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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

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**SECRETARY OF STATE**

**ROBIN CARNAHAN**

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

DIRECTOR

BARBARA WOOD

.

EDITORS

BARBARA MCDUGAL

JAMES MCCLURE

.

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

.

PUBLISHING STAFF

WILBUR HIGHBARGER

JACQUELINE D. WHITE

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

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

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

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

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

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

**RSMo**—The most recent version of the statute containing the section number and the date.

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

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

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

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 24—Drivers License Bureau Rules**

**EMERGENCY AMENDMENT**

**12 CSR 10-24.448** [*Proof of Identity and Proof of Social Security Number*] **Documents Required for Issuance of a Driver or Nondriver License or Instruction Permit.** The director proposes to amend the title and Purpose, delete sections (1) through (8) and add new sections (1) and (2).

*EMERGENCY STATEMENT:* This emergency amendment is required to ensure enhanced identification requirements are used for the issuance of driver or nondriver licenses or instruction permits, including minimum data requirements and standards to ensure that a person who presents a form of identification is the person identified on that document and that such person is lawfully present in the United States and residing in Missouri. It is intended to clarify the documents required for both United States citizens and non-United States citizens. This action is being taken in order to ensure that Missouri's identification standards are reliable and that they parallel the federal government standards for issuing passports, military identity cards and identity cards for access to secure federal facilities. These specific documents further assist the department in correctly identifying the applicant, ensuring that the applicant is lawfully present and the duration of such person's lawful presence so that a dri-

ver or nondriver license or instruction permit issued by Missouri may be more widely accepted as a primary form of identification by other states, for boarding planes, and by the federal government for use in such programs as the Help America Vote Act. This emergency amendment is necessary to ensure public awareness of the documentation required to establish identity, lawful presence and residency and to preserve the compelling governmental interest of identifying applicants and confirming lawful presence and duration of stay prior to issuing Missouri driver or nondriver licenses, or instruction permits. It is necessary to require an early effective date for this amendment to coincide with Missouri statute passed by the 92nd General Assembly in Senate Bill 1233. The department undertook a lengthy and time consuming process to coordinate with the United States Custom Service what documentation should be required to ensure that accurate and consistent documentation is being used to correctly identify and determine the applicant's lawful presence. The United States Custom Service has now approved the documentation required as indicated in this amended rule. The director finds that there is an immediate danger to the public welfare in issuing a driver or nondriver license or instruction permit to applicants without proper identification and documentation of lawful presence and this danger can only be addressed through this emergency amendment. License applicants applying under the prior license standards have been issued documents that have resulted in some contact from the federal government indicating six (6)-year license documents were issued to persons who were not legally in this country and were of interest. The director has followed procedures calculated to assure fairness to all interested persons and parties and has complied with protections extended by the *Missouri and United States Constitutions*. The director has limited the scope of the emergency amendment to the circumstances creating the emergency. Emergency amendment filed June 21, 2005, effective July 1, 2005, expires December 28, 2005.

*PURPOSE:* This amendment identifies the documents required when issuing driver and nondriver licenses or instruction permits to United States and non-United States citizens. This amendment is necessary due to the passage of Senate Bill 1233 from the 92nd General Assembly.

*PURPOSE:* This rule establishes the [documents] guidelines and documentation acceptable as proof of lawful presence, identity, [and] Social Security number and residency for driver[s] and nondriver[s] license or instruction permit applicants.

[(1) An applicant is required to submit a minimum of two (2) documents for proof of identity (two (2) primary documents or one (1) primary and one (1) secondary document) when making an application for an original or duplicate driver's or nondriver's license.

(2) A renewal applicant is required to show only his or her current driver or nondriver license. If the license is unavailable, the license office clerk must obtain the digital image of the applicant's previous license transaction where a comparison of the image on the file can be made to the person in the office and require one (1) secondary document, or the clerk must require the applicant to submit two (2) primary documents or one (1) primary and one (1) secondary document for proof of identity.

(3) The primary document must contain the applicant's full legal name (including middle name if the applicant has one) and date of birth. The secondary document must contain the applicant's name and sufficient substantiating information for all/part of the information contained on the primary document.

