evaluators:

It is estimated that it will take 333 hours of a Health Program Representative I position to review percolation tester and onsite soil evaluator registration applications and issue registrations. This amount of time was divided by the total hours of an FTE to find the fraction of an FTE needed, resulting in 0.16 (333/2080). Using standard fiscal note costs, the cost of 0.16 of a Health Program Representative I is \$8,751 for the first year, and \$9,083 for the second year.

Fees are expected to generate \$9,000 each year, resulting in no net cost for the first year and \$83 net cost for the second year and annually thereafter.

IV. ASSUMPTIONS

1. We expect 1,900 regular and advanced onsite wastewater treatment system installers to register each year at \$30 per year per registration:

$$1,900 \times \$30 = \$57,000$$

2. We expect 225 percolation testers to register each year at \$30 per year per registration:

$$225 \times \$30 = \$6750$$

3. We expect 75 Onsite Soil Evaluators to register each year at \$30 per year per registration:

$$75 \times \$30 = \$2,250$$

4. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Title: 19-DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division: 20-Environmental Health & CD Prevention

Chapter: 3-General Sanitation

Type of Rule Making: Proposed Rule

Rule Number and Name: 19 CSR 20-3.080 Requirements for Percolation Testers or On-site Soils Evaluators and Registered On-site Wastewater Treatment System Installers.

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type 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:
300	New Installers	\$75,000 annually
1,600	Installers with existing Registrations	\$208,000 annually
25	New Percolation Testers	\$3,250 annually
200	Percolation Testers with existing Registrations	\$26,000 annually
75	Onsite Soil Evaluators	\$9,750 annually

III. WORKSHEET

1. Costs for installers to attend mandatory training class, which includes registration fee for one year: \$250.

2. At 300 new installers per year, annual cost to this classification will be:

$$300 \times \$250 = \$75,000$$

3. Registration fees are \$30 per year per installer (except for the initial registration fee, which is included in the training fee):

Total number registered per year: 1,900
Total number of new registrations per year: 300
Total number of registration renewals per year: 1,600 (1,900 – 300)

4. At 1,600 installer registration renewals per year, annual cost to this classification will be:

$$1,600 \times \$30 = \$48,000$$

5. At 1,600 installers registered each year, continuing education costs will be:

$$1,600 \times \$100 = \$160,000$$

6. Costs for new percolation testers to attend a mandatory training class: \$100

7. At 25 new percolation testers per year, annual training costs to this classification will be:

$$25 \times \$100 = \$2,500$$

8. Registration fees are \$30 per year per percolation tester:

Total number registered per year: 225

Total number of new registrations per year: 25

Total number of registration renewals per year: 200 (225 -- 25)

9. At 25 new percolation testers per year, annual registration costs to this classification will be:

$$25 \times \$30 = \$750$$

10. At 200 percolation tester registration renewals per year, annual cost to this classification will be:

$$200 \times \$30 = \$6,000$$

11. At 200 percolation testers registered each year, continuing education costs will be:

$$200 \times \$100 = \$20,000$$

12. Registration fees are \$30 per year per Onsite Soil Evaluator:

$$75 \times \$30 = \$2,250$$

13. At 75 Onsite Soil Evaluators registered each year, continuing education costs will be:

$$75 \times \$100 = \$7,500$$

IV. ASSUMPTIONS

1. There will be 300 new installers and 25 new percolation testers registered each year.
2. We estimate 300 installers 25 percolation testers will leave the industry each year.
3. There will be 1,900 total installers, 225 percolation testers, and 75 onsite soil evaluators registered each year.
4. Cost of one continuing education unit will be \$30 - \$200, with an average of \$100 per unit.
5. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES**

**Division 30—Division of Health Standards and Licensure
Chapter 83—Definition of Terms**

PROPOSED AMENDMENT

19 CSR 30-83.010 Definition of Terms. The department proposes to amend the Purpose statement, sections (1), (3), (4), (5), (6), (12), (14), (23) and (32), add new sections (2) and (9), and renumber the sections accordingly.

PURPOSE: This proposed amendment updates the definitions, which apply to 19 CSR 30-85, 19 CSR 30-86, 19 CSR 30-87 and 19 CSR 30-88.

PURPOSE: This rule defines terms used in the rules for long-term care facilities as set forth in chapters [13 CSR 15-14, 13 CSR 15-15, 13 CSR 15-17, 13 CSR 15-18] 19 CSR 30-85, 19 CSR 30-86, 19 CSR 30-87, and 19 CSR 3-88.

(1) Administrator—**Shall mean** [A]an individual person who is in general administrative charge of a facility.

(2) Automated dispensing system—**Shall mean a mechanical system that performs functions that may include, but are not limited to, storing, packaging or dispensing medications, and that collects, controls and maintains all transaction information.**

[(2)](3) Certified-medication technician—Shall mean a nursing assistant who has completed a course in medication administration approved by the [Division of Aging] Department of Health and Senior Services.

[(3)](4) Chemical restraint—Shall mean any [drug, utilized in such a strength or in such a manner as to suppress normal physical or mental activity] medication that is used for discipline or convenience and not required to treat medical symptoms. For the purposes of this definition, discipline means any action taken by the facility for the purpose of punishing or penalizing residents and convenience means any action taken by the facility to control a resident's behavior or maintain a resident with a lesser amount of effort by the facility and not in the resident's best interest.

[(4)](5) Communicable disease—Any illness, disease or condition reportable to the Missouri Department of Health and Senior Services as required by 19 CSR 20-20.010 and 19 CSR 20-20.020 is considered, for the context of these rules, a communicable disease.

[(5)](6) Control of medication—Shall mean assuming responsibility by the facility for [the storage and distribution or administration] all facets of control of medication including, but not limited to, acquisition, storage, security and administration.

[6]/(7) Designee—Shall mean an individual who has been designated in writing by a resident to handle matters and receive reports related to his/her personal possessions and property.

[(7)](8) Emergency medical procedure—Shall mean those written policies and procedures which describe the types and degrees of accidents and injuries, how they will be treated, by whom, in which instances the resident's physician will be notified and how quickly.

(9) Emergency medication supply—**Shall mean a limited number of dosage units of prescription medications that may be administered to a resident in an emergency situation or for initial doses of a necessary medication when a pharmacy cannot provide a prescription for a resident within a reasonable time based on the resident's clinical needs at the time.**

[(8)](10) Existing or existing licensed facility—Shall mean a long-term care facility which was licensed and in operation or one whose plans were approved prior to June 10, 1981 for a skilled or intermediate care facility or prior to November 13, 1980 for residential care facilities I and II.

[(9)](11) Exit—Shall mean a door leading to the outside or through a horizontal exit in a fire wall to a fire-safe area in the building.

[(10)](12) Fire-resistant construction—For intermediate care facilities and skilled nursing facilities, fire-resistant construction shall mean that a facility meets the specifications for [two (2)-hour fire-resistive construction or protected noncombustible] Type II (222) or Type II (111) construction as given in the National Fire Protection Association Code 220. The definition of fire-resistant construction for residential care facilities I and II is given in [13 CSR 15-15.022(42)] 19 CSR 30-86.022(2)(B).

[(11)](13) Hazardous area—Shall mean furnace rooms other than electric forced air furnaces, laundries, kitchens, maintenance shops and storage rooms of over one hundred (100) square feet and any areas which contain combustible materials which will be either easily ignited, burn with an intense flame or result in the production of dense smoke and fumes.

[(12)](14) Level I medication [technician] aide—Shall mean an individual who has completed a course approved by the [Division of Aging] Department of Health and Senior Services in medication administration in a residential care type facility.

[(13)](15) Long-term care facility—Shall mean a facility that is licensed either solely or in combination as a skilled nursing facility, an intermediate care facility, a residential care facility II or a residential care facility I.

[(14)](16) Major fraction thereof—Shall mean anything over fifty percent (50%) of the number of occupied beds.

[(15)](17) Major remodeling—Shall mean any remodeling of a long-term care facility which involves the addition of resident-use rooms, which affects fire safety or the structure of the building.

[(16)](18) Multistory building—Shall mean any building with more than one (1) floor entirely above the grade. A floor that is partially below grade will be counted as the first story to determine sprinkler requirements only if it contains resident sleeping rooms.

[(17)](19) New or newly licensed facility—Shall mean a long-term care facility whose plans are approved or which is licensed after June 10, 1981 for a skilled nursing or intermediate care facility or after November 13, 1980 for residential care facility I or II.

[(18)](20) Nursing personnel—Shall include any employee, including a nurse's aide or an orderly, who provides or assists in the provision of direct resident health care services.

[(19)](21) Operator—Shall mean any person licensed or required to be licensed under the provisions of sections 198.003–198.096, RSMo, in order to establish, conduct or maintain a facility. The term person required to be licensed shall mean any person having the following, as determined by the division:

(A) Ultimate responsibility for making and implementing decisions regarding the operation of the facility;

(B) Ultimate financial control of the operation of a facility; and

(C) Legal right to possession of the premises on which a facility is located.

[(20)](22) Person—Shall mean any individual, or any entity, including, but not limited to, a corporation, partnership, association, non-

profit organization, fraternal organization, church or political subdivision of the state of Missouri.

[(21)](23) Physical restraint—Shall mean *[anything which serves to inhibit physical mobility including, but not limited to, any type of strap or harness or any locked door which is not customarily locked as a matter of security]* any manual method or physical or mechanical device, material or equipment attached to or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. Physical restraints include, but are not limited to leg restraints, arm restraints, hand mitts, soft ties or vests, lap cushions and lap trays the resident cannot remove easily. Physical restraints also include facility practices that meet the definition of a restraint, such as the following:

(A) Using side rails that keep a resident from voluntarily getting out of bed;

(B) Tucking in or using Velcro to hold a sheet, fabric or clothing tightly so that a resident's movement is restricted;

(C) Using devices in conjunction with a chair, such as trays, tables, bars or belts, that the resident can not remove easily, that prevent the resident from rising;

(D) Placing the resident in a chair that prevents a resident from rising; and

(E) Placing a chair or bed so close to a wall that the wall prevents the resident from rising out of the chair or voluntarily getting out of bed.

[(22)](24) Physician—Shall mean an individual licensed to practice medicine in the state of Missouri under Chapter 334, RSMo.

[(23)](25) Premises—Shall mean any structure(s) that are in close proximity one to the other and which are located on a single piece of property.

[(24)](26) Protective oversight—Shall mean an awareness twenty-four (24) hours a day of the location of a resident, the ability to intervene on behalf of the resident, supervision of nutrition, medication, or actual provisions of care and the responsibility for the welfare of the resident, except where the resident is on voluntary leave.

[(25)](27) Qualified dietitian—Shall mean an individual who is registered by the American Dietetic Association or who is eligible for registration.

[(26)](28) Qualified therapist—Shall mean an individual who is either registered or is eligible for registration by the national accrediting association for that therapy or, if applicable, is licensed by the state of Missouri for the practice of the profession in which s/he is engaged.

[(27)](29) Qualified therapy assistant—Shall mean an individual who would be qualified as an occupational therapy or physical therapy assistant as outlined in CFR 405.1101.

[(28)](30) Responsible party—Shall mean an individual who has been designated in writing by the resident to handle matters and receive reports related to his/her general condition.

[(29)](31) Self-administration of medication—Shall mean the act of actually taking or applying medication to oneself.

[(30)](32) Self-control of medication—Shall mean assuming immediate responsibility by a resident for the storage and administration of medication for oneself while the facility retains ultimate control of medication.

[(31)](33) Skilled nursing care—Shall mean services furnished pursuant to physicians' orders which require the skills of licensed nurs-

es and which are provided directly by or under the on-site supervision of these personnel. Examples of skilled nursing care may include, but are not limited to: administration of levine tube or gastrostomy tube feedings; nasopharyngeal and tracheotomy aspiration; insertion of medicated or sterile irrigation solutions and replacement of catheters; administration of parenteral fluids; inhalation therapy treatments; administration of other treatments requiring aseptic technique; and administration of injectable medication other than insulin.

[(32)](34) Voluntary leave—Shall mean an off-premise leave initiated by: a) a resident that has not been declared mentally incompetent or incapacitated by a court; or b) a legal guardian of a resident that has been declared mentally incompetent or incapacitated by a court.

