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SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

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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.

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

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

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

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 2—Procedure**

EMERGENCY AMENDMENT

8 CSR 50-2.020 Administration. The division proposes to amend section (1) and add a new section (6).

PURPOSE: This rule sets forth the requirements for administrative functions of the division, including acceptance and withdrawal from Chapter 287, RSMo, filing of documents, storage of documents, requests for documents, and maintenance of division records. This amendment includes the exception that is available to certain employees who are members of a recognized religious sect or division that is conscientiously opposed to accepting public or private insurance benefits, including benefits of any insurance system established under the Federal Social Security Act. Senate Bills 1 and 130 created a new statutory section 287.804 that deals with the religious exception and applicable requirements. This amendment will allow certain employees to follow the procedures established by the division and file the appropriate application for the exception from workers' compensation coverage.

EMERGENCY STATEMENT: This emergency amendment is necessary as it includes the exception that is available to certain employ-

ees who are members of a recognized religious sect or division that is conscientiously opposed to accepting public or private insurance benefits, including benefits of any insurance system established under the Federal Social Security Act. Senate Bills 1 and 130 created a new statutory section 287.804 that deals with the religious exception and applicable requirements. This emergency amendment will allow certain employees to follow the procedures established by the division and file the appropriate application for the exception from workers' compensation coverage.

This emergency amendment is necessary to protect the public health, safety and welfare of all interested parties. The division believes this emergency amendment to be fair to all interested parties as it provides guidance to the employee on how to request an exception from the law based upon membership in a recognized religious sect or division, and it allows the employers to revise their workers' compensation insurance coverage to except certain employees from workers' compensation insurance coverage.

The division finds an immediate danger to the public health, safety and/or welfare and a compelling governmental interest, which requires this emergency action. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. Emergency amendment filed Dec. 12, 2005, effective Dec. 22, 2005, expires June 19, 2006.

(1) Any employer exempted by section 287.090, RSMo, or any employer who is not covered by the provisions of Chapter 287, RSMo, because of section 287.030, RSMo, who desires to operate under the provisions of Chapter 287, RSMo, may do so by the purchase of a workers' compensation insurance policy evidenced by the carrier filing a proof of coverage form with the division or its designee.

(C) Upon request an exception from the provisions of the workers' compensation law may apply with respect to certain employees who are members of a recognized religious sect or division as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to accepting public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established under the Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj.

1. Any applicant requesting an exception as indicated in subsection (C) above, must simultaneously file with the division at PO Box 58, Jefferson City, MO 65102, the following forms:

A. Section 287.804 Application for Religious Exception from the provisions of the Missouri Workers' Compensation Law;

B. Employee's Affidavit and Waiver of Workers' Compensation Benefits; and

C. Employer's Affidavit of Exception from Workers' Compensation Benefits.

2. If the division grants the religious exception, the employee waives his/her rights to any benefits under the workers' compensation law.

3. An exception shall be valid until such employee rescinds the election to reject benefits under the law or the religious sect or division of which the employee is a member ceases to meet the requirements of section 287.804.1, RSMo.

(6) The division approved forms as referenced in these rules may be obtained from the website address <http://www.dolir.mo.gov/wc/forms/forms.htm> or by contacting the division at (573) 751-4231 or by submitting a written request to the division's Jefferson City office at PO Box 58, Jefferson City, MO 65102.

AUTHORITY: section 287.650, RSMo [Supp. 1997] 2000. Original rule filed Dec. 23, 1953, effective Jan. 3, 1954. Amended: Filed Jan. 15, 1960, effective Jan. 26, 1960. Amended: Filed Sept. 4, 1963, effective Sept. 15, 1963. Amended: Filed Aug. 26, 1975, effective Sept. 5, 1975. Rescinded and readopted: Filed May 29, 1998, effective Feb. 28, 1999. Amended: Filed Nov. 22, 2005. Emergency amendment filed Dec. 12, 2005, effective Dec. 22, 2005, expires June 19, 2006.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 15—Division of Senior and Disability Services Chapter 8—Consumer-Directed Services

EMERGENCY AMENDMENT

19 CSR 15-8.100 Definitions. The Department of Health and Senior Services is amending the division title, Purpose, section (1), and the authority section.

PURPOSE: This amendment adds definitions required by Senate Bill 539 and Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005).

PURPOSE: [This rule establishes the standards and procedures for the provision of state-funded participant-directed personal care assistance services to eligible clients subject to legislative appropriations through eligible vendors under guidelines established by the Division of Vocational Rehabilitation.] This rule defines terms used in establishing procedures for the provision of consumer-directed services under the Department of Health and Senior Services to eligible consumers through eligible vendors, subject to legislative appropriations.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bills 539 and 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for these programs and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency amendment must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program and to support the right of individuals to choose the care options that best meet their needs in a home and community based setting. This emergency amendment will also allow DHSS to implement the financial needs demonstration for the non-Medicaid eligible program ensuring the prudent expenditure of General Revenue funds. 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. DHSS believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

(1) [Definitions.] As used in this rule and other rules established for consumer-directed services (CDS), except as otherwise

required for the context, the following terms shall have the meanings ascribed:

(A) [After-tax income. The sum of all income from all sources to an individual including, but not limited to, salary, wages, tips, interest, dividends, annuities, pensions and disability payments, less the sum of all federal, state and local taxes on this income;] **Adjusted gross income.** The amount reported to the Internal Revenue Service (IRS) as adjusted gross income on the previous calendar year's income tax return for the consumer and the consumer's spouse;

(B) **Assets.** Any tangible, real, or personal property as would be reported to the Department of Social Services (DSS), Family Support Division (FSD) for the purpose of determining eligibility for Medicaid;

[(B)] (C) [Client/c] **Consumer.** A physically disabled person determined by the [Division of Vocational Rehabilitation (DVR)] Department of Health and Senior Services (DHSS) to be eligible to receive [personal care assistance (PCA)] consumer-directed services (CDS);/. **Consumer does not include any individual with a legal limitation of his or her ability to make decisions, including the appointment of a guardian or conservator, or who has an effective power of attorney that authorizes another person to act as the agent or on behalf of the individual for any of the duties required by the CDS program;**

