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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.

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are divided 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 in 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—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo Supp. 1999. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

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

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

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 70—Missouri Assistive Technology Advisory
Council
Chapter 1—Assistive Technology Programs**

EMERGENCY RULE

8 CSR 70-1.010 Telecommunication Access Program

PURPOSE: This rule establishes the standards and procedures for the provision of a statewide telecommunications equipment distribution program providing specialized equipment to eligible individuals with disabilities. This rule implements section 209.251, RSMo through 209.259, RSMo.

EMERGENCY STATEMENT: The Missouri Assistive Technology Advisory Council is responsible for administering the statewide telecommunication equipment distribution program on August 28, 2000 under revised section 209.251, RSMo through 209.259, RSMo. The current program provides adaptive telephone equipment to individuals with disabilities assuring their health, safety, and welfare through access to basic telecommunications service. There is a compelling governmental interest in implementing the new statutory requirements for this program. The rules for the current program do not meet the requirements of the revised statute that becomes effective August 28, 2000. The current rules do not

provide for a full range of adaptive equipment, do not provide for consumer support services, do not include procedures to match individual with equipment, and do not include financial eligibility criteria. The current program does not meet the new legal requirement for a 20% cap on administrative costs and as a result the administrative structure for the program must be revised. A proposed rescission to rescind current rule 8 CSR 5-1.010, Adaptive Telephone Equipment Program, was filed with the Secretary of State on July 10, 2000.

*An emergency rule is needed to implement the new legal requirements for the program and assure continuity of service. Without an emergency rule, individuals with disabilities will lose access to adaptive telephone equipment necessary for basic telephone service that is critical to their health and safety and the parameters of the new statute will not be implemented. The scope of this rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The Missouri Assistive Technology Advisory Council believes this emergency rule is fair to all interested persons and parties under the circumstances. The emergency rule was filed on July 28, 2000, is effective August 28, 2000, and expires February 23, 2001.*

(1) Program Title. The telecommunication equipment distribution program established by 209.251, RSMo through 209.259, RSMo shall hereinafter be referred to as the "Telecommunication Access Program (TAP)" with two programmatic components, known as "TAP for Telephone" and "TAP for Internet."

(2) Definitions. As used in this rule, except as otherwise required for the context, the following terms have the meanings ascribed:

(A) Adaptive telecommunications equipment—is equipment that translates, enhances or otherwise transforms the receiving or sending of telecommunications into a form accessible to individuals with disabilities and includes adaptive telephone and adaptive computer equipment.

1. Adaptive telephone equipment—is equipment that translates, enhances or otherwise transforms the receiving or sending of voice calling and associated auditory signaling into a form accessible to individuals with disabilities.

2. Adaptive computer equipment—is equipment that translates, enhances or otherwise transforms the receiving or sending of internet and electronic mail information into a form accessible to individuals with disabilities.

(B) Adjusted gross income—is the amount claimed as adjusted gross income on the applicant's most recent federal income tax return.

(C) Basic telecommunication service—is a service that supplies the transmission and reception of information to and from customer premises equipment and includes basic telephone and internet services.

1. Basic telephone service—is telephone service from a telephone company that supplies the transmission and reception of voice calls to and from customer premises equipment. Basic telephone service does not include other types of voice communications, such as two-way radio communication, nor does it include adjunct-to-basic voice communication services, such as caller identification or voice mail.

2. Basic internet service—is service from an internet service provider that supplies the transmission and reception of electronic

information, web and electronic mail, to and from customer premises equipment. Basic internet service does not include other types of electronic communications such as alpha-numeric paging or facsimile communication.

(D) Consumer support services—are services that assist individuals with disabilities or their families or caregivers in the selection of the most appropriate adaptive telecommunications equipment to meet their needs and in the installation and use of such equipment.

(E) Eligible applicants—are individuals with disabilities who have been certified as unable to use traditional telecommunication equipment for access to basic telephone or internet service.

(F) Program administrator—is staff of Missouri Assistive Technology or other entity so designated by the Missouri Assistive Technology Advisory Council.

(G) Qualified agency—is an entity that regularly works with individuals with disabilities, is familiar with adaptive telecommunications equipment and resources, and is able to assist individuals with disabilities in determining equipment needs.

(H) Reasonable access to basic telecommunications service—is access delivered by cost-effective adaptive telephone equipment or cost-effective adaptive computer equipment.

(I) Traditional telecommunications equipment—is customer premises equipment used to access basic telecommunications service and includes traditional telephone equipment for telephone service and traditional computer equipment for internet service.

