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SALUS POPULI SUPREMA LEX ESTO

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



JASON KANDER  
SECRETARY OF STATE

MISSOURI  
REGISTER

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**SECRETARY OF STATE**

**JASON KANDER**

Administrative Rules Division

James C. Kirkpatrick State Information Center  
600 W. Main  
Jefferson City, MO 65101  
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

MANAGING EDITOR

CURTIS W. TREAT

•

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•

ASSISTANT EDITOR

VONNE KILBOURN

•

PUBLICATION TECHNICIAN

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•

ADMINISTRATIVE ASSISTANT

ALISHA DUDENHOEFFER

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December 2, 2013 December 16, 2013	<b>January 2, 2014</b> <b>January 15, 2014</b>	January 29, 2014 January 29, 2014	February 28, 2014 February 28, 2014
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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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## HOW TO CITE RULES AND RSMo

**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.

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

### Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 4—Wildlife Code: General Provisions

#### PROPOSED AMENDMENT

**3 CSR 10-4.111 Endangered Species.** The commission proposes to amend subsection (3)(E) of this rule.

*PURPOSE: This amendment adds the grotto sculpin to the list of species considered to be threatened with extinction in Missouri.*

(3) For the purpose of this rule, endangered species of wildlife and plants shall include the following native species designated as endangered in Missouri:

(E) Fishes: lake sturgeon, pallid sturgeon, taillight shiner, Neosho madtom, spring cavefish, harlequin darter, goldstripe darter, cypress minnow, central mudminnow, crystal darter, swamp darter, Ozark

cavefish, Niangua darter, Sabine shiner, mountain madtom, redbfin darter, longnose darter, flathead chub, Topeka shiner, **grotto sculpin**.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Aug. 15, 1973, effective Dec. 31, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

### Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

#### PROPOSED AMENDMENT

**3 CSR 10-6.550 Other Fish.** The commission proposes to amend section (3) of this rule.

*PURPOSE: This amendment adds the prohibition of the use of live bighead and silver carp as bait.*

(3) Fish taken under this rule may be used as bait; except that bowfin[,] or parts thereof (including eggs), **live bighead carp, and live silver carp** may not be used as bait.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

### Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

#### PROPOSED AMENDMENT

**3 CSR 10-10.735 Sale of Live Bait.** The commission proposes to

amend section (2) of this rule.

*PURPOSE: This amendment corrects a reference to a related rule.*

(2) Live bait may not be sold if obtained from the waters of the state except when taken by a licensed commercial fisherman from commercial waters. Live bait purchased or obtained from a licensed commercial fisherman or other legal sources must be species listed in the Approved Aquatic Species List (3 CSR 10-9.110(3))(F)(H)).

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Oct. 2, 2006, effective Feb. 28, 2007. Amended: Filed Oct. 10, 2008, effective April 30, 2009. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 11—Wildlife Code: Special Regulations for  
Department Areas**

**PROPOSED AMENDMENT**

**3 CSR 10-11.115 Closings.** The commission proposes to amend subsection (4)(C) of this rule.

*PURPOSE: This amendment allows area users to determine water elevation at Hornersville Swamp Access by accessing elevation readings on the Internet. Currently, area users must travel to the area to read the Hornersville Swamp Access gage.*

(4) The following department areas are closed during high waters:  
(C) On Hornersville Swamp Conservation Area, all public use is prohibited, except fishing and waterfowl hunting by boat when the water level is at or above two hundred thirty-nine feet (239') on the [Hornersville] Ditch 81 Ext. (Upstream of Big Lake Northend CS - Above Trash Rack (BL110)) gage.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be*

*received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 11—Wildlife Code: Special Regulations for  
Department Areas**

**PROPOSED AMENDMENT**

**3 CSR 10-11.205 Fishing, Methods and Hours.** The commission proposes to remove section (7) and renumber subsequent sections of this rule.

*PURPOSE: This amendment removes the catch and release requirement at the Ronald and Maude Hartell Conservation Area.*

*[(7)](7) On Ronald and Maude Hartell Conservation Area, fishing is permitted only on designated waters. Only flies, artificial lures, and soft plastic baits (unscented) may be used and fish must be returned to the water unharmed immediately after being caught except by holders of a special use permit.]*

*[(8)](7) On Lost Valley Fish Hatchery, fishing is permitted only on designated waters from 9:00 a.m. to 4:00 p.m. Tuesday through Saturday. Fishing is restricted to persons fifteen (15) years of age or younger and not more than one (1) pole and line may be used by any one (1) person at any time.*

*[(9)](8) On Binder Community Lake, fishing is permitted only from 3:00 a.m. to 11:00 p.m. daily.*

*[(10)](9) Seining or trapping live bait, including tadpoles, is prohibited on all lakes and ponds, except as otherwise provided in this chapter.*

(A) Seining or trapping live bait, excluding all frogs and tadpoles, in compliance with 3 CSR 10-6.605 is permitted on designated lakes and ponds on the following department areas:

1. Atlanta Conservation Area;
2. B.K. Leach Memorial Conservation Area;
3. Bob Brown Conservation Area;
4. Eagle Bluffs Conservation Area;
5. Fountain Grove Conservation Area;
6. Grand Pass Conservation Area;
7. Long Branch Lake Management Lands;
8. Locust Creek Conservation Area;
9. Nodaway Valley Conservation Area;
10. Rebel's Cove Conservation Area; and
11. Ted Shanks Conservation Area.

*[(11)](10) On Mule Shoe Conservation Area, seining or trapping live bait, including tadpoles, is prohibited on streams and the discharge channels of impoundments.*

*[(12)](11) The taking of crayfish, is prohibited on the following areas:*

- (A) Caney Mountain Conservation Area;
- (B) Dan and Maureen Cover Prairie Conservation Area;
- (C) George and Vida Martin Access; and
- (D) Turnback Cave (Paris Springs Access).

*[(13)](12) Salvage seining of other fish as designated in 3 CSR 10-6.550 may be permitted seasonally for personal use with a special use permit.*

*[(14)](13) On Wire Road Conservation Area, other fish as designated in 3 CSR 10-6.550 may be taken by snagging, snaring, or grabbing*

from March 15 through May 15.

**[(15)](14)** On Blind Pony Lake Conservation Area, Hunnewell Lake Conservation Area, Blackwell Lake (Indian Trail Conservation Area), and Lost Valley Fish Hatchery, bait transported or held in containers with water is prohibited.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule was previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 11—Wildlife Code: Special Regulations for  
Department Areas**

**PROPOSED AMENDMENT**

**3 CSR 10-11.210 Fishing, Daily and Possession Limits.** The commission proposes to add subsections (2)(K), (4)(B), (4)(E), (4)(F), and (4)(G), and re-letter subsequent subsections of this rule.

*PURPOSE: This amendment establishes a daily limit for black bass at the Ronald and Maude Hartell Conservation Area and establishes a daily limit of four (4) in the aggregate for white bass, striped bass, and their hybrids on four (4) department areas or individually-named lakes.*

(2) The daily limit for black bass shall be two (2) on the following department areas or individually named lakes:

- (K) Ronald and Maude Hartell Conservation Area**  
*[(K)](L)* J. N. "Turkey" Kearn Memorial Wildlife Area
- [(L)](M)* Lake Paho Conservation Area
- [(M)](N)* Lone Jack Lake Conservation Area
- [(N)](O)* Maple Leaf Lake Conservation Area
- [(O)](P)* Port Hudson Lake Conservation Area
- [(P)](Q)* James A. Reed Memorial Wildlife Area
- [(Q)](R)* Schell Lake (Schell-Osage Conservation Area)
- [(R)](S)* Weldon Spring Conservation Area

(4) The daily limit for white bass, striped bass, and their hybrids in the aggregate shall be four (4) on the following department areas or individually-named lakes:

- (B) Belcher Branch Lake Conservation Area**  
*[(B)](C)* Harmony Mission Lake (Harmony Mission Conservation Area)
- [(C)](D)* Lake Paho Conservation Area
- (E) Limpp Community Lake**
- (F) Little Compton Lake (Little Compton Lake Conservation Area)**
- (G) Nodaway County Community Lake**

- [(D)](H)* Perry County Community Lake
- [(E)](I)* James A. Reed Memorial Wildlife Area

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 11—Wildlife Code: Special Regulations for  
Department Areas**

**PROPOSED AMENDMENT**

**3 CSR 10-11.215 Fishing, Length Limits.** The commission proposes to add paragraph (2)(B)6., renumber subsequent paragraphs, add subsections (3)(B), (3)(E), (3)(F), and (3)(G), re-letter subsequent subsections, amend section (5), and add new section (6) of this rule.