AUTHORITY: sections 198.006, RSMo Supp. 2003 and 198.009, RSMo 2000. Emergency rule filed Sept. 7, 1979, effective Sept. 28, 1979, expired Jan. 24, 1980. This rule originally filed as 13 CSR 15-11.010. Original rule filed Sept. 7, 1979, effective Jan. 12, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 89—Specialized Long-Term Care Facilities or Special Care Units

PROPOSED RESCISSION

19 CSR 30-89.010 Pediatric Nursing Facilities. This rule set forth definitions and standards for nursing facilities to follow if care is being provided exclusively for persons under twenty-one years of age.

PURPOSE: This rule is being rescinded because there are no longer any facilities in Missouri to which these rules apply.

AUTHORITY: sections 198.009 and 198.079, RSMo 1986. This rule originally filed as 13 CSR 15-20.010. Original rule filed Nov. 2, 1990, effective April 29, 1991. Moved to 19 CSR 30-89.010, effective Aug. 28, 2001. Rescinded: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with David S. Durbin J.D., MPA, Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570,

Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES**

**Division 30—Division of Health Standards and Licensure
Chapter 90—Adult Day Care Program Licensure**

PROPOSED AMENDMENT

19 CSR 30-90.010 Definitions. The division proposes to amend the Purpose statement, amend sections (1), (2), (5), (6), (8), (10), (11), (13), (16), (17), and (21); add new sections (3), (4), (7), (9), (12), (14), (15), (18) through (20), and (22), delete section (7), and renumber sections accordingly.

PURPOSE: This proposed amendment is to update the definitions which apply throughout Chapter 90, Adult Day Care Program Licensure.

PURPOSE: The following definitions are listed to establish an understanding of the terms as applied to Chapter [8] 90, Adult Day Care Program Licensure.

(1) Adult day care program/. *A/* means a group program designed to provide care and supervision to meet the needs of five (5) or more functionally impaired adults for periods of less than twenty-four (24) hours but more than two (2) hours per day in a place other than the adult's own home.

(2) Adult day care provider/.] means *[T/*the person, corporation, partnership, association or organization legally responsible for the overall operation of the adult day care program/, *who has a current license, or provisional license, to operate issued by the Division of Aging].*

(3) Adult day health care means an adult day care program certified to provide Medicaid reimbursed services to Medicaid-eligible participants in accordance with standards set forth in 19 CSR 70-92.010.

(4) Alzheimer's special care unit or program means any adult day care program that provides a designated separated unit or program for participants with a diagnosis of probable Alzheimer's disease or related disorder, to prevent or limit access by a participant outside the designated or separated area; or that advertises, markets or promotes the adult day care program as providing Alzheimer's or dementia care services.

[(3)](5) Applicant/. *The/* means any person, corporation, partnership, association or organization which has submitted an application to operate an adult day care program but has not yet been approved and issued a license/,] or provisional license/,] by the Division of *[Aging]* Senior Services and Regulation.

[(4)](6) Associated adult day care program/. *An/* means an adult day care program which is *[physically attached with]* located in a building also occupied by another organization established primarily to offer other services (*[such as]* for example: medical care, long-term care and human services) but has designated space and staff for an adult day care program which is *[above]* in addition to the existing space and staffing requirements for the residents, patients or clients.

(7) Department means the Missouri Department of Health and Senior Services.

[(5)](8) Direct care staff/. *Those/* means those staff (paid and volunteer) assigned to take care of the direct needs of participants.

(9) Division means the Division of Senior Services and Regulation of the Missouri Department of Health and Senior Services.

[(6)](10) Free-standing adult day care program/. *A/* means a program of adult day care services which does not share staffing or licensed space or any physical components of space, equipment, furnishings, dietary, security, maintenance or utilities utilized in the provision of services with any other organization.

[(7)](11) Functionally impaired adult. An individual aged eighteen (18) or older who, by reason of age or infirmity, requires care and supervision.

(12) Immediate danger means a situation or condition which presents a substantial likelihood of death, life-threatening injury or serious physical or mental harm to a participant.

[(8)](13) Individual plan of care/. *The/* means the adult day care provider's written description of the amount, duration and scope of services to be provided to each individual participant.

(14) License means the document issued by the Division of Senior Services and Regulation in accordance with the provisions of sections 199.025 and 660.403 through 660.420, RSMo to an adult day care program which authorizes the adult day care provider to operate the program in accordance with the provisions of sections 199.025, and 660.403 to 660.420, RSMo and the applicable rules promulgated pursuant thereto.

(15) Licensed nurse means a person currently licensed under the provisions of Chapter 335, RSMo to engage in the practice of practical nursing or professional nursing.

[(9)](16) Long-term care facility/. *Any holding a valid license to operate, issued by the Missouri Division of Aging including: skilled nursing facilities, intermediate care facilities or residential care facilities I and II as defined by section 198, RSMo; or distinct part skilled care units, intermediate care units or residential care units licensed by the Missouri Department of Health as defined by 19 CSR 30-20.010.]* means a "facility" as defined in section 198.006(6) or a "long-term care unit" as defined in 19 CSR 30-20.040.

[(10)](17) Medical care facility/,] means a hospital, rehabilitation facility or other facility holding a valid state license to operate, issued by the Missouri *[Division]* Department of Health and Senior Services, as defined by 19 CSR 30-20.*[010]*/040.

(18) Participant means an adult who by reason of age or infirmity requires care and supervision and who is enrolled in an adult day care program.

(19) Person means any individual, firm, corporation, partnership, association, agency or any other business organization, including but not limited to limited liability companies, regardless of the name used.

(20) Program director means the individual person responsible for the on-site general administration of the adult day care program.

(21) Provisional license means the document issued by the division in accordance with the provisions of sections 199.025, RSMo and 660.403 through 660.420, RSMo to an adult day care program which is currently not meeting the requirements necessary to obtain a license.

(22) **Related** means any individual who is related to any of the following by reason of blood, marriage or adoption: parent, child, grandchild, brother, sister, half-brother, half-sister, step-parent, uncle, aunt, niece, nephew or first cousin.

(23) **Volunteer** means an individual who is utilized by the program to provide a direct care service to program participants with recurring contact whether or not supervised by other employees or volunteers.

AUTHORITY: sections 660.050[, RSMo Supp. 1992] 2003 and 660.418, RSMo [1986] 2000. This rule originally filed as 13 CSR 15-8.010. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Moved to 19 CSR 30-90.010, effective Aug. 28, 2001. Amended: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin J.D., M.P.A., Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 90—Adult Day Care Program Licensure

PROPOSED AMENDMENT

19 CSR 30-90.020 Licensure Requirements. The division proposes to amend sections (1), (2), (4), (6) through (10), add new sections (3), (5), (14), and renumber sections accordingly and replace the forms that follow this rule from the *Code of State Regulations*.

PURPOSE: This rule is being amended to update the requirements for adult day care program licensure; include the requirements of the "Alzheimer's Special Care Disclosure Act" pursuant to sections 198.500 through 198.515, RSMo; update and clarify the licensure revocation and suspension procedures, including the appeal process; and add an exceptions process for adult day care programs.

(1) Any person who establishes, maintains or operates an adult day care program, or advertises or holds him//self or herself out as being able to perform any adult day care service, shall obtain the proper license from the division, except [for the following:] as provided in section (5) of this rule.

[(A) Any adult day care program operated by a person in which care is offered for no more than two (2) hours per day;

(B) Any adult day care program maintained or operated by the federal government except where care is provided through management contract;

(C) Any person who cares solely for persons related to the provider or who has been designated as guardian of that person;

(D) Any adult day care program which cares for no more than four (4) persons who are not related within the fourth degree of consanguinity or affinity to the adult day care provider;

(E) Any adult day care program licensed by the Department of Mental Health under Chapter 630, RSMo, which provides care, treatment and habilitation, exclusively to adults who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disability as defined; or

(F) Any adult day care program administered or maintained by a religious not-for-profit organization serving a social or religious function if the adult day care program does not hold itself out as providing the prescription or usage of physical or medical therapeutic activities or as providing or administering medicines or drugs.]

(2) An [application] applicant shall [be] submit[ted] the following documents to the division for each proposed associated or free-standing adult day care program: [on forms supplied by the Division of Aging.]

(A) A fully completed, properly signed and notarized Application for License to Operate an Adult Day Care Program, included herein; and

(B) The required licensure fee.

(3) Every adult day care program that includes an Alzheimer's special care unit or program as defined in section 198.505, RSMo, shall submit to the division, as part of the licensure application or renewal, the following:

(A) A completed Alzheimer's Special Care Services Disclosure form (MO Form 886-3548), available at http://www.oa.state.mo.us/gs/form/fm/_indiv.htm, stating how the care is different from the rest of the program in the following areas:

1. The Alzheimer's special care unit's or program's written statement of its overall philosophy and mission which reflects the needs of participants afflicted with dementia;

2. The process and criteria for placement in, or discharge from, the program;

3. The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

4. Staff training and continuing education practices;

5. The physical environment and design features appropriate to support the functioning of cognitively impaired participants;

6. The frequency and types of participant activities;

7. The involvement of families and the availability of family support programs;

8. The costs of care and any additional fees; and

9. Safety and security measures; and

(B) A document approved by the division which contains, but is not limited to, updated information on selecting an Alzheimer's special care unit or program.

[(3)](4) A nonrefundable fee shall accompany each adult day care program application for license according to the following schedule for licensed capacity which is the number of program participants who may be present at any one time:

(A) For eight (8) participants or fewer, the fee is twenty-five dollars (\$25);

(B) For nine through sixteen (9-16) participants, the fee is fifty dollars (\$50);

(C) For seventeen through twenty-four (17-24) participants, the fee is seventy-five dollars (\$75); and

(D) For twenty-five (25) or more participants, the fee is one hundred dollars (\$100).

(5) Unless the program has voluntarily submitted to licensure in accordance with section 660.409, RSMo, adult day care licensure requirements shall not apply to any:

(A) Adult day care program operated by a person in which care is offered for no more than two (2) hours per day;

(B) Adult day care program maintained or operated by the federal government except where care is provided through a management contract;

(C) Person who cares solely for persons related to the adult day care provider or who has been designated as guardian of that person;

(D) Adult day care program which cares for no more than four (4) persons who are not related to the adult day care provider as defined in 19 CSR 30-90.010;

(E) Adult day care program licensed by the Department of Mental Health under Chapter 630, RSMo, which provides care, treatment and habilitation exclusively to adults who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disability; or

(F) Adult day care program administered or maintained by a religious not-for-profit organization serving a social or religious function if the adult day care program does not hold itself out as providing the prescription or usage of physical or medical therapeutic activities or as providing or administering medicines or drugs.

[(4)](6) The division shall review each application and investigate each applicant and adult day care program to determine *[that]* if they comply with the adult day care licensure law and these *[rules]* regulations and to insure that the health and safety of the participants are protected.

[(5)](7) If the adult day care program and the applicant are found to be in compliance, a regular license will be issued for a period not to exceed two (2) years for the premises and persons named in the application.

[(6)](8) If an adult day care program is not currently meeting all of the requirements for licensure but demonstrates the potential capacity to meet the full requirements for licensure, a provisional license may be issued if there is no *[threat]* detriment to the health, *[and]* safety and welfare of the participants in the program. The provisional license is nonrenewable and will be valid for a maximum of six (6) months. Any regular license issued subsequent to a provisional license will be valid for a period not to exceed two (2) years from the date that the provisional license was issued.

[(7)](9) Licensure renewal applications will be sent to adult day care providers at least sixty (60) days prior to the expiration date of the current license. Renewal applications must be accompanied by *[a]* the required nonrefundable fee and be post-/marked at least thirty (30) days prior to the expiration date of the current license. *[The nonrefundable fee is identified in the fee schedule in section (3) of this rule.]*

[(8)](10) A regular or provisional license may be revoked or suspended for *[failure to cooperate with the division or]* failure to comply with statutory or regulatory requirements. The division may revoke or suspend a license in any case in which it finds that the adult day care provider:

(A) Failed to comply with any lawful request from the divi-

sion to inspect the premises or investigate any complaint to determine compliance with sections 660.403 through 660.420, RSMo;

(B) Falsified documents, records or any relevant information relating to the operation of the adult day care program;

(C) Placed participants in immediate danger whether or not the adult day care program or adult day care provider corrected the situation which placed participants in immediate danger; or

(D) Failed to achieve substantial compliance with statutory and regulatory requirements after being given a reasonable opportunity and period of time in which to correct the deficiencies cited by the division.

