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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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IN THIS ISSUE:

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
April 1, 2010	**May 3, 2010**	May 31, 2010	June 30, 2010
April 15, 2010	**May 17, 2010**	May 31, 2010	June 30, 2010
May 3, 2010	**June 1, 2010**	June 30, 2010	July 30, 2010
May 17, 2010	**June 15, 2010**	June 30, 2010	July 30, 2010
June 1, 2010	**July 1, 2010**	July 31, 2010	August 30, 2010
June 15, 2010	**July 15, 2010**	July 31, 2010	August 30, 2010
July 1, 2010	**August 2, 2010**	August 31, 2010	September 30, 2010
July 15, 2010	**August 16, 2010**	August 31, 2010	September 30, 2010
August 2, 2010	**September 1, 2010**	September 30, 2010	October 30, 2010
August 16, 2010	**September 15, 2010**	September 30, 2010	October 30, 2010
September 1, 2010	**October 1, 2010**	October 31, 2010	November 30, 2010
September 15, 2010	**October 15, 2010**	October 31, 2010	November 30, 2010
October 1, 2010	**November 1, 2010**	November 30, 2010	December 30, 2010
October 15, 2010	**November 15, 2010**	November 30, 2010	December 30, 2010
November 1, 2010	**December 1, 2010**	December 31, 2010	January 30, 2011
November 15, 2010	**December 15, 2010**	December 31, 2010	January 30, 2011
December 1, 2010	**January 3, 2011**	January 29, 2011	February 28, 2011
December 15, 2010	**January 18, 2011**	January 29, 2011	February 28, 2011

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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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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Driver License Bureau Rules

EMERGENCY AMENDMENT

12 CSR 10-24.430 Back of Driver License, Permits, and Non*[-D]*driver License. The director is amending the title, purpose, section (1), and removing the diagram that appears with the rule in *Code*.

PURPOSE: This amendment adds a permanent disability indicator and a boater identification indicator to the description of variable data which may appear on the back of a driver license, permit, or nondriver license and removes the diagram that appears with the rule.

*EMERGENCY STATEMENT: This emergency amendment establishes the placement of a boater identification indicator and a permanent disability indicator on a driver or nondriver license. Sections 302.182 and 302.184, RSMo, which provide for these indicators, become effective July 1, 2010. This emergency amendment is necessary to ensure the public is aware of the placement of these indicators on the driver or nondriver license. Public awareness is beneficial and necessary when additional information is added to secure documents. The department estimates twenty-eight thousand, eight hundred twenty-five (28,825) citizens may elect to add these indicators to the license; it was assumed that twenty-five percent (25%) of the citizens who have a boater identification card will make this election, and it was assumed that five percent (5%) of the citizens that have a disabled license plate or permanent disabled placard will make the election. The permanently disabled indicator will further public safety and assist the disabled by alerting law enforcement and medical personnel that view the driver or nondriver license that the person is permanently disabled and may require special attention during traffic stops or other law enforcement or medically related contacts. Supporters say that a permanent disability notation would help protect citizens with hidden diseases against wrongful arrest by allowing them to prove their permanent disability status on-site. The Missouri State Water Patrol (MSWP) will accept the driver or nondriver license with the boater identification indicator in lieu of carrying the boating safety education card and an identification document as previously required. This will eliminate the burden for the public to carry both a boater identification card and a driver license while boating. The department initially reviewed sections 302.182 and 302.184, RSMo, and created an implementation work plan in June 2009, and an initial review with legal staff in July of the same year. A programming request was submitted in September 2009, but the programming changes could not start until other programming efforts were completed and implemented into code. The department made its initial contact with MSWP on September 27, 2009, to discuss requirements of the boater identification indicator. MSWP proceeded to conduct research with fourteen (14) other states to see how they applied similar indicators; they provided the department with an update on December 22, 2009. Requirements were finalized with MSWP in March 2010. During this time, MSWP was also providing samples of indicators to use to denote the boater identification and discussed placement of the indicator on the license. In November 2009, the department met to start documenting the business decisions that were required with placing a permanently disabled indicator on the license. Research was conducted with five (5) other states at that time to see how they applied similar indicators. As research was being conducted on the type of indicators to display and cost to establish, the implementation team was also developing the business requirements for contracted staff to complete programming changes to the department's license issuance system to allow for the placement of the indicator on the back of the license. Detailed design meetings were held with the information technology staff in February 2010, the business requirements document was approved on March 1, 2010, and programming commenced on March 22, 2010. Because of these events, the department finds a compelling governmental interest to allow for the placement of these indicators on the driver or nondriver license which requires this emergency action. A proposed amendment which covers the same material is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Department of Revenue believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 21, 2010, becomes effective July 1, 2010, and expires December 28, 2010.*

*PURPOSE: This rule complies with section 302.181, RSMo, which provides for a form to be utilized for designating anatomical gifts as provided in section [194.240] **194.255**, RSMo, and the name and address of the person designated as the licensee's attorney-in-fact for the purposes of a durable power of attorney for health care decisions.*

(1) The *[attached]* information*[, included herein,]* **that** may be printed on the back of a person's driver license, permit, or non*[-]*driver license*[. It]* includes endorsements, restrictions, two (2)-dimensional bar code, **permanent disability indicator, boater identification indicator,** and areas for indicating whether the person has taken a skills test, for designating anatomical gifts, and for designating the

name and address of the licensee's attorney-in-fact for the purposes of a durable power of attorney for health care decisions.

*AUTHORITY: sections 302.181, [RSMo 2000.] **302.171, 302.182, and 302.184, RSMo Supp. 2009.** Original rule filed Sept. 15, 1995, effective March 30, 1996. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 21, 2010, effective July 1, 2010, expires Dec. 28, 2010. Amended: Filed June 21, 2010. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

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

EMERGENCY RULE

12 CSR 10-24.480 Boater Identification Indicator on Driver or Nondriver License

PURPOSE: This rule establishes the cost and criteria for placement of a boater identification indicator on a driver or nondriver license.