*PURPOSE: This amendment establishes a minimum length limit for black bass at the Ronald and Maude Hartell Conservation Area; establishes a twenty inch (20") minimum length limit for white bass, striped bass, and their hybrids on four (4) lakes; and establishes a twenty four inch (24") minimum length limit for flathead catfish for two (2) lakes.*

(2) On lakes and ponds, except as listed below, black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught.

(B) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following department areas or individually named lakes:

1. Bellefontaine Conservation Area
2. Lakes 33 and 35 (August A. Busch Memorial Conservation Area)
3. Belcher Branch Lake Conservation Area
4. Jerry P. Combs Lake (Little River Conservation Area)
5. Robert G. Delaney Lake Conservation Area
- 6. Ronald and Maude Hartell Conservation Area**  
*[6.]7.* Happy Holler Lake Conservation Area
- [7.]8.* Lake Paho Conservation Area
- [8.]9.* Port Hudson Lake Conservation Area

(3) White bass, striped bass, and their hybrids less than twenty inches (20") total length must be returned to the water unharmed immediately after being caught on the following department areas or individually named lakes:

- (B) Belcher Branch Lake Conservation Area**  
*[(B)](C)* Harmony Mission Lake (Harmony Mission Conservation Area)

- [(C)](D) Lake Paho Conservation Area  
 (E) Limpp Community Lake  
 (F) Little Compton Lake (Little Compton Lake Conservation Area)  
 (G) Nodaway County Community Lake  
 [(D)](H) Perry County Community Lake  
 [(E)](I) James A. Reed Memorial Wildlife Area

(5) On Lake Girardeau Conservation Area, [all] crappie less than nine inches (9") total length must be returned to the water unharmed immediately after being caught.

**(6) On Limpp Community Lake and Little Compton Lake, flat-head catfish less than twenty-four inches (24") total length must be returned to water unharmed immediately after being caught.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
 Division 10—Conservation Commission  
 Chapter 12—Wildlife Code: Special Regulations for  
 Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.110 Use of Boats and Motors.** The commission proposes to amend subsection (6)(T) of this rule.

*PURPOSE: This amendment corrects an improper reference to Williams Creek Lake at Watkins Mill State Park.*

(6) Outboard motors in excess of ten (10) horsepower may be used but must be operated at slow, no-wake speed on the following areas:  
 (T) Watkins [Woolen] Mill State Park [and Historic Site] (Williams Creek Lake)[;].

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
 Division 10—Conservation Commission  
 Chapter 12—Wildlife Code: Special Regulations for  
 Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.140 Fishing, Daily and Possession Limits.** The commission proposes to amend subsection (2)(BB) of this rule.

*PURPOSE: This amendment corrects an improper reference to Williams Creek Lake at Watkins Mill State Park.*

(2) The daily limit for black bass is two (2) on the following lakes:  
 (BB) Watkins Mill State Park [Lake] (Williams Creek Lake);

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 7, 2014, effective March 17, 2014. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 3—DEPARTMENT OF CONSERVATION  
 Division 10—Conservation Commission  
 Chapter 12—Wildlife Code: Special Regulations for  
 Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.145 Fishing, Length Limits.** The commission proposes to amend paragraph (2)(A)33. of this rule.

*PURPOSE: This amendment corrects an improper reference to Williams Creek Lake at Watkins Mill State Park.*

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(A) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake);
2. Bethany (Old Bethany City Reservoir);
3. Blue Springs (Lake Remembrance);
4. Big Oak Tree State Park (Big Oak Lake);
5. Butler City Lake;

6. Cameron (Reservoir Nos. 1, 2, and 3, Grindstone Reservoir);
  7. Carthage (Kellogg Lake);
  8. Columbia (Stephens Park Lake);
  9. Concordia (Edwin A. Pape Lake);
  10. Confederate Memorial State Historic Site lakes;
  11. Dexter City Lake;
  12. Farmington (Hager Lake, Giessing Lake, Thomas Lake);
  13. Hamilton City Lake;
  14. Harrison County Lake;
  15. Higginsville (Higginsville City Lake, Upper Higginsville City Lake);
  16. Holden City Lake;
  17. Jackson (Litz Park Lake, Rotary Lake);
  18. Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);
  19. Jefferson City (McKay Park Lake);
  20. Keytesville (Maxwell Taylor Park Pond);
  21. Kirksville (Hazel Creek Lake);
  22. Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);
  23. Maysville (Willow Brook Lake);
  24. Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake);
  25. Mineral Area College (Quarry Pond);
  26. Odessa (Lake Venita);
  27. Pershing State Park ponds;
  28. Potosi (Roger Bilderback Lake);
  29. Raymore (Johnston Lake);
  30. Unionville (Lake Mahoney);
  31. University of Missouri (Dairy Farm Lake No. 1, McCredie Lake);
  32. Warrensburg (Lions Lake);
  33. Watkins Mill State Park [Lake] (Williams Creek Lake);
- and
34. Windsor (Farrington Park Lake);/].

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed March 7, 2014, effective March 17, 2014. Amended: Filed March 17, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 6—Air Quality Standards, Definitions, Sampling  
and Reference Methods and Air Pollution Control  
Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.040 Reference Methods.** The commission proposes to amend sections (4)–(6). If the commission adopts this rule action, it

will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.mo.gov/reg/index.html](http://www.dnr.mo.gov/reg/index.html).

*PURPOSE: This rule provides reference methods for determining data and information necessary for the enforcement of air pollution control regulations throughout Missouri. The purpose of this rule-making is to update the incorporation by reference date to include the latest Federal Register notices for ambient air monitoring methods. This action allows use of the latest equivalency methods for monitoring lead, nitrogen dioxide (NO<sub>2</sub>), particulate matter less than 2.5 microns (PM<sub>2.5</sub>), particulate matter less than 10 microns (PM<sub>10</sub>), particulate matter between 10 and 2.5 microns (PM<sub>10-2.5</sub>), and lead in total suspended particulate matter. The evidence supporting the need for this proposed rulemaking, per 536.016, RSMo, is Federal Register Notice dated June 1, 2012 (77 FR 32632), adding one (1) new equivalency method for NO<sub>2</sub> and two (2) for lead, Federal Register Notice dated October 5, 2012 (77 FR 60985), adding one (1) new equivalency method each for PM<sub>2.5</sub>, PM<sub>10</sub>, and PM<sub>10-2.5</sub>, and Federal Register Notice dated July 3, 2013 (78 FR 40000), adding a new federal reference method designating it as a new equivalency method for lead.*

(4) The methods for determining the concentrations of the following air contaminants [in the ambient air] shall be as specified in 40 CFR 50, Appendices A–R or equivalent methods as specified in 40 CFR 53. The provisions of 40 CFR 50, Appendices A–R and 40 CFR 53, promulgated as of July 1, [2012] 2013, and Federal Register Notice [77] 78 FR [55832-55834] 40000–40011, promulgated [September 11] July 3, [2012] 2013, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(C) The concentration of carbon monoxide [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix C—Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry) or equivalent methods as approved by 40 CFR 53.

(D) The concentration of ozone [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix D—Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere or equivalent methods as approved by 40 CFR 53.

(E) Reserved[;].

(F) The concentration of nitrogen dioxide [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix F—Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence) or equivalent methods as approved by 40 CFR 53.

(G) The concentration of lead [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix G—Reference Method for the Determination of Lead in Suspended Particulate Matter Collected From Ambient Air or in 40 CFR 50, Appendix Q—Reference Method for the Determination of Lead in Particulate Matter as PM<sub>10</sub> Collected From Ambient Air or equivalent methods as approved by 40 CFR 53.

(J) The concentration of particulate matter 10 micron (PM<sub>10</sub>) [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix J—Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere, or an equivalent method as approved in 40 CFR 53.