[(C)] **Counselor.** An employee of DVR responsible for determining eligibility for PCA services and for developing and implementing a PCA services plan (plan of care);]

[(D)] **Employment.** A minimum of sixteen (16) hours per week for which an individual receives remuneration;]

(D) **Consumer-directed.** The hiring, training, supervising, and directing of the personal care attendant (attendant) by the physically disabled person;

(E) **Consumer-directed services (CDS).** All services that are required or may be provided as part of the CDS program;

(F) **Disability-related medical expenses.** Any medical expense, as defined and approved by the IRS, that is directly related to the consumer's disability;

(G) **Health care coverage.** Any insurance policy that provides personal care assistance benefits;

(H) **Income.** Any income as would be reported to DSS/FSD for the purpose of determining eligibility for Medicaid;

[(E)] (I) **Live independently.** To reside and perform routine tasks of daily living and activities of daily living and activities in the community in a noninstitutional or unsupervised residential setting;

[(F)] **Participant-directed.** Hiring, training, supervising and directing of the personal care attendant by the physically disabled person; excluding, but not limited to, the following:

1. Any individual with a legal designation, including guardianship, conservator, power of attorney, etc., that involves the authorization of another person to act as the agent for any of the duties required by the participant-directed program;]

(J) **Non-Medicaid eligible (NME).** Has been found by DSS/FSD not to be eligible to participate under guidelines established by the Medicaid state plan;

(K) **Non-Medicaid eligible (NME) program.** Financial assistance for CDS through eligible vendors for individuals who are NME consumers;

[(G)] (L) **Personal care assistance (PCA) services.** Those [services] routine tasks provided to meet the unmet needs required by a physically disabled person to enable him [her to perform those routine tasks and activities of daily living necessary to enter and maintain employment] or her to live independently;

[(H)] (M) **Personal care attendant (attendant).** A person, other than the consumer's spouse, who performs PCA [tasks] services for a physically disabled person;

[(I)] (N) **Physically disabled.** Loss of, or loss of use of, all or part of the neurological, muscular or skeletal functions of the body to the

extent that person requires the assistance of another person to accomplish routine tasks;

[(J)] (O) Routine tasks. Routine tasks and instrumental activities of daily living include, but are not limited to, the following:

1. Bowel and bladder elimination;
2. Dressing and undressing;
3. Moving into and out of bed;
4. Preparation and consumption of food and drink;
5. Bathing and grooming;
6. Shopping/transportation;
7. Maintenance and use of prostheses, aids, equipment and other similar devices; and/or
8. Ambulation, **housekeeping**, or other functions of daily living based on an independent living philosophy as specified in state law and regulation;

(P) **Undue hardship.** The result of a significantly difficult circumstance experienced by the disabled consumer that creates a situation of burden, risk or harm to the consumer. Undue hardship includes, but is not limited to, the following:

1. Loss of consumer's income;
2. Overall disintegration of the family;
3. Abuse and neglect;
4. Misuse of child labor; and/or
5. Presence of physical contraindication(s);

(Q) **Unit of service.** One unit equals fifteen (15) minutes;

(R) **Unmet needs.** Routine tasks and activities of daily living which cannot be reasonably met by members of the consumer's household or other current support systems without causing undue hardship; and

[(K)] (S) **Vendor.** Any person, firm or corporation [certified by DVR as eligible to provide evaluation, training and administrative services] having a written agreement with DHSS to provide services, including monitoring and oversight of the attendant, orientation and training of the consumer, and fiscal conduit services necessary for delivery of CDS to physically disabled persons. [For purposes of this rule, the term "provider" is used synonymously with the term "vendor";

(L) **Unmet need.** Unmet needs are those routine tasks and activities of daily living as allowable by Medicaid but not adequately met by current support systems without causing undue hardships to the client/consumer and/or caregiver;

(M) **Undue hardship.** An undue hardship is the result of a significantly difficult circumstance experienced by the caregiver who is currently meeting the needs of the person with a disability that creates a situation of burden, risk or harm to the caregiver or client/consumer. Undue hardship includes, but is not limited to, the following:

1. Loss of income;
2. Overall disintegration of the family;
3. Abuse and neglect;
4. Misuse of child labor;
5. Inadequacy of training; and/or
6. Physically contraindicated;

(N) **Non-Medicaid eligible (NME) program.** The NME program provides PCA services through state funding sources for the NME clients/consumers and serves clients/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently";

(O) **Medicaid state plan (MSP) program.** The MSP program provides PCA services, through a combination of federal and state funding sources, for the Medicaid-eligible client/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently"; and/or

(P) **Cost Neutral.** Overall cost of services to receiving agency should not exceed cost of services from transferring agency.]

AUTHORITY: sections [161.092] 208.900, 208.927 and 208.930, RSMo Supp. [2003] 2005. [178.661 and 178.673, RSMo 2000.] This rule originally filed as 5 CSR 90-7.010. Original rule filed Jan. 10, 1985, effective May 13, 1985. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 15—Division of Senior and Disability Services
Chapter 8—Consumer-Directed Services**

EMERGENCY AMENDMENT

19 CSR 15-8.200 Eligibility. The Department of Health and Senior Services is amending the division title, Purpose, sections (1)–(8), the authority section, and adding sections (9) and (10).

PURPOSE: This amendment incorporates changes in the consumer-directed services required by Senate Bill 539, 93rd General Assembly, First Regular Session (2005).