1. Traditional telephone equipment—is a typical telephone with dial pad, handset, and audio ringer used to place and receive voice calls.

2. Traditional computer equipment—is a typical computer system with keyboard, pointing device, and visual display monitor used to send and receive electronic information.

(3) Applicant Eligibility.

(A) Eligible applicants shall:

1. Be certified by a licensed physician, audiologist, speech pathologist, or qualified agency as unable to use traditional telecommunications equipment due to disability;

2. Be residents of Missouri;

3. Meet financial income standards;

4. Have access to basic telephone equipment and service if applying for adaptive telephone equipment or have access to basic internet equipment and service if applying for adaptive computer equipment.

(B) Applicants shall be eligible for one adaptive equipment system that provides access to basic telecommunication. Applicants shall not be eligible for more than one equipment system to provide access in more than one location, for example, equipment for both upstairs and downstairs in a residence or equipment for both work and home.

(C) Applicants who have received equipment from the program in the past shall be eligible for replacement equipment according to the time schedule established by the program administrator and shall be notified of such replacement period when they receive their initial equipment. The program administrator may also find applicants eligible for replacement equipment if:

1. The device is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

2. There is a change in disability status rendering the adaptive equipment inappropriate to meet their needs;

3. A new device has become available through TAP that is deemed more appropriate to the applicant's disability than a device previously provided by TAP.

(D) Applicants shall have an annual adjusted gross income that does not exceed \$60,000 for an individual or an individual plus a second exemption, spouse or dependent. For each additional

dependent claimed, \$5,000 shall be added to the \$60,000 base level.

(E) Applicants shall be ineligible for equipment when the applicant has:

1. Sold or otherwise transferred ownership of equipment received from TAP to an individual or entity other than the originally authorized applicant;

2. Lost equipment received from TAP through negligence such as leaving in an unlocked house or unlocked car;

3. Negligently or willfully damaged equipment received from TAP or violated other provisions of the administrative rules governing TAP.

(4) General Application and Certification Procedures.

(A) Individuals shall apply for equipment from the program, on forms approved by the program administrator, that include:

1. Applicant name, address, home and work phone, date of birth, social security number;

2. Assurance of Missouri residency, assurance of current access to basic telephone equipment and service, assurance of income level;

3. Identification of current or past use of adaptive equipment;

4. Specific request for specialized equipment or request for assistance in selecting equipment;

5. Signature and date.

(B) Applicants may elect to allow the program to release their name, address, and phone number to an agency that provides consumer support. Applicants who have a hearing disability may elect to allow the program to release their name, address, and date of birth to the Missouri Commission for the Deaf to be used solely for completing the commission's census.

(C) In addition to information required on the application and certification form, applicants shall supply any additional information which the program administrator deems reasonably necessary to determine the applicant's eligibility and to assist in determining the adaptive equipment which best meets the applicant's needs.

(D) Certifying agents shall, on forms approved by the program administrator, certify that the applicant, by name, is unable to use traditional telecommunications equipment because of a specific category of disability and that the applicant needs adaptive equipment as identified on the application form. The certifying agent shall sign and date the certification and provide state license or certification number if certifying as a physician, audiologist, or speech pathologist. Approved agency representatives shall provide the name of the approved agency. All certifying agents shall provide their name, address, and phone number to enable the program administrator to contact them as necessary.

(5) Approval of Certifying Agencies and Agents.

(A) Entities desiring to be approved as a certifying agency shall request such designation from the program administrator. The program administrator will review agency qualifications and may require an agency to complete training provided by the program administrator prior to approval.

(B) The program administrator will maintain a list of approved certifying agencies and those personnel of the agency who are approved to certify. A list of approved certifying agencies will be included with applicant education information and otherwise made available as widely as possible.

(6) Appeals Process. Applicants may appeal any disapproval of an equipment request by filing a written appeal with the Missouri Assistive Technology Advisory Council. No specific form shall be required. The appeal shall describe how the equipment requested is necessary for basic telephone access. The council may hear appeals during any regularly scheduled council meeting or may call a special meeting of the council for such purpose.

(7) Fraud. If an applicant supplies false information or obtains adaptive equipment through misrepresentation of facts on the application and certification form, TAP may demand return of the equipment and shall declare such applicants ineligible for future equipment from TAP.

(8) Confidentiality. All applicant information shall be kept confidential except for approved release of information for purposes specified on the application form.