*EMERGENCY STATEMENT: This emergency rule establishes the cost and criteria for placement of a boater identification indicator on a driver or nondriver license. Section 302.184, RSMo, which provides for this indicator, becomes effective July 1, 2010. This emergency rule is necessary to implement this legislation, to ensure the public is aware of the administrative changes that provide for this indicator on a driver or nondriver license, and to ensure the cost can be processed. Public awareness is beneficial and necessary when additional information is added to secure documents. The department estimates two thousand eighty (2,080) citizens may elect to add the indicator to the license; it was assumed that twenty-five percent (25%) of the citizens who have a boater identification card will elect to add the indicator to their license. The Missouri State Water Patrol (MSWP) will accept the driver or nondriver license with the boater identification indicator in lieu of carrying the boating safety education card and an identification document as previously required. This will eliminate the burden for the public to carry both a boater identification card and a driver license while boating. The department initially reviewed section 302.184, RSMo, and created an implementation work plan in June 2009, and an initial review with legal staff in July of the same year. A programming request was submitted in September 2009, but the programming changes could not start until other programming efforts were completed and implemented into code. It made its initial contact with MSWP on September 27, 2009, to discuss requirements of this legislation. MSWP proceeded to conduct research with fourteen (14) other states to see how they applied similar indicators; they provided the department with an update on December 22, 2009. Requirements were finalized with MSWP in March 2010. During this time, MSWP was also providing samples of indicators to use to denote the boater identification. As research was being conducted on the type of indicator to display and cost to establish, the implementation team was also developing the business requirements for contracted staff to complete programming changes to the department's license issuance system. Detailed design meetings were held with the information technology staff in February 2010, the business requirements document was approved on March 1, 2010, and programming commenced on March 22, 2010. Because of these events, the department finds a compelling governmental interest to allow for the issuance of this indicator that requires this emergency action. A proposed rule that covers the same material is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to the circumstances creating the emergency, and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Department of Revenue believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2010, becomes effective July 1, 2010, and expires December 28, 2010.*

(1) To obtain a boater identification indicator on the back of a driver or nondriver license, the applicant must present a boater identification card issued by the Missouri State Water Patrol indicating the applicant has complied with the provisions of section 306.127, RSMo.

(2) A cost of one dollar ($1) will be charged to the applicant in addition to any fees required under law or state regulation for placement of the boater identification indicator on a driver or nondriver license.

(A) An applicant will be required to pay the one dollar ($1)-cost only upon initial issuance of the boater identification indicator on each document type—driver or nondriver license—received. Applicants renewing or updating a driver or nondriver license with a current indicator will not incur any cost to retain the indicator.

(B) The one dollar ($1)-cost will not be charged to applicants requesting to remove a boater identification indicator. Any fees required under law or state regulation to obtain the new, renewal, or duplicate driver or nondriver license will apply.

*AUTHORITY: section 302.184, RSMo Supp. 2009. Emergency rule filed June 21, 2010, effective July 1, 2010, expires Dec. 28, 2010. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

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

EMERGENCY RULE

12 CSR 10-24.485 Permanent Disability Indicator on Driver or Nondriver License

PURPOSE: This rule establishes the criteria for placement of a permanent disability indicator on a driver or nondriver license.

EMERGENCY STATEMENT: This emergency rule establishes the criteria for placement of a permanent disability indicator on a driver or nondriver license. Section 302.182, RSMo, which provides for this indicator, becomes effective July 1, 2010. This emergency rule is necessary to implement this legislation by making certain that criteria is established to ensure only truly disabled applicants have the indicator placed on the driver or nondriver license. The department estimates twenty-six thousand, seven hundred forty-five (26,745) citizens may elect to add the indictor to the license; it was assumed that five percent (5%) of the citizens that have a disabled license plate or permanent disabled placard will elect to add the indicator to the license. During the legislative hearing for SB 683, which was passed by the 95th General Assembly, representatives from the Services for Independent Living and the Epilepsy Foundation testified in favor of placing this indicator on the license. The indicator will further public safety and assist the disabled by alerting law enforcement and medical personnel that view the driver or nondriver license that the person is permanently disabled and may require special attention during traffic stops or other law enforcement or medically related contacts. Supporters say that a permanent disability notation would help protect citizens with hidden diseases against wrongful arrest by allowing them to prove their permanent disability status on-site. The department initially reviewed section 302.182, RSMo, and created an implementation work plan in June 2009, and an initial review with legal staff in July of the same year. A programming request was submitted in September 2009, but the programming changes could not start until other programming efforts were completed and implemented into code. In November 2009, the department met to start

documenting the business decisions that were required with placing a permanently disabled indicator on the license. Research was conducted with five (5) other states at that time to see how they applied similar indicators and if costs were established. The department's legislative liaison contacted the bill's sponsor on January 21, 2010, to obtain his feedback on the best definition for "permanently disabled." The sponsor contacted a representative from the Services for Independent Living and received language that was then shared with House Research. The department ultimately received a response from the sponsor on February 9, 2010. The department's legal counsel reviewed the proposed definition and approvals were provided to move forward in February as well. As research was being conducted on a definition for "permanently disabled," the implementation team was also developing the business requirements for contracted staff to complete programming changes to the department's license issuance system. Detailed design meetings were held with the information technology staff in February 2010, the business requirements document was approved on March 1, 2010, and programming commenced on March 22, 2010. Because of these events, the department finds a compelling governmental interest to allow for the issuance of this indicator, which requires this emergency action. A proposed rule covering the same material is published in this issue of the ***Missouri Register****. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Department of Revenue believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 24, 2010, becomes effective July 4, 2010, and expires December 31, 2010.*

(1) As used in this rule, the term "permanently disabled" means having a physical or mental impairment, which substantially limits one's ability to perform one (1) or more major life activities and is permanent in nature, as determined by a licensed physician, physical therapist, or occupational therapist licensed pursuant to Chapter 334, RSMo, or other authorized licensed healthcare practitioner.

(2) As used in this rule, the term "healthcare practitioner" means a licensed physician, physical therapist, or occupational therapist licensed under Chapter 334, RSMo, or other authorized healthcare provider, licensed under the laws of the state of Missouri and approved by the director of revenue.

(3) To obtain a permanent disability indicator on a driver or nondriver license, an applicant at the time of application for an initial, renewal, or duplicate driver or nondriver license shall present a medical statement, as provided in section (1), completed and certified by a healthcare practitioner as provided in section (2).

(4) The issuance of a permanent disability indicator or notation on a driver or nondriver license is not for the purpose of any determination of eligibility or entitlement to any benefit or accommodation.

AUTHORITY: section 302.182, RSMo Supp. 2009. Emergency rule filed June 24, 2010, effective July 4, 2010, expires Dec. 31, 2010. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology. The division is amending sections (3), (4), (15), (16), and (18).

PURPOSE: This amendment provides the State Fiscal Year (SFY) 2011 trend factor and specifies that it will not be applied in determining payments; clarifies the per diem rate, Direct Medicaid payments, and uninsured payments for facilities that do not have a fourth prior year base cost report and facilities previously certified for MO HealthNet that had terminated and are reopening; indicates the Missouri Specific Trend factor will not be applied in determining payments; and clarifies the safety net adjustment relating to the uninsured payment for Department of Mental Health (DMH) facilities.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance. This emergency amendment will ensure payment to Missouri hospitals providing health care to over eight hundred ninety thousand (890,000) Missourians eligible for the MO HealthNet Program plus the uninsured. This emergency amendment must be implemented on a timely basis because it establishes the calculation of the Direct Medicaid and uninsured payments effective for dates of service beginning July 1, 2010, in regulation to ensure that quality health care continues to be provided to MO HealthNet participants at hospitals that have relied on MO HealthNet payments to meet those patients' needs. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest which requires emergency action. The MO HealthNet Program has a compelling government interest in providing continued cash flow for inpatient hospital services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the ***Missouri*** *and* ***United States Constitutions****. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material will be published in this issue of the* ***Missouri Register****. This emergency amendment was filed June 17, 2010, effective July 1, 2010, and expires December 27, 2010.*