(4) Primary documents acceptable as proof of identity include the following:

(A) U.S. or Canadian photo driver's license (including the U.S. and Canadian territories);

(B) U.S. or Canadian photo identification card/nondriver's license (including the U.S. and Canadian territories);

(C) Microfilm copy or image portfolio of a driver's license or identification card/nondriver's license certified by the issuing agency with an embossed seal of the issuing agency;

(D) Certificate of birth (U.S. or Canadian issued, including the U.S. and Canadian territories). Must be original or certified copy, have a seal and be issued by an authorized government agency such as the Bureau of Vital Statistics or State Board of Health. Hospital issued certificates and Baptismal certificates are not acceptable;

(E) Immigration and Naturalization Services (INS) documents (must be a valid unexpired document) as follows:

1. Certificate of Naturalization (N-550, N-570 or N-578);

2. Certificate of Citizenship (N-560, N-561 or N-645);

3. Northern Mariana Card;

4. American Indian Card;

5. U.S. Citizen Identification Card (I-179 or I-197);

6. Resident Alien Card (I-551);

7. Temporary Resident Identification Card (I-688);

8. Record of Arrival and Departure in a valid Foreign Passport (I-94);

9. Valid Foreign Passport containing an I-551 stamp;

10. U.S. Re-entry Permit (I-327);

11. Refugee Travel Document (I-571);

12. Employment Authorization Card (I-688A, I-688B, I-766); and

13. Record of Arrival and Departure, stamped Refugee. (I-94)—(Refugee I-94's will likely not be in a Foreign Passport);

(F) Canadian Immigration Record and Visa or Record of Landing (IMM 100);

(G) Active Duty, Retiree or Reservist Military Identification Card;

(H) Valid Passport, U.S. or Canadian (including the U.S. and Canadian territories). If Foreign Passport, appropriate INS document is also required;

(I) U.S. or Canadian issued learner's permit containing a photo (including the U.S. and Canadian territories); and

(J) Canadian Department of Indian Affairs issued identification card. Tribal issued cards and U.S. issued Department of Indian Affairs cards are not acceptable.

(5) Secondary documents acceptable as proof of identity include the following:

(A) All primary documents listed in section (4) of this rule;

(B) Court order. The order must contain full name, date of birth and court seal. Examples include, but may not be limited to, adoption document, name change document, and gender change document. It does not include abstract of criminal or civil conviction;

(C) INS documents listed in subsection (4)(E) of this rule which are expired one (1) year or less;

(D) Bureau of Indian Affairs Card/Indian Treaty Card. Tribal issued cards are not acceptable;

(E) Employer photo identification card;

(F) Foreign birth certificate. An Affidavit of Interpretation form as outlined in 12 CSR 10-24.446 must be completed and notarized when the birth certificate is in another language;

(G) Health insurance card;

(H) IRS/state tax form. A W-2 is not acceptable;

(I) Marriage certificate/license;

(J) Medical records from doctor/hospital;

(K) Military dependent identification card;

(L) Military discharge/separation papers;

(M) Parent/guardian affidavit. Parent/guardian must appear in person, prove his or her identity and submit a notarized affidavit regarding the child's identity. This affidavit only applies to minors;

(N) Gun permit;

(O) Pilot's license;

(P) School record/transcript that is certified with an embossed seal of the issuing school or department of education;

(Q) Social Security card. A metal card is not acceptable;

(R) Student identification card that contains a photo;

(S) Vehicle title. Vehicle registration is not acceptable;

(T) Photo public assistance card; and

(U) Prison release document.

(6) Additional documentation may be required if the documentation submitted is questionable or if the license office clerk has reason to believe the person is not who he or she claims to be.

(7) In exceptional circumstances where a primary or secondary document is not available, personnel authorized by the Director of Revenue may accept alternative documents to verify a person's identity.

(8) Documents acceptable as proof of Social Security number (SSN) include the following:

(A) Social Security card. A metal card is not acceptable;

(B) Letter from the Social Security Administration;

(C) IRS/state tax forms. W-2 Form is not acceptable;

(D) Financial statement containing the SSN;

(E) Payroll stub containing the SSN; and

(F) Military identification card containing the SSN.

If one of these documents is not available, personnel authorized by the Director of Revenue may use discretion in accepting other documents to verify the Social Security number.]

(1) All applicants for a driver or nondriver license or instruction permit must provide:

(A) Proof of lawful presence—proof of lawful presence must be shown for any new or renewal driver or nondriver license or instruction permit application. U.S. citizens who have previously verified lawful presence and the license record indicates such verification may not be required to show proof upon subsequent applications.

(B) Proof of identity—proof of identity must be shown for any new, renewal, or duplicate driver or nondriver license or instruction permit. The proof of identity document must contain the applicant's full legal name and date of birth. The document must match the person's current name unless a change of name is established by a court order, marriage certificate, marriage license, adoption papers (court order/amended birth certificate) or divorce decree. Only original documents or a photocopy bearing an original certification by the issuing authority is acceptable.

(C) Proof of Social Security number—proof of Social Security number must be provided for any new, renewal, or duplicate driver or nondriver license or instruction permit. Applicants who have previously verified Social Security number and the license record indicates such verification may not be required to show proof upon subsequent applications.

(D) Proof of residency—proof of residency must be shown upon application for a new, renewal or duplicate driver or nondriver license or instruction permit application.