[(9)](11) If any person is refused a license, or a license is suspended or revoked, or other official action by the division is detrimental to the provider of an adult day care program, a determination from the *[a]*Administrative *[h]*Hearing *[c]*Commission may be requested pursuant to provisions of section *[161.272]*621.045, RSMo et seq. This action must be taken within thirty (30) calendar days of official notification of the adverse action taken by the division.

[(10)](12) The license, or provisional license, issued to the adult day care provider, shall not be transferable when there is a change of ownership or when the program is moved to another location, building or *[facility]* premises.

[(11)](13) The application for an adult day care program license shall be signed by the applicant's owner, chairman of the board or chief executive officer and shall be notarized.

(14) The division may, subject to the considerations noted below, grant exceptions for specified periods of time to any rule imposed by the division if the division determines that the exception to the rule would not potentially endanger the health, safety or welfare of any participant in the adult day care program.

(A) The owner or operator of the adult day care program shall make requests for exceptions in writing to the director of the division. The requests shall contain:

1. If the exception request is being made due to a deficiency being cited, a copy of the latest Letter of Notification which indicates the violation;

2. The section number and text of the rule for which the exception is being requested;

3. Specific reasons why compliance with the rule would impose an undue hardship on the operator, including an estimate of any additional cost that might be involved;

4. An explanation of the relevant or extenuating factors; and

5. A complete description of the individual characteristics of the premises, program, participants or other factors that would safeguard the health, safety and welfare of the participants if the exception were granted.

(B) The division shall issue a written decision stating the reasons for approval or denial of the request for an exception. If approved, the length of time the exception will be in effect and any additional corrective factors upon which the exception is granted shall be stated in the decision.

(C) The division shall only grant exceptions to licensure requirements set out in rules imposed by the division and cannot grant exceptions to requirements established by state statutes, federal regulations or state regulations of other state agencies.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF SENIOR SERVICES AND REGULATION
SECTION FOR LONG TERM CARE
**APPLICATION FOR LICENSE TO OPERATE AN
ADULT DAY CARE PROGRAM**

	<input type="checkbox"/> New Facility <input type="checkbox"/> Change of Owner <input type="checkbox"/> Renewal
In accordance with the requirements of sections 660.400 through 660.420, RSMo (2000) and 19 CSR 30-90.010 through 19 CSR 30-90.080, an application is hereby made for licensure to establish, conduct or maintain an adult day care program as: <i>(check one)</i> <input type="checkbox"/> Free Standing Adult Day Care Program <input type="checkbox"/> Associated Adult Day Care Program (List Name of Associated Organization) Program Capacity:	Provisional License No. Issued
	Regular License No. Issued
	Effective Date Expiration Date
	Date Fee Received – Amount
	Check/Money Order Number
FEE SCHEDULE	
Check licensed capacity requested:	
<input type="checkbox"/>	8 or fewer \$25.00
<input type="checkbox"/>	9 through 16 \$50.00
<input type="checkbox"/>	17 through 24 \$75.00
<input type="checkbox"/>	25 or more \$100.00
2. Name and address of Adult Day Care Program:	Telephone Number () -
	County (or City of St. Louis)
3. If a change of ownership, former name of adult day care program:	
4. Type of provider of the adult day care program: (check one)	
Governmental <input type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> State	Not-for-profit <input type="checkbox"/> Religious organization <input type="checkbox"/> Corporation <input type="checkbox"/> Other: _____
	Proprietary <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
5. Name and address of provider:	Telephone Number () -
	County (or City of St. Louis)
6. Name, address and percentage of ownership of any individual or entity who owns an interest of five percent (5%) or more in the land, structure(s), mortgage or other obligation, or lease on which an adult day care program is being conducted. Indicate whether this ownership involves land, structure(s), mortgage or lease.	

7. Name of adult day care program director:

8. Has the program, provider director or any corporate officers, directors or holders of five percent (5%) or more stock or ownership ever been convicted of a misdemeanor relating to the operation of an adult day care program, long-term care facility or of any felony? Yes No
If yes, list the person's name and type of conviction:

9. Fire Safety and Facility Physical Requirements (for initial licensure applications only):
For **Free Standing Adult Day Care Programs** submit a diagram of the building that houses the adult day care program. This diagram shall be labeled to show exits; fire extinguishers; smoke detectors and room use, such as dining, crafts, quiet room, therapy or offices. This diagram shall give exact measurements of the area to be used for the adult day care program.
For **Associated Adult Day Care Programs** submit a diagram of the designated space for the adult day care program. This diagram shall show the portion set aside for the adult day care program including office space; dining area; quiet area; craft area; general adult day care meeting area or therapy. This diagram shall give exact measurement of the area used for the adult day care program and also show the locations of exits or entrances for day care; fire extinguishers; and other fire safety features, such as pull stations and smoke detectors.

10. Is an Alzheimer's special care unit/program a part of this center? Yes No
(If yes, then it is required MO Form 580-2637 (2-03), Alzheimer's Special Care Services Disclosure Form, be submitted with this application.)

11. The fee must be submitted with this application. Enclose a check or money order ONLY payable to the Missouri Department of Health and Senior Services.

I hereby affirm that I, as an individual, or the operating corporation or partnership for which I sign, have adequate financial resources to properly construct, equip and operate the adult day care program referred to in this application, and hereby authorize the division to obtain information from third parties verifying this.

I further affirm that I have read, understand and agree to abide by the provisions of sections 660.400 through 660.420, RSMo (2000), and the Adult Day Care Program Licensure rules of the Division of Senior Services and Regulation — specifically, 19 CSR 30-90.010 through 19 CSR 30-90.080.

I further affirm that I understand that I am eligible for a license only if the program and the provider are in compliance with the law and the regulations thereunder, and that a license may be revoked at any time that the facility, provider or operator fail to comply with such laws and rules.

I further affirm under the penalties of perjury, that all documents and information required by the division to be filed pursuant to this application are true and correct to the best of my knowledge and belief, that the statements contained in this application and any attached information are true and correct to the best of my knowledge and belief and that all required documents are either included with the application or are currently on file with the division.

MUST BE SIGNED IN PRESENCE OF NOTARY	Applicant's Signature	Date
	Print or Type Name	Telephone Number () -
Notary Public Embosser or Black Ink Rubber Stamp Seal	State of	County
	Signed and sworn to before me this _____ day of _____, 20____.	
	_____ (Notary Public's Name)	
My commission expires _____, 20_____.		

AUTHORITY: sections 660.050, RSMo Supp. [1992] 2003 and 660.418, RSMo [Supp. 1986] 2000. This rule originally filed as 13 CSR 15-8.020. Moved to 19 CSR 30-90.020, effective Aug. 28, 2001. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Amended: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin, J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 90—Adult Day Care Program Licensure

PROPOSED RESCISSION

19 CSR 30-90.030 Participants' Rights and Program Policies. This rule established the rights of participants in adult day care programs and required providers to have written program policies.

PURPOSE: This rule is being rescinded to transfer the provisions of this rule to 19 CSR 30-90.050 Program Policies and Participant Care Requirements and Rights.

AUTHORITY: sections 660.050 RSMo Supp. 1992 and 660.418, RSMo 1986. This rule originally filed as 13 CSR 15-8.030. Moved to 19 CSR 30-90.030, effective Aug. 28, 2001. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Rescinded: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with David S. Durbin J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 90—Adult Day Care Program Licensure

PROPOSED AMENDMENT

19 CSR 30-90.040 Staffing Requirements. The division proposes to amend sections (1) through (4), (9), (10) through (12), add new

sections (1), (3), (9) through (19), delete sections (5) through (8) and renumber all sections accordingly.

PURPOSE: This rule is being amended to update language and clarify the staffing requirements for the adult day care program; include job duties and responsibilities for the position of program director; add requirements for background checks through the Family Care Safety Registry in accordance with sections 210.900 through 210.936, RSMo Supp. 2001; require the exercise of business judgement in utilizing persons who are on the Employee Disqualification List; update curriculum for orientation and in-service training; and add the dementia-specific training requirements in accordance with section 660.050.8, RSMo.

(1) The adult day care provider, as defined in 19 CSR 30-90.010, shall be responsible for assuring compliance with all applicable laws and rules.

~~[(1)](2)~~ The adult day care program shall have a **program director who is responsible for the day-to-day operation of the program.** Either the **program director** or ~~[his/her]~~ **the program director's** designee shall be present and in charge during all hours that participants are on the premises. The **program director** and ~~[his/her]~~ **any such** designee shall be qualified by demonstrated competence, specialized background, education, or experience to manage the day-to-day operation of ~~[the]~~ **an adult day care program.**

(3) The program director's responsibilities shall include, but not be limited to:

(A) Managing the adult day care program as necessary for the health, safety and welfare of the participants;

(B) Complying with the laws and rules pertaining to the adult day care program;

(C) Ensuring that participants receive appropriate care according to their needs;

(D) Preserving the rights of participants;

(E) Meeting staffing, record keeping, facility and fire safety requirements;

(F) Directing and supervising staff, as required, to meet the needs of the participants;

(G) Conducting background checks and criminal record reviews as required and necessary to protect the health, safety and welfare of participants;

(H) Providing staff training as needed and appropriate to meet the needs of the participants; and

(I) Providing direct care services when necessary to meet the needs of the participants.

~~[(2)](4)~~ Direct care paid staff shall be at least eighteen (18) years of age and qualified by education, **training, [and] experience or demonstrated competence in order** to perform the duties required by the written job description.

~~[(3)] (5)~~ Volunteer staff shall be qualified by education, **training, experience[, or both,] or demonstrated competence** to perform the duties required by the written job description.

~~[(4)] (6)~~ The adult day care provider shall provide a sufficient number of direct care staff on duty at all times to meet the needs of each participant and assure that participants are never left unattended. At a minimum, there shall be at least two (2) direct care staff persons when two through sixteen (2-16) participants are present and one (1) additional direct care staff person for any portion of eight (8) additional participants present. **In calculating the staffing ratios:**

(A) The program director shall not be counted to meet the required direct care staff ratio if serving as an administrator or manager in a long-term care facility on the same premises;

(B) The program director may be counted only when it is necessary for the program director to provide direct care in order to ensure that the needs of the participants are met;

(C) In an associated adult day care program, direct care staff shall not be counted simultaneously to meet the required staffing ratios for both the long-term care or medical care facility and the associated adult day care or any other affiliated program;

(D) Secretaries, cooks, accountants and other staff members who provide no direct care shall not be considered in calculating the staffing ratio, but such staff may be counted only if and when they are providing direct care to the participants; and

(E) Trained volunteer staff at least eighteen (18) years of age may be counted in the direct care staff to participant ratio provided a written volunteer program description includes in-service training and a system for ensuring the presence of volunteer help as scheduled.

[(5) The director shall not be counted to meet the required staff ratio if there are nine (9) or more participants present.

(6) Trained volunteers at least eighteen (18) years of age may be counted in the direct care staff to participant ratio provided a volunteer program description, including the training to be provided and the system, for assuring the presence of volunteer help as scheduled, has been submitted to and approved by the Division of Aging.

(7) Secretaries, cooks, accountants and other nondirect care staff members shall not be considered in calculating the staffing ratio.

(8) Direct care staff shall not be counted simultaneously to meet the required staffing ratios for both the long-term care or medical care facility and the associated adult day care program.]

[(9)](7) All staff who have direct contact with participants shall be able to perform the assigned job duties in the adult day care program and shall be free of communicable disease, listed in 19 CSR 20-20.020 and physically and emotionally able to work in the adult day care program.] in accordance with the department's regulations pertaining to communicable diseases, specifically 19 CSR 20-20.010 through 19 CSR 20-20.100, as amended. Persons who have been diagnosed with a communicable disease may return to duty only with written approval from a physician's written approval or the physician's designated agent. The program director shall be responsible for monitoring the health of employees.

[(10)](8) No person shall be employed to work or allowed to volunteer, as defined in 19 CSR 30-90.010, in any capacity in the adult day care program who left or was discharged from employment with any other employer due to abuse or neglect to patients, residents or clients and the dismissal [was upheld by administrative review-or conviction. The adult day care provider shall have made a reasonable check of references on all employees and volunteers.] or departure has not been reversed by any tribunal or agency.