PURPOSE: This rule establishes the criteria and procedures for determining an applicant eligible to receive [personal care assistance program] consumer-directed services.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bill 539, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bill 539 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for this program and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency amendment must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program and to support the right of individuals to choose the care options that best meet their needs in a home and community based setting. 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. DHSS believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

(1) Subject to legislative appropriations, the [Division of Vocational Rehabilitation (DVR)] **Department of Health and Senior Services (DHSS)** shall provide financial assistance for [the personal care assistance (PCA) program] **consumer-directed services (CDS)** through eligible [providers] **vendors** to each [client/consumer selected] **consumer determined eligible** to participate [and meeting the criteria:] **in the CDS program.**

(A) All [clients/] consumers must meet the following general criteria for eligibility under the [PCA] CDS program:

1. Be at least eighteen (18) years of age;
2. Able to direct their own care ([participant] **consumer-directed**);

3. *[Employed, ready for employment, or c]Capable of living independently with [PCA] CDS; [and]*

4. Physically disabled;

5. **Require at least a nursing facility level of care under regulations established by DHSS;**

6. **Unmet needs must be safely met at a cost that shall not exceed the average monthly Medicaid cost of nursing facility care as determined by the Department of Social Services (DSS);**

7. **Document proof of Medicaid eligibility under Title XIX of the Social Security Act pursuant to federal and state laws and regulations; and**

8. **Participate in an assessment and/or evaluation conducted by DHSS to assign point values pursuant to federal and state laws and regulations.**

[(B) In addition to the above general criteria, persons eligible for non-Medicaid eligible (NME) PCA services shall meet the following:

1. *Document need for a minimum of seven (7) or maximum of forty-two (42) hours per week of PCA. If more than forty-two (42) hours per week are required, substantial documentation may be used to support a request for additional time;*

2. *Demonstrate financial need based upon the client/consumer adjusted gross income level of the most recent tax records less living expenses as approved by DVR and compared to three hundred percent (300%) of the U.S. Department of Health and Human Services poverty level for Missouri and the Consumer Price Index as updated on an annual basis; and*

3. *Participate in an evaluation conducted by the assessment team to assess the individual's qualifications to be eligible for PCA services:*

A. *The initial evaluation shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence; and*

(C) In addition to the above general criteria, persons eligible for Medicaid PCA services shall meet the following:

1. *Document proof of Medicaid eligibility under Title XIX of the Social Security Act pursuant to federal/state laws and regulations; and*

2. *Participate in an assessment with the assessment team or the Department of Health and Senior Services, Division of Senior Services (Division of Senior Services) that utilizes a level of care evaluation tool that is approved by the state Medicaid agency and assigns a point value pursuant to federal/state laws and regulations.*

A. *The initial assessment shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence.]*

(2) Individuals eligible for Medicaid under Title XIX of the Social Security Act who do not meet the above criteria for **[PCA] the CDS program** shall be referred to *[the Division of Senior Services or] other programs or agencies*, as appropriate, to determine eligibility for **[PCA] personal care** services pursuant to **federal and state laws and regulations.**

(3) *[The] Any assessments [team must consist of an independent living specialist, rehabilitation counselor, and a medical professional from physical therapy, occupational therapy, or a registered nurse. Other team members may include additional service providers, including Division of Senior Services personnel. When a client/consumer is currently receiving PCA services from another agency and wishes to transfer PCA services to DVR, the other agency's case manager*

should be consulted for planning purposes:] and/or evaluations shall be conducted by DHSS, using the common assessment tool utilized for assessment of other disabled and aged adults.

[(A) The independent living specialist will serve as a team member, consultant on independent living, and must be qualified as follows:

1. *Understand basic principles of case management;*

2. *Possess previous experience in an independent living program or a related field (that is, case services, peer counseling, etc.);*

3. *Possess the ability to communicate effectively;*

4. *Possess skills in training others to live independently; and*

5. *Participate in assessment and evaluation training provided by DVR;*

(B) The medical professional will be contracted by DVR, serve as team leader, conduct the assessment, and must be qualified as follows:

1. *If a physical therapist, the individual shall possess a valid and unencumbered license as a registered physical therapist, in accordance with state law and regulation, and be approved as a contractor with DVR;*

2. *If an occupational therapist, the individual shall possess a valid and unencumbered license as a registered occupational therapist, in accordance with state law and regulation, and be approved as a contractor with DVR; or*

3. *If a registered nurse, the individual shall possess a valid and unencumbered license as a registered nurse in accordance with state law and regulation, and be approved as a contractor with DVR; and*

(C) The rehabilitation counselor will serve as a team member, reviews and approves all assessments.]

(4) The *[PCA services plan (] CDS plan of care [)]* is based on the assessment *[/] and/or* evaluation performed by *[the assessment team or Division of Senior Services] DHSS* and determines the appropriateness and adequacy of services*[,]* and ensures *[the] that* services furnished are consistent with the nature and severity of the individual's disability. *[If a client/consumer transfers from or is shared with the Division of Senior Services, a new evaluation and PCA services plan (POC) is required but must maintain cost neutrality through the next regularly scheduled assessment date, unless undue hardship is documented. The plan of care will be available for review upon proper release by the client's/consumer's physician:]*

(A) The initial assessment and/or evaluation [and re-evaluation] shall be conducted in the [client's/] consumer's home or place of residence and include, but not be limited to, the following:

1. *The functions of daily living;*

2. *The frequency and duration of the routine task(s) or activity(ies) required to live independently; and*

3. *A description of met and/or unmet needs[;].*

[(B) The NME plan of care shall include, but not be limited to, the following:

1. *The maximum number of hours of PCA to be provided;*

2. *The maximum amount of financial assistance to be provided by DVR for PCA services;*

3. *The date of evaluation, initiation of, and re-evaluation of the PCA services; and*

4. *Signatures of the client/consumer, rehabilitation counselor, and provider; and]*

[(C)] (B) The [Medicaid PCA services] CDS plan of care [, subject to DVR's approval,] shall include, but not be limited to, the following:

1. *The maximum number of [hours] units of personal care assistance (PCA) to be provided based on [a client's/] the consumer's unmet needs;*

2. The description and frequency of services to be provided as documented on the assessment and/or evaluation;

[3. The type of provider who will furnish each service;]

[4.] 3. The starting date for PCA services;

[5.] 4. The date for re-assessment or re-evaluation of [PCA] CDS services;

5. Documentation of the consumer's choice of vendor; and

6. Consent signatures by the [client/] consumer and [assessment team members and the approval signature by DVR; and] DHSS.