(2) Documents acceptable as proof of lawful presence, identity, Social Security number and residency are available on the Department of Revenue's website <http://www.dor.mo.gov> or by mailing a written request to the Missouri Department of Revenue, PO Box 200, Jefferson City, MO 65105-0200, or by telephone (573) 751-2730.

*AUTHORITY:* sections 302.011, 302.130, 302.171, 302.181, 302.720, 302.735, RSMo Supp. 2004 and 302.080, RSMo 2000. Original rule filed March 27, 1998, effective Sept. 30, 1998. Emergency amendment filed Dec. 16, 2002, effective Dec. 26, 2002, expired June 23, 2003. Amended: Filed Dec. 16, 2002, effective May 30, 2003. Emergency amendment filed June 21, 2005, effective July 1, 2005, expires Dec. 28, 2005. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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

**EMERGENCY AMENDMENT**

**13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services.** The division is adding section (21).

*PURPOSE:* This amendment provides for the calculation of nursing facility Medicaid per diem rates effective for dates of service beginning July 1, 2005.

*EMERGENCY STATEMENT:* The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance. For the fiscal year that begins July 1, 2005, the appropriation by the General Assembly did not include any funds for any per diem rate increases. The division must take proactive action to create an efficient and sustainable Medicaid program. This emergency amendment provides for the calculation of nursing facility Medicaid per diem rates effective for dates of service beginning July 1, 2005 to maintain the per diem calculations provided for in the emergency amendment filed March 21, 2005, effective for dates of service beginning April 1, 2005 and to provide for an additional provision which allows the state to adjust the per diem calculation for nursing facilities that operate at fifty percent (50%) of their licensed bed capacity with each resident residing in a private room. These adjustments to the calculation of nursing facility Medicaid per diem rates are necessary to ensure that payments for such nursing facility per diem rates are in line with the funds appropriated for that purpose. If the funds appropriated for the payment of medical assistance benefits at any time become insufficient to pay the full amount of the payment, no payment will be made through the Medicaid claims processing system. The Division of Medical Services is attempting to provide services within the means that taxpayers, through the General Assembly, have given the division. There are a total of four hundred ninety-nine (499) nursing facilities currently enrolled in Missouri Medicaid. Of the total, four hundred ninety-seven (497) nursing facilities have no rate reduction or rate increase; and two (2) nursing facilities have an increase, one (1) of which is over one dollar (\$1) per day and the other is over two dollars (\$2) per day. The continued availability of payment for mandatory nursing facility services to approximately twenty-five thousand (25,000) senior Missourians will ensure quality nursing facility services continue to be provided to Medicaid patients in nursing facilities. This emergency amendment will ensure continued payment throughout state fiscal year 2006 for nursing facility services. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in nursing facili-

ties for state fiscal year 2006. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling government interest in providing continued cash flow for nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material was published in the *Missouri Register* on May 2, 2005. As a result of comments, the proposed amendment is revised in the order of rulemaking that will be filed with the Secretary of State after review by the Joint Committee on Administrative Rules. This emergency amendment was filed June 20, 2005, effective July 1, 2005, expires December 27, 2005.

(21) Per Diem Rate Calculation Effective for Dates of Service Beginning July 1, 2005. Effective for dates of service beginning July 1, 2005, the rebase provisions set forth in section (20) shall not apply. Effective for dates of service beginning July 1, 2005, the per diem rates shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, except that the data indicated in this section (21) shall be used.

(A) The audited 2001 cost report data shall be used to develop the databank and to determine each nursing facility's per diem rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective July 1, 2005.

1. A new databank shall be developed using the audited 2001 cost report data set forth above in subsection (21)(A) for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

2. The costs in the databank shall be trended using the second quarter indices from the First Quarter 2004 publication of the Health-Care Cost Review using the "CMS Nursing Home without Capital Market Basket" table. The costs shall be trended for the years following the cost report year, up to and including SFY 2005. The trends applied to the 2001 cost report data include the following:

A. 2002:2 = 3.2%

B. 2003:2 = 3.4%

C. 2004:2 = 2.3%

D. 2005:2 = 2.3%

E. The total trend applied to the 2001 cost report data is 11.2%.

3. The medians and ceilings shall be recalculated, based upon the trended costs included in the new databank.

4. The costs, beds, days, renovations/major improvements, loans, etc. from each facility's cost report included in the databank shall be used to calculate each nursing facility's rate. The costs reflected in each facility's cost report shall be trended as detailed above in paragraph (21)(A)2.

(B) The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be based upon the 2004 publication of the RS Means Building Construction Cost Data. The asset value is determined by using the median, total cost of construction per bed for nursing homes from the "S.F., C.F., and % of Total Costs" table and adjusting it by the total weighted average index for Missouri cities from the "City Cost Indexes" table. The asset value shall be forty-one thousand seven hundred twenty-seven dollars and fifty cents (\$41,727.50).