(9) Each adult day care provider shall require all new applicants for employment in positions involving contact with participants to:

(A) Disclose if he or she is listed on the Employee Disqualification List (EDL); and

(B) Disclose his or her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(C) Sign a consent form authorizing a criminal record review with the Missouri Highway Patrol through:

1. The Missouri Highway Patrol in accordance with requirements of Chapter 43, RSMo; or

2. A private investigatory agency; or

3. The Family Care Safety Registry (FCSR), providing the applicant is registered and listed in the registry.

(10) The adult day care provider shall make periodic checks of the EDL to determine whether any current employee, contractor or volunteer has been recently added to the list. These checks shall be made at least every ninety (90) days by contacting the FCSR once the individual is registered and listed on the registry.

(11) Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with participants, the adult day care provider shall, or in the case of temporary employees hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

(A) Request a criminal background check for the person as provided in section 43.540, RSMo. Each adult day care provider must maintain in its records a copy of documents verifying that the background checks were requested and the nature of the response received for each such request:

1. The adult day care provider must ensure that any applicant or person hired or retained who discloses prior to the receipt of the criminal background check that he/she has been convicted of, pled guilty or *nolo contendere* to in this state or any other state, or has been found guilty of a crime, which if committed in Missouri would be a 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 of section 568.020, RSMo, will not have contact with participants;

2. Upon receipt of the criminal background check, the adult day care provider must ensure that if the criminal background check indicates that the person hired or retained by the adult day care provider has been convicted of, pled guilty or *nolo contendere* to in this state or any other state, or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of Chapter 565, 566, or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, that person will not have contact with participants;

(B) Make an inquiry to the department whether the person is listed on the Employee Disqualification List as provided in section 660.315, RSMo; or

(C) If the person has registered with the department's Family Care Safety Registry, the adult day care provider may contact the Registry in order to meet the requirements of (11)(A) and (11)(B).

(12) All persons employed in an adult day care program shall be registered in the FCSR. Any person hired on or after the effective date of this rule, who is not listed in the Registry, shall complete a Worker Registration form (MO 580-2421), and submit it to the FCSR within fifteen (15) days of the beginning of employment pursuant to sections 210.900 through 210.936, RSMo and 19 CSR 30-80.010 through 19 CSR 30-80.040. The Worker Registration form may be downloaded from the Department of Health and Senior Services website (<http://www.dhss.mo.gov/>).

(13) The adult day care program or adult day care provider shall use its business judgement in determining whether to utilize any person as an employee, independent contractor, or volunteer who is listed on the EDL.

(14) Any person who may be refused or terminated from employment based on a criminal history described in section 660.317.6,

RSMo, may apply to the division for a good cause waiver under the provisions of 19 CSR 30-82.060.

(15) The adult day care provider may consider for employment any person who has been granted a good cause waiver in accordance with the provisions of section 660.317, RSMo and 19 CSR 30-82.060, in positions which have contact with participants. The adult day care provider shall be responsible for contacting the division to confirm the validity of an applicant's good cause waiver prior to hiring the applicant.

(16) At least one (1) staff person trained and certified in first aid and cardiopulmonary resuscitation (CPR) shall be on the premises and available at all times. First aid and CPR training shall be taken from the American Red Cross or from another comparable source. Certification in first aid shall be renewed every three (3) years and certification in CPR shall be renewed annually for each staff person assigned to and performing first aid and CPR responsibilities. The program director or designee shall be responsible for ensuring that first aid supplies recommended by the American Red Cross or other comparable source are readily available.

~~/(11)/~~(17) All staff, including nondirect care, direct care and volunteers, shall be given an *[general]* orientation to the adult day care program, its policies, fire safety and emergency procedures prior to performing job responsibilities. **The orientation shall be sufficient in depth to enable staff to perform their assigned job responsibilities and meet the individual needs of participants.**

~~/(12)/~~(18) At least quarterly, or as needed based on participants' needs, ~~///~~in-service training shall be provided *[at least quarterly]* to staff, as appropriate to their job function *[and]* or participant care needs. **At a minimum, in-service training shall address:**

- (A) Participant care needs, both general and individualized;
- (B) Participants' rights;
- (C) Program policies; and
- (D) Specialized care needs, such as Alzheimer's disease or related dementias, appropriate to the needs of participants, as follows:

1. For employees providing direct care to persons with Alzheimer's disease or related dementia, the training shall include—

- A. An overview of Alzheimer's disease and related dementia;
- B. Communicating with persons with dementia;
- C. Behavior management;
- D. Promoting independence in activities of daily living;

and

- E. Understanding and dealing with family issues; and

2. For employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementia, the training shall include—

- A. An overview of dementia; and
- B. Communicating with persons with dementia.

AUTHORITY: sections 660.050, RSMo Supp. [1992] 2003 and 660.418, RSMo [Supp. 1986] 2000. This rule originally filed as 13 CSR 15-8.040. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Moved to 19 CSR 30-90.040, effective Aug. 28, 2001. Amended: Filed Sept. 14, 2004.

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

PRIVATE COST: The cost of mandated criminal background checks is estimated at one thousand one hundred eighty-five dollars (\$1,185) per year for existing Adult Day Care Programs for FY05 and one

thousand two hundred fifteen dollars (\$1,215) for existing Adult Day Care Programs for FY06. For each additional year thereafter, add two (2) Adult Day Care Programs to determine the aggregate cost for the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin J.D., M.P.A., Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services,, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	19 CSR 30-90.040 Staffing Requirements
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 proposed 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:
79	Existing Adult Day Care Programs for FY05	FY05 - \$1,185.00
81	Existing Adult Day Care Programs for FY06 and annually thereafter	FY06 - \$1,215 per year add 2 Adult Day Care Programs per year to determine the aggregate cost over the life of the rule.

III. WORKSHEET

- Existing Adult Day Care (ADC) Programs
79 ADC programs times an average of 3 CBC checks per year at \$5.00=\$1,185
- Adult Day Care Program in FY 06.
81 ADC programs times an average of 3 CBC referrals at \$5.00=\$1,215.00.
- Annually thereafter – and two (2) Adult Day Care Programs per year.

IV. ASSUMPTIONS

1. The number of ADC programs is increasing by an average of 2 per year according to DHSS records.
2. A random telephone sample of ADC programs indicates that these programs average 3 new hires per year.
3. The cost of a criminal background check has been \$5.00 per check for several years.
4. In determining the aggregate private cost over the life of the rule add 3 percent each year to adjust for inflation.

**FISCAL NOTE
PRIVATE COST**

5. DHSS staff have performed a takings analysis in accordance with Section 536.017 and determined that no taking of real property will occur as a result of this amended rule.

6. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES**

**Division 30—Division of Health Standards and Licensure
Chapter 90—Adult Day Care Program Licensure**

PROPOSED AMENDMENT

19 CSR 30-90.050 Program Policies and Participant Care Requirements and Rights. The division proposes to amend the rule's short title, amend the Purpose statement, amend sections (2) through (5), (8), (9) and (10), delete sections (6) and (7), renumber accordingly, and add new sections (9) through (12).

PURPOSE: This rule is being amended to update and clarify the program and participant care requirements of the adult day care program in accordance with the provisions of sections 660.403 through 660.420, RSMo and to transfer 19 CSR 30-90.030 participants' Rights and Program Policies, as new sections (9) through (12).

PURPOSE: This rule establishes the minimum requirements for operating an adult day care program; [and] providing care to participants; establishing and preserving certain rights of participants; and requiring adult day care providers to have written program policies.

(2) Each **adult day care** provider shall have a written emergency medical plan *[which]* that assures **the following:**

(A) *It/Transportation to a hospital or other type of facility providing emergency or urgent care./;*

(B) A written agreement, signed by each participant or legal guardian, shall be on file in the facility granting permission to transport the participant in need of emergency care to the designated hospital or other type of facility./;

(C) Notes in the participant's record shall be made immediately of any accident, injury or illness and the emergency procedures taken./;

(D) Emergency telephone numbers for each participant shall be available to staff at all times./; and *[At least one (1) staff member certified in first aid and cardiopulmonary resuscitation (CPR) shall be on the premises at all times that participants are present. Certification in first aid shall be renewed every three (3) years and certification in CPR shall be renewed annually. First-aid training shall be taken from the American Red Cross or from another comparable source.]*

(E) At a minimum, those first-aid supplies, as recommended by the American Red Cross *[in "Standard First Aid and Personal Safety",]* or other comparable source, shall be readily available on-site.

(3) The **adult day care** provider shall require a medical assessment by the participant's physician or that physician's designated agent of the participant's medical condition to include activity needs and restrictions, dietary modifications, indicated therapies and medication as applicable prior to the first day of participation, signed by the physician or that physician's designated agent within five (5) working days of the first day of participation.

(4) The **adult day care** provider shall develop a written individual plan of care for each participant within five (5) contact days following the entry of the participant into the adult day care program. The plan shall be designed to maintain the participant at, or to restore to, optimal capability for self-care. The plan shall be based on a functional assessment and information obtained from the participant, participant's family, physician and the person or agency referring the participant. The plan shall address the participant's physical, social and psychological needs, goals and the means of *[goal accomplishment]* **accomplishing goals** to the degree that the program is designed and the staff *[is]* are qualified to meet these goals. The

plan shall identify *[names]* **the positions** of persons responsible for specific./ individualized activities provided for the participant that are not documented by the regularly scheduled plan of activities for the program. The plan of care shall identify the participant's regularly scheduled days for attendance, including arrival and departure times. The plan of care shall be revised as frequently as warranted by the participant's condition, but shall be reviewed at least every six (6) months and updated as necessary.

(5) The **program director**./ or *[a designated staff person,]* **program director's designee** shall maintain communication with participants and their families or other responsible persons to solve day-to-day problems which confront the participants. Referrals to other community resources should be made and services coordinated as needed.

[(6) Participants who are responsible for taking their own medication at home shall be permitted and encouraged to continue to be responsible for taking their own medication during the hours spent in the center. If a participant is unable to self-administer medication, then the adult day care provider may assume responsibility in accordance with 13 CSR 15-8.050(10)(D) of this rule.

(7) There shall be a safe, effective system of handling and storing participants' medications.]

[(8)](6) The adult day care provider or program director or any other employee of the adult day care program shall report any suspected incidents of physical or mental abuse, neglect, exploitation or a combination of these, of its participants to the Elderly Abuse and Neglect Hotline (1-800-392-0210).

[(9)](7) The adult day care provider [shall] is required to offer at least the following services:

(A) Activities of Daily Living. *[The adult day care program shall provide]* **This includes providing** assistance and training in walking, toileting, feeding, personal care and other activities of daily living in accordance with each participant's individual plan of care;

(B) Planned Group Activities. *[The adult day care program shall provide]* **This includes providing** planned activities during at least fifty percent (50%) of the time that the program is open for daily operation, with a maximum four (4) hours of planned activities required. Activities shall be suited to the needs and interests of participants and designed to stimulate interest, rekindle motivation and encourage physical exercise. Activities shall be conducted individually and in small and large groups. Planned activities include meals, rest periods, exercise, recreation and social activities. Physical exercise shall be designed in relation to each individual's needs, impairments and abilities and shall be alternated with rest periods or quiet activities./ *In an associated program some, but not all, activities may be conducted cooperatively with the residents or participants of the other program];*

(C) Food Service. *[The adult day care program shall]* **This includes [assure] assuring** the availability of meals and supplemental snacks in accordance with each participant's individual plan of care. Meals served by the **adult day care** provider shall provide at least one-third (1/3) of the recommended dietary allowance of the National Research Council. Supplemental snacks shall consist of nourishing food and beverages. Food may be prepared, stored, served or any combination of these, on-site *[if]* **in compliance with** the requirements of the local health department or applicable rules established by the *[Missouri D]department [of Health] under the provisions of [(19) CSR 20-1.010]* are met/. Food prepared away from the site shall be prepared in a **food preparation** facility which meets the requirements of the local health department or applicable rules established by the *[Missouri D]department [of Health] under [(19) CSR 20-1.010]*. The **adult day care** provider shall arrange

for special diets and other diet modifications as ordered by a physician or the physician's designated agent. Such [D]diets shall be served as ordered by the participant's physician [and] or the physician's designated agent with food preparation and service [shall] being reviewed by a qualified dietitian, physician or nurse at least every six (6) months. Modified diets shall be in effect for the specified number of days indicated in the physician's order. If no time is specified, the period may not exceed one (1) calendar year, at which time [when] another order from the physician shall be obtained; and

(D) Observation. The health, functional and psychosocial status of each participant shall be observed and documented in the participant's record at least monthly by the adult day care program director or other designated professional staff and the plan of care modified if necessary.