(C) Copies of the plan of care will be provided to the consumer and the vendor.

[7.] (D) If a [client/] consumer is receiving services or transferring from another service provider or agency, [the provider] DHSS is responsible for collaborating and coordinating services through the plan of care.

(5) The individual shall be notified [by the provider of DVR] of DHSS's decision regarding eligibility for CDS within [thirty (30)] ten (10) days of the date [of application for eligibility for PCA services] of the decision.

(6) [PCA services] CDS are [participant] consumer-directed and the [client/] consumer shall be responsible, at a minimum, for the following:

(A) Selection, hiring, training, and supervision of the [client's/] consumer's [PCA] personal care attendant (attendant);

(B) Preparation of biweekly time sheets, signed by both the [client/] consumer and [PCA] the attendant, which shall be submitted to the [provider] vendor in a timely manner;

(C) Ensuring that units submitted for reimbursement do not exceed the amounts authorized by the CDS plan of care and/or those eligible for reimbursement through Medicaid;

[[C]] (D) Promptly [notification to DVR] notifying DHSS and/or the vendor within ten (10) days of any changes in [need for PCA services, that affect the amount of PCA received, financial status, and/or] circumstances affecting the CDS plan of care and/or changes in the consumer's place of residence; and

[[D]] (E) Prompt notification [of the provider] to the vendor regarding any problems resulting from the quality of services rendered by the [PCA] attendant. Any problems not resolved with assistance from the vendor shall be reported to DHSS. [; and]

[[E] Ensure that hours submitted for reimbursement do not exceed the amounts authorized by the plan of care.]

(7) The [client/] needs of the consumer shall be reassessed and/or re-evaluated [for Medicaid eligibility,] at least annually[, for continued need of PCA services including financial need.] by DHSS, and the amount of assistance authorized by DHSS shall be maintained, adjusted, or eliminated accordingly.

(8) A [client's/] consumer's [PCA services] CDS may be discontinued or denied by [a provider] DHSS in certain circumstances including, but not limited to, the following:

(A) [The provider may request discontinuation of PCA services in the following situations:] DHSS and/or the vendor

[1. If the provider] learns of circumstances that require the denial or closure of a [client's/] consumer's case, including, but not limited to, death, [entry into a nursing home,] admission to a long-term care facility, consumer no longer needing services, and/or the inability of the consumer to [participant] self-direct [PCA] his or her services;

[2.] (B) [If the client/] The consumer has falsified records or committed fraud;

[3.] (C) [If the client/] The consumer is noncompliant with the plan of care. Noncompliance requires persistent actions by the [client/] consumer or his or her family/representative which negate the services provided in the plan of care;

[4.] (D) [If the client/] The consumer or [client's/] a member of the consumer's [family/representative] household threatens and/or abuses the [PCA] attendant and/or [provider] vendor to the point where the staff's welfare is in jeopardy; [and corrective action has failed; and/or]

[5.] (E) [If a provider is unable to continue to meet the maintenance] The consumer's needs [of a client/consumer whose] exceed available plan of care hours [exceed availability]; and/or

[[B] The provider shall confer with DVR, the client/consumer and/or their representative prior to requesting termination of PCA services in writing. This may include discussion of alternatives, including but not limited to, a transfer to another agency, institutional placement, or other appropriate care;]

(F) The attendant is not providing services as set forth in the CDS plan of care and attempts to remedy the situation have been unsuccessful.

[[C]] (9) [Prior to] DHSS shall notify the consumer/applicant in writing regarding denial, reduction, or termination of [PCA] CDS services[,]. [the provider must notify DVR and client/consumer, in writing, listing the specific reasons, and requesting discontinuation of services; and]

[[D]] (10) The [client/] consumer may request a hearing under the rules promulgated by [the State Board of Education, informal review and/or a hearing] DHSS. [The provider] DHSS shall not suspend, reduce or terminate services provided to a [client/] consumer during this time period, unless the [client/] consumer [or their representative] requests in writing that services be suspended, reduced or terminated.

AUTHORITY: sections [161.092] 208.903, 208.906, 208.909, 208.921, 208.924 and 208.927, RSMo Supp. [2003] 2005 I, 178.662, 178.666 and 178.673, RSMo 2000]. This rule originally filed as 5 CSR 90-7.100. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.200, effective Aug. 29, 2005. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 15—Division of Senior and Disability Services Chapter 8—Consumer-Directed Services

EMERGENCY RULE

19 CSR 15-8.300 Eligibility for Non-Medicaid Eligible Program

PURPOSE: This rule incorporates changes to the non-Medicaid eligible consumer-directed services program required by Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005), to establish the criteria and procedures for determining eligibility for consumer-directed services through the non-Medicaid eligible program.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Non-Medicaid Eligible Personal Care Assistance Services Program be transferred to DHSS. Senate Bill 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for the Non-Medicaid Eligible program and provided additional protections for

disabled consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency rule must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program and to support the right of individuals to choose the care options that best meet their needs in a home and community based setting. This emergency rule will also allow DHSS to implement the financial needs demonstration of the legislation, ensuring the prudent expenditure of General Revenue funds for this program. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. DHSS believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

(1) Subject to legislative appropriations, the Department of Health and Senior Services (DHSS) shall provide financial assistance for consumer-directed services (CDS) through eligible vendors, pursuant to applicable state law and regulation, to each person determined eligible to participate in the non-Medicaid eligible (NME) program. All consumers must meet the CDS requirements found in state law and regulations, except for proof of Medicaid eligibility under Title XIX of the Social Security Act. In addition, consumers must meet the following criteria for eligibility under the NME program:

(A) Participation in the NME program through the Department of Elementary and Secondary Education, Division of Vocational Rehabilitation, on June 30, 2005, and make application to DHSS;

(B) Demonstrate financial need and eligibility pursuant to the applicable rules and regulations;

(C) Provide proof of having been found by the Department of Social Services (DSS) ineligible to participate in the Medicaid state plan; and

(D) Does not have access to employer-sponsored or other health care coverage that includes personal care assistance, or the costs of such coverage exceed on a monthly basis one hundred and thirty-three percent (133%) of the monthly average premium required in the state's current Missouri Consolidated Health Care Plan (MCHCP).