(3) Per Diem Reimbursement Rate Computation. Each hospital shall receive a MO HealthNet per diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—
   A. SFY 1994—4.6%
   B. SFY 1995—4.45%
   C. SFY 1996—4.575%
   D. SFY 1997—4.05%
   E. SFY 1998—3.1%
   F. SFY 1999—3.8%
   G. SFY 2000—4.0%
   H. SFY 2001—4.6%
   I. SFY 2002—4.8%
   J. SFY 2003—5.0%
   K. SFY 2004—6.2%
   L. SFY 2005—6.7%
   M. SFY 2006—5.7%
   N. SFY 2007—5.9%
   O. SFY 2008—5.5%
   P. SFY 2009—5.5%
   Q. SFY 2010—3.9%
   R. SFY 2011—3.2%—The 3.2% trend shall not be applied in determining the per diem rate, Direct Medicaid payments, or uninsured payments.
2. The TI for SFY 1996 through SFY 1998 are applied as a full

percentage to the OC of the per diem rate and for SFY 1999 the OC of the June 30, 1998, rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999, rate shall be trended by 2.4%. The OC of the June 30, 2000, rate shall be trended by 1.95% for SFY 2001.

3. The per diem rate shall be reduced as necessary to avoid any negative Direct Medicaid *[P]***p**ayments computed in accordance with subsection (15)(B).

4. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its MO HealthNet rate determined in accordance with section (4).

(4) Per Diem Rate—New Hospitals.

(B) Facilities Reimbursed by Medicare on a DRG Basis. In the absence of adequate cost data, a new facility's MO HealthNet rate *[may]* **shall** be ninety percent (90%) of the average-weighted, statewide per diem rate *[for two (2) fiscal years following the facility's initial fiscal year as a new facility. The MO HealthNet rate for the third fiscal year will be the facility's MO HealthNet rate for its second fiscal year indexed forward by the inflation index for the current fiscal year. The MO HealthNet rate]* for **the year it became certified to participate in the MO HealthNet Program until a prospective rate is determined on** the facility's fourth fiscal year *[will be determined]* **cost report** in accordance with sections (1)–(3) of this plan. **If the facility's fourth fiscal year cost report does not include any Medicaid costs, the facility shall continue to receive the initial rate, and the prospective rate will be determined from the facility's fifth fiscal year cost report.**

(C) In addition to the MO HealthNet rate determined by either subsection (4)(A) or (4)(B), the MO HealthNet per diem rate for a new hospital licensed after February 1, 2007, shall include an adjustment for the hospital's estimated Direct Medicaid Add-On payment per patient day, as determined in subsection (15)(C), until the facility's fourth fiscal year. The MO HealthNet rate for the facility's fourth fiscal year will be determined in accordance with sections (1)–(3) of this plan. The facility's Direct Medicaid Add-On adjustment will then no longer be included in the per diem rate but shall be calculated as a separate Add-On payment, as set forth in section (15). **If the facility's fourth fiscal year cost report does not include any Medicaid costs, the facility shall continue to receive the Direct Medicaid Add-On as an adjustment to its initial rate. The prospective rate will be determined on the facility's fifth fiscal year cost report at which time the facility's Direct Medicaid Add-On adjustment will no longer be included in the per diem but be calculated as a separate Add-On payment, as set forth in section (15).**

(15) Direct Medicaid Payments.

(B) Direct Medicaid payment will be computed as follows:

1. The MO HealthNet share of the inpatient FRA assessment will be calculated by dividing the hospital's inpatient Medicaid patient days by the total inpatient hospital patient days from the hospital's base cost report to arrive at the inpatient Medicaid utilization percentage. This percentage is then multiplied by the inpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the inpatient FRA assessment. The MO HealthNet share of the outpatient FRA assessment will be calculated by dividing the hospital's outpatient MO HealthNet charges by the total outpatient hospital charges from the base cost report to arrive at the MO HealthNet utilization percentage. This percentage is then multiplied by the outpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the outpatient FRA assessment;

2. The unreimbursed MO HealthNet costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated MO HealthNet patient days for the current SFY plus the out-of-state days from the fourth prior year cost report trended to the current SFY. The estimated MO HealthNet patient days for the current SFY shall be the better of the sum of the Fee-for-Service (FFS) days plus managed care days or the days used in the prior SFY's Direct Medicaid payment calculation. The FFS days are determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior SFY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

A. Effective January 1, 2010, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the prior SFY's Direct Medicaid payment calculation (i.e., for SFY 2010, prior SFY would be SFY 2009) adjusted downward by twenty-five percent (25%) of the difference between the sum of the FFS days plus managed care days and the days used in the prior SFY's Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as follows: The FFS days are determined by applying a trend to the second prior Calendar Year (CY) days (i.e., for SFY 2010, second prior CY would be 2008) as determined from the state's Medicaid Management Information System (MMIS). The trend is determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by twenty-five percent (25%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by twenty-five percent (25%), and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

B. Effective July 1, 2010, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the SFY 2009 Direct Medicaid payment calculation adjusted downward by fifty percent (50%) of the difference between the sum of the FFS days plus managed care days and the days used in the SFY 2009 Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by fifty percent (50%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by fifty percent (50%) and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

C. Effective July 1, 2011, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the SFY 2009 Direct Medicaid payment calculation adjusted downward by seventy-five percent (75%) of the difference between the sum of the FFS days plus managed care days and the days used in the SFY 2009 Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by seventy-five percent (75%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by seventy-five percent (75%) and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

D. Effective July 1, 2012, the estimated MO HealthNet patient days shall be the sum of the FFS days plus managed care days. The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

E. The trended cost per day is calculated by trending the base year costs per day by the trend indices listed in paragraph (3)(B)1., using the rate calculation in subsection (3)(A). In addition to the trend indices applied to inflate base period costs to the current fiscal year, base year costs will be further adjusted by a Missouri Specific Trend. The Missouri Specific Trend will be used to address the fact that costs for Missouri inpatient care of MO HealthNet residents have historically exceeded the compounded inflation rates estimated using national hospital indices for a significant number of hospitals. The Missouri Specific Trend will be applied at one and one-half percent (1.5%) per year to the hospital's base year. For example, hospitals with a 1998 base year will receive an additional six percent (6%) trend, and hospitals with a 1999 base year will receive an additional four and one-half percent (4.5%) trend.

(I) Effective for dates of service beginning July 1, 2010, the Missouri Specific Trend shall no longer be applied to inflate base period costs.

F. For hospitals that meet the requirements in paragraphs (6)(A)1., (6)(A)2., and (6)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third prior year, the fourth prior year, or the fifth prior year. For hospitals that meet the requirements in paragraphs (6)(A)1. and (6)(A)3. of this rule (first tier Disproportionate Share Hospitals), the base year operating costs may be the third or fourth prior year cost report. The MO HealthNet Division shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year operating costs are based on the fourth prior year cost report. For any hospital that has both a twelve (12)-month cost report and a partial year cost report, its base period cost report for that year will be the twelve (12)-month cost report.