(L) The concentration of particulate matter 2.5 micron ( $PM_{2.5}$ ) [in the ambient air] shall be determined as specified in 40 CFR 50, Appendix L—Reference Method for the Determination of Fine Particulate Matter as  $PM_{2.5}$  in the Atmosphere, or an equivalent method as approved in 40 CFR 53.

(5) The concentration of hydrogen sulfide ( $H_2S$ ) [in the ambient air] shall be determined by scrubbing all sulfur dioxide ( $SO_2$ ) present in the sample and then converting each molecule of  $H_2S$  to  $SO_2$  with a thermal converter so that the resulting  $SO_2$  is detected by an analyzer as specified in 40 CFR 50, Appendix A—Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method) or an equivalent method approved by 40 CFR 53, in which case the calibration gas used must be National Institute of Standards and Technology traceable  $H_2S$  gas.

(6) The concentration of sulfuric acid mist [in the ambient air] shall be determined as specified in the Compendium Method IO-4-2, Determination of Reactive Acidic and Basic Gases and Strong Acidity of Fine-Particles (<2.5  $\mu m$ ), Center for Environmental Research Information, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268, EPA/625/R-96/010a.

*AUTHORITY:* section 643.050, RSMo Supp. [2012] 2013. Original rule filed Aug. 16, 1977, effective Feb. 11, 1978. For intervening history, please consult the Code of State Regulations. Amended: Filed March 14, 2014.

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** A public hearing on this proposed amendment will begin at 9:00 a.m., May 29, 2014. The public hearing will be held at the St. Louis Regional Office, 7545 S Lindbergh, Suite 220, DESE Conference Room, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., June 5, 2014. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to [apcprulespn@dnr.mo.gov](mailto:apcprulespn@dnr.mo.gov).

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO HealthNet Division  
Chapter 1—Organization**

**PROPOSED AMENDMENT**

**13 CSR 70-1.020 Standards for Privacy of Individually Identifiable Health Information.** The division is amending sections (1)–(3), adding new sections (4)–(6), and amending and renumbering old sections (4) and (5).

*PURPOSE:* This amendment adds new definitions to section (2) and adds new sections (4), (5), and (6). The amendment also includes clarifications in sections (1), (3), and (8).

(1) General Authority. There are many state and federal laws and regulations that safeguard applicants' and participants' protected health information.

(A) Section 1902(a)(7) of the federal Social Security Act requires

that a state plan for medical assistance must provide safeguards which restrict the use or disclosure of information concerning applicants and participants to purposes directly connected with the administration of the plan.

(B) The Health Insurance Portability and Accountability Act (HIPAA) represents the first comprehensive federal protection of patient privacy (45 Code of Federal Regulations, parts 160-164). Passed by the United States Congress in 1996, HIPAA sets national standards to protect personal health information, reduces health care fraud, and makes health coverage more portable. The entire health care industry must implement HIPAA, including state governments.

(C) The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology. Subtitle D of the HITECH Act, Sections 13400-13424 of Public Law 111-5, codified at 42 U.S.C. 300jj et seq.; 17901 et seq., addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules. The U.S. Department of Health and Human Services (HHS) Office of Civil Rights (OCR) issued a final rule that implements a number of provisions of the HITECH Act, to strengthen the privacy and security protections for health information established under the HIPAA for individual's health information maintained in electronic health records and other formats at 45 CFR Parts 160 and 164, Vol. 78, No. 17.

(2) Definitions.

(A) Breach. The unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. section 17921.

(B) Business Associate. An individual or business who carries out a function or activity, involving the use or disclosure of individually identifiable health information, on behalf of the Department of Social Services and its divisions.

(C) Covered Entity. A health plan, a healthcare clearinghouse, and a healthcare provider who transmits any health information in electronic form in connection with a covered transaction. The Department of Social Services is a Health Plan, as defined in HIPAA.

(D) Health Information Network. A group of hospitals and medical professionals, and its related infrastructure, who share protected health information as defined by HIPAA.

(E) Health Information Technology for Economic and Clinical Health (HITECH) Act. Subtitle D of the HITECH Act, addresses privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules, including, business associate liability, enforcement, and breach notification.

/(A)/(F) Health Insurance Portability and Accountability Act of 1996 (HIPAA). This law established "portability" requirements, allowing employees to "take their coverage with them" when they changed jobs. The "Administrative Simplification" section of the law deals with privacy, security of health care information, and standardized formats for electronic health care transactions (such as submission of health care claims).

(G) MO HealthNet. In Missouri, the medical assistance program on behalf of needy persons, Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act, 42 U.S.C. Section 301, et seq., shall be known as "MO HealthNet." Medicaid shall also mean "MO HealthNet" whenever it appears throughout Missouri Revised Statutes.

/(B)/(H) Protected Health Information. A term established under the HIPAA privacy rules, it refers to individually identifiable health information, in whatever medium it is transmitted or maintained (e.g.,

paper, electronic, or even oral), including demographic information, that is created or received by a health care provider, health plan, employer, or health care clearinghouse and that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

**[(C)](I)** Treatment, Payment, and Health Care Operations (TPO) includes all of the following:

1. Treatment means the provision, coordination, or management of health care and related services, consultation between providers relating to an individual, */or/* referral of an individual to another provider for health care, **and the necessary sharing of information through a health information network.**

2. Payment means activities undertaken by a health plan to obtain premiums or determine/fulfill responsibility for coverage or provision of benefits, or by a provider or health plan to obtain or provide reimbursement for health care, including determinations of eligibility or coverage, billing, collections activities, medical necessity determinations, and utilization review.

3. Health care operations includes functions such as quality assessment and improvement activities, **population-based activities relating to improving health or reducing health care costs**, case management and care coordination, reviewing competence or qualifications of health care professionals, conducting training programs, licensing and credentialing activities, underwriting, premium rating, conducting or arranging for medical review, legal services and auditing functions, business planning and development, and general business and administrative activities (including activities relating to the sale, transfer, or merger of the covered entity).

(3) Disclosures of **Protected Health Information Required or Allowed by Law.**

**(A)** The Department of Social Services, the single state MO HealthNet agency, **and its divisions**, may use an applicant's or participant's individually identifiable health information for treatment, payment, or health care operations. For example, individually identifiable health information may be used to determine disability for a public assistance program; when reviewing a request from the treating physician for a MO HealthNet service that requires a prior approval; **when sharing information through a health information network for treatment purposes**; and when processing claims and other requests for medical care payments. The Department of Social Services, MO HealthNet Division may also report information for research purposes and matters concerning organ donations. The research must be for helping the MO HealthNet program.

**(B)** The Department of Social Services, MO HealthNet Division shall */report/* **provide information:**—

**[(A)]1. [Contagious] To public health authorities to report contagious and reportable diseases**, including, but not limited to, those defined by 19 CSR 20-20.020, birth defects, cancer, or other information for public health purposes;

**[(B)]2. [Firearm injuries and other trauma events] Reporting of certain types of wounds or other physical injuries;**

**[(C)]3. [Reactions] Regarding reactions to problems with medicines;**

**[(D)]4. To the police when required by law;**

**[(E)]5. [When the court orders the Department of Social Services to] For court and administrative proceedings, when ordered;**

**[(F)]6. To [the government] health oversight authorities to review how Department of Social Services programs are working;**

**[(G)]7. To a provider or other insurance company who needs to know if a participant is enrolled in one of the Department of Social Services programs;**

**[(H)]8. To Workers' Compensation for work related injuries;**

**[(I)]9. Birth, death, and immunization information;**

**[(J)]10. To the federal government [when they are looking into something important] to protect our country, the [P]resident, and other government workers;**

**[(K)]11. [Information] When reporting information about victims of abuse, neglect, or domestic violence to a government authority to the extent the disclosure is required by law; */and/***

**[(L)]12. For Medical eligibility when that information is used for a governmental function, such as local public health agency using eligibility information to determine eligibility for local health programs./;**

**13. To funeral directors or coroners; and**

**14. To another government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.**

**(4) Disclosure of Protected Health Information to Business Associates and Other Covered Entities.** The Department of Social Services, and its divisions, may disclose, at its discretion, a participant's protected health information to designated business associates in accordance with and as authorized by HIPAA, as amended by the HITECH Act, and all regulations promulgated pursuant to authority granted therein. Examples of how a participant's protected health information may be disclosed, include, but are not limited to:

**(A) Treatment of a Participant.** Includes activities such as, providing, coordinating, or managing health care delivery and related services; consultation between providers relating to a participant; referral of a participant to another provider for health care; and necessary sharing of information through a health information network;

**(B) Payment.** Payment activities may include obtaining premiums or determining/fulfilling responsibility for coverage or provision of benefits by a provider or health plan to obtain or provide reimbursement for health care; providing reimbursement for health care services provided to the participant, which may include eligibility determinations, medical necessity or appropriateness; utilization management activities; claims management; billing; and collection activities; and

**(C) Health Care Operations.** Includes functions such as quality assessment and improvement activities; population-based activities relating to improving health or reducing health care costs; wellness and risk assessments; quality assessments and improvement, case management and care coordination; conducting training programs; licensing and credentialing activities; underwriting, premium rating, conducting or arranging for medical review; legal services and auditing functions; business planning and development; customer service; and general business and administrative activities (including activities relating to the sale, transfer or merger of the covered entity).