[(10)](8) The adult day care provider may offer the following services:

(A) Transportation. If transportation services are offered, directly or through a contract[ed for], they shall meet the requirements of [13 CSR 15-6.165]19 CSR 15-7.040;

(B) Counseling Services. If counseling services are offered, they shall be provided by qualified professional personnel;

(C) Rehabilitation Services. If rehabilitation services are offered, they shall be prescribed by a physician and performed by qualified therapists. Orders for the various therapies and treatments shall be in effect for the specified number of days indicated by the physician's written order. If no time period is specified, then the time period shall not exceed sixty (60) days and a new order by the physician must be obtained. Therapy services provided shall be summarized in the participant's record and progress noted at least monthly by the therapist;

(D) Medical Services. If medical services are offered, a licensed nurse shall be available at all times that the program is in operation. Medical services shall be provided in accordance with the particular needs of each participant. The licensed nurse shall be the only individual authorized to receive, control and manage the medication and drug program. The licensed nurse shall be responsible for the following:

1. A safe, effective system of identifying, handling and storing each participant's medications.

2. A system for administering and storing medications that is reviewed not less than every ninety (90) days by a licensed nurse.

[1.]3. Administration of medications and treatments, including the following requirements:

A. Participants who are responsible for taking their own medication at home shall be permitted and encouraged to continue to be responsible for taking their own medication during the hours spent in the program. If a participant is unable to self-administer medication, then the adult day care provider shall assume responsibility in accordance with the applicable provisions of this rule. If a participant refuses medication, this refusal shall be documented in the participant's record and the participant and their primary caregiver informed of the possible consequences of not receiving the medication;

[A.]B. Medications or treatments may not be administered without an order signed by a licensed physician. Physician's phone orders may be taken only by a licensed nurse. Phone orders shall be written into the participant's record by the licensed nurse receiving them and shall be signed by that person. The physician shall sign and date the order within five (5) working days after giving the phone order[.];

[B.]C. Orders concerning treatments and medications shall be in effect for a specified number of days as indicated by the physician. If not specified, the period may not exceed sixty (60) days;

[C.]D. The licensed nurse shall communicate as indicated with the participant's physician to report observed changes in health status, including reaction to medications and treatments. If an

adverse reaction to medications, treatments or diet is observed, the licensed nurse shall promptly notify the participant's physician [shall be called immediately]. If contact cannot be made with the personal physician, emergency medical procedures shall be followed; and

[D.]E. All medications, including over-the-counter medications, shall be packaged and labeled in accordance with applicable professional pharmacy standards, state and federal drug laws and regulations [and the United States Pharmacopoeia (USP)]. [Labeling shall include accessory and cautionary instructions as well as the expiration date, when applicable and the name of the medication as specified in the physician's order. Over-the-counter medications for individual participants shall be labeled with at least the participant's name; and

[2.]4. Medication storage [and records.] that meets the following requirements:

A. The adult day care provider shall have a safe, secure, locked place[d] for storing medications or drugs and make them available to the participant according to the instructions of his[.] or her personal physician.

B. [Schedule II drugs, (Chapter 197, RSMo and 19 CSR 30-1.010) shall be kept in a locked box] Controlled substances shall be locked separately from non-controlled substance medications;

C. Medications requiring refrigeration shall be kept refrigerated in a locked room or in a separate locked refrigerator or in a locked box within the refrigerator or in a refrigerator in a locked room[.]; and

D. Nonprescription medicines may be retained in the facility for administration as ordered by the participant's physician.

[The system for administering and storing medications shall be reviewed not less than every three (3) months by a licensed nurse.]

5. Medication records that meet the following requirements:

A. A written record of medications, including over-the-counter medications, administered shall be maintained[.];

B. Records shall be kept of [all Schedule II drugs.] the receipt and disposition of all controlled substances, separate from other records for two (2) years;

C. Inventories of controlled substances shall be reconciled at the time of the medication system review and as needed to ensure accountability;

D. Receipt records of controlled substances shall include the date, source of supply, resident name, prescription number, medication name and strength, quantity and signatures of the supplier and the receiver;

E. Administration records of controlled substances shall include the date, time, resident name, medication name, dose administered and signature of the person administering;

F. Documentation of waste of controlled substances at the time of administration shall include the reason for the waste and the signature of an authorized employee witness; and

G. All variances of controlled substance records shall be documented and reported to the director for review and investigation. All losses of controlled substances shall be reported to the appropriate authorities.

(9) Each participant of the adult day care program shall be assured of the following rights:

(A) To be treated as an adult, with respect and dignity regardless of race, color, sex or creed;

(B) To participate in a program of services and activities which promote positive attitudes regarding one's usefulness and capabilities;

(C) To participate in a program of services designed to encourage learning, growth and awareness of constructive ways to develop one's interests and talents;

(D) To maintain one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence;

(E) To be encouraged to attain self-determination within the adult day care setting, including the opportunity to participate in developing one's plan for services;

(F) To decide whether or not to participate in any given activity and to be involved in the extent possible in program planning and operation;

(G) To be cared for in an atmosphere of sincere interest and concern in which needed support and services are provided;

(H) To have access to a telephone to make or receive calls, unless necessary restrictions are indicated in the individual's care plan;

(I) To have privacy and confidentiality;

(J) To be free of mental or physical abuse;

(K) To be free to choose whether or not to perform services for the program;

(L) To be free of restraint, unless under physician's order as indicated in the individual's care plan; and

(M) To be free of interference, coercion, discrimination or reprisal.

(10) Participants and their families shall be advised of participants' rights and program policies upon admission to the adult day care program.

(11) Participants' rights shall be posted in a conspicuous location in the adult day care facility.

(12) The adult day care provider shall have a written program description, copies of which are available to the division, participants, families and other interested agencies and individuals. The written program description shall contain at least the following:

(A) Administrative organization, including role of the advisory committee if applicable;

(B) Maximum number of participants that can be served;

(C) Types of participants that shall and shall not be admitted;

(D) Days of the week and hours of operation;

(E) Services available to participants and families;

(F) Procedures and requirements for admission;

(G) Emergency arrangements for participants;

(H) Criteria and procedure for discontinuing service to a participant;

(I) Participant and family procedures for resolving grievances;

(J) Confidentiality of participant information and records; and

(K) A copy of the Alzheimer's SCS form (MO FORM 886-3548) (if applicable) available at http://www.oe.state.mo.us/gs/form/fm_indiv.htm

AUTHORITY: sections 660.050, RSMo Supp. [1992] 2003 and 660.418, RSMo [1986] 2000. This rule originally filed as 13 CSR 15-8.050. Moved to 19 CSR 30-90.050, effective Aug. 28, 2001. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Amended: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570,

Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 30—Division of Health Standards and Licensure Chapter 90—Adult Day Care Program Licensure

PROPOSED AMENDMENT

19 CSR 30-90.060 Record Keeping Requirements. The division proposes to amend sections (1) through (5).

PURPOSE: This amendment is to update and include additions to the record keeping requirements for administrative, participant and program policies of the adult day care program in accordance with the provisions of sections 660.400 through 660.420, RSMo 2000.

(1) The adult day care provider shall maintain administrative records that include at least:

(A) Written personnel policies which address, at a minimum, the staffing requirements found in 19 CSR 30-90.040;

(C) Individual personnel records for both paid staff and volunteer staff who are counted in the staffing ratio that include the following:

1. Position title and written job description/s of job/ of the work tasks, responsibilities and qualifications of the job duties to be performed by each person;

2. Name, address, home telephone number, date of birth and Social Security number;

3. Licensure, certification or other [D]documentation of professional qualifications; such as copies of license, certification, as applicable;

4. Educational background;

5. Employment history, [and] documentation of references checked prior to employment including the results of the criminal background checks and, if applicable, a copy of any good cause waiver granted by the department;

6. Documentation of Employee Disqualification List (EDL) or Family Care Safety Registry checks;

[6.]7. Annual evaluation of work performance;

[7.]8. Documentation of orientation and in-service training received;

[8.]9. Record of dates and hours worked for at least the previous calendar year;

[9.]10. Copies of contracts with consultants, as applicable;

[10.]11. Documentation[, as applicable,] of any communicable disease and [written] a physician's or the physician's designated agent's written release [to] stating that the employee or volunteer may return to work; and

[11.]12. Documentation of any current certification in first aid and cardiopulmonary resuscitation [(CPR), as applicable];

(D) Fiscal records that include documentation of program income and expenditures in accordance with generally accepted accounting procedures. However, either cash basis, accrual basis or modified accrual basis may be used as appropriate for the adult day care provider's business entity and tax status;

(E) Records of orientation and in-service training provided to staff and volunteers; and

(F) [Current facility i]Inspection reports, for the past three (3) years from the local health authority, local fire authority, department, [Department of Health] or [D]division [of Aging, as applicable, including catered services] and any state or local inspecting authority.

(2) The **adult day care** provider shall maintain individual participant records that include at least:

(A) Identifying information consisting of the participant's name; address; home telephone number; sex; date of birth; legal guardian, if applicable; the name and telephone number of the person to be notified in case of emergency **and at least one (1) alternate**; next of kin; travel directions between the home and program location and transportation arrangements, if applicable;

(E) Documentation of **any prescribed or modified diet** [as] provided[, if prescribed];

(3) The **adult day care** provider shall maintain program records that include [at least], **at a minimum, copies of:**

(A) Current written program description **in accordance with 19 CSR 30-90.050;**

(B) Current list of participants' rights;

[(B)](C) Schedule of daily group activities planned and record of activities actually conducted [shall be maintained] for the previous four (4) calendar months;

[(C)](D) Weekly menus of meals planned and records of actual meals served [shall be maintained] for the previous four (4) calendar months;

[(D)](E) Emergency medical plan; and

[(E)](F) Fire safety plan.

(4) Records or any information regarding adult day care program participants shall be confidential and no information shall be released without a written release of information signed by the participant or legal guardian except that records shall be available to the division for **investigation of any complaint**, program inspection, monitoring or technical assistance purposes.

(5) Records shall be maintained for no less than five (5) years unless otherwise specified in this rule. Current records shall be kept on-site within the adult day care program. Inactive records may be maintained at another central location but in no case outside the state of Missouri. Any record requested by **the department or** the division shall be **made** available within twenty-four (24) hours of the request.

AUTHORITY: sections 660.050, RSMo Supp. [1992] 2003 and 660.418, RSMo [1986] 2000. This rule originally filed as 13 CSR 15-8.060. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Moved to 19 CSR 30-90.060, effective Aug. 28, 2001. Amended: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin, J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 30—Division of Health Standards and
Licensure
Chapter 90—Adult Day Care Program**

PROPOSED AMENDMENT

19 CSR 30-90.070 Fire Safety and Facility Physical Requirements.

The division proposes to amend the rule's short title, add a new section (1), amend sections (1) through (5) and (7) through (20) by lettering them (A) through (S), delete section (6) and transfer the provisions of 19 CSR 30-90.080 Fire Safety Requirements and include it as new section (2), subsections (A) through (F).

PURPOSE: The purpose of this amendment is to update the existing rule on adult day care facility physical requirements and transfer and update the fire safety requirements from 19 CSR 30-90.080. This proposed amendment updates the space requirements and Life Safety Code requirements for buildings and facilities in which adult day care programs are located; updates the Life Safety Code references and requirements regarding fire safety; adds fire drill and emergency preparedness procedures; and makes language and grammatical changes for clarification.

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. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Facility Physical Requirements.

[(1)](A) The adult day care program [facility] building shall be safe and suitable for participants. **The building in which the program is located shall be clean, of sound construction and maintained in good repair.**

[(2)](B) Minimum space requirements shall be eighty (80) square feet per participant, for up to twenty (20) participants and an additional fifty (50) square feet per each additional participant. Space requirements do not include office space, bathrooms, storage, examining rooms or dining rooms, unless the latter is also used for activities. For associated adult day care programs, the required space shall be designated and in excess of the particular facility's required licensed space for providing long-term care or medical care. **For adult day health care programs, the required space, regardless of the number of participants, shall not be less than three hundred twenty (320) square feet of space.**

[(3)](C) The facility shall have a room of **sufficient size to meet the needs of the participants based on minimum standards** where all of the participants can gather as well as rooms or divided areas for small group activities, including a quiet area for rest./, **which contains at least one (1) bed for temporary use by participants when needed.**

[(4)](D) Furniture shall be of a size and design so that it is easily used by persons with limited agility. It shall be sturdy and secure so that it cannot easily tip when used for support while walking or sitting. At a minimum, the following shall be provided:

[(A)]1. One (1) chair for each participant and staff person;

[(B)]2. Table space adequate for all participants to be served a meal at a table at the same time;

[(C)]3. Reclining lounge chairs or other sturdy comfortable furniture, the number to be determined by the needs of the participants; and

[(D)]4. **At least [O]one (1) bed with adequate privacy [and] in a quiet area to be available for temporary use [of] by participants as needed.**

[(5)](E) Equipment and supplies shall be adequate to meet the needs of participants including items necessary for [direct] personal care and [items] materials to encourage [active participation and group interaction.] activities among participants. The

activity materials shall be geared to the interests and backgrounds of the participants.