G. The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment, and the poison control costs computed in paragraphs (15)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization as identified in paragraph (5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated MO HealthNet patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of MO HealthNet inpatient days the hospital will not provide as a result of the managed care health plans limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated MO HealthNet days for the current SFY to arrive at the MO HealthNet utilization adjustment.

A. Effective January 1, 2010, hospitals other than safety net hospitals as defined in subsection (6)(B) will receive sixty-seven percent (67%) of the utilization adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

B. Effective July 1, 2010, hospitals other than safety net hospitals as defined in subsection (6)(B), children's hospitals as defined in subsection (2)(S), and specialty pediatric hospitals as defined in subsection (2)(P) will receive thirty-four percent (34%) of the utilization adjustment calculated in accordance with paragraph (15)(B)4. Children's hospitals and specialty pediatric hospitals will receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

C. Effective July 1, 2011, the utilization adjustment will no longer apply to any hospital other than safety net hospitals as defined in subsection (6)(B), children's hospitals as defined in subsection (2)(S), and specialty pediatric hospitals as defined in subsection (2)(P). Children's hospitals and specialty pediatric hospitals will continue to receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

5. The poison control cost shall reimburse the hospital for the prorated MO HealthNet managed care cost. It will be calculated by multiplying the estimated MO HealthNet share of the poison control costs by the percentage of managed care participants to total MO HealthNet participants; and

6. Prior to July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days from the base year cost report. Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.

(C) For new hospitals that do not have a base cost report, Direct Medicaid payments shall be estimated as follows:

1. Hospitals receiving Direct Medicaid payments shall be divided into quartiles based on total beds;

2. Direct Medicaid payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average Direct Medicaid payment per bed;

3. The number of beds for the new hospital without the base cost report shall be multiplied by the average Direct Medicaid payment per bed to determine the hospital's estimated Direct Medicaid payment for the current state fiscal year; and

4. For a new hospital licensed after February 1, 2007, estimated total Direct Medicaid payments for the current state fiscal year shall be divided by the estimated MO HealthNet patient days for the new hospital's quartile to obtain the estimated Direct Medicaid adjustment per patient day. This adjustment per day shall be added to the new hospital's MO HealthNet rate as determined in section (4), so that the hospital's Direct Medicaid payment per day is included in its per diem rate, rather than as a separate *[addon]* **Add-On** payment. When the hospital's per diem rate is determined from its fourth prior year cost report in accordance with sections (1)–(3), the facility's Direct Medicaid payment will be calculated in accordance with subsection (15)(B) and reimbursed as an *[addon]* **Add-On** payment rather than as part of the per diem rate. If the hospital is defined as

a critical access hospital, its MO HealthNet per diem rate and Direct Medicaid payment will be determined in accordance with subsection (5)(F).

5. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its Direct Medicaid payments determined in accordance with subsection (15)(C).

(16) Safety Net Adjustment. A safety net adjustment, in lieu of the Direct Medicaid Payments and Uninsured Add-Ons, shall be provided for each hospital which qualified as disproportionate share under the provision of paragraph (6)(A)4. The safety net adjustment payment shall be made prior to the end of each federal fiscal year.

(B) The safety net adjustment for facilities which qualify under subparagraph (6)(A)4.D. of this regulation shall be computed in accordance with the Direct Medicaid *[P]***p**ayment calculation described in section (15) and **up to one hundred percent (100%) of** the uninsured costs calculation described in subsection (18)(B) of this regulation. The safety net adjustment will include the last three (3) quarters of the SFY ending June 30 and the first quarter of the next SFY beginning July 1 to correspond with the FFY of October 1 to September 30.

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1–June 30) shall be determined as follows:

(B) Uninsured Add-Ons. The hospital shall receive eighty-nine percent (89%) of the uninsured costs prorated over the SFY. Hospitals which contribute through a plan approved by the director of health to support the state's poison control center, the Primary Care Resource Initiative for Missouri (PRIMO), and Patient Safety Initiatives shall receive ninety percent (90%) of its uninsured costs prorated over the SFY. **DMH hospitals shall receive up to one hundred percent (100%) of their uninsured costs.** The uninsured Add-On will include:

(C) For new hospitals that do not have a base cost report, uninsured payments shall be estimated as follows:

1. Hospitals receiving uninsured payments shall be divided into quartiles based on total beds;

2. Uninsured payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average uninsured payment per bed; *[and]*

3. The numbers of beds for the new hospital without the base cost report shall be multiplied by the average uninsured payment per bed*[.]***; and**

4. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its uninsured payments determined in accordance with subsection (18)(C).

AUTHORITY: sections 208.152, 208.153, 208.201, and 208.471, RSMo Supp. 2009. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is amending section (1) and adding section (19).

PURPOSE: This amendment will specify the trends to be applied to the inpatient and outpatient adjusted net revenues determined from the FRA fiscal year cost report, clarify the estimated inpatient and outpatient adjusted net revenues for hospitals without a base year cost report, and establish the Federal Reimbursement Allowance assessment effective for dates of service beginning July 1, 2010, at five and forty-five hundredths percent (5.45%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its FRA fiscal year cost report.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Federal Reimbursement Allowance (FRA) assessment rate effective for dates of service beginning July 1, 2010, in regulation in order to collect the state revenue to ensure access to hospital services for MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The Missouri Partnership Plan between the Centers for Medicare and Medicaid Services (CMS) and the Missouri Department of Social Services (DSS), which establishes a process whereby CMS and DSS determine the permissibility of the funding source used by Missouri to fund its share of the MO HealthNet program, is based on a state fiscal year. The MO HealthNet Division also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri hospitals which serve over eight hundred ninety thousand (890,000) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. The FRA will raise approximately $917.6 million for SFY 2011 (July 1, 2010–June 30, 2011). A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. 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****. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. The emergency amendment was filed June 17, 2010, effective July 1, 2010, and expires December 27, 2010.*

(1) Federal Reimbursement Allowance (FRA). FRA shall be assessed as described in this section.

(A) Definitions.

1. Bad debts—Amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. Allowable bad debts include the costs of caring for patients who have insurance, but their insurance does not cover the particular service procedures or treatment rendered.

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report. When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve (12)-month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve (12)-month period, the data shall be adjusted, based on the number of months reflected in the base cost report, to a twelve (12)-month period.

3. Charity care—Those charges written off by a hospital based on the hospital's policy to provide health care services free of charge or at a reduced charge because of the indigence or medical indigence

of the patient.

4. Contractual allowances—Difference between established rates for covered services and the amount paid by third-party payers under contractual agreements. The Federal Reimbursement Allowance (FRA) is a cost to the hospital, regardless of how the FRA is remitted to the MO HealthNet Division, and shall not be included in contractual allowances for determining revenues. Any redistributions of MO HealthNet payments by private entities acting at the request of participating health care providers shall not be included in contractual allowances or determining revenues or cost of patient care.