(C) The age of the beds shall be calculated from 2004.

(D) The interest rate used in determining the capital cost component and working capital allowance, as set forth in subsections (7)(F), (11)(D), and (11)(E), shall be the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June 2004 plus two percent (2%). The interest rate shall be the prime rate of four percent (4%), as published June 1, 2004, plus two percent (2%) for a total of six percent (6%).

(E) The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be the interest (i.e., coupon) rate for the most recent issue of thirty (30)-year Treasury Bonds in effect on the first business day of June 2004 plus two percent (2%). The rate of return shall be the thirty (30)-year Treasury Bond rate of 5.375%, effective June 1, 2004, plus two percent (2%) for a total of 7.375%.

(F) The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy.

(G) The high volume adjustment shall continue to be that determined for SFY 2004. The 2001 cost report shall continue to be used rather than the cost report ending in the third calendar year prior to the state fiscal year as set forth in part (13)(B)10.A.(I), and the remaining criteria and calculations set forth in paragraph (13)(B)10. shall continue to be that used in the SFY 2004 calculation. Therefore, facilities receiving the high volume adjustment for SFY 2004 shall continue to receive that same high volume adjustment which will be included in its rate effective for dates of service beginning July 1, 2005.

(H) Rate adjustment requests for replacement beds, additional beds, and/or extraordinary circumstances as set forth in paragraphs (13)(B)6., (13)(B)7. and (13)(B)8. are no longer allowed.

(I) Facility size and occupancy rate adjustment. If a facility qualifies for the facility size and occupancy rate adjustment, its facility size and occupancy rate shall be adjusted and used in the calculation of its per diem rate.

1. Qualifying criteria. A nursing facility may qualify for a facility size and occupancy adjustment if it meets all of the following criteria:

A. The facility has been operating only fifty percent (50%) of its licensed bed capacity; and

B. Every resident has been residing in a private room; and

C. The facility has been operating as such (as detailed in A. and B. above) from the beginning of their 2001 cost report period through the date the rate is effective as reported on the quarterly survey form, "Missouri Department of Health and Senior Services, Division of Senior Services and Regulation, ICF/SNF Certificate of Need Quarterly Survey" (form MO 886-9001(6-95)) (quarterly survey); and

D. The facility's intent for operating as such is to qualify for a Certificate of Need (CON) in accordance with section 197.318.9, RSMo 2000.

2. Calculation of adjusted facility size, adjusted occupancy rate and adjusted per diem rate.

A. Adjusted facility size. The facility size as defined in subsection (4)(BB) and used in the determination of a facility's capital cost component under the fair rental value system set forth in subsection (11)(D) shall be adjusted to reflect fifty percent (50%) of the licensed bed capacity.

B. Adjusted occupancy rate. The occupancy rate as defined in subsection (4)(MM) shall be adjusted to reflect fifty percent (50%) of the licensed bed capacity by adjusting the bed days used to determine the occupancy rate. The bed days shall be calculated using fifty percent (50%) of the licensed bed capacity and the adjusted occupancy rate shall be calculated by dividing the facility's total actual patient days by the adjusted bed days.

C. The adjusted facility size and the adjusted occupancy rate shall be used to determine the facility's per diem rate in accordance with the remaining provisions of this regulation.

3. The facility must notify the division in writing that it qualifies for this adjustment and provide the proper documentation, including the following:

A. A copy of the quarterly surveys from the beginning of the 2001 cost report period through the date the rate is effective, and

B. A copy of an approved CON obtained under section 197.318.9, RSMo 2000, or a written statement indicating the facility's intention of obtaining a CON under section 197.318.9, RSMo 2000, including a specific time line detailing when they plan to apply for the CON and when they plan to begin construction relative to the CON.

C. The division shall accept such written notification from facilities that qualify for this adjustment as of July 1, 2005 for up to thirty (30) days after the effective date of this amendment.

4. This adjustment shall only apply to nursing facilities with a prospective rate on July 1, 2005 and shall only be granted for the July 1, 2005 rate calculation.

5. Loss of facility size and occupancy rate adjustment and recalculation of per diem rate. If a facility's per diem rate has been set using an adjusted facility size and an adjusted occupancy rate and at least one of the conditions set forth below in parts (21)(I)5.A.(I)-(IV) is met, the facility will no longer receive the adjustment to the facility size and occupancy rate in determining its per diem rate and its per diem rate shall be recalculated.

A. The conditions for losing the facility size and occupancy rate adjustment include the following:

(I) The facility ceases to operate at fifty percent (50%) of its licensed bed capacity; or

(II) The facility ceases to operate with every resident residing in a private room; or

(III) The facility does not apply for a CON under section 197.318.9, RSMo 2000 within five (5) years of receiving the adjustment; or

(IV) The facility does not begin the construction relative to the CON obtained under section 197.318.9, RSMo 2000 within five years of receiving the adjustment.