(2) Financial need and eligibility are based upon the adjusted gross income (AGI) of the applicant and the applicant's spouse and the assets of the applicant and/or the applicant's spouse.

(A) In order to demonstrate a financial need, an applicant and the applicant's spouse must have an AGI, less disability-related medical expenses as approved by DHSS, that is equal to or less than three hundred percent (300%) of the federal poverty level.

1. AGI is calculated on an annual basis by calendar year, using the AGI as reported to the Internal Revenue Service, less any disability-related medical expenses paid during the same year.

2. Disability-related medical expenses must be documented and proof of payment is required.

(B) Applicant and/or the applicant's spouse shall not have assets in excess of two hundred fifty thousand dollars (\$250,000).

1. Any assets of the applicant and/or the applicant's spouse transferred within twelve (12) months of the date of application shall be included in the calculation of assets.

(3) Consumers shall pay a monthly premium to DHSS.

(A) The premium shall be equal to the statewide average premium required for the MCHCP, but shall not exceed five percent (5%) of the consumer's and the consumer's spouse's AGI for the previous calendar year.

(B) Nonpayment of the required premium shall result in denial or termination of services, unless the person demonstrates good cause for such nonpayment by providing documentation of income and expenses that substantiates the inability to pay the premium.

1. Any consumer who is denied services for nonpayment of the premium shall not receive services until past due and current premiums are paid.

2. Any consumer who does not make any payments for past due premiums for sixty (60) consecutive days shall have their enrollment in the program terminated.

3. Any consumer who is terminated due to non-payment of premiums shall not be re-enrolled unless all past due and current premiums are paid prior to re-enrollment.

4. Nonpayment shall include payment with a returned, refused, or dishonored instrument.

(4) Continued participation in the NME program shall require that eligibility be reevaluated on an annual basis, pursuant to applicable state law and regulation.

(A) The amount of financial assistance shall be adjusted or eliminated based on the outcome of the reevaluation and shall be recorded in the consumer's plan of care.

(B) Consumers must respond and provide requested documentation within ten (10) days of DHSS's notice of reevaluation of eligibility.

(C) Failure by the consumer to provide requested documentation within ten (10) days will result in DHSS sending the consumer a notification letter that he or she has ten (10) days to file an appeal or services will be terminated.

(5) Applicants or consumers whose services are denied, reduced, or terminated have the right to request a hearing under the applicable rules of DHSS.

AUTHORITY: section 208.930, RSMo Supp. 2005. Emergency rule filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 15—Division of Senior Services
Chapter 8—Consumer-Directed Services**

EMERGENCY RESCISSION

19 CSR 15-8.400 Providers. This rule provided procedures for certifying eligible providers for the personal care assistance program.

PURPOSE: This rule is being rescinded as SB 539, effective August 28, 2005, changes the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bill 539, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bill 539 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for these programs and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting.

Seamless delivery of services to the vulnerable population served by the vendors for this program is vital to their health, safety and welfare. This emergency rescission must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program, to support the right of individuals to choose the care options that best meet their needs in a home and community based setting, and protect the individuals' appeal rights. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. DHSS believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.662, 178.664, 178.666, 178.669 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.200. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.400, effective Aug. 29, 2005. Emergency rescission filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed rescission covering this same material is published in this issue of the Missouri Register.

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

**Division 15—Division of Senior and Disability Services
Chapter 8—Consumer-Directed Services**

EMERGENCY RULE

19 CSR 15-8.400 Vendors

PURPOSE: This rule incorporates changes in the consumer-directed services program required by Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), to establish the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bills 539 and 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for this program and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency rule must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program and to support the right of individuals to choose the care options that best meet their needs in a home and community based setting. This emergency rule will also allow DHSS to implement the financial needs demonstration of the legislation, ensuring the prudent expenditure of General Revenue funds for this program. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. DHSS believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed

December 15, 2005, effective December 25, 2005, expires June 23, 2006.

(1) All vendors of the Consumer-Directed Services (CDS) program shall:

(A) Have a philosophy that promotes the consumer's ability to live independently in the most integrated setting. This philosophy includes the following independent living services:

1. Advocacy;
2. Independent living skills training;
3. Peer counseling; and
4. Information and referral;

(B) Have a valid written agreement with the Department of Health and Senior Services (DHSS); and

(C) Have a valid Medicaid participation agreement pursuant to federal and state laws and regulations.

(2) Vendors shall perform, directly or by contract, payroll and fringe benefit accounting functions for consumers, including but not limited to:

- (A) Collecting timesheets and certifying their accuracy;
- (B) Transmitting individual payments to the personal care attendant (attendant) on behalf of the consumer; and
- (C) Ensuring all payroll, employment, and other taxes are paid timely.

(3) Vendors shall, directly or by contract, file claims for Medicaid reimbursement.

(4) In addition to the above requirements, vendors shall be responsible, directly or by contract, for the following:

- (A) Maintaining a list of eligible attendants:
 1. Ensuring that each attendant is registered, screened, and employable pursuant to the Family Care Safety Registry (FCSR) and the Employee Disqualification List (EDL) maintained by DHSS, and applicable state laws and regulations;
 2. Notifying the attendant of his or her responsibility to comply with applicable state laws and regulations regarding reports of abuse or neglect;
 3. Attendants must meet the following qualifications:
 - A. Be at least eighteen (18) years of age;
 - B. Be able to meet the physical and mental demands required to perform specific tasks required by a particular consumer;
 - C. Agree to maintain confidentiality;
 - D. Be emotionally mature and dependable;
 - E. Be able to handle emergency type situations; and
 - F. Not be the consumer's spouse;
 4. The attendant is an employee of the consumer only for the time period subsidized with CDS funds, but is never the employee of the vendor, DHSS, or the state of Missouri;

(B) Training and orientation of consumers in the skills needed to recruit, employ, instruct, supervise and maintain the services of attendants including, but not limited to:

1. Assisting consumers in the general orientation of attendants as requested by the consumer;
2. Preparation of time sheets;
3. Identification of issues that would be considered fraud of the program;
4. Allowable and non-allowable tasks;
5. Rights and responsibilities of the attendant; and
6. Identification of abuse, neglect, and/or exploitation;

(C) Processing of consumers' and/or attendants' inquiries and problems;

(D) Public information, outreach and education activities to ensure that persons with disabilities are informed of the services available and have maximum opportunity for participation;

(E) Maintaining confidentiality of consumer records, including eligibility information from DHSS, pursuant to applicable federal and state laws and regulations;

(F) Performing case management activities with the consumer at least monthly to provide ongoing monitoring of the provision of services in the plan of care and other services as needed to live independently;

(G) Ensuring the consumer has an emergency and/or backup plan;

(H) Monitoring utilization of units by the consumer at least monthly;

(I) Ensuring that the consumer's case file contains, at a minimum, the following:

1. Written plan of care and service authorization that document the type of services and quantity of units to be provided;

2. Consumer's original time sheets that contain the following:

A. Attendant's name;

B. Consumer's name;

C. Dates and times of services delivery;

D. Types of activities performed at each visit;

E. Attendant's signature for each visit; and

F. Consumer's signature verifying service delivery for each visit;

3. Copies of all correspondence with DHSS, the consumer's physician, other service providers, and other administrative agencies;

4. Documentation of training provided to the consumer in the skills needed to understand and perform the essential functions of an employer;

5. Documentation of the consumer's emergency and/or backup plans;

6. Signed documentation that the consumer has been informed of their rights concerning hearings and consumer responsibilities;

A. Such forms must comply with Medicaid and/or DHSS' requirements; and

7. Any pertinent documentation regarding the consumer;

(J) Demonstrating positive impact on consumer outcomes regarding the provision of CDS through the submission of quarterly service reports and an annual service report to DHSS;

(K) Operating programs, services, and/or activities in such a manner as to be readily accessible to and usable by persons with disabilities;

(L) Providing information necessary to conduct state and/or federal audits, as requested by DHSS;

(M) Complying with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975;

(N) Complying with applicable statutes and regulations regarding reports of abuse or neglect; and

(O) Complying with applicable statutes and regulations regarding reports of misappropriation of a consumer's property or funds or the falsification of documents verifying CDS delivery.

(5) Vendors should refer the following situations to DHSS for investigation:

(A) Circumstances that may require closure or termination of services, including but not limited to:

1. Death;

2. Admission into a long-term care facility;

3. The consumer no longer needing services;

4. The inability of the consumer to self-direct; and/or

5. An inability to continue to meet the maintenance needs of the consumer because the plan of care hours needed to ensure the health and safety of the consumer exceed availability;

(B) Upon a finding that such circumstances exist, DHSS may close or terminate services.

(6) Vendors, after notice to DHSS:

(A) May suspend services to consumers in the following circumstances:

1. The inability of the consumer to self-direct;

2. Falsification of records or fraud;

3. Persistent actions by the consumer of noncompliance with the plan of care;

4. The consumer or a member of the consumer's household threatens or abuses the attendant and/or vendor; and/or

5. The attendant is not providing services as set forth in the plan of care and attempts to remedy the situation have been unsuccessful;

(B) Shall provide written notice to DHSS and the consumer listing specific reasons for requesting closure or termination. All supporting documentation shall be maintained in the consumer's case file. DHSS shall investigate the circumstances reported by the vendor and assist the consumer in accessing appropriate care. Upon a finding that such circumstances exist, DHSS may close or terminate services.

(7) Vendors shall comply, either directly or by contract, with the following fiscal requirements:

(A) No state or federal funds shall be authorized or expended to pay for CDS if the primary benefit of such services is to the household unit, or is a task that members of the consumer's household may reasonably be expected to share or do for one another, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability;

(B) No state or federal funds shall be authorized or expended to pay for CDS provided by an attendant who is listed on any of the background check lists in the Family Care Safety Registry, pursuant to applicable state laws and regulations, unless a good cause waiver is first obtained from DHSS in accordance with applicable state laws and regulations;

(C) The general assembly shall set the statewide reimbursement rate to be paid for CDS;

(D) The total monthly payment for CDS made on behalf of a consumer shall not exceed one hundred percent (100%) of the average statewide monthly cost for care in a nursing facility as defined in applicable state laws and regulations;

(E) Assure that federal funds shall not be used to replace funds from nonfederal sources and that the vendor shall continue or initiate efforts to obtain support from private sources or other public organizations;

(F) Be responsible for repayment of any federal or state funds that are deferred and/or ultimately disallowed;

(G) Quarterly financial reports shall be submitted to DHSS one (1) day after the end of each calendar quarter, or as soon as practicable thereafter, but no later than fifteen (15) days after the end of the quarter;

(H) Quarterly service reports shall be submitted to DHSS thirty (30) days after the end of each calendar quarter;

(I) Maintain CDS financial records separately from any other financial records and make all consumer and CDS financial records, documents, reports and data available to DHSS upon request; and

(J) Submit an annual audit by a properly licensed independent practitioner (certified public accountant licensed in the state of Missouri) pursuant to applicable federal and state laws and regulations, including any audit parameters as established by DHSS.

1. The audit report must be submitted to DHSS within ninety (90) days after the end of the vendor's fiscal year.

(8) DHSS may withhold funding if the vendor does not submit required documentation pursuant to this rule.

(9) The vendor shall maintain, at a minimum, all case files and records of its activities pursuant to applicable state laws and regulations in a central location for six (6) years. Records must be provided to DHSS or its designee upon request and must be maintained in a manner that will ensure they are readily available for monitoring

or inspection. Such records shall include, but not be limited to, records verifying the delivery of services.

(10) DHSS or its designee shall conduct on-site visits, which may be announced or unannounced, for the purpose of program and/or fiscal monitoring of the vendor. The vendor's principal place of business shall have staff on the premises with access to records as prescribed by the vendor's written agreement with DHSS.