5. Department—Department of Social Services.

6. Director—Director of the Department of Social Services.

7. Division—MO HealthNet Division, Department of Social Services.

8. Engaging in the business of providing inpatient health care—Accepting payment for inpatient services rendered.

9. Federal Reimbursement Allowance (FRA)—The fee assessed to hospitals for the privilege of engaging in the business of providing inpatient health care in Missouri. The FRA is an allowable cost to the hospital.

10. Fiscal period—Twelve (12)-month reporting period determined by each hospital.

11. Gross hospital service charges—Total charges made by the hospital for inpatient and outpatient hospital services that are covered under 13 CSR 70-15.010.

12. Hospital—A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not fewer than twenty-four (24) hours in any week of three (3) or more nonrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide for not fewer than twenty-four (24) hours in any week, medical or nursing care for three (3) or more nonrelated individuals. The term hospital does not include convalescent, nursing, shelter, or boarding homes as defined in Chapter 198, RSMo.

13. Hospital revenues subject to FRA assessment effective July 1, 2008—Each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues subject to the FRA assessment will be determined as follows:

A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3, of the *[most recent]* **third prior year** cost report *[that is available]* **(i.e., FRA fiscal year cost report)** for *[a]* **the** hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:

(I) "Nursing Facility Charges" from Worksheet C, Part I, Line 35, Column 6.

(II) "Swing Bed Nursing Facility Charges" from Worksheet G-2, Line 5, Column 1.

(III) "Nursing Facility Ancillary Charges" as determined from the Department of Social Services, MO HealthNet Division, nursing home cost report. (Note: To the extent that the gross hospital charges, as specified in subparagraph (1)(A)13.A. above, include long-term care charges, the charges to be excluded through this step shall include all long-term care ancillary charges including skilled nursing facility, nursing facility, and other long-term care providers based at the hospital that are subject to the state's provider tax on nursing facility services.)

(IV) "Distinct Part Ambulatory Surgical Center Charges" from Worksheet G-2, Line 22, Column 2.

(V) "Ambulance Charges" from Worksheet C, Part I, Line 65, Column 7.

(VI) "Home Health Charges" from Worksheet G-2, Line 19, Column 2.

(VII) "Total Rural Health Clinic Charges" from Worksheet C, Part I, Column 7, Lines 63.50–63.59.

(VIII) "Other Non-Hospital Component Charges" from Worksheet G-2, Lines 6, 8, 21, 21.02, 23, and 24.

B. Obtain "Net Revenue" from Worksheet G-3, Line 3, Column 1. The state will ensure this amount is net of bad debts and other uncollectible charges by survey methodology.

C. "Adjusted Gross Total Charges" (the result of the computations in subparagraph (1)(A)13.A.) will then be further adjusted by a hospital-specific collection-to-charge ratio determined as follows:

(I) Divide "Net Revenue" by "Gross Total Charges."

(II) "Adjusted Gross Total Charges" will be multiplied by the result of part (1)(A)13.C.(I) to yield "Adjusted Net Revenue."

D. Obtain "Gross Inpatient Charges" from Worksheet G-2, Line 25, Column 1, of the most recent cost report that is available for a hospital.

E. Obtain "Gross Outpatient Charges" from Worksheet G-2, Line 25, Column 2, of the most recent cost report that is available for a hospital.

F. Total "Adjusted Net Revenue" will be allocated between "Net Inpatient Revenue" and "Net Outpatient Revenue" as follows:

(I) "Gross Inpatient Charges" will be divided by "Gross Total Charges."

(II) "Adjusted Net Revenue" will then be multiplied by the result to yield "Net Inpatient Revenue."

(III) The remainder will be allocated to "Net Outpatient Revenue."

G. The trend indices listed *[in 13 CSR 70-15.010(3)(B) and the Missouri Specific Trend defined in 13 CSR 70-15.010(15)(B)2.A.]* **below** will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted net revenue in order to inflate or trend forward the adjusted net revenues from the *[base cost report]* **FRA** fiscal year **cost report** to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.

(I) SFY 2009 = 5.50%
(II) SFY 2009 Missouri Specific Trend = 1.50%
(III) SFY 2010 = 3.90%
(IV) SFY 2010 Missouri Specific Trend = 1.50%
(V) SFY 2011 = 3.20%

14. Net operating revenue—Gross charges less bad debts, less charity care, and less contractual allowances times the trend indices listed in 13 CSR 70-15.010(3)(B).

15. Other operating revenues—The other operating revenue is total other revenue less government appropriations, less donations, and less income from investments times the trend indices listed in 13 CSR 70-15.010(3)(B).

(B) Each hospital*[, except public hospitals which are operated primarily for the care and treatment of mental disorders and any hospital operated by the Department of Health and Senior Services,]* engaging in the business of providing inpatient health care in Missouri shall pay an FRA. The FRA shall be calculated by the Department of Social Services.

1. The FRA shall be sixty-three dollars and sixty-three cents ($63.63) per inpatient hospital day from the 1991 base cost report for Federal Fiscal Year 1994. For succeeding periods, the FRA shall be as described beginning with section (2) and going forward.

2. If a hospital does not have a fourth prior year base cost report, inpatient and outpatient adjusted net revenues shall be estimated as follows:

A. Hospitals required to pay the FRA**, except safety net hospitals,** shall be divided in quartiles based on total beds;

B. *[Average inpatient and outpatient adjusted net revenues shall be individually summed and divided by the total beds in the quartile to yield an average inpatient and outpatient adjusted net revenue per bed;]* **The inpatient adjusted net revenue shall be summed for each quartile and divided by the total beds in the quartile to yield an average inpatient adjusted net revenue per bed. The number of beds for the hospital without the base cost report shall be multiplied by the average inpatient adjusted net revenue per bed to determine the estimated inpatient adjusted net revenue;** and

C. *[Finally, the number of beds for the hospital without the base cost report shall be multiplied by the average inpatient and outpatient adjusted net revenue per bed.]* **The outpatient adjusted net revenue shall be summed for each quartile and divided by the number of facilities in the quartile to yield an average outpatient adjusted net revenue per facility which will be the estimated outpatient adjusted net revenue for the hospital without the base cost report.**

3. The FRA assessment for hospitals that merge operation under one (1) Medicare and MO HealthNet provider number shall be determined as follows:

A. The previously determined FRA assessment for each hospital shall be combined under the active MO HealthNet provider number for the remainder of the state fiscal year after the division receives official notification of the merger; and

B. The FRA assessment for subsequent fiscal years shall be based on the combined data for both facilities.

(19) Beginning July 1, 2010, the FRA assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

AUTHORITY: section 208.201, RSMo Supp. 2009 and sections 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program

EMERGENCY AMENDMENT

13 CSR 70-20.320 Pharmacy Reimbursement Allowance. The division is amending section (2).

PURPOSE: This amendment establishes the Pharmacy Reimbursement Allowance beginning July 1, 2010, at one and ninety-seven hundredths percent (1.97%) of gross retail prescription receipts.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Pharmacy Reimbursement Allowance (PRA) rate effective for dates of service beginning July 1, 2010, in regulation in order to collect the state revenue to ensure access to pharmacy services for MO HealthNet participants. The MO HealthNet Division also finds an immediate danger to public health and welfare which requires emergency action. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri pharmacies which serve over eight hundred ninety thousand (890,000) MO HealthNet participants. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants. The PRA will raise approximately $99.2 million for funding the pharmacy program for state fiscal year 2011 (July 1, 2010–June 30, 2011). A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. 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****. The MO Health Net Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed June 17, 2010, becomes effective July 1, 2010, and expires December 27, 2010.*

(2) Payment of the PRA.