B. If the facility size and occupancy rate adjustment is lost, the facility's per diem rate shall be recalculated using the unadjusted facility size as set forth in subsection (4)(BB) and the unadjusted bed days and unadjusted occupancy rate as set forth in subsection (4)(MM).

C. The facility must notify the division within thirty (30) days if it no longer qualifies for the facility size and occupancy rate adjustment as a result of meeting one (1) of the conditions listed above in subparagraph (21)(I)5.A.

(I) If the facility notifies the division of such within thirty (30) days, the effective date of the rate recalculation shall be the date that one (1) of the conditions set forth above in subparagraph (21)(I)5.A. is met. If more than one (1) of the conditions apply, the effective date shall be the earliest date. The facility shall repay the division any overpayment resulting from the loss of the facility size and occupancy rate adjustment.

(II) If the facility does not notify the division within thirty (30) days, the effective date of the rate recalculation shall be the date the facility size and occupancy rate adjustment was originally granted. The facility shall repay the division any overpayment resulting from the loss of the facility size and occupancy rate adjustment.

(J) The rates effective for dates of service beginning July 1, 2005 shall be determined, as set forth below:

1. A preliminary rate for July 1, 2005 shall be calculated using the same principles and methodology as detailed throughout sections (1)-(19) of this regulation and the updated items detailed above in subsections (21)(A)-(I).



2. The total increase resulting from the July 1, 2005 preliminary rate calculation shall be calculated as follows:

A. Each facility's rate as of June 30, 2004, less the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9., shall be compared to the July 1, 2005 preliminary rate calculation.

(I) The high volume adjustment, if applicable, and the NFRA shall not be included in the June 30, 2004 rate or the July 1, 2005 preliminary rate for comparison purposes in determining the total increase.

(II) The high volume adjustment, if applicable, and the current NFRA shall be added to the rate determined below in subparagraphs (21)(I)2.B. and (21)(I)2.C.;

B. If the July 1, 2005 preliminary rate is greater than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9., the difference between the two (2) shall represent the total increase. Effective for dates of service beginning July 1, 2005, one-third (1/3) of the total increase shall be added to the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9. The high volume adjustment, if applicable, and the current NFRA shall be added to that total and shall be the facility's prospective rate for dates of service beginning July 1, 2005;

C. If the July 1, 2005 preliminary rate is less than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9., the facility's prospective rate shall be the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9. plus the high volume adjustment, if applicable, and the current NFRA.

(K) Interim rates and rates for hospital-based facilities that do not submit cost reports due to having less than one thousand (1,000) patient days for Medicaid residents shall also be recalculated and increases given as set forth above.

*AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000 and 208.225 and 208.225 (Senate Substitute for Senate Bill 539 as enacted by the 93rd General Assembly). Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. Amended: Filed March 29, 2005. Emergency amendment filed June 20, 2005, effective July 1, 2005, expires Dec. 27, 2005.*

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

**EMERGENCY AMENDMENT**

**13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services.** The division is adding section (21).

*PURPOSE: This amendment provides for the calculation of HIV nursing facility Medicaid per diem rates effective for dates of service beginning July 1, 2005.*

*EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance. For the fiscal year that begins July 1, 2005, the appropriation by the General Assembly did not include any funds for any per diem rate increases. The division must take proactive action to create an efficient and sustainable Medicaid program. This emergency amendment provides for the calculation of HIV nursing facility Medicaid per diem rates effective for dates of service beginning July 1, 2005 to maintain the per diem calculations provided for in the emergency amendment filed March 21, 2005, effective for dates of service beginning April 1, 2005. These adjustments to the calculation of HIV nursing facility Medicaid per diem rates are necessary to ensure that payments for such HIV nursing facility per diem rates are in line with the funds appropriated for that purpose. If the funds appropriated for the payment of medical assistance benefits at any time become insufficient to pay the full amount of the payment, no payment will be made through the Medicaid claims processing system. The Division of Medical Services is attempting to provide services within the means that taxpayers, through the General Assembly, have given the division. There is a total of one (1) HIV nursing facility currently enrolled in Missouri Medicaid. Of the total, the one (1) HIV nursing facility did not have a rate reduction or a rate increase. The continued availability of payment for mandatory HIV nursing facility services to approximately sixteen (16) disabled Missourians will ensure quality nursing facility services continue to be provided to Medicaid patients in HIV nursing facilities. This emergency amendment will ensure continued payment throughout state fiscal year 2006 for HIV nursing facility services. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in HIV nursing facilities for state fiscal year 2006. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling government interest in providing continued cash flow for HIV nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material was published in the Missouri Register on May 2, 2005. This emergency amendment was filed June 20, 2005, effective July 1, 2005, expires December 27, 2005.*

**(21) Per Diem Rate Calculation Effective for Dates of Service Beginning July 1, 2005.** Effective for dates of service beginning July 1, 2005, the rebase provisions set forth in section (20) shall not apply. Effective for dates of service beginning July 1, 2005, the per diem rates shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, except that the data indicated in this section (21) shall be used.