[(6)] The building in which the program is located shall be of sound construction and maintained in good repair

[(7)](F) Ventilation[,] by natural or mechanical means[,] shall be provided. All screen doors shall be equipped with self-closing devices and shall fit tightly. Doors and windows and other openings to the outside shall be screened when necessary[,] to prevent entrance of insects and vermin.

[(8)](G) The heating system for adult day care facilities initially licensed prior to December 1, 2004 shall be in compliance with the [National Fire Protection Code, published by the National Fire Protection Association (NFPA)] applicable provisions of the 2000 Life Safety Code for existing occupancies (NFPA 101), incorporated by reference in this rule, as published by the National Fire Protection Agency, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-9101 and all state and local codes. This rule does not incorporate any subsequent amendments or additions. Heating systems for adult day care facilities initially licensed on or after December 1, 2004 shall be in compliance with the applicable provisions of the 2000 Life Safety Code for New Day Care Occupancies, incorporated by reference in this rule, as published by the National Fire Protection Agency, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-9101 and all state and local codes. This rule does not incorporate any subsequent amendments or additions. Exposed heating pipes, hot water pipes or radiators in rooms and areas used by participants shall be covered or protected, and insulated when appropriate. Portable space heaters shall not be used. Room temperatures shall be maintained between sixty-eight degrees Fahrenheit (68° F) and eighty-five degrees Fahrenheit (85° F) in all seasons. [and t]The reasonable comfort needs of individual participants shall be met.

[(9)](H) Illumination shall be adequate in all areas and commensurate with the type of activity. Glare shall be kept at a minimum by providing [shades] window coverings at all windows exposed to direct sunlight and using shaded light fixtures [shall have shades].

[(10)](I) All plumbing and plumbing fixtures shall conform to applicable local codes. There shall be no cross-connection between the potable water supply and any source of pollution through which the potable water supply might become contaminated.

[(11)](J) An adequate supply of water, the source of which is approved by the state water control authority, under sufficient pressure to properly serve the facility shall be provided. The potable water system shall be installed to preclude the possibility of back-flow.

[(12)](K) Drinking water shall be easily accessible to the participants and provided by either an angle jet drinking fountain with mouth guard or by a running water supply with individual service drinking cups. Drinking facilities [may] shall not be located in a toilet room.

[(13)](L) At least one (1) toilet and [washbowl] handwashing sink shall be provided for each ten (10) participants or any additional fraction thereof. The [washbowl] handwashing sink shall be in close proximity to each toilet and shall have hot and cold running water. [Hot] The water temperature shall [not exceed one hundred and ten degrees Fahrenheit (110° F)] be maintained between one hundred degrees (100°) degrees and one hundred fifteen (115°) degrees. The toilet room shall be within easy access of the activity areas and afford the participants [shall have the right to] privacy. Each toilet room shall be equipped with approved natural or mechanical ventilation. All toilets shall have grab-rails. Individual paper towels, a trash receptacle, soap and toilet paper shall be provided at all times and shall be within reach of the participants.

[(14)](M) If persons using wheelchairs[-bound] or persons with other physical[ly handicapped persons] disabilities are accepted, or the building in which the facility is located is otherwise required to comply with the Americans with Disabilities Act

(ADA), the facility shall have ramps or other means of accessibility to the adult day care facility for [handicapped] persons with disabilities, and shall meet the standards of the [American National Standards Institute publication (ANSI), A117.1, Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped]. ADA Standards for Accessible Design which are available at www.usdoj.gov/crt/ada/adastd94.pdf

[(15)](N) Stairways and hallways shall be kept free of obstructions and shall be well lighted. All stairways and ramps shall have nonslip surface or treads. All inside and outside stairs and ramps shall have handrails.

[(16)](O) All rugs and floor coverings shall be secured to the floor. Throw rugs shall not be used. All equipment and furnishings shall be safe and maintained in good condition.

[(17)](P) [Sufficient housekeeping and maintenance service shall be provided] The adult day care program shall provide necessary services to maintain the [facility] building or portion of the building in which the adult day care program is located in good repair and in a safe, clean, orderly[, attractive] and sanitary manner.

[(18)](Q) Drugs, cleaning agents, pesticides and poisonous products shall be stored apart from food, out of the reach of the participants, and shall be used in a manner which assures the safety of participants and staff.

[(19)](R) Wastebaskets and trash containers shall be made of noncombustible or fire-resistant material. Garbage and other waste shall be stored and disposed of in an [approved] appropriate manner.

[(20)](S) The facility shall be maintained free of insects and rodents. Control measures shall be [provided] implemented to prevent rodent and insect infestation.

(2) Fire Safety Requirements.

(A) Adult day care programs shall obtain annual written approval from the appropriate local fire safety officials, certifying that the facility complies with local fire codes. If there are no applicable codes, or if the department or division determines that such codes are not adequate, the department or division shall determine the adequacy of the means of egress and other measures for life safety from fire in accordance with the provisions of the Life Safety Code (NFPA 101), in order to ensure the safety of frail persons or persons with disabilities. All adult day care programs initially licensed prior to December 1, 2004 shall comply with the provisions of the 2000 Life Safety Code for existing occupancies (NFPA 101), incorporated by reference in this rule. Adult day care programs licensed on or after December 1, 2004 shall comply with the provisions of the 2000 Life Safety Code for New Day Care Occupancies (NFPA 101).

(B) The facility shall have a minimum of two (2) exits remote from each other. Exits shall be clearly marked with exit signs and shall provide egress at ground level.

(C) Each adult day care provider shall locate, install and maintain in operable condition an adequate number of smoke detectors and fire extinguishers of the appropriate type as determined in consultation with the local fire authorities or the division. Fire extinguishers shall comply with the requirements of the 1998 Standard for Portable Fire Extinguishers (NFPA 10), incorporated by reference in this rule.

(D) A written plan for assuring the safety of participants, staff and volunteers in case of fire or other disaster shall be developed in consultation with state or local fire authorities and shall include, at a minimum, the following:

1. A written assessment of potential fire or safety hazards present on the premises and actions and procedures to follow to minimize potential danger;

2. A written schedule for periodic checks for battery strength of smoke detectors and adequate pressure of fire extinguishers;

3. A written training plan and schedule for staff and volunteers on safety responsibilities and actions to be taken if an emergency situation occurs and documentation of the type of training provided; and

4. A written plan for conducting fire drills and other emergency preparedness procedures, including staff responsibilities and assignments to ensure orderly evacuations and participants' safety.

(E) Fire drills shall be coordinated with local fire safety authorities and conducted at least one (1) time per month and with sufficient frequency to familiarize staff and participants with the proper evacuation procedures. Drills may be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire. The actual evacuation of participants and staff is not necessary providing everyone involved is able to carry out actual evacuation procedures if required. Fire drills shall include suitable procedures to ensure that all affected persons actually participate in the drill exercises.

(F) The program director or other staff qualified to exercise leadership shall be responsible for planning and conducting fire drills and other emergency preparedness procedures. The program director shall ensure that staff are assigned to assist participants with disabilities or other special needs to ensure the health and safety of participants when implementing the fire and emergency preparedness procedures in evacuating the facility, or complying with written plan procedures.

AUTHORITY: sections 660.050], RSMo Supp. 1992] and 660.418, RSMo [1986] 2000. This rule originally filed as 13 CSR 15-8.070. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Moved to 19 CSR 30-90.070, effective Aug. 28, 2001. Amended: Filed Sept. 14, 2004.

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

PRIVATE COST: For existing adult day care centers, the cost to replace trash receptacles with those made of noncombustible or fire-resistant material is estimated to be a one (1)-time cost of one thousand five hundred eighty dollars (\$1,580) in fiscal year 2005 and a cost of forty dollars (\$40) annually thereafter as new Adult Day Care Programs are added each year. The cost to build a new adult day care facility that meets the 2000 Life Safety Code should add an additional twenty dollars (\$20) per square foot to the building costs in fiscal year 2005. Since this requirement only applies to adult day care facilities built in areas which lack local codes, it is anticipated that no more than one (1) such facility may be built in the next five (5) years with an anticipated cost increase of forty-four thousand dollars (\$44,000) plus a three percent (3%) annual inflationary factor and one (1) additional facility every five (5) years thereafter.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin, J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	19 CSR 30-90.070 Fire Safety and Facility Physical Requirements Subsection (I) (R)
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 proposed 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:
Non-Combustible Trash Receptacles 79	Existing Adult Day Care Programs	FY-05 \$1,1580.00
2	New Adult Day Care Programs	FY-06 \$40.00 per year. Add 2 Adult Day Care Programs per year to determine the aggregate cost over the life of the rule
2000 Life Safety Code Requirement 1 every 5 years	New Adult Day Care Programs	FY 05 through FY 09 \$44,000. Add 1 Adult Day Care Program every 5 years with 3 per cent cost increase annually for inflation thereafter to determine the aggregate cost over the life of the rule

III. WORKSHEET

Non-Combustible Trash Receptacles

- Existing Adult Day Care (ADC) Programs
79 ADC programs times 2 non-combustible trash receptacles at \$10.00 each =\$1,580.00.
- New Adult Day Care Programs.
2 new programs times 2 non-combustible trash receptacles at \$10.00 each-\$40.00.
- Annually Thereafter-add two (2) Adult Day Care Programs per year

2000 Life Safety Code Requirement

- New Adult Day Care Programs

**FISCAL NOTE
PRIVATE COST**

- 1 new ADC program every 5 years with 22 participants times 100 square feet per resident times \$20.00 per square foot increased construction costs = \$44,000 plus 3 per cent annual adjustment for inflation..
- Annually Thereafter --add one (1) Adult Day Care Program every five (5) years.

IV. ASSUMPTIONS**Non-Combustible Trash Receptacles**

1. The estimated cost of non-combustible trash receptacles is \$10.00 each.
2. DHSS record shows ADC Programs are increasing at an average of 2 per year.
3. DHSS staff estimate that an average of 2 trash receptacles per program is necessary.
4. In determining the aggregate private cost over the life of the rule add 3 percent each year to adjust for inflation.
5. DHSS staff have performed a takings analysis in accordance with Section 536.017 and determined that no taking of real property will occur as a result of this amended rule.
6. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable.

2000 Life Safety Code Requirement

1. Under the proposed amendment, the 2000 Life Safety Code Requirement for new programs would only apply to new programs that are built in areas which lack applicable or adequate codes. DHSS Life Safety Code specialists estimate that perhaps one (1) such program may be built in the next five (5) years.
2. DHSS staff estimate 22 participants for a newly built program building.
3. DHSS staff estimate a minimum of 100 square feet per resident in a new building for an ADC program.
4. DHSS engineers estimate that compliance with the 2000 Life Safety Code for New Day Care Occupancies will add an additional \$20.00 per square foot to the construction of a new ADC program building as opposed to the cost of a program building not built to a local code.
5. In determining the aggregate private cost over the life of the rule, add 3 per cent each year to adjust for inflation.
6. DHSS have performed a takings analysis in accordance with Section 536.017 and determined that no taking of real property will occur as a result of this amended rule.
7. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 30—Division of Health Standards and Licensure
Chapter 90—Adult Day Care Program Licensure**

PROPOSED RESCISSION

19 CSR 30-90.080 Fire Safety Requirements. This rule established fire safety requirements for adult day care programs and facilities.

PURPOSE: This rule is being rescinded to transfer the provisions of this rule to 19 CSR 30-90.070 Fire Safety and Facility Physical Requirements.