(E) PRA Rates.

1. The PRA tax rate will be a uniform effective rate of *[one and twenty hundredths percent (1.20%)]* **one and ninety-seven hundredths percent (1.97%)** with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five hundredths percent (.05%) based on the pharmacy's total prescription volume.

2. *[Beginning January 1, 2010, the PRA tax rate will be a uniform effective rate of one and eighty-two hundredths percent (1.82%) with an aggregate quarterly adjustment, by the MO HealthNet Division, not to exceed five tenths percent (0.5%) based on the pharmacy's total prescription volume.*

3.] The maximum rate shall be five percent (5%).

AUTHORITY: sections 208.201 and 338.505, RSMo Supp. [2008] ***2009****. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed July 15, 2002, effective Feb. 28, 2003. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. 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 30—Division of Regulation and Licensure
Chapter 1—Controlled Substances

EMERGENCY AMENDMENT

19 CSR 30-1.074 Dispensing Without a Prescription. The department is adding a new section (1), renumbering the old section (1) to section (2) and amending it, and adding new section (3).

PURPOSE: This amendment establishes specific requirements and restrictions regarding transmission of information regarding sales of methamphetamine precursors to a statewide electronic database.

EMERGENCY STATEMENT: Section 195.017.12 and .13, RSMo, effective August 28, 2008, requires pharmacies to maintain an electronic log for sales of certain pseudoephedrine and other methamphetamine precursor drug products used to manufacture methamphetamine. The statute provides for the submission of such information by transmission methods and at a frequency established by the Department of Health and Senior Services, but no funding was available for implementation of a statewide electronic database to receive the information. During the fall of 2009, the department received multiple offers for free database services from multiple vendors. The department conducted a competitive bid process and accepted a proposal to establish and maintain a statewide system at no cost to the state for the first two (2) years of operation. This will allow the Department of Health and Senior Services to now implement a statewide electronic database and allow additional time to attempt to secure funding for continued operation of the database after the end of the first two (2) years. The Department of Health and Senior

Services finds an immediate danger to the public health, safety, and welfare in not having a statewide electronic database as Missouri leads the nation in clandestine methamphetamine lab seizures by a considerable margin and the numbers of seizures of toxic, clandestine methamphetamine (meth) labs continue to grow. According to information from the Missouri State Highway Patrol, clandestine methamphetamine labs were identified at an average rate of one hundred twenty-four (124) per month during calendar year 2008. This rate increased to an average of one hundred forty-seven and eight tenths (147.8) labs per month during 2009. These toxic and hazardous lab sites place citizens of the state, including small children and other vulnerable populations, at risk. Without a statewide electronic database, potential methamphetamine "cooks" may go from pharmacy to pharmacy, purchasing the maximum quantity allowed under the law at each pharmacy visited. Oklahoma and Tennessee currently have statewide electronic tracking systems in place. Iowa, Illinois, and Kansas are reportedly preparing to implement similar systems. Without a statewide electronic database to track methamphetamine precursor purchases in Missouri, individuals interested in "cooking meth" will come from surrounding states to Missouri where purchases over the legal quantity threshold may be made without detection. Many of the meth labs in Northeastern Oklahoma are having their drugs purchased from Southwest Missouri. This emergency amendment establishes specific requirements for a transmission of data into a statewide "real-time" electronic database for methamphetamine precursor drug sales. For information regarding fiscal notes and costs for the electronic database, you may refer to the proposed amendment also published in this Register. The department has met with law enforcement agencies and members of the pharmacy industry in preparing these rules. Prior to the effective date of this emergency amendment, Missouri retail pharmacies will be receiving a letter from the database vendor that explains the system, the equipment that will be made available for users of the system, information for attending no-cost regional training classes, and also an online Internet tutorial for training. There will be separate training for pharmacies and law enforcement. Once operational, the database will notify the pharmacy if the purchaser has exceeded the legal limit for pseudoephedrine purchases and allow the pharmacy to refuse the sale. The database is anticipated to be operational by the effective date of this emergency amendment and will allow law enforcement to access one (1) central source of online pseudoephedrine sales data rather than having to contact individual pharmacies for paper copies of sales records. As a result, the Department of Health and Senior Services finds an immediate danger to the public health, safety, and/or welfare and finds it is necessary to preserve a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed July 9, 2010, becomes effective September 28, 2010, and expires March 26, 2011.*

(1) Definitions. For the purposes of this rule, the following terms shall apply:

(A) "Dispenser" means a pharmacist, intern pharmacist, or registered pharmacy technician who sells, dispenses, or otherwise provides methamphetamine precursor products to purchasers;

(B) "Methamphetamine precursor products" means both Schedule V pseudoephedrine products and any other drug product containing any detectable amount of ephedrine, pseudoephedrine, or phenylpropanolamine, including the salts or optical isomers or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers of ephedrine, pseudoephedrine, or phenylpropanolamine; and

(C) "Valid photo identification" means forms of identification issued in the United States by a U.S. state, territory, or U.S. federal government that contain a photograph and date of birth.

*[(1)]***(2) Dispensing Without a Prescription.** A controlled substance listed in Schedule V which is not a prescription drug *[and determined]* under the federal Food, Drug and Cosmetic Act**, and is not a methamphetamine precursor product,** may be dispensed by a pharmacist without a prescription to a purchaser at retail; provided, that—

[(A) Products that are designated Schedule V controlled substances which contain any detectable amount of pseudoephedrine, its salts or optical isomers, or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers may be sold, distributed or otherwise provided only by a pharmacist or pharmacy ancillary personnel as authorized by the Missouri State Board of Pharmacy;]

*[(B)]***(A)** Dispensing *[of any other substance listed in Schedule V]* is made only by a pharmacist and not by a nonpharmacist employee even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his/her professional and legal responsibilities, the actual cash transaction, credit transaction**,** or delivery may be completed by a nonpharmacist); **and**

*[(C)]***(B)** Dispensing, sale, distribution**,** or otherwise providing is limited to*[:*

1. Not] **not** more than two hundred forty cubic centimeters (240 cc) or eight ounces (8 oz.) of any controlled substance containing opium, nor more than one hundred twenty cubic centimeters (120 cc) or four ounces (4 oz.) of any other controlled substance**,** nor more than forty-eight (48) dosage units of any controlled substance containing opium, nor more than twenty-four (24) dosage units of any other controlled substance may be dispensed at retail to the same purchaser in any given forty-eight (48)-hour period*[;]***.**

[2. Within any thirty (30)-day period, not more than any number of packages of any drug product containing any detectable amount of ephedrine or pseudoephedrine in any total amount greater than nine (9) grams, or any of their salts or optical isomers, or salts of optical isomers, either as:

A. The sole active ingredient; or

B. One of the active ingredients of a combination drug; or

C. A combination of any of the products specified in subsections (A) and (B) of this section;

(D) The purchaser is at least eighteen (18) years of age;

(E) The pharmacist requires every purchaser of a Schedule V controlled substance not known to him/her to furnish suitable photo identification (including proof of age where appropriate);

(F) Pharmacists and registered pharmacy technicians shall implement and maintain a written or electronic log of each transaction.