**(5) Restrictions of Allowable Disclosures by a Participant.** In accordance with HIPAA, a participant may request Department of Social Services to restrict allowable disclosures of the participant's protected health information. Such requests must be made in writing to the Department of Social Services Privacy Officer. The Department of Social Services Privacy Review Board shall consider the request and assess the impact on ensuring delivery of safe and quality health care to the participant, timely and accurate payment for services provided to the participant, and for the accurate review and audit of public funds used to provide health care to the participant. Decisions of the Department of Social Services Privacy Review Board may be appealed to the Department of Social Services Director for affirmation or reversal.

**(6) Protected Health Information Available Through Health Information Networks.** Protected health information may be made available for the treatment of a participant, review of health care services for payment of medical expenses, and healthcare operations, including case management and care coordination for a

participant, upon request from authorized business associates through a health information network or by other electronic means provided directly by the department, if such disclosures are made in accordance with HIPAA and for the purposes stated herein.

[[4]](7) Other Uses and Disclosures Require the Applicant's or Participant's Written Authorization. For other situations, the Department of Social Services will ask for the applicant's, or participant's, or their representative's written authorization before using or disclosing information. The applicant, or participant, or their representative may cancel this authorization at any time in writing. The Department of Social Services cannot take back any uses or disclosures already made with the applicant's, or participant's, or their representative's authorization.

[[5]](8) Applicant or Participant Rights to Restrict or Request Protected Health Information. An applicant, or participant, or their representative has the right to:—

(A) Receive private information from the Department of Social Services by other means or at another place;

(B) Have their doctor see their health information, unless it is psychotherapy notes taken by a mental health provider that are kept separate from the rest of the individual's medical record;

(C) Request a change of their medical information if they think some of the information is wrong; and

(D) Request a list of medical information the Department of Social Services shared that was not for treatment, payment, or health care operations or as required by federal law. *[Beginning in April 2003 an]* An applicant or participant or their representative can get a list of where their health information has been sent, unless it was sent for treatment, payment, **health care operations; such as** checking to make sure they received quality care, or to make sure the laws are being followed, on forms prepared by the Department of Social Services.

1. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:—

A. Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual;

B. Postage, when the individual has requested the copy, or summary or explanation, be mailed;

C. Preparing an explanation or summary of the protected health information; and

D. Requests for information in other formats such as *[diskettes, audio/video tapes, slides]* **compact disks (CDs), flash drives**, will be invoiced at the rate the agency actually paid for the format used.

**AUTHORITY:** sections 208.001 and 208.201, RSMo Supp. [2007] 2013. Original rule filed Feb. 3, 2003, effective Sept. 30, 2003. Amended: Filed Oct. 12, 2007, effective April 30, 2008. Amended: Filed March 12, 2014.

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

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

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight

mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—[Division of Medical Services]**  
**MO HealthNet Division**  
**Chapter 2—General Scope of Medical Service Coverage**

**PROPOSED AMENDMENT**

**13 CSR 70-2.200 [Medicaid] MO HealthNet Program Benefits for Human Organ and Bone Marrow/Stem Cell Transplants and Related Medical Services.** The division is amending the purpose and sections (1)–(4).

**PURPOSE:** This amendment updates the purpose statement and terminology in sections (1), (2), (3), and (4) to reflect current program requirements.

**PURPOSE:** This rule establishes, via regulation, the Department of Social Services' [Division of Medical Services] MO HealthNet Division's guidelines regarding [Medicaid] MO HealthNet coverage and reimbursement for human organ or bone marrow/stem cell transplants and related medical services. These policies will be administered by the [Division of Medical Services] MO HealthNet Division with the assistance and guidance of its [Transplant Advisory Committee] medical consultant and/or transplant consultants.

(1) Administration. Through its [Medicaid] MO HealthNet program, the Department of Social Services (DSS) [Division of Medical Services (DMS)] MO HealthNet Division (MHD) will provide limited coverage and reimbursement for the transplantation of human organs or bone marrow/stem cell and the related medical services, including, but not necessarily limited to, treatment and necessary pre-transplant and post-operative care for the specific procedures defined here and as further defined by the DSS/DMS/MHD and included in the provider program manuals.

(A) The [recipient] participant must be [Medicaid] MO HealthNet-eligible on each date on which services are rendered.

(B) [Medicaid] MO HealthNet shall be the payor of last resort and all other appropriate funding sources must be exhausted prior to obtaining [Medicaid] MO HealthNet reimbursement.

(2) Conditions and Limitations.

(A) The procedures of transplantation and the related medical services must be prior authorized by DSS/DMS/MHD.

(B) [Medicaid] MO HealthNet benefits may be provided for transplantation of the following:

1. Bone marrow/stem cell;
2. Heart;
3. Kidney;
4. Liver; *[and]*
5. Lung *[(effective for dates of service October 1, 1991 and after that date.)]*;
6. Small bowel; and
7. Pancreas (in combination with or following a kidney transplant).

(C) Transplants which include multiple organs, at least one (1) of which is covered under subsection (2)(B), may be covered at the recommendation of the [Transplant Advisory Committee] medical consultant and/or transplant consultants.

(D) Each request for coverage will be handled on a case-by-case basis. A separate Prior Authorization Request must be submitted for each individual [recipient] participant and transplant.

(E) In order to be considered for approval, each proposed transplant case must meet all of the requirements of procedures and protocols specific to the service as defined by DSS/[DMS]/MHD. These procedures and protocols will be developed with input by the [DMS] MHD'S [Transplant Advisory Committee] **medical consultant and/or transplant consultants.**

(F) Approved organ transplants can only be performed in a facility which submits documentation approved by [DMS] MHD as complying with the following criteria:

1. The transplant facility must qualify for membership in the national transplantation network and must provide a copy of a current effective certification from the United Network for Organ Sharing (UNOS) granting approval to perform a specific transplant(s). The certification from UNOS will be considered appropriate verification and documentation for [DMS] MHD transplant facility approval;

2. When the period for initial certification expires, the transplant facility must provide [DMS] MHD evidence that continued approval from UNOS allowing participation to perform the transplant(s) has been granted;

3. Each type of [Missouri Medicaid] MO HealthNet-covered organ transplant will be subject to separate UNOS certification for each type of organ transplant;

4. The transplant facility must notify [DMS] MHD of each new transplant surgeon who becomes a member of the transplant team. The transplant surgeons must be current [Missouri Medicaid] MO HealthNet [participating] **enrolled** providers;

5. The transplant facility must name the organ procurement organization (OPO) presently utilized by the facility. The transplant facility must furnish a copy of the notification from [Health Care Financing Administration (HCFA)] **Centers for Medicare and Medicaid Services (CMS)** which designates the facility's OPO as an acceptable organ procurement source;

6. The transplant facility must provide [DMS] MHD with a yearly report of the number of patients receiving transplants at the facility and the average charge for the inpatient transplant stay (by type of the transplant(s) performed) as defined by [DMS] MHD in the provider program manual;

7. Those facilities seeking certification as a [Medicaid] MO HealthNet-approved Kidney Transplant Center must furnish a copy of their current Medicare certification indicating active participation in the Medicare Renal Transplant Program; and

8. The facility must submit a copy of its Protocol for Transplantation Cases and Patient Selection Criteria for the type(s) of transplant(s) for which it is requesting transplant facility approval.