(9) TAP for Telephone Specific Procedures.

(A) Equipment Provided—Adaptive telephone equipment shall be provided in sufficient scope to meet the needs of individuals with all types of disabilities and shall be procured in a cost effective manner.

1. The program administrator shall develop and maintain a list of adaptive telephone equipment designed to provide reasonable access to basic telephone service for individuals with a wide range of disabilities. The list will be provided with the application and certification form. The program will monitor the market for devices that might be added to the program to better meet individual needs and will update the list as necessary to remain current with the market.

2. Adaptive telephones or adaptive devices that attach to the telephone shall be considered first to provide access. For the majority of program applicants, adaptive equipment that attaches to or replaces the typical end-unit telephone will be available on the approved list to meet their needs. Equipment that does not directly attach to or replace the phone will be provided by the program when no other device will deliver the needed access.

3. The program may provide equipment not on the list if such equipment is necessary for basic telephone access and is cost effective as compared to devices on the list.

4. The program shall not provide adaptive devices needed for one-to-one personal communication such as hearing aids, artificial larynx, or other augmentative communication devices.

5. The program shall maintain a list of vendors with which it has contracted to provide adaptive telephone equipment in a cost-effective manner.

(B) Application Processing—The program administrator shall process TAP for Telephone applications and deliver equipment and services that assure an appropriate match between an individual with a disability and adaptive equipment.

1. Each application shall be reviewed for completeness. If any information is missing, the applicant will be contacted and requested to supply such information.

2. Each applicant's eligibility will be verified by information provided on the application form.

3. If the application:

A. Requests equipment on the approved list, the request will be matched with disability description, as provided by the application form or equipment worksheet, and approved.

B. Does not request specific equipment, but instead requests assistance in determining equipment needs, the applicant will be contacted and such assistance provided.

C. Requests equipment not on the approved list, the explanation will be reviewed to determine if the equipment is necessary for basic telephone access and is cost effective as compared to devices on the list. If so, the equipment request will be approved.

4. Upon verification of applicant eligibility and determination of equipment/disability match, the program administrator shall order the equipment from an approved vendor and will notify the applicant that the equipment has been ordered.

5. Equipment orders shall include applicant name, make and model of equipment ordered, applicant shipping address, and date of order. The program administrator shall transmit equipment orders directly to the vendor by facsimile or via other time expedient mechanism that is mutually agreeable.

6. Applicants will be notified if their equipment request cannot be approved as submitted and will be asked to revise their equipment request accordingly.

7. Upon receipt of equipment order, the vendor shall ship the equipment directly to the applicant's Missouri residence by verifiable delivery mechanism.

8. The vendor shall provide the program administrator with a monthly invoice of all equipment ordered and delivered.

9. The program administrator may establish alternative and pilot programs to increase program quality and consumer satisfaction. A voucher program for targeted types of adaptive telephone equipment may be implemented as an option to increase consumer choice for those applicants who are experienced users of such equipment.

(C) Consumer Support—The program administrator shall deliver consumer support services directly or through contracts with individuals, organizations, vendors, or other entities. Consumer support providers shall:

1. Have expertise and experience of sufficient depth and breadth to assist consumers in identifying adaptive telephone equipment that will meet their needs;

2. Be able to provide adaptive telephone equipment orientation and use training;

3. Participate in training activities as may be required by the program administrator to assure equipment competency; and

4. Be able to demonstrate equipment knowledge and competency as requested by the program administrator.

(D) Equipment Ownership, Repair and Replacement—

1. Adaptive telephone equipment purchased for an individual applicant shall be owned by that applicant and applicants are in general responsible for service, repair, and replacement.

2. Adaptive telephone equipment will be covered by an extended warranty, purchased with the device, or by a one-year express warranty provided via the Missouri Lemon Law for Assistive Devices.

3. Miscellaneous supplies, such as text telephone (TTY) paper and batteries, are the applicant's responsibility.

4. An applicant shall be eligible for replacement equipment every four years, unless their disability needs change. The program administrator may approve equipment replacement within this time period for extenuating circumstances.

5. If an applicant's disability changes, rendering the adaptive telephone equipment inappropriate to meet their needs, the applicant may reapply for new equipment and shall provide a description of the disability change.

AUTHORITY: section 209.253, RSMo 2000. Emergency rule filed July 28, 2000, effective Aug. 28, 2000, expires Feb. 23, 2001. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 10—Adjutant General
Chapter 3—National Guard Member Educational
Assistance Program**

EMERGENCY AMENDMENT

11 CSR 10-3.015 State Sponsored Missouri National Guard Member Educational Assistance Program. The Office of the Adjutant General is amending sections (1) and (3).