1. Such log shall include the following information:

A. The name and address of the purchaser;

B. The amount of the compound, mixture, or preparation purchased;

C. The date of each purchase; and

D. The name or initials of the pharmacist or registered pharmacy technician who dispensed, sold, distributed, or otherwise provided the compound, mixture, or preparation to the purchaser.

2. An auxiliary written log shall be established for the documentation of Schedule V substances dispensed, sold, distributed or otherwise provided if the electronic log is inoperative for any reason.

3. Any electronic log described in subsection (F) must be capable of providing a listing of utilization of any Schedule V substance for a minimum of the preceding twelve (12)-month period. Utilization information shall be

available by both specific Schedule V product and purchaser name;

(G) A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law.]

(3) Methamphetamine precursor products may be sold, dispensed, distributed, or otherwise provided only as follows:

(A) Products that are designated Schedule V controlled substances which contain any detectable amount of pseudoephedrine, ephedrine, phenylpropanolamine, their salts or optical isomers, or salts of their optical isomers may be sold, distributed, or otherwise provided only by a pharmacist or pharmacy ancillary personnel as authorized by the Missouri State Board of Pharmacy;

(B) Dispensers of methamphetamine precursor products shall exercise reasonable care in assuring that the purchaser has not exceeded the three and six-tenths (3.6)-grams limit per day or the nine (9)-gram limit per thirty (30)-day period;

(C) Dispensers shall utilize the real-time electronic pseudoephedrine tracking system established and maintained by the Missouri Department of Health and Senior Services (DHSS);

(D) Methamphetamine precursor products regulated by Missouri law as controlled substances shall only be sold to customers eighteen (18) years of age or older who present a valid photo identification;

(E) Any dispenser who sells, dispenses, or otherwise provides any methamphetamine precursor product shall submit the following information to the DHSS electronic database at the time of purchase:

1. Date and time of transaction;

2. Pharmacy identification information, including:

A. National Council for Prescription Drug Programs identification number; or

B. National Association of Boards of Pharmacy identification number; or

C. Vendor assigned site and/or pharmacy identifier;

3. Purchaser information, including the following fields:

A. Purchaser's given or first name;

B. Purchaser's middle name (if any);

C. Purchaser's surname or last name;

D. The purchaser's full name shall be entered into the database without the use of initials or nicknames;

E. Purchaser's date of birth; and

F. Purchaser's address, including number, street, city, state, and zip code;

4. Identification of the form of valid photo identification presented by the purchaser; including issuing agency of the photo identification and identification number appearing on the photo identification;

5. Purchaser's signature;

6. Dispenser identification, including:

A. The name of the individual performing the transaction; or

B. The initials of the individual performing the transaction;

7. Transaction number, assigned by the database provider/vendor;

8. Purchase transaction information, including the following:

A. Product Universal Product Code (UPC);

B. Product National Drug Code (NDC) (optional);

C. Unique product description; and

D. Purchase quantity, in grams as—

(I) Product grams per box and number of boxes in transaction;

(II) Product grams per dosage form such as tablet, capsule, or milliliter, and number of dosages per transaction; or

(III) Other mechanism identified by the database provider/vendor; and

9. Form of pseudoephedrine in a manner defined by the database provider/vendor, including but not limited to:

A. Tablet;

B. Capsule;

C. Liquid-filled gelcap; or

D. Liquid;

(F) Purchaser information provided and entered into the DHSS electronic database shall be the same as that on the presented identification. Full names shall be used and not merely initials or a nickname;

(G) If the DHSS electronic database is not available at the time of the sale of the methamphetamine precursor product, the information to be provided in subsection (3)(E) above shall be recorded manually and entered into the DHSS electronic database as soon as practicable after the system is back online, as specified in subsection (3)(I). Signatures shall be captured on paper and then may be scanned to the database;

(H) Every dispenser who sells, dispenses, or otherwise provides any methamphetamine precursor product shall maintain a bound logbook in addition to the electronic database system. The logbook shall be used for documenting a clear audit trail of any alterations, changes, or deletions to the original transaction record and sales that occurred during system failures, including date and time of entry into the database, justification, and resultant contacts with law enforcement because the override button was used;

(I) In the event that the DHSS electronic database is unavailable for five (5) minutes or more due to a failure on the DHSS network or because of a failure attributable to systems other than the DHSS, the dispenser may continue with the transaction until the system is available. All information required to be captured with each transaction shall be retained and documented. The information may be entered into the database where it may be held pending until the system comes back online, or all of the required information for transactions occurring during the time the DHSS electronic database is unavailable must be recorded manually and entered into the DHSS electronic database by the registrant as soon as is practicable, but within no more than forty-eight (48) hours following the resumption of operability. Documentation shall also identify the reason for the late entry into the DHSS electronic database;

(J) At least once each month, the pharmacist-in-charge shall review the logbook of changes and the changes captured by the database to see what changes and alterations pharmacy employees have entered regarding sales of methamphetamine precursors. The date and time that the pharmacist-in-charge conducts this monthly review shall be documented in the bound logbook maintained by the pharmacy in addition to the electronic system;

(K) Documentation in the bound logbook shall be maintained in a readily retrievable manner for two (2) years from the date of the transaction and available for inspection and copying by authorized DHSS employees and law enforcement;

(L) Denials of Sales and Dispensings.

1. Except as provided in subsection (D) of this section, if an individual attempts to purchase a methamphetamine precursor product in violation of the three and six-tenths (3.6) gram per day or nine (9) gram per month quantity restrictions or age restriction established by sections 195.017 and 195.417, RSMo, the dispenser shall refuse to make the sale.

2. Sales of methamphetamine precursor products shall be denied to purchasers who are not at least eighteen (18) years of age.

3. Sales of methamphetamine precursor products shall be denied to purchasers who are not able to produce a valid government issued identification card with the required information displayed on it.