(G) Approved bone marrow/**stem cell** transplants can only be performed in a facility which submits documentation approved by [DMS] MHD as complying with the following bone marrow/**stem cell** transplant facility criteria. An autologous only transplant facility must meet criteria items one through [twelve] **ten** (1-[12]/**10**) of the following:

1. A physician(s) with expertise in pediatric and/or adult bone marrow/**stem cell** transplantation, hematology, and oncology;

2. Identified nursing unit with protective isolation unit for bone marrow/**stem cell** transplantation;

3. Blood bank with Pheresis capability and the capability to supply required blood products or association with a qualified blood bank;

4. Physicians with expertise in infectious disease, immunology, pathology, and pulmonary medicine;

5. Capability of providing cardiac/respiratory intensive care and renal dialysis;

6. Performance of at least thirteen (13) bone marrow/**stem cell** transplants a year or demonstrated an ability to care for prolonged marrow failure by treating twenty[-two] ([22] **20**) **adult or ten (10) pediatric** marrow failure patients per year;

7. Capability for marrow cryopreservation and purging techniques or affiliation with a facility which has these capabilities;

8. Capability to provide psychosocial support to patients and their families;

9. Close affiliation with academically based institutions to insure that all components of comprehensive care for patients undergoing bone marrow/**stem cell** transplantation are present in the facility. The mere presence or availability of the components one through eight (1-8) is not adequate. The facility must demonstrate that a coordinated bone marrow/**stem cell** transplantation program is in place and directed by a physician trained in an institution with a well established bone marrow/**stem cell** transplantation program;

[10. *The capacity and commitment to conduct a systematic evaluation of outcome and cost (refer to paragraph (2)(F).;*]

11. *Once approved, continuing approval of the facility requires evidence of a record of success and safety with bone marrow transplantation, and that the program continues to meet the previously mentioned criteria;]*

[12.]**10.** The facility must submit a copy of its Protocol for Transplantation Cases and Patient Selection Criteria for the type of bone marrow/**stem cell** transplants to be performed at the facility. Once approved as a facility each new type of bone marrow/**stem cell** transplant or diagnosis added for treatment by the facility must be documented by submitting the new protocol and patient selection criteria;

[13.]**11.** Physicians with expertise in infectious disease, immunology, pathology (of Graft vs. Host Disease) and pulmonary medicine;

[14.]**12.** Tissue typing laboratory with capability to perform typing for HLA-A, B, C, D/DR, and MLC;

[15.]**13.** Cytogenetic laboratory; and

[16.]**14.** Adequate laboratory facility to assay drug levels including Cyclosporine A.

(H) All providers of transplantation and related services must sign a [Missouri Medicaid] MO HealthNet Provider Participation Agreement in order to receive reimbursement.

(L) The transplant procedures and related services outlined previously will be reimbursable when they are performed/provided by a qualified provider who participates in the [Missouri Medicaid] MO HealthNet program. In cases involving procedures that are to be performed outside of Missouri, however, the [Transplant Advisory Committee] MO HealthNet Division, at its discretion, may require an eligible client's physician to file a statement indicating why the transplant procedure must be performed at an out-of-state facility.

(M) DSS/[DMS]/MHD will reimburse qualified providers for a presurgery assessment at established [Medicaid] MO HealthNet reimbursement rates.

(3) Procedure.

(A) The physician or transplant facility must make a written request to DSS/[DMS]/MHD for coverage of the transplant. This request must include, at a minimum, the following information:

1. [Diagnosis;] **Patient's full name;**

2. [Pertinent medical history;] **Date of birth;**

3. [Alternative treatments performed and results.] **MO HealthNew ID or Social Security Number;**

4. [Recommended transplant procedure;] **Synopsis of alternative treatments performed and results;**

5. [Prognosis;] **Diagnosis and prognosis;**

6. [Results of a presurgery assessment and copies of medical documentation verifying that the patient has completed the selected facility's Protocol for Transplantation. Cases and meets the Patient Selection Criteria; and] **Specific transplant type being requested;**

7. Name of the selected transplant center. In cases involving out-of-state facilities, a statement from the patient's physician explaining why the transplant procedure must be performed there. (Note: Those statements may be requested at the discretion of the [DMS Transplant Advisory Committee.] **MO HealthNet Division;**)

8. Medical records must be submitted which substantiate the patient's diagnosis, as well as results of the facility's completed transplant evaluation indicating that the patient meets the facility's "Patient Selection Protocols;" and

9. Participant permanent residence; pertinent medical history; availability of other medical or Medicare coverage (including ID number); correspondence from referring physician; consultation reports/letters; transplant evaluation forms; medical records and laboratory reports showing HIV status (within six (6) months of the request date); donor compatibility for bone marrow/stem cell transplants; and full psychiatric/social service evaluations with impression of participant's ability to be an adequate transplant candidate (within six (6) months of request date).

(B) The request for transplantation will be reviewed by [DMS]/MHD and the transplant facility advised in writing of the decision. An agreement will be issued on a case-by-case basis for approved transplants.

(4) Reimbursement.

(A) Facility.

1. Reasonable charges will be paid by the [Medicaid program] MO HealthNet Division up to a maximum cap amount for the type of transplant authorized as listed [in subparagraph (4)(A)1.A] in the Transplant Provider Manual at <http://manuals.momed.com/manuals/>. The cap will cover the costs associated with the transplant for the patient's hospitalization from the date of the transplant procedure until the date of discharge [except as further defined in paragraph (4)(A)2]. These charges will include organ procurement, donor costs or both, inpatient surgery costs, and all postsurgical hospital costs as defined in the provider program manual.

<i>[A. Type of Transplant]</i>	<i>Maximum Cap Amount</i>
<i>Kidney</i>	<i>\$ 39,000</i>
<i>Heart</i>	<i>\$100,000</i>
<i>Bone Marrow</i>	<i>\$100,000</i>
<i>Liver</i>	<i>\$100,000</i>
<i>Lung</i>	<i>\$100,000]</i>

[B.]A. Reimbursement for multiple organ transplants involving a transplant covered in subsection (2)(B), may not exceed the maximum of highest coverage for highest single transplant, [that is, heart/kidney = \$100,000 cap].

2. Payment for all other transplant-related medical services provided prior to the date of the transplant surgery or subsequent to the date of discharge will be made at established [Medicaid] MO HealthNet Division reimbursable rates, excluding the period and reimbursement set out in [subparagraph (4)(A)1.A.] and otherwise subject to the limitations as defined in the appropriate provider program manuals.

(B) Physician. Payment for the physician's services for the actual transplant surgery will be [determined through a medical review by the DMS physician consultant] made at established MO HealthNet Division reimbursable rates.

**AUTHORITY:** sections 208.153 and 208.201, RSMo Supp. [1990] 2013. This rule was previously filed as 13 CSR 40-81.035. Emergency rule filed April 2, 1986, effective April 12, 1986, expired Oct. 10, 1986. Original rule filed April 2, 1986 effective June 28, 1986. For intervening history, please consult the Code of State Regulations. Amended: Filed March 12, 2014.

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

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

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in

support of or in opposition to this amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No Public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—MO HealthNet Division**  
**Chapter 3—Conditions of Provider Participation,**  
**Reimbursement and Procedure of**  
**General Applicability**

**PROPOSED RULE**

**13 CSR 70-3.250 Payment Policy for Early Elective Delivery**

**PURPOSE:** This rule establishes the MO HealthNet payment policy for early elective delivery provided in any setting. The goal of this payment policy is to improve health outcomes for both the mother and child.

(1) The following definition(s) will be used in administering this rule:

(A) Early Elective Delivery—a delivery by induction of labor without medical necessity followed by vaginal or Caesarean section delivery or a delivery by Caesarean section before thirty-nine (39) weeks gestation without medical necessity.

(2) Early elective deliveries, or deliveries before thirty-nine (39) weeks gestation without a medical indication, shall not be reimbursed by the MO HealthNet Division (MHD). Those delivery-related services shall be denied or recouped by MHD. Non-payment includes services billed by the delivering physicians/provider and the delivering institution.