(11) DHSS may invoke sanctions, upon written notice to the vendor, when it has cause to do so, including but not limited to the following:

(A) Elimination of one (1) or more counties from the vendor's authorized service commitment area and the subsequent transfer of consumers served in those counties to other vendors;

(B) Prospective cessation, temporarily or permanently, of new consumer service authorizations to the vendor, either for specific counties or for all counties served by the vendor;

(C) Demand that the vendor make certain assurances, including but not limited to, audits or financial assurances to satisfy DHSS; and/or

(D) Any remedies calculated to correct or prevent further impairment of the delivery of service by the vendor or the attendant that is substandard, delivered in a substandard manner, or delivered but not documented according to the requirements of this rule.

(12) DHSS may take immediate action to protect consumers from vendors who are found to be out of compliance with this rule and/or any other statute and/or rule applicable to the CDS program, when such noncompliance creates a risk of injury or harm to the consumer.

(13) DHSS may suspend or terminate the written agreement of any vendor found to be out of compliance with the written agreement and with the provisions of this rule and/or the requirements of applicable state laws and regulations.

AUTHORITY: sections 208.900, 208.903, 208.906, 208.909, 208.912, 208.915, 208.918, 208.921, 208.927 and 208.930, RSMo Supp. 2005. This rule originally filed as 5 CSR 90-7.200. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.400, effective Aug. 29, 2005. Emergency rescission and rule filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed rescission and rule covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 15—Division of Senior and Disability Services Chapter 8—Consumer-Directed Services

EMERGENCY AMENDMENT

19 CSR 15-8.500 [Appeals] Hearing Rights. The Department of Health and Senior Services is amending the division title, Purpose, sections (1), (2), (3) and the authority section.

PURPOSE: This amendment incorporates changes in the appeals procedure for consumer-directed services required by Senate Bill 539 and Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005).

PURPOSE: This rule establishes procedures [for appeal] by which an applicant or [client/] consumer dissatisfied with a determination made regarding the provision of services by the [Division of Vocational Rehabilitation] Department of Health and Senior Services (DHSS) can request a hearing.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10, Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bills 539 and 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for these programs and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency amendment must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program and to support the right of individuals to choose the care options that best meet their needs in a home and community based setting. Applicants and consumers of consumer-directed services must be afforded the right to appeal and request a hearing in a timely manner. 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. DHSS believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

(1) When an applicant or [client/] consumer is determined ineligible for **consumer-directed services (CDS)** or when a dispute arises concerning the provision of [services] CDS, after preparation of the [personal care assistance program services] CDS plan (plan of care), or **termination of CDS**, the applicant or [client/] consumer may request [under the rules promulgated by the State Board of Education, informal review and/or], **in writing, a hearing with the Department of Social Services (DSS).**

(2) [When a non-Medicaid eligible (NME) applicant or client/consumer is denied financial assistance or financial assistance is set below what the client/consumer believes is necessary, the NME applicant or client/consumer may request under the rules promulgated by the State Board of Education, informal review and/or a hearing.] **An applicant or consumer may request a hearing by contacting Department of Health and Senior Services (DHSS) in writing within ninety (90) days of denial of eligibility, denial of financial assistance, the determination of financial assistance, discontinuation, suspension or reduction of CDS.**

(3) [Division of Vocational Rehabilitation] **If the consumer appeals in writing within ten (10) days of the mailing of the notice regarding denial, suspension, reduction or termination of CDS, DHSS will not suspend, reduce, or terminate services provided to a [client/] consumer under an existing plan of care pending a decision from [informal review or] a hearing, unless the [client/] consumer [or their representative] requests in writing that services be suspended, reduced or terminated.**

(A) The consumer shall be responsible for repayment of any federal or state funds expended for services while the appeal is pending if DHSS's decision is upheld.

AUTHORITY: sections [161.092, 178.671 and 178.673] 208.921, 208.927 and 208.930, RSMo [2000] Supp. 2005. This rule originally filed as 5 CSR 90-7.300. Original rule filed June 28, 2001, effective Jan. 30, 2002. Moved to 19 CSR 15-8.500, effective Aug. 29, 2005. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 15—Division of Senior Services
Chapter 8—Consumer-Directed Services**

EMERGENCY RESCISSION

19 CSR 15-8.510 Informal Review. This rule provided the procedures for informal review of decisions made by the Division of Vocational Rehabilitation.

PURPOSE: This rule is being rescinded as SB 539, effective August 28, 2005, changes the appeal procedure.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10 and Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bills 539 and 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for these programs and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency rescission must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program, to support the right of individuals to choose the care options that best meet their needs in a home and community based setting, and protect the individuals' appeal rights. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. DHSS believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

AUTHORITY: sections 161.092, 178.671 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.310. Original rule filed June 28, 2001, effective Jan. 30, 2002. Moved to 19 CSR 15-8.510, effective Aug. 29, 2005. Emergency rescission filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 15—Division of Senior Services
Chapter 8—Consumer-Directed Services**

EMERGENCY RESCISSION

19 CSR 15-8.520 Hearings. This rule provided for the hearing procedures for decisions made by the Division of Vocational Rehabilitation.

PURPOSE: This rule is being rescinded as SB 539, effective August 28, 2005, changes the way hearings are conducted.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) must implement Executive Order 05-10, Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session

(2005), which mandated that responsibility for the Personal Care Assistance Services Program be transferred to DHSS. Senate Bills 539 and 74/49 also enacted substantive changes in the methods by which disabled consumers are determined to be eligible for these programs and provided additional protection for consumers by mandating use of the background checks available through the Family Care Safety Registry. Personal care assistance services are provided to eligible disabled individuals in a home and community based setting and any interruption in service delivery would result in immediate jeopardy to the individual and/or premature placement in an institutional setting. Seamless delivery of services to the vulnerable population served by this program is vital to their health, safety and welfare. This emergency rescission must be implemented in a timely fashion to ensure DHSS has the necessary authority to protect the individuals served by the program, to support the right of individuals to choose the care options that best meet their needs in a home and community based setting, and protect the individuals' appeal rights. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. DHSS believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed December 15, 2005, effective December 25, 2005, expires June 23, 2006.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.320. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.520, effective Aug. 29, 2005. Emergency rescission filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2004.