4. In the event that the dispenser perceives that refusal of the purchase may place him or her in imminent physical harm, then the dispenser may use the database safety override function to proceed with the transaction, provided that—

A. When jeopardy is no longer perceived, the dispenser shall immediately contact local law enforcement to report the purchase; and

B. The dispenser shall document in their manual log, the circumstance, the individual contacted at the local law enforcement agency, and the date and time of that contact;

(M) Pharmacy Employees. Employees in a pharmacy shall be assigned individual personal passwords to identify their own transactions in the database.

1. Pharmacy employees shall only use their own passwords for their own transactions and shall not dispense or make a sale under the password of another person.

2. The database computer shall not be left on and unattended so that another person can use the previous user's password. Users shall close out their personal access when their activities are completed.

3. The pharmacist-in-charge shall be responsible for insuring pharmacy employees have adequate password privileges. The pharmacist-in-charge shall insure that new employees have their own personal passwords and also insure that ex-employees have their passwords removed from the system;

(N) Access to Database by Law Enforcement and Regulatory Agencies.

1. Access to the database and controlled substance records shall be made available to those agencies with authority under Chapter 195 and Chapter 338, RSMo.

2. Law enforcement agencies and regulatory agencies shall only have the ability to read and review and shall not be able to enter data or change records.

3. It shall be the responsibility of each agency's administrator, chief, sheriff, or other chief executive officer to insure—

A. Only authorized employees have access to the database;

B. Employees only use their own passwords and passwords are not shared;

C. Each employee adheres to all state and federal laws regarding confidentiality; and

D. As employees change, that new passwords are assigned to new employees and passwords of ex-employees or transferred employees are removed. The chief, sheriff, or chief executive officer of the law enforcement or regulatory agency shall notify the DHSS in writing when an employee's access is to be added or removed; and

(O) Method for Enforcement Agencies to Gain or Alter Access to the Database.

1. Requests submitted to the DHSS to add or remove an employee from access to the database shall—

A. Be submitted in writing on the agency's letterhead;

B. State whether this is a request for an employee to be granted access to the database or a request to remove an employee's access;

C. Provide the employee's full name and title;

D. Provide the employee's Missouri POST certification number if the employee is a sworn law enforcement officer; and

E. Be signed by the chief, sheriff, or chief executive officer of the requesting agency.

2. Multiple requests for multiple employees and actions may be submitted on one (1) letter.

3. The DHSS shall notify the provider of the database in writing of persons who are given access or have access removed.

4. The DHSS may restrict access to the database to a limited number of people in each agency, depending on the size of the agency, their locations, and number of sworn officers engaged in the actual enforcement of controlled substance laws.

*AUTHORITY: sections 195.017 and 195.417, RSMo Supp. [2005] **2009**, and sections 195.030, 195.050, and 195.195, RSMo 2000. Original rule filed April 14, 2000, effective Nov. 30, 2000. Emergency amendment filed Aug. 18, 2005, effective Aug. 28, 2005, expired Feb. 23, 2006. Amended: Filed Sept. 1, 2005, effective Feb. 28, 2006. Emergency amendment filed July 9, 2010, effective Sept. 28, 2010, expires March 26, 2011. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2009.

EXECUTIVE ORDER
10-22

WHEREAS, I have been advised by the State Emergency Management Agency that on-going and forecast severe storm systems have caused, or have the potential to cause, damages associated with on-going and forecast flooding, flash flooding, high winds, hail, and tornadoes impacting communities throughout the state of Missouri; and

WHEREAS, the severe weather that began on June 12, 2010, has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the state of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, I issued Executive Order 10-21 on June 15, 2010, activating the State Emergency Management Operations Center; and

WHEREAS, the State Emergency Management Agency has been responding to requests from affected communities for sandbags and pumps; and

WHEREAS, the Missouri State Highway Patrol, Missouri State Water Patrol, Department of Natural Resources, and Department of Corrections have been assisting local officials with life-safety actions; and

WHEREAS, the state will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

WHEREAS, interruptions of critical public services are occurring, or anticipated to occur, as a result of the on-going and forecast flooding; and

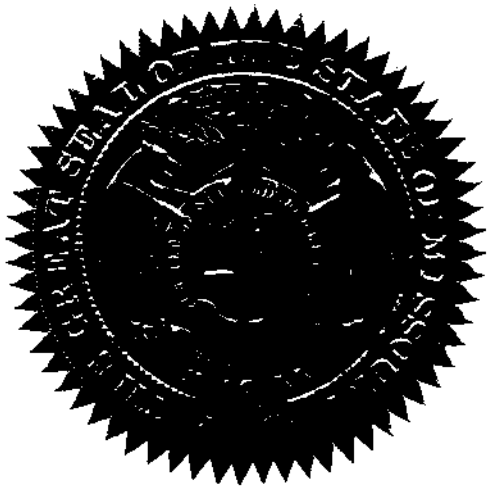
WHEREAS, the resources of the state of Missouri have been needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, an invocation of the provisions of Sections 44.100 and 44.110, RSMo, will be required to ensure the protection of the safety and welfare of the citizens of Missouri.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, 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 July 20, 2010, unless extended in whole or in part.



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 21st day of June, 2010.

Jeremiah W. (Jay) Nixon
Governor

Robin Carnahan
Secretary of State

EXECUTIVE ORDER
10-23

WHEREAS, I have been advised by the State Emergency Management Agency that on-going and forecast severe storm systems have caused, or have the potential to cause, damages associated with on-going and forecast flooding, flash flooding, high winds, hail, and tornadoes impacting communities throughout the state of Missouri; and

WHEREAS, the severe weather that began on June 12, 2010, has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the state of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, the state will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

WHEREAS, interruptions of critical public services are occurring, or anticipated to occur, as a result of the on-going and forecast flooding; and

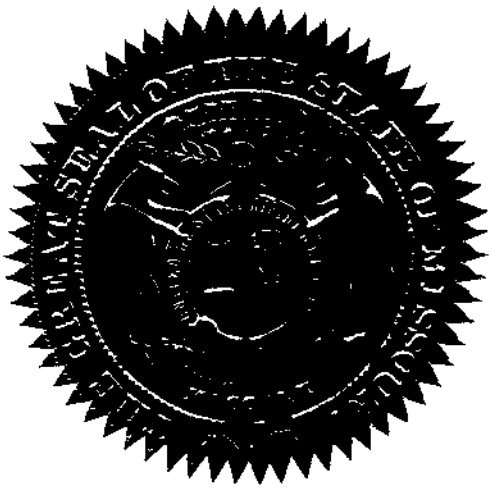
WHEREAS, the resources of the state of Missouri have been needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, I issued Executive Order 10-21 on June 15, 2010, activating the State Emergency Operations Center and Executive Order 10-22 on June 21, 2010, declaring a State of Emergency and directing state agencies to coordinate emergency services with affected local communities; and

WHEREAS, an invocation of the provisions of Sections 44.100 and 44.110, RSMo, will be required to ensure the protection of the safety and welfare of the citizens of Missouri.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, 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 July 23, 2010, 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 23rd day of June, 2010.

Jeremiah W. (Jay) Nixon
Governor

ATTEST:

Robin Carnahan
Secretary of State