(3) Services determined to be caused by Early Elective Delivery—

(A) All services provided during the delivery-related stay at the delivering institution for maternal care related to an early elective delivery shall not be reimbursed by MHD. Non-payment or recoupment includes obstetric and institutional or facility charges; and

(B) Non-routine newborn services provided for newborns during the initial delivery-related stay at the delivering institution for conditions resulting from an early elective delivery and that are identified within seventy-two (72) hours of delivery may be subject to review and recoupment. Non-payment or recoupment includes facility or institutional charges.

(4) Payment for delivery prior to thirty-nine (39) weeks shall only be made if delivery is medically indicated.

(A) Services must be consistent with accepted health care practice standards and guidelines. MHD, through consultants, including expertise in obstetrics and pediatrics/neonatology, shall audit deliveries prior to thirty-nine (39) weeks gestational age that are billed to MHD for medical necessity and review those that would potentially be denied due to questions regarding medical necessity and non-routine services provided for newborns during the initial delivery related stay. Documentation must adequately demonstrate sufficient evidence of medical necessity to justify delivery prior to thirty-nine (39) weeks. Evidence shall include information of substantial nature about the pregnancy-complicating condition which is directly associated with the need for delivery prior to thirty-nine (39) weeks. Delivery will be considered medically necessary if without delivery, the mother or child would be adversely affected (significant and immediate impact on the normal function of the body, illness, infection, mortality).

(B) Delivery must be demonstrated to be—

1. Of clear clinical benefit and required for reasons other than convenience of the patient, family, or medical provider;
2. Appropriate for the pregnancy-complicating condition in question; and
3. Conform to the standards of generally accepted obstetrics practice as supported by applicable medical and scientific literature and as included in the MO HealthNet provider manuals and bulletins, which are incorporated by reference and made part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO. 65109, at its website [www.dss.mo.gov/mhd](http://www.dss.mo.gov/mhd), dated April 15, 2013.

(C) The determination of services caused by Early Elective Delivery shall be a final decision of the MO HealthNet Division.

(5) If a newborn or mother or both are transferred to another hospital for higher level care following standard medical practice, the receiving hospital shall not be subject to this early elective delivery policy. The hospital receiving the transfer shall be reimbursed following MHD reimbursement rules.

*AUTHORITY: section 208.201, RSMo Supp. 2013. Original rule filed March 12, 2014.*

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

*PRIVATE COST: We have received information from one (1) large metropolitan hospital system and one (1) medium rural system. These costs relate totally to computer/information technology (IT) costs. The large system estimated their IT costs to be ten thousand two hundred dollars (\$10,200) and the rural system said they would incur no additional costs. The average IT cost would be five thousand one hundred dollars (\$5,100) per provider for compliance. Therefore, with one hundred forty-two (142) hospitals in the state of Missouri, the total IT cost would be seven hundred twenty-four thousand two hundred dollars (\$724,200).*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE COST**

- I. Department Title:** Title 13 - Department of Social Services  
**Division Title:** Division 70 - MO HealthNet Division  
**Chapter Title:** Chapter 3 -- Conditions of Provider Participation, Reimbursement, and Procedure of General Applicability

<b>Rule Number and Title:</b>	13 CSR 70-3.250 Payment Policy for Early Elective Delivery
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<b>142</b>	<b>Hospitals</b>	<b>\$724,200.00</b>

**III. WORKSHEET**

<b>No. of Facilities</b>	<b>Cost per Provider</b>	<b>Total</b>
142	\$5,100.00	\$724,200.00

**IV. ASSUMPTIONS**

We have received information from one large metropolitan hospital system and one medium rural system. These costs relate totally to computer/IT costs. The large system estimated their IT costs to be \$10,200.00 dollars and the rural system said they would incur no additional costs. The average IT cost would be \$5,100.00 per provider for compliance. Therefore, with 142 hospitals in the State of MO, the total IT cost would be seven hundred thirty-four thousand four hundred dollars (\$724,200.00).

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.400 Letter of Intent Process.** The committee proposes to add section (7), and renumber sections (7) to (8) and (8) to (9).

*PURPOSE:* The committee proposes to amend this rule to expand the procedure for reviewing Letters of Intent for new long-term care bed proposals.

(7) For each LOI for new or additional long-term care beds which indicates that special exceptions apply, the CON staff shall forward the LOI and all supporting documents to the special exceptions subcommittee of the committee established under 19 CSR 60-50.415 (subcommittee). The subcommittee shall review the statement of special exception submitted with the LOI at a meeting of the subcommittee. The subcommittee shall determine whether or not the special exceptions are sufficient to permit the applicant to file a full CON application under 19 CSR 60-50.430. If the subcommittee determines that the special exceptions are not sufficient to permit the applicant to file a full CON application, the decision shall be delivered to the applicant as provided in 19 CSR 60-50.600(4). If the subcommittee determines that the special exceptions are sufficient to permit the applicant to file a full CON application under 19 CSR 60-50.430, the decision shall be delivered to applicant as provided in 19 CSR 60-50.600(4) and the applicant may thereafter file such full CON application. Any full CON application filed in the absence of a determination by the subcommittee required under this section shall be treated as a nonconforming application under 19 CSR 60-50.420(2).

~~[(7)](8)~~ Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON website at least twenty (20) days in advance of the committee meeting when they are scheduled to be confirmed by the committee.

~~[(8)](9)~~ The following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html> <http://health.mo.gov/information/boards/certificateofneed/forms.php>, obtained by mailing a written request with a self-addressed stamped envelope to CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) LTC Facility Expansion Certification (Form MO 580-2351).

(B) Purchase Agreement (Form MO 580-2352).

(C) Periodic Progress Report (Form MO 580-1871).

*AUTHORITY:* section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 10, 2014.

*PUBLIC COST:* This proposed amendment will cost state agencies or political subdivisions twenty-nine thousand one hundred seventy-five dollars (\$29,175) annually with adjustments for inflation for the life of the rule.

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE  
PUBLIC COST**

**I. Department Title: 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division Title: 60 – Missouri Health Facilities Review Committee**  
**Chapter Title: 50 – Certificate of Need Program**

<b>Rule Number and Name:</b>	19 CSR 60-50.400 Letter of Intent Process
<b>Type of Rulemaking:</b>	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
State of Missouri	<b>\$29,175 (reduction in fees collected annually with adjustments for inflation for the life of the rule)</b>

**III. WORKSHEET**

Application Fees

27 proposals x 20% = 5

5 x \$5,835 = \$29,175

**IV. ASSUMPTIONS**

If this amendment is interpreted to allow the subcommittee to determine whether or not special exceptions to the occupancy and bed need criteria are sufficient to permit the filing of a full CON application for new long-term care beds, it would also make a CON application which does not have such a determination a nonconforming application to be either returned or denied.

Assumes there would be 27 proposals to be considered each year based on the average number of new bed proposals for the past three years that did not meet the bed need and occupancy criteria.

Assumes that 20% of new bed proposals considered would not be permitted to file an application for which an application fee is required.

Assumes an average application fee of \$5,835 for each proposal, based on the average fee for new bed projects for the past three years.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.410 Letter of Intent Package.** The committee is amending sections (1) and (6), adding a new section (5), and renumbering thereafter.

*PURPOSE:* The committee proposes to amend this rule to expand information required for a Letter of Intent package submission for new bed proposals.

(1) The Letter of Intent (LOI) (Form MO 580-1860, incorporated by reference) shall be completed as follows:

(D) Project Description: information which provides details of the number of beds to be added, deleted, or replaced, square footage of new construction and/or renovation, services affected, and equipment to be acquired. **If an application for new or additional long-term care beds, confirm that the bed need and bed occupancy standards have been met or that special exceptions exist.** If a replacement project, information which provides details of the facilities or equipment to be replaced, including name, location, distance from the current site, and its final disposition;

(F) Authorized Contact Person Identification: the full name, title, address (including association), telephone number, email, and fax number; *[and]*

(G) Applicability: *[P]*page 2 of the LOI must be filled out by applicants requesting a non-applicability review to provide the reason and rationale for the exemption or exception being sought.; **and**

**(H) Special Exceptions: if the LOI indicates that special exceptions apply, applicant shall attach a separate sheet with a complete explanation of all reasons for such special exceptions.**

**(5) If the LOI relates to new or additional long-term care beds, applicant shall submit documentation of the need for such beds and the average occupancy of all licensed beds in the appropriate category within the fifteen- (15-) mile radius of the project site as provided in 19 CSR 60-50.450(1).**

*[(5)](6)* The LOI must have an original signature for the contact person including an electronic signature.