EXECUTIVE ORDER 05-43

WHEREAS, Spanish-speaking Missourians and Missourians who identify themselves as Hispanic make up a vibrant and growing segment of the business and industry sectors of this state; and

WHEREAS, economic development within the Hispanic community benefits all members of the community and all citizens of this state; and

WHEREAS, adequate means must be provided to ensure that Hispanic Missourians have a voice within the business community; and

WHEREAS, members of the Hispanic community have unique concerns and specific needs with regard to economic development assistance; and

WHEREAS, appropriate and additional means should be developed to ensure that government is responsive to the crucial issues facing the Hispanic business community.

NOW, THEREFORE, I, Matt Blunt, Governor of the State of Missouri, by the power vested in me by the Constitution and Laws of the State of Missouri, do hereby create and establish the Hispanic Business, Trade and Culture Commission.

The purpose of the Hispanic Business, Trade and Culture Commission shall be to serve as a statewide advisory body to the Department of Economic Development, Office of International Trade & Investment, on trade and investment issues of importance and relevance to the Hispanic business community in Missouri.

The Commission's responsibilities shall include, but not be limited to, gathering and disseminating information concerning matters relevant to the economic needs of Hispanic businesses; monitoring legislative issues pertaining to the Hispanic business community; submitting recommendations to the Office of International Trade & Investment and private-sector entities concerning business development issues relevant to Hispanic Missourians and, when appropriate, recommending legislative initiatives to the Department of Economic Development.

The Commission shall work in a liaison capacity for the Office of International Trade & Investment in order to aid in mentoring Missouri entrepreneurs of Hispanic origin while assisting them to open and expand businesses in the state. The Commission shall also help to identify and facilitate foreign and domestic investment opportunities for companies of Hispanic origin.

Commission members shall act as ambassadors of the state of Missouri while traveling abroad. Reports shall be submitted quarterly indicating foreign company references, business visits, and mentoring meetings, as well as any international trips taken on Commission business.

An annual report on the Commission's activities and accomplishments during the preceding year shall be produced by the executive board and submitted to the Director of International Trade & Investment.

The Commission shall be composed of not more than fifteen citizen members and one ex-officio member, who shall be an employee of the Missouri Office of International Trade & Investment. The Director of the Department of Economic Development shall appoint all citizen members of the Commission and shall designate the Office of International Trade & Investment member.

All members of the Commission shall be legal residents of the United States and registered voters in the state of Missouri. The citizen members shall be selected with a view toward equitable geographic representations, with at least one member from each of the defined economic regions within the state of Missouri, and representation of persons who are business owners or founding members of not-for-profit organizations. Not more than nine of the citizen members shall be from the same political party.

The Governor shall select a chairperson and vice-chairperson who shall hold their positions at the pleasure of the Director of the Department of Economic Development. All citizen members of the Commission shall serve without compensation, except that members may be reimbursed for reasonable and necessary expenses arising from Commission activities or business. Such expenses shall be paid by the Department of Economic Development, to which the Commission is assigned for administrative purposes.

Commission members shall serve at the pleasure of the Director of the Department of Economic Development. If no action has been taken sooner, each Commission member shall serve for a term of three years; provided, however, that of the members first appointed, five shall be appointed for a term of one year, five for a term of two years, and five for a term of three years. Any vacancies shall be filled for the balance of the departing member's unexpired term. Each member shall continue to serve until a successor is duly appointed. A citizen may be reappointed, but shall not serve more than two complete terms.

The Commission shall conduct not less than two meetings and not more than four meetings per calendar year with one meeting to include the annual International Trade & Investment foreign director's meeting. The chairperson of the Commission may establish subcommittees as necessary to further the objectives and responsibilities of the commission, and those subcommittees may meet as often as necessary. Attendance at the commission meetings is mandatory, with failure to attend at least half (50%) of official meetings in any twelve-month period resulting in removal from the Commission.

The Commission shall convene no earlier than November 30, 2005, and no later than November 1, 2006.

Executive Order 03-24 and all previous Executive Orders pertaining to the subject matter contained therein are hereby superseded and the Missouri Governor's Commission on Hispanic Affairs is hereby abolished.



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 30th day of November, 2005.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

**EXECUTIVE ORDER
05-44**

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that a failure of the dam at Taum Sauk Reservoir has occurred; and

WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and individuals; and

WHEREAS, this assistance may be necessary to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, protection of the safety and welfare of the citizens of the Missouri requires an invocation of the provisions of Section 44.100 and 44.110, RSMo.

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 Sections 44.100 and 44.110, RSMo, do hereby declare that a State of Emergency exists in the State of Missouri. I do hereby direct that the Missouri State Emergency Operations Plan be activated.

I further authorize the use of state agencies to provide assistance, as needed.

This order shall terminate on January 31, 2006, unless extended in whole or in part.

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 14th day of December, 2005.



**Matt Blunt
Governor**

ATTEST:

**Robin Carnahan
Secretary of State**

EXECUTIVE ORDER
05-45

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that a failure of the dam at Taum Sauk Reservoir has occurred; and

WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and individuals; and

WHEREAS, this assistance may be necessary to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, protection of the safety and welfare of the citizens of the State requires an invocation of the provisions of Section 41.480.2 RSMo.

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 Section 41.480.2 RSMo, order and direct the Adjutant General of the State of Missouri, or his designee, to forthwith call and order into active service such portions of the organized militia as he deems necessary to aid the executive officials of Missouri, to protect life and property, and it is further ordered and directed that the Adjutant General or his designee, and through him, the commanding officer of any unit or other organization of such organized militia so called into active service take such action and employ such equipment as may be necessary in support of civilian authorities, and provide such assistance as may be authorized and directed by the Governor of this State.

This order shall terminate on January 31, 2006, unless extended in whole or in part.

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 14th day of December, 2005.



Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State