AUTHORITY: sections 660.050, RSMo Supp. 1992 and 660.418, RSMo 1986. This rule originally filed as 13 CSR 15-8.080. Original rule filed Oct. 15, 1984, effective Jan. 11, 1985. Moved to 19 CSR 30-90.080, effective Aug. 28, 2001. Rescinded: Filed Sept. 14, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with David S. Durbin, J.D., M.P.A., Deputy Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents**

PROPOSED AMENDMENT

20 CSR 700-6.100 Fees and Renewals—Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents. The department is amending the title of the chapter and the title of the rule, the Purpose and sections (1) and (2).

PURPOSE: This rule is being amended to implement the legislative changes enacted by Senate Bill 1122 in the 2004 legislative session of the 92nd General Assembly and to update and establish the licensing fees and requirements for bail bond and surety recovery agents.

PURPOSE: This rule sets the license and renewal fees for bail bond [and], general bail bond agents and surety recovery agents under sections 374.700–[374.775] 374.789, RSMo Supp. 2004.

(1) Each application for license as a general bail bond agent, [or] bail bond agent or surety recovery agent must be accompanied by a licensing fee of [twenty-five] one hundred fifty dollars [(\$25)] (\$150) for the [one (1)] two (2)-year license. The fee for renewal of the license shall also be [twenty-five] one hundred fifty dollars [(\$25)] (\$150) for a biennial license.

(2) If a general bail bond agent, [or] bail bond agent or surety recovery agent fails to file for renewal of his/her license on or before the expiration date, the Department of Insurance will issue a renewal of the license upon payment of a late renewal fee of twenty-five dollars (\$25) per month or fraction of a month after the renewal deadline. In

the alternative to payment of a late renewal fee, the former licensee may apply for a new license except that the former licensee must comply with all provisions of section [374.725/374.710 and 374.784, RSMo regarding issuance of a new license.

AUTHORITY: sections 374.045, RSMo [Supp. 1993] 2000 and 374.705, 374.710, 374.730, 374.783, 374.784 and 374.786, RSMo Supp. 2004. Original rule filed March 14, 1994, effective Sept. 30, 1994. Amended: Filed Sept. 14, 2004.

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

PRIVATE COST: This proposed amendment will cost private entities three hundred thousand dollars (\$300,000) biennially in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	20 CSR 700-6.100 Fees and Renewals- Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents
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 proposed 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:
950	Bail Bond Licensees (Bail bond agents, General bail bond agents and Bail Bond Corporations) (License application and license renewal fees @ \$150 biennially)	\$ 142,500 biennially
1,050	Surety Recovery Agents (License application and license renewal fees @ \$ 150 per year)	\$ 157,500 biennially
	Estimated Biennial Cost of Compliance for the Life of the Rule	\$300,000

* The aggregate cost to licensed insurance companies includes the aggregate cost to all licensees.

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

- Based on a review of the Department's licensing records, the Department statistically issues or renews a total of approximately 950 bail bond agents, general bail bond agents and general bail bond corporations licenses biennially. The Department assumes this number will remain consistent over the life of this rule and therefore calculated the fiscal impact on bail bond licensees based on an estimated total of 950 bail bond license applications and renewals biennially.
- Surety recovery agents are not currently licensed in the state of Missouri rendering a precise estimate of potential surety recovery licensees impracticable. Based on discussions with representatives of the Missouri Bail Bond Association, the National Professional Bounty Hunting School and representatives from the surety recovery

industry in Missouri, it is estimated that an aggregate of 1,050 surety recovery agents would apply for or renew a surety recovery agent license biennially. This calculation assumes approximately one licensed surety recovery agent per current bail bond licensee. The number of estimated surety recovery licensees does not include licensed bail bond agents who are authorized to perform surety recovery activities without a separate surety recovery license. The Department anticipates the number of assumed surety recovery licensees will remain consistent over the life of this rule.

- It is anticipated the estimated total cost will recur for the life of the rule.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED RULE

20 CSR 700-6.150 Initial Basic Training for Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents

PURPOSE: This rule outlines initial basic training requirements for bail bond agents, general bail bond agents, and surety recovery agents under sections 374.710 and 374.784, RSMo Supp. 2004.

(1) Initial Basic Training. Except as otherwise provided by law, before an individual may be licensed as a bail bond agent, general bail bond agent, or surety recovery agent s/he must first fulfill the initial basic training requirements set forth in sections 374.710 and 374.784, RSMo. The initial basic training must be completed within a twelve (12)-month period prior to submitting an application. The basic course of training shall consist of a minimum of twenty-four (24) hours, taught by personnel with qualifications approved by the director and shall include instruction in all of the following subject areas:

(A) Areas of Law.

1. Statute: Chapter 374, sections 374.695 to 374.789, RSMo;
2. Statute: Chapter 544, RSMo—Arrest, Examination, Commitment and Bail;
3. Applicable federal and state constitutional and case law, including, but not limited to:
 - A. Warrants/warrant procedures.
 - B. Incarceration, surrender and release.
 - C. Extraditions.
 - D. Use of force.
 - E. Custody and transportation.

(B) Bail Bond Training.

1. Licensing.
 - A. Test procedures.
 - B. Regulation.
 - C. Terminology.
2. Documentation.
 - A. Power of Attorney.
 - B. Contracts: elements, classifications.
 - C. Certifications.
 - D. Revocation of bail.
 - E. Incarceration, surrender and release.
3. Missouri Supreme Court Rules: 33.17, 33.18, 33.19.
4. Rights of a bondsman.
 - A. History.
 - B. Powers.
 - C. Principles.
 - D. Practices.
5. Business etiquette.
 - A. Contracts.
 - B. Appearance.
 - C. Ethics.

(C) Surety Recovery Training.

1. Licensing.
 - A. Test procedures.
 - B. Regulation.
 - C. Terminology.
2. Documentation.
 - A. Contracts.
 - B. Authority.
 - (I) Warrants.
 - (II) Certifications.
 - (III) Extradition.
 - (IV) Incarceration and surrender.

3. Apprehension procedures.
 - A. Authority notification.
 - B. Techniques.
 - (I) Verification.
 - (II) Proper use of force.
 - (III) Self-identification.
 - (IV) Custody and transportation.
4. Legal liability.

(2) Authorized Educational Providers.

(A) Pending approval by the department upon submission of an application for course provider, the director shall grant authority to public or private institutions, educational organizations, associations or individuals to provide the required initial basic training. All course provider applications must include a course outline and list of instructors, as provided herein. Applicants for course provider must have demonstrated three (3) years prior competent experience in the areas of instruction listed in section (1) of this rule.

(B) Each course provider and each course must be approved by the director. Application forms for this approval are available on the department's website at www.insurance.mo.gov and at the Department of Insurance. In order for the director to review applications for approval, the following must be submitted:

1. The provider's application must include each instructor's qualifications and a listing of dates and times of all scheduled courses. Upon approval of the course, notification will be returned to the provider indicating the course number assigned by the Department of Insurance. Once approved, subsequent courses with a schedule of dates and times the course will be offered must be submitted thirty (30) days prior to holding the course.

2. A course outline prepared by each instructor which demonstrates the topics to be taught and the time that will be devoted to each topic. Course outlines shall indicate a sufficient amount of time for each subject area and must include all subjects as listed in this section.

3. An application fee of one hundred dollars (\$100) must be submitted with the provider and course application. Personal checks are not accepted.

4. The cost per student for the twenty-four (24)-hour initial basic training which shall not exceed two hundred dollars (\$200).

(C) All approved course providers shall complete a class roster in the form approved by the department indicating all course attendees for each day classes are held which shall be sent to the Missouri Department of Insurance within thirty (30) days of completion of the course.

(D) Course providers shall present each attendee with a Certificate of Completion of Initial Basic Training upon the attendee's successful completion of the course, in the form approved by the department.

(E) The Missouri Department of Insurance may audit the approved courses at any time.

(F) Self-study courses in any format, or electronic or telephone conference courses shall not be eligible for approval for initial basic training.

(G) Class roster and Certificate of Completion of Initial Basic Training forms are available on the department's website at www.insurance.mo.gov and at the Department of Insurance.

AUTHORITY: sections 374.045, RSMo 2000 and 374.705, 374.710 and 374.784, RSMo Supp. 2004. Original rule filed Sept. 14, 2004.

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

PRIVATE COST: This proposed rule will cost private entities one thousand dollars (\$1,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	20 CSR 700-6.150 Initial Basic Training for Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents
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 proposed 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:
10	Initial Basic Training for Bail Bond, General Bail Bond and Surety Recovery Agents (10 providers @ \$ 100 registration fee each)	\$ 1,000
	Estimated Cost of Compliance for the Life of the Rule	\$ 1,000

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

- Currently, initial basic training is not required for bail bond licensees or surety recovery agents rendering it difficult to precisely estimate the number of potential educational providers. However, prior to 2003, pre-licensing education was a prerequisite for insurance agent licensure. The Department's data reflects that an aggregate of approximately 10 providers requested certification/licensure as insurance agent pre-licensing educational providers over the last 10 years. After consulting with representatives from the bail bond and surety recovery industries, the Missouri Bail Bond Association and the National Professional Bounty Hunting School, the Department assumes the number of educational providers for bail bond/surety recovery initial basic training will be similar to the numbers of former agent pre-licensing educational providers. Accordingly, the Department estimates a maximum of 10 initial basic training providers will request provider approval over the life of the rule.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED RULE

20 CSR 700-6.160 Continuing Education for Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents

PURPOSE: This rule establishes procedures with regard to the continuing education requirements contained in sections 374.710 and 374.784, RSMo Supp. 2004.

(1) As used in this rule, unless the context clearly indicates otherwise, the following terms shall mean:

(A) Approved course—an educational presentation offered in a class, seminar, self-study or other forms of instruction involving state and federal laws related to the bail bond industry and law enforcement, surety contract principles, procedures related to the apprehension of prisoners, procedures for field operations, principles of investigation, or other related areas approved by the director;

(B) CEC—continuing education credit for licensed bail bond agents, general bail bond agents and surety recovery agents;

(C) Classroom—an area designated for instructional purposes;

(D) Bail Bond Agent, General Bail Bond Agent and Surety Recovery Agent Continuing Education Certificate of Course Completion—a form provided by the director and completed by the authorized provider representative of an approved course which signifies satisfactory completion of the course and reflects the hours of credit earned;

(E) Bail Bond Agent, General Bail Bond Agent and Surety Recovery Agent Continuing Education Certification Summary—a form provided by the director and completed by the licensee which documents compliance with the continuing education requirements in section 374.710, RSMo;

(F) Bail Bond Agent, General Bail Bond Agent and Surety Recovery Agent Continuing Education Provider Application for Course Approval—a form provided by the director and completed by the course provider which requests approval of a continuing education course from the director;

(G) Affidavit of Bail Bond Agent, General Bail Bond Agent and Surety Recovery Agent Exam Proctor—a form which can be accessed at the department's website at www.insurance.mo.gov or at the department to be completed by the proctor of an exam taken by the licensee to complete the requirements for credit for a self-study course;

(H) Exam proctor—a disinterested third party of at least eighteen (18) years of age, who has no corporate, employment or personal relationship, or other interest, in the student's performance on the examination;

(I) Teleconference course—a live interactive broadcast that is transmitted via satellite or other electronic means;

(J) Credit hour—constitutes fifty (50) minutes of uninterrupted instruction pertaining to an approved course. Partial hours of credit are not allowed;

(K) Director—the director of the Department of Insurance, or his/her designee;

(L) Licensee—a person who is licensed by the Missouri Department of Insurance (MDI) as a bail bond agent, general bail bond agent or surety recovery agent;

(M) Self-study course—any course completed by a licensee using books, audio and/or videotapes, computer programs, Internet rebroadcast of a taped teleconference, or any other medium of instruction, without the presence of an instructor or monitor.

(2) CEC hours may be earned through the following:

(A) Classroom instruction with a maximum credit of eight (8) CEC hours per course.

(B) Self-Study Courses. The licensee must pass a proctored exam to receive credit. The maximum allowable credit for self-study courses is eight (8) CEC hours per course.

1. The credit hours for a self-study course will be determined by the following method:

A. Workbooks or other printed material—Page count of fifteen (15) pages will equal one (1) credit hour;

B. Computer-based courses or Internet courses will be calculated as: three (3) screens (750 words) will equal one (1) printed page and forty-five (45) screens will equal one (1) credit hour.

2. The proctored exam must have at least twenty-five (25) questions and the exam will be awarded one (1) credit hour for every twenty-five (25) questions.

3. Open book examinations will not be allowed. The licensee will not be allowed access to books, notes, or any other reference material or information that would give or assist the licensee with the answers to the examination questions.