*[(6)](7)* The following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), *[October 1, 2009]* **October 30, 2014** and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) Letter of Intent (Form MO 580-1860).

(B) Proposed Expenditures (Form MO 580-2375).

*AUTHORITY:* section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 10, 2014.

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

*PRIVATE COST:* This proposed amendment will not cost private enti-

ties more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED RULE**

**19 CSR 60-50.415 Special Exceptions Subcommittee**

*PURPOSE:* This rule proposes to establish the Special Exceptions Subcommittee.

(1) The chair of the committee is authorized to appoint a Special Exceptions Subcommittee (subcommittee) as follows:

(A) Each member of the subcommittee shall be a member of the committee in good standing; and

(B) The subcommittee shall have three (3) members, one (1) of whom shall be a member of the senate and one (1) of whom shall be a member of the house.

(2) The subcommittee shall meet from time-to-time in person or by telephone to consider Letters of Intent (LOIs) for new or additional long-term care beds which state that special exceptions apply. The subcommittee is authorized to make a decision as described in 19 CSR 60-50.400(7) for each LOI for new or additional long-term care beds which indicates that special exceptions apply.

*AUTHORITY:* section 197.320, RSMo 2000. Original rule filed March 10, 2014.

*PUBLIC COST:* This proposed rule will cost state agencies or political subdivisions eight hundred thirty-seven dollars (\$837) annually with adjustments for inflation for the life of the rule.

*PRIVATE COST:* This proposed rule will cost private entities three thousand five hundred dollars (\$3,500) annually with adjustments for inflation for the life of the rule.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE  
PUBLIC COST**

- I. Department Title: 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division Title: 60 – Missouri Health Facilities Review Committee**  
**Chapter Title: 50 – Certificate of Need Program**

<b>Rule Number and Name:</b>	19 CSR 60-50.415 Special Exceptions Subcommittee
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Health and Senior Services	\$837 annually with adjustments for inflation for the life of the rule.

**III. WORKSHEET**

Conference Call Cost

8 phone lines x (100 min x 100%) x \$.09/minute =	\$72.00
10 phone lines x (100 min x 75%) x \$.09/minute =	67.50
Cost per meeting =	\$139.50
Meetings per year	x 6
Cost per year =	\$837.00

**IV. ASSUMPTIONS**

This rule would add subcommittee meetings for the consideration of Letters of Intent for new long-term care beds which state that a special exception to the occupancy and bed need criteria applies.

Assumes there would be six meetings per year, based on six scheduled Letter of Intent cut-off dates and the projected number of proposals.

Assumes there would be five proposals to consider at each meeting, based on the average number of Letters of Intent for new beds received.

Assumes the Special Exceptions Subcommittee meetings would be conducted by telephone.

Assumes each meeting would last for 100 minutes (20 minutes per proposal), based on experience with other meetings for which proposals are discussed.

Assumes there would be eight telephone lines used for the entire meeting, and ten lines used for 75% of the meeting based on anticipated number of attendees.

Assuming the conference call rate per telephone per minutes would be \$.09, based on current rate.

**FISCAL NOTE  
PRIVATE COST**

- I. Department Title: 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division Title: 60 – Missouri Health Facilities Review Committee**  
**Chapter Title: 50 – Certificate of Need Program**

<b>Rule Number and Name:</b>	19 CSR 60-50.415 Special Exceptions Committee
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
14 annually	Private long-term care facilities	\$3,500 annually with adjustments for inflation for the life of the rule.

**III. WORKSHEET**

Consultant Fees to Attend Meetings of the Subcommittee

27 total LOIs to address/year x 92% (private entity proposals) = 25  
 25 x 54% proposals with consultant contact = 14  
 1.67 hours (meeting length) x 75% (attendance by consultant) = 1.25 hours  
 \$200/hour x 1.25 hours = \$250/proposal  
 14 proposals x \$250 = \$3,500

**IV. ASSUMPTIONS**

This rule would add subcommittee meetings for the consideration of Letters of Intent for new long-term care beds which state that a special exception to the occupancy and bed need criteria applies.

Assumes there would be 27 proposals to be considered each year based on the average number of proposals for the past three years that did not meet the bed need and occupancy criteria.

Assumes that 92% of proposals heard are for private entities, based on percentage of applications by private entities each year.

Assumes that 54% of proposals heard at the meetings use consultant/attorney assistance based on historical data.

Assumes a consultant/attorney rate of \$200 per hour.

Assumes each meeting would last for 100 minutes or 1.67 hours (20 minutes per proposal), based on experience with other meetings.

Assumes that consultants would attend 75% of the meeting for which the project is heard.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.420 Review Process.** The committee proposes to amend sections (2) and (10).

*PURPOSE: The committee proposes to amend this rule to expand the definition of a non-conforming application and change factors the committee may consider.*

(2) A CON application filing that does not substantially conform with the LOI and these regulations, including any change in owner(s), operator(s), scope of services, [or] location, or requirements with regard to special exceptions for new or additional long-term care beds shall not be considered a CON application and shall be subject to the following provisions:

(A) The Certificate of Need Program (CONP) staff [shall] may return any nonconforming submission; or

(10) In addition to using the Community Need Criteria and Standards as guidelines, the committee may also consider other factors to include, [but not be limited to, the number of patients requiring treatment, the changing complexity of treatment, unique obstacles to access, competitive financial consideration, or the specialized nature of service.] the needs of residents based upon religious considerations, residents with HIV/AIDS, or mental health diagnoses and special exceptions to the Community Need Criteria and Standards for new or additional long-term care beds but only to the extent approved by the subcommittee under 19 CSR 60-50.400(7).

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at CONP@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.430 Application Package.** The committee proposes to amend sections (2), (4), (7), and (8).

*PURPOSE: The committee proposes to change the projected population used, correct contact information and website address, amend the population calculation, and change factors the committee may consider.*

(2) A written application package consisting of [an original and eleven (11) copies (comb or three ring binder) or] an electronic file in PDF format or a paper original shall be prepared and organized as follows:

(B) The application package should use one (1) of the following CON Applicant's Completeness Checklists and Table of Contents appropriate to the proposed project, as follows:

1. New Hospital Application (Form MO 580-2501, incorporated by reference);

2. New or Additional Long-Term Care (LTC) Bed Application (Form MO 580-2502, incorporated by reference). Use this for Residential Care, Assisted Living, Intermediate Care, and Skilled Nursing Facilities and Long-Term Care Hospitals;

3. New or Additional Long-Term Care Hospital (LTCH) Bed Application (also use Form MO 580-2502);

4. New or Additional Equipment Application (Form MO 580-2503, incorporated by reference);

**5. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);**

[5.]6. Expedited LTC Renovation/Modernization Application (Form MO 580-2505, incorporated by reference); or

[6.]7. [Expedited] Equipment Replacement Application (Form MO 580-2506, incorporated by reference).

(4) The Proposal Description shall include documents which:

(C) Proposals for new hospitals, new or additional long-term care (LTC) beds, or new major medical equipment must define the community to be served:

1. Describe the service area(s) population using year [2015] 2020 populations and projections which are consistent with those provided by the Bureau of [Health Informatics] Vital Statistics which can be obtained by contacting:

Chief, Bureau of [Health Informatics] Vital Statistics  
Section of [Public Health Practice and Administrative  
Support (SPHPAS)] Epidemiology for Public Health Practice  
(SEPHP)

Division of Community and Public Health  
Department of Health and Senior Services  
PO Box 570, Jefferson City, MO 65102  
Telephone: (573) 751-/6299/6272

There will be a charge for any of the information requested, and seven to fourteen (7-14) days should be allowed for a response from [SPHPAS] SEPHP. Information requests should be made to [SPHPAS] SEPHP such that the response is received at least two (2) weeks before it is needed for incorporation into the CON application.