(A) The audited 2001 cost report data shall be used to develop the databank and to determine each nursing facility's per diem rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective July 1, 2005.

1. A new databank shall be developed using the audited 2001 cost report data set forth above in subsection (21)(A) for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

2. The costs in the databank shall be trended using the second quarter indices from the First Quarter 2004 publication of the Health-Care Cost Review using the "CMS Nursing Home

without Capital Market Basket” table. The costs shall be trended for the years following the cost report year, up to and including SFY 2005. The trends applied to the 2001 cost report data include the following:

- A. 2002:2 = 3.2%
- B. 2003:2 = 3.4%
- C. 2004:2 = 2.3%
- D. 2005:2 = 2.3%

E. The total trend applied to the 2001 cost report data is 11.2%.

3. The medians and ceilings shall be recalculated, based upon the trended costs included in the new databank.

4. The costs, beds, days, renovations/major improvements, loans, etc. from each facility’s cost report included in the databank shall be used to calculate each nursing facility’s rate. The costs reflected in each facility’s cost report shall be trended as detailed above in paragraph (21)(A)2.

(B) The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be based upon the 2004 publication of the RS Means Building Construction Cost Data. The asset value is determined by using the median, total cost of construction per bed for nursing homes from the “S.F., C.F., and % of Total Costs” table and adjusting it by the total weighted average index for Missouri cities from the “City Cost Indexes” table. The asset value shall be forty-one thousand seven hundred twenty-seven dollars and fifty cents (\$41,727.50).

(C) The age of the beds shall be calculated from 2004.

(D) The interest rate used in determining the capital cost component and working capital allowance, as set forth in subsections (7)(F), (11)(D), and (11)(E), shall be the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June 2004 plus two percent (2%). The interest rate shall be the prime rate of four percent (4%), as published June 1, 2004, plus two percent (2%) for a total of six percent (6%).

(E) The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be the interest (i.e., coupon) rate for the most recent issue of thirty (30)-year Treasury Bonds in effect on the first business day of June 2004 plus two percent (2%). The rate of return shall be the thirty (30)-year Treasury Bond rate of 5.375%, effective June 1, 2004, plus two percent (2%) for a total of 7.375%.

(F) The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy.

(G) Rate adjustment requests for replacement beds, additional beds, and/or extraordinary circumstances as set forth in paragraphs (13)(B)1., (13)(B)2. and (13)(B)3. are no longer allowed.

(H) The rates effective for dates of service beginning July 1, 2005 shall be determined, as set forth below:

1. A preliminary rate for July 1, 2005 shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation and the updated items detailed above in subsections (21)(A)–(G).

2. The total increase resulting from the July 1, 2005 preliminary rate calculation shall be calculated as follows:

A. Each facility’s rate as of June 30, 2004, less the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5., shall be compared to the July 1, 2005 preliminary rate calculation.

(I) The high volume adjustment, if applicable, and the NFRA shall not be included in the June 30, 2004 rate or the July 1, 2005 preliminary rate for comparison purposes in determining the total increase.

(II) The high volume adjustment, if applicable, and the current NFRA shall be added to the rate determined below in subparagraphs (21)(H)2.B. and (21)(H)2.C.;

B. If the July 1, 2005 preliminary rate is greater than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5., the difference between the two (2) shall represent the total increase. Effective for dates of service beginning July 1, 2005, one-third (1/3) of the total increase shall be added to the facility’s rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5. The high volume adjustment, if applicable, and the current NFRA shall be added to that total and shall be the facility’s prospective rate for dates of service beginning July 1, 2005;

C. If the July 1, 2005 preliminary rate is less than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5., the facility’s prospective rate shall be the facility’s rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5. plus the high volume adjustment, if applicable, and the current NFRA.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000. and 208.225 (Senate Substitute for Senate Bill 539 as enacted by the 93rd General Assembly). Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the Code of State Regulations. Emergency amendment filed March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. Amended: Filed March 29, 2005. Emergency amendment filed June 20, 2005, effective July 1, 2005, expires Dec. 27, 2005.*

## Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

### Division 30—Division of [Health Standards and Licensure] Senior Services and Regulation Chapter 81—Certification

#### EMERGENCY AMENDMENT

**19 CSR 30-81.030 Evaluation and Assessment Measures for Title XIX Recipients and Applicants in Long-Term Care Facilities.**  
The department is amending section (5).