(3) A provider of classroom instruction or a self-study course must seek approval from the director by completing the form "Continuing Education Provider Application for Bail Bond Course Approval," which can be accessed at the department's website at www.insurance.mo.gov or at the department. The form contains the requirements for obtaining course approval. Incomplete applications that are returned to the applicant for additional information must be resubmitted in their entirety prior to the course presentation date. Credit will not be given to licensees for attending courses prior to the course approval date.

(4) Filing Fees for Course Approval. Every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars (\$50) per course. Such fee shall accompany the application form required by the director. Courses shall be approved for a period of no more than one (1) year. Applicants holding courses intended to be offered for a longer period must reapply for approval on forms prescribed by the director and must include a fifty dollar (\$50) course renewal fee.

(5) All course providers must furnish the form "Continuing Education Certificate of Course Completion" to any licensee who earns CEC hours after completing an approved course. The form contains record keeping requirements for licensees. The form can be accessed at the department's website at www.insurance.mo.gov or at the department.

(6) Bail bond agents, general bail bond agents and surety recovery agents must submit the form "Continuing Education Certification Summary" to the director to show compliance with sections 374.710 and 374.784, RSMo. The form can be accessed at the department's website at www.insurance.mo.gov or at the department.

(7) Bail bond agents, general bail bond agents and surety recovery agents taking self-study courses must have the exam proctor complete the form "Affidavit of Exam Proctor" to show compliance with sections 374.710 and 374.784, RSMo, and return the form to the provider. The form can be accessed at the department's website at www.insurance.mo.gov or at the department.

(8) Within thirty (30) days of the date a course is completed by a licensee, providers shall notify the director of the credit hours earned by a licensee in an electronic form as prescribed by the director. Specifications may be obtained by contacting the Licensing Section of the department.

(A) For good cause shown, the director or the director's designee may by written order waive application of the provisions of this section of the rule. The extent of the waiver will be governed by the terms of the written order granting the waiver.

(9) A licensee may not repeat a course for credit during the same renewal period.

(10) Courses that were taken prior to the date of the Missouri license will not be allowable for credit as continuing education.

(11) The department may audit the approved courses or the licensee's continuing education records at any time.

(12) Failure of providers to comply with Missouri insurance statutes or regulations may result in revocation of the courses and/or corrective action against the provider.

(13) Reporting Period.

(A) All resident and nonresident bail bond agents, general bail bond agents and surety recovery agents must file the Continuing Education Certification Summary listing the completed courses approved by the Missouri Department of Insurance at the time of their biennial license renewal.

(B) Resident and nonresident bail bond agents, general bail bond agents and surety recovery agents must show proof of compliance with the continuing education requirements at the time of their biennial license renewal.

(14) The cost per student for eight (8) hours of continuing education shall not exceed one hundred fifty dollars (\$150).

AUTHORITY: sections 374.045, RSMo 2000 and 374.705, 374.710 and 374.784, RSMo Supp. 2004. Original rule filed Sept. 14, 2004.

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

PRIVATE COST: This proposed rule will cost private entities ten thousand dollars (\$10,000) annually in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

FISCAL NOTE
 PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 700-6.160 Continuing Education for Bail Bond Agents, General Bail Bond Agents and Surety Recovery Agents
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 proposed 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:
20	Continuing Education Providers for Bail Bond, General Bail Bond and Surety Recovery Agents (200 courses applications/ renewals per year @ \$50 each)	\$ 10,000 annually
	Estimated Annual Cost of Compliance for the Life of the Rule	\$ 10,000

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

- Currently, continuing education is not required for bail bond licensees or surety recovery agents rendering it difficult to precisely estimate the number of potential educational courses.
- Based on discussions with representatives from the bail bond and surety recovery industry, the Missouri Bail Bond Association and the National Professional Bounty Hunting School, it is assumed the ratio of educational providers to bail bond and surety recovery agent licensees will approximately equal the ratio of insurance producer continuing education providers to insurance producer licenses.
- Currently, there are approximately 46,000 resident licensed insurance producers and approximately one continuing education provider per 100 insurance producer licensees.
- Based on the Department's research and the Department's licensing records, the Department statistically issues or renews a total of approximately 950 bail bond agents, general bail bond agents and general bail bond corporations licenses biennially. The Department assumes the annual number of bail bond licensees will remain consistent

over the life of this rule and therefore estimates a total of 950 bail bond new or renewed bail bond licensees biennially.

- It is assumed that an aggregate of 1,050 surety recovery agents will apply for or renew a surety recovery agent license biennially. This calculation estimates approximately one licensed surety recovery agent per current bail bond licensee and does not include licensed bail bond agents who are authorized to perform surety recovery activities without a separate surety recovery license.
- Based on the foregoing, it is estimated that a total of 2,000 bail bond and surety recovery agents will require continuing education biennially (950 bail bond licensees + 1,050 surety recovery agents)
- Applying the continuing education course ratio indicated above, the Department assumes approximately 20 bail bond/surety recovery educational providers will apply for course approval each year (1 provider per every 100 of the estimated 2,000 bail bond and surety recovery licensees).
- The estimate of continuing education courses subject to the proposed rule was similarly calculated based on the Department's research and current producer education data which evidences a ratio of approximately 1 insurance producer continuing education course for every 10 producer licensees (currently 4,242 continuing education courses are approved or renewed each year for approximately 46,000 insurance producer licensees). Based on this ratio and discussions with representatives from the bail bond and surety recovery industries, it is assumed that a total number of 200 bail bond and surety recovery courses will be submitted for approval or renewal each year (1 course for every 10 of the estimated 2,000 bail bond and surety recovery licensees).
- It is anticipated the estimated total cost will recur annually for the life of the rule.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED RULE

20 CSR 700-6.170 Change of Status Notification for Bail Bonds Agents, General Bail Bonds Agents and Surety Recovery Agents

PURPOSE: This rule sets the requirements for notification of the Department of Insurance of a change in status of specified information provided on the original application.

(1) Bail bond agents, general bail bond agents and surety recovery agents shall inform the director of a change of name or change of address within thirty (30) days of the change by submitting a change in status form which may be obtained on the department website at www.insurance.mo.gov or at the offices of the department.

(2) General bail bond corporations shall inform the director of a change of officers/owners within thirty (30) days of the change by submitting a change in status form which may be obtained on the department website at www.insurance.mo.gov or at the offices of the department.

(3) Failure to timely inform the director of the changes described in this rule may result in a forfeiture not to exceed the sum of ten dollars (\$10) per month.

AUTHORITY: sections 374.045, RSMo 2000 and 374.705, 374.710 and 374.784, RSMo Supp. 2004. Original rule filed Sept. 14, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED AMENDMENT

20 CSR 700-6.200 Assignment and Acknowledgement. The department is amending the title of the chapter, the Purpose and sections (1)–(3), deleting section (4), and the form that follows the rule

in the *Code of State Regulations*.

PURPOSE: This rule is being amended to implement the legislative changes enacted by Senate Bill 1122 in the 2004 legislative session of the 92nd General Assembly and to update the required forms and procedures for the assignment of assets to the department by a general bail bond agent.

PURPOSE: This rule is intended to clarify the procedure for [and form of] the asset assignment requirement under sections 374.715 and 374.740, RSMo Supp. 2004. [This rule also provides the form of the assignment for the benefit of the state of Missouri to be used by all applicants for and by all current licensees seeking renewal of licensure as a general bail bond agent.]

(1) The ten thousand dollar (\$10,000)- or twenty-five thousand dollar (\$25,000)-asset or assets required by sections 374.715 and 374.740, RSMo, shall be held in the name of the general bail bond agent [for the owner of the asset or assets,] with the state of Missouri, director of the Department of Insurance as assignee. [The interest of the state of Missouri and the director shall be prominently shown on the asset or assets.] The general bail bond agent applicant shall submit with the general bail bond license application, the fee stated in section (1) of 20 CSR 700-6.100, the Assignment, a completed Acknowledgement of Assignment from the financial institution issuing the Certificate of Deposit, and the original Certificate of Deposit.

(2) [The Assignment form set forth as Exhibit 1 of this rule shall be used and submitted to the department by all applicants for licensure or upon renewal of licensure as a general bail bond agent in order to comply with the provisions of sections 374.715 and 374.740, RSMo. All general bail bond agent licensees seeking renewal shall supply a copy of this form with each renewal.] All general bail bond agents seeking renewal shall supply an original letter from the financial institution issuing the assigned Certificate of Deposit, stating that the Certificate of Deposit is still assigned to the state of Missouri. The letter must be printed on the financial institution's letterhead, provide the Certificate of Deposit number, the general bail bond agent's name, and must be signed and dated by an official of the financial institution. The letter from the financial institution shall be submitted with the renewal request and renewal fee stated in section (1) of 20 CSR 700-6.100.

(3) [The Acknowledgement of Assignment and Release of Assignment form set forth as Exhibit 2 of this rule shall be sent to the holder of the asset or assets required by section 374.715, RSMo.] The Assignment form and the Acknowledgement of Assignment and Release of Assignment form are available on the department website at www.insurance.mo.gov and at the offices of the Department of Insurance.

[(4) The holder of the asset or assets shall execute the Acknowledgement of Assignment and return it to the department within thirty (30) days of receipt.]

AUTHORITY: sections [374.045, 374.700–374.775, RSMo 1994] 374.710 and 374.784, RSMo Supp. 2004. Original rule filed Oct. 15, 1996, effective May 30, 1997. Amended: Filed Sept. 14, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED RULE

20 CSR 700-6.250 Assignment of Additional Assets

PURPOSE: This rule effectuates and aids in the interpretation of the provisions of sections 374.715 and 374.740, RSMo Supp. 2004, involving the conditions under which an assignment of additional assets to the director will be required of a general bail bond agent.

- (1) The director may require the assignment of additional assets if:
- (A) The department receives notices from a court or courts that the general bail bond agent has accumulated seven thousand dollars (\$7,000) in unsatisfied bond forfeiture judgments;
- (B) The department receives multiple notices of unsatisfied judgments within a thirty (30)-day period;
- (C) The department receives a complaint or complaints that the general bail bond agent owes parties to the bail contract or any persons providing funds or collateral for bail in excess of five thousand dollars (\$5,000); or
- (D) The department receives notice from a court or courts that the general bail bond agent, acting as surety, has executed a bond or bonds exceeding the assets declared to the court or courts pursuant to the provisions of Supreme Court Rule 33.18.

(2) In the event that the general bail bond agent receives notice from the department that the assignment of additional assets is required, the general bail bond agent shall obtain a Certificate of Deposit in the name of the general bail bond agent for the amount requested by the department. The original Certificate of Deposit, an Assignment, and a completed Acknowledgement of Assignment from the financial institution issuing the Certificate of Deposit shall be submitted to the department within twenty (20) working days of receipt of the notice by the general bail bond agent. Acknowledgement of Assignment forms are available on the department website at www.insurance.mo.gov and at the offices of the Department of Insurance.

AUTHORITY: sections 374.045, RSMo 2000 and 374.705, 374.715 and 374.740, RSMo 2004. Original rule filed Sept. 14, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on November 18, 2004. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED AMENDMENT

20 CSR 700-6.300 Affidavits. The department is amending the title of the Chapter, the Purpose, section (1), and deleting the form that follows this rule in the *Code of State Regulations*.

PURPOSE: This rule is being amended to implement the legislative changes enacted by Senate Bill 1122 in the 2004 legislative session of the 92nd General Assembly and to amend the forms for affidavits required by section 374.760, RSMo.

PURPOSE: This rule establishes [the form of the affidavit] the location of the affidavit form required to be filed monthly pursuant to section[s] 374.760, RSMo Supp. 2004.

- (1) The Affidavit form [set forth as Exhibit 1 of this rule shall] required to be filed between the first and the tenth day of each month by each general bail bond agent in order to comply with the provisions of section 374.760, RSMo, is available on the department website at www.insurance.mo.gov and at the offices of the Missouri Department of Insurance.

AUTHORITY: sections 374.045 [374.700-374.775, RSMo 1994 and Supp. 1998] and 374.760, RSMO 2000 and 374.705 RSMo Supp. 2004. Original rule filed Oct. 15, 1996, effective May 30, 1997. Amended: Filed April 23, 1999, effective Nov. 30, 1999. Amended: Filed Sept. 14, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on November 18, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on November 18, 2004. Written statements shall be sent

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