2. Use the maps and population data received from [SPHPAS] SEPHP with the CON Applicant's Population Determination Method to determine the estimated population for LTC projects, as follows:

A. Utilize all of the population for zip codes entirely within the fifteen- (15-)/- mile radius for LTC beds or geographic service area for hospitals and major medical equipment;

B. Reference a state highway map (or a map of greater detail) to verify population centers (see Bureau of [Health Informatics] Vital Statistics) within each zip code overlapped by the fifteen- (15-)/- mile radius or geographic service area;

C. Categorize population centers as either "in" or "out" of the fifteen- (15-)/- mile radius or geographic service area and remove the population data from each affected zip code categorized as "out;"/;

D. Estimate, to the nearest ten percent (10%), the portion of

the zip code area that is within the fifteen- (15-)/-/ mile radius or geographic service area by “eyeballing” the portion of the area in the radius (if less than five percent (5%), exclude the entire zip code);

E. Multiply the remaining zip code population (total population less the population centers) by the percentage determined in subparagraph (4)(C)2.D. (Due to numerous complexities, population centers will not be utilized to adjust overlapped zip code populations in Jackson, Clay, St. Louis, and St. Charles counties or St. Louis City; instead, the total population within the zip code will be considered uniform and multiplied by the percentage determined in subparagraph (4)(C)2.D.);

F. Add back the population center(s) “inside” the radius or region for zip codes overlapped; and

G. The sum of the estimated zip codes, plus those entirely within the radius, will equal the total population within the fifteen- (15-)/-/ mile radius or geographic service area.

3. Provide other statistics, such as studies, patient origin, or discharge data, Hospital Industry Data Institute’s information, or consultants’ reports, to document the size and validity of any proposed user-defined “geographic service area;”/];/

(7) In addition to using the Community Need Criteria and Standards as guidelines, the committee may also consider other factors to include, *[but not be limited to, the number of patients requiring treatment, the changing complexity of treatment, unique obstacles to access, competitive financial consideration, or the specialized nature of service.] the needs of residents based upon religious considerations, residents with HIV/AIDS, or mental health diagnoses and special exceptions to the Community Need Criteria and Standards for new or additional long-term care beds but only to the extent approved by the subcommittee under 19 CSR 60-50.400(7).*

(8) The following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), *[October 1, 2009] October 30, 2014*, and may be downloaded from *[http://www.dhss.mo.gov/CON/Forms.html] http://health.mo.gov/information/boards/certificateofneed/forms.php*, obtained by mailing a written request with a self-addressed stamped envelope to CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

**(D) Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504).**

*[(D)](E) Expedited LTC Renovation/Modernization Application (Form MO 580-2505).*

*[(E)](F) [Expedited] Equipment Replacement Application (Form MO 580-2506).*

*[(F)](G) Applicant Identification and Certification (Form MO 580-1861).*

*[(G)](H) Representative Registration (Form MO 580-1869).*

*[(H)](I) Proposed Project Budget (Form MO 580-1863).*

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at CONP@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.440 Criteria and Standards for Equipment and New Hospitals.** The committee proposes to amend sections (1) and (4).

*PURPOSE: This committee proposes to amend the rule to change the projected population used.*

(1) For new units or services in the service area, use the following methodologies:

(A) The population-based need formula should be (Unmet need = (R × P) – U) where:

P = Year *[2015] 2020* population in the service area(s). Use population in 19 CSR 60-50.430;

U = Number of service units in the service area(s); and

R = Community need rate of one (1) unit per population listed as follows:

1. Magnetic resonance imaging unit	28,000
2. Positron emission tomography/computed tomography unit	224,000
3. Lithotripsy unit	486,000
4. Linear accelerator unit	78,000
5. Cardiac catheterization lab	42,000
6. Gamma knife	1,947,000
7. Computed tomography	15,000

(4) For the construction of a new hospital, the following questions should be answered:

(D) What is the unmet need according to the following population-based bed need formula using (Unmet Need = (R × P) – U), where:

P = Year *[2015] 2020* population in the service area;

U = Number of beds in the service area; and

R = Community need rate of one (1) bed per population in the service area as follows:

1. Medical/surgical bed	570
2. Pediatric bed	8,330
3. Psychiatric bed	2,080
4. Substance abuse/chemical dependency bed	20,000
5. Inpatient rehabilitation bed	9,090
6. Obstetric bed	5,880

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2014.*

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.450 Criteria and Standards for Long-Term Care.** The committee is proposing to amend section (1).

*PURPOSE:* The committee is proposing to add criteria for approval of new long-term care bed projects.

(1) The following population-based long-term care bed need methodology for the fifteen- (15-)/-1 mile radius shall be used to determine the maximum size of the need:

(B) Approval of additional residential care facilities/assisted living facilities (RCF/ALF) beds will be based on a service area need determined to be twenty-five (25) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF/ALF beds shown in the Six-Quarter Occupancy of Residential Care and Assisted Living Facility Licensed and Available Beds as provided by the CONP which includes licensed and CON-approved beds; *[and]*

(C) Approval for Long-Term Care Hospital (LTCH) beds, as described in 42 CFR, section 412.23(e), will be based on a service area need determined to be one-tenth (0.1) bed per one thousand (1,000) population minus the current supply of LTCH beds shown in the Six-Quarter Occupancy of Long-Term Care Hospital Facility Licensed and Available Beds as provided by the CONP which includes licensed beds and CON-approved beds; *[.]*; **and**

**(D) Additional ICF/SNF or RCF/ALF beds will be approved only if the average occupancy of all licensed and available beds in the appropriate category in the service area equals or exceeds eighty-three percent (83%) for the most recent four (4) consecutive calendar quarters as shown in the Six-Quarter Occupancy of Hospital and Nursing Home Licensed and Available Beds as provided by the CONP.**

*AUTHORITY:* section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 10, 2014.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson

City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.600 Certificate of Need Decisions.** The committee proposes to add section (4).

*PURPOSE:* The committee proposes to amend this rule to state when the subcommittee would make a decision on special exceptions, and adds a notification procedure.

**(4) The subcommittee shall make a decision as described in 19 CSR 60-50.400(7) for each Letter of Intent (LOI) for new or additional long-term care beds which indicates that special exceptions apply within one hundred thirty (130) calendar days after such LOI is filed and subsequently notify the applicant by providing by mail or email either a statement that the special exceptions are sufficient to permit a full CON application to be filed or that the special exceptions are not sufficient.**

*AUTHORITY:* section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 10, 2014.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at [CONP@health.mo.gov](mailto:CONP@health.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities  
Review Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.700 Post-Decision Activity.** The committee proposes to amend section (2).

*PURPOSE:* The committee proposes to amend this rule to limit the number of extensions for capital expenditure deadlines.

(2) Applicants who have been granted a CON and fail to incur a capital expenditure within six (6) months may request *[an]* one (1) extension of six (6) months by submitting a letter to the committee outlining the reasons for the failure, with a listing of the actions to

be taken within the requested extension period to insure compliance. The Certificate of Need Program (CONP) staff on behalf of the committee will analyze the request and grant *[an]* **one (1)** extension, if appropriate. Applicants may request **not more than two (2)** additional **six (6) month** extensions and must provide additional financial information plus other documentation describing delays.

*AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2014.*

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

*PRIVATE COST: This proposed amendment will cost private entities eighty thousand thirty-six dollars (\$80,036) annually with adjustments for inflation for the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Health Facilities Review Committee, PO Box 570, Jefferson City, MO 65102, by faxing (573) 751-7894, or via email at CONP@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE COST**

**I. Department Title: 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division Title: 60 – Missouri Health Facilities Review Committee**  
**Chapter Title: 50 – Certificate of Need Program**

<b>Rule Number and Name:</b>	19 CSR 60-50.700 Post-Decision Activity
<b>Type of Rulemaking:</b>	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<b>5 annually</b>	<b>Private Long-term Care Facilities</b>	<b>\$80,036 annually with adjustments for inflation for the life of the rule.</b>

**III. WORKSHEET**

CON Application Fees

\$240,108 application fees for CON projects needing more than 3 extensions in 36 months / 3 years = \$80,036/year

**IV. ASSUMPTIONS**

This amendment would limit the capital expenditure deadline extensions on all CON projects to three extensions.

Assumes all CON projects that did not incur a capital expenditure by the third extension deadline, would reapply for a CON.

Assumes the amount of fees for reapplications would total \$80,036 annually based on application fees submitted for projects needing extensions beyond the third extension that were heard in the past 36 months.