*PURPOSE: This amendment changes the minimum eligibility requirements for applicants seeking admission to a nursing facility as Title XIX recipients on or after July 1, 2005, by changing the required level-of-care point count requirement from eighteen (18) to twenty-one (21).*

*EMERGENCY STATEMENT: The Department of Health and Senior Services by regulation must define the minimum level-of-care point count which qualifies individuals for intermediate and skilled nursing care and, derivatively, for home and community-based services. The Department of Health and Senior Services must implement House Bill 10, 93rd General Assembly, First Regular Session (2005), which appropriated funds for home and community-based services based on projected savings from an increase in the minimum level-of-care point count which qualifies individuals for intermediate and skilled nursing care and, derivatively, for home and community-based services. For the fiscal year that ends June 30, 2006, House Bill 10 was predicated on projected budget savings of \$6,300,000 in general revenue and \$10,100,000 in associated federal funds, for a total budget savings of \$16,400,000. The department must take proactive action to create an efficient and sustainable home and community-based services program which serves those of greatest need with available funding. This emergency amendment provides for an*

increase in the minimum level-of-care point count which qualifies individuals for intermediate and skilled nursing care and, derivatively, for home and community-based services from eighteen (18) points to twenty-one (21) points. Since the level-of-care assessment is in increments of three (3) points, this amounts to an increase of one (1) step in calculating level-of-care. In order to realize the full budget savings contemplated by House Bill 10, the increase in the level-of-care point count must be effective at the beginning of the fiscal year, i.e., July 1, 2005. This adjustment to the minimum level-of-care point count is necessary to ensure that payments for home and community-based services are in line with the funds appropriated for that purpose. If the funds appropriated for the payment of home and community-based services at any time become insufficient to pay the full amount of the payment, no further payment will be made through the Medicaid claims processing system. By this emergency amendment, the department adopts a solution to this funding issue within the means that taxpayers, through the General Assembly, have given the department. At any given time, there are approximately thirty-five thousand (35,000) elderly and disabled adults receiving home and community-based services. There are a total of approximately ten thousand (10,000) such recipients who, at the time of their last assessment were assessed at eighteen points. During State Fiscal Year 2004, some three hundred forty-seven (347) persons who were assessed at only the eighteen (18)-point count level entered intermediate and skilled nursing facilities at various times during the year. The continued availability of payment for home and community-based services to approximately twenty-five thousand (25,000) senior Missourians who have been assessed at a level-of-care point count higher than eighteen (18) points will ensure that quality home and community-based services will continue to be provided to these Medicaid recipients. This emergency amendment that increases the minimum level-of-care point count from eighteen (18) to twenty-one (21) points will help to ensure that appropriated funds for home and community-based services will be available for those individuals with greater limitations on their activities of daily living. This emergency amendment must be implemented in a timely fashion to ensure that quality home and community-based services continue to be provided to those individuals with greater limitations on their activities of daily living. As a result, the Department of Health and Senior Services finds an immediate danger to public health, safety and/or welfare, and a compelling governmental interest, which require emergency action. The department has a compelling government interest in providing continued services for those individuals with greater limitations on their activities of daily living. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 20, 2005, effective July 1, 2005, expires December 27, 2005.

*AUTHORITY: sections [207.020 and 208.159, RSMo 1986 and 208.153, RSMo Supp. 1991] 192.006 and 198.079, RSMo 2000 and 660.050, RSMo Supp. 2004. This rule was previously filed as 13 CSR 40-81.084 and 13 CSR 15-9.030. Original rule filed Aug. 9, 1982, effective Nov. 11, 1982. For intervening history, please consult the Code of State Regulations. Emergency amendment filed June 20, 2005, effective July 1, 2005, expires Dec. 27, 2005. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

(5) Assessed Needs Point Designations.

(D) An applicant or recipient will be determined to be qualified for skilled nursing care if s/he is determined to need care with an assessed point level of [~~fifty-four (54)~~] **twenty-one (21)** points or above, using the assessment procedure as stated in this section.

(E) An applicant or recipient will be determined to be qualified for intermediate nursing care if s/he is determined to need care with an assessed point level of [~~eighteen~~] **twenty-one** to forty-eight [~~(18-48)~~] **(21-48)** points using the assessment procedure as stated in this section.

(F) Applicants or recipients with [~~twelve (12)~~] **eighteen (18)** points or lower will normally be assessed as ineligible for Title XIX-funded intermediate or skilled nursing services in [~~an~~] a long-term care facility, unless they qualify as otherwise provided in subsections (5)(H) or (J), or both, of this rule.

**T**he Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2002.

## EXECUTIVE ORDER

05-15

WHEREAS, on June 23, 2005, the United States Supreme Court issued its decision in *Kelo v. City of New London*, which deals with eminent domain and the government's right to use eminent domain to acquire private property for public use; and

WHEREAS, the Court's decision greatly expands the right of government to seize private property—a home, farm, or small business—and give it to other private persons or entities just because they can generate greater tax and other revenues, and

WHEREAS, both the United States and Missouri Constitutions provide that no private property shall be taken for public use without just compensation; and

WHEREAS, in its decision the Court expressly provides that nothing in the decision precludes any State from placing further restrictions on the exercise of eminent domain; and

WHEREAS, it is in the public interest to determine the appropriate use by government of eminent domain to allow the taking of private property when there is a clear and direct public purpose, while at the same time protecting individual property rights.

NOW THEREFORE, I, Matt Blunt, Governor of Missouri, by virtue and authority vested in me by the Constitution and laws of the State of Missouri, do hereby create and establish the Missouri Task Force on Eminent Domain.

The Task Force shall consist of nine (9) members appointed by the Governor. The Governor's General Counsel shall serve as Chair. All members shall serve at the pleasure of the Governor.

Members of the Task Force shall receive no compensation for their service to the people of Missouri but may seek reimbursement for their reasonable and necessary expenses incurred as members of the Task Force, in accordance with the rules and regulations of the Office of Administration, to the extent that funds are available for such purpose.

The Task Force is assigned for administrative purposes to the Missouri Department of Agriculture and the Missouri Department of Economic Development. The Directors of the Missouri Department of Agriculture and the Missouri Department of Economic Development shall be available to assist the Task Force as necessary, and shall provide the Task Force with any staff assistance the Task Force may require from time to time.

The Task Force shall meet at the call of its Chair, and the Chair shall call the first meeting of the Task Force as soon as possible.

The Task Force shall evaluate and make initial recommendations to me by October 1, 2005 on the following topics:

- Study the use of eminent domain, especially when the proposed public use of the property being acquired by eminent domain is not directly owned or primarily used by the general public.
- Analyze current state and federal laws governing eminent domain and recommending any changes that would enhance the effectiveness of these laws.
- Develop a definition of "public use" that allows state and local governments to use eminent domain when there is a clear and direct public purpose while at the same time ensuring that individual property rights are preserved.
- Develop criteria to be applied by state and local governments when the use of eminent domain is being proposed.
- Recommend specific eminent domain legislation for possible consideration by the Missouri General Assembly.

The Task Force shall prepare a final report and submit it to me by December 31, 2005.

The Task Force shall expire on December 31, 2005.



ATTEST:

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 28<sup>th</sup> day of June, 2005.

  
Matt Blunt  
Governor

  
Robin Carnahan  
Secretary of State

**EXECUTIVE ORDER  
05-16**

WHEREAS, the Department of Labor and Industrial Relations, created by Section 286.010, RSMo, administers laws and programs relating to labor and employment; and

WHEREAS, the Labor and Industrial Relations Commission of Missouri, created by Article IV, Section 49 of the Missouri Constitution and Section 286.010, RSMo, hears appeals from all final decisions and awards in workers' compensation, unemployment compensation and victims of crime compensation cases at the highest administrative level, holds hearings and renders written decisions in prevailing wage disputes, and is composed of one public member, one employer representative and one employee representative; and

WHEREAS, the State Board of Mediation was created by Section 295.030, RSMo, and transferred to the Department of Labor and Industrial Relations by type II transfer under the Omnibus State Reorganization Act of 1974 and is composed of one public member who serves as chairman, two employer representatives and two employee representatives; and

WHEREAS, the primary duty of the State Board of Mediation is to determine the appropriate bargaining unit and conduct elections for public employees; and

WHEREAS, the consolidation of the State Board of Mediation's functions into the Labor and Industrial Relations Commission will benefit the citizens of the State of Missouri by promoting efficiency and reducing costs without losing the representation of the public, employer and employee positions; and

WHEREAS, the Governor, in consultation with the Director of the Department of Labor and Industrial Relations, has determined that the best way to accomplish this consolidation is to transfer the responsibilities, assets, functions and staff of the State Board of Mediation to the Labor and Industrial Relations Commission of Missouri with the Chairman of the Labor and Industrial Relation Commission assuming the duties of the Chairman of the State Board of Mediation.

NOW THEREFORE, I, Matt Blunt, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including Article IV, Section 12, Missouri Constitution, Chapter 26, RSMo, and the Omnibus State Reorganization Act of 1974, hereby transfer all the powers, duties and functions of the State Board of Mediation to the Labor and Industrial Relations Commission of Missouri.



**ATTEST:**

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 1st day of July, 2005.

**Matt Blunt**  
Governor

**Robin Carnahan**  
Secretary of State