PURPOSE: This emergency amendment is made because of revisions to section 173.239, RSMo, which increases eligibility for participating in the program to include private for-profit institutions and also requires that federal Department of Defense monies be expended prior to the use of state educational assistance.

EMERGENCY STATEMENT: *The Office of the Adjutant General-Missouri National Guard files for this emergency amendment because it is necessary to protect the public health, safety, and welfare of the citizens of Missouri. Article III, section 46, of the Constitution of Missouri requires that the General Assembly provide for the adequate militia. Chapter 41 of the Revised Statutes of Missouri identifies the Missouri National Guard as Missouri's militia. Assigned strength levels for units of the militia are currently at levels below one hundred percent. This emergency rule is necessary to implement provisions of Senate Bill 961 and provide the Guard with a powerful recruiting and retention program to assist the Guard in the maintenance of authorized strength and meet the legislature's constitutional obligation by providing for an adequate militia. The maintenance of authorized strength levels is critical to ensure that the militia is organized and prepared to perform its dual state and federal missions to serve the citizens of the state in times of state or local disaster or emergency and to serve the federal government in time of national emergency.*

Senate Bill 961 allows for a greater number of Missouri institutions to participate in the program. The emergency rule is necessary to make additional institutions available to new recruits and current members of the National Guard for the Fall 2000 school semester. In addition to benefiting readiness levels of the militia, the expanded eligible institutions and benefits will provide the citizens of Missouri with greater access to diversified educational programs and opportunities. The agency believes this emergency amendment to be of compelling governmental interest in the public safety and welfare requiring emergency action. This agency believes this rule to be fair to all persons and parties under the circumstances. This emergency rule was filed on July 20, 2000, effective August 28, 2000 expires February 23, 2001.

(1) Definitions.

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

1. Academic eligibility—State law requires recipients of educational assistance to maintain a cumulative grade point average of 2.5 on a 4.0 scale, or the equivalent on another scale approved by the program administrator;

2. Academic year—The period from August 1 of any year through July 31 of the following year;

3. Active member—A soldier or airman who is a member of the Missouri National Guard (MONG) in good standing and is satisfactorily participating in all required training;

4. Applicant—A member of the Missouri National Guard who submits an application for an educational assistance grant;

5. Application package—An application form together with all supporting documents required;

6. Approved private institution—As defined in section 173.205 or 173.778, RSMo.

[A. Is operated privately under the control of an independent board and not directly controlled or administered by and public agency or political subdivision.

B. Provides a postsecondary course of instruction at least six (6) months in length leading to or directly creditable toward a certificate or degree.

C. Meets the standards for accreditation as determined by either the North Central Association of Colleges and Secondary Schools or by other accreditation standards applicable to nondegree-granting institutions as established by the Missouri Coordinating Board for Higher Education.

D. Does not discriminate in the hiring of administrators, faculty and staff or in the admission of students on the basis of race, color, religion, sex, or national origin and is in compliance with the Federal Civil Rights Acts of 1964 and 1968 and executive orders issued pursuant thereto. Sex discrimination as used herein shall not apply to admis-

*sion practices of institutions offering the enrollment limit-
ed to one (1) sex.*

E. Permits faculty members to select textbooks without influence or pressure by any religious or sectarian source;]

7. Approved public institutions—As defined in section 173.205, RSMo.

[A. Is directly controlled or administered by a public agency or political subdivision.

B. Receives appropriations directly or indirectly from the general assembly for operating expenses.

C. Provides a postsecondary course of instruction at least six (6) months in length leading to or directly creditable toward a degree or certificate.

D. Meets one (1) or more of the following standards for accreditation:

(I) Those determined by the North Central Association of Colleges and Secondary Schools; and

(II) Those established by the Missouri Coordinating Board for Higher Education for public junior college or by other accrediting bodies recognized by the United States Office of Education or by utilizing accreditation standards applicable to the institution as established by the Coordinating Board for Higher Education.

E. Does not discriminate in the hiring of administrators, faculty and staff or in the admission of students on the basis of race, color, religion, sex, or national origin and is otherwise in compliance with the Federal Civil Rights Acts of 1964 and 1968 and executive orders issued pursuant thereto.

F. Permits faculty members to select textbooks without influence or pressure by any religious or sectarian source;]

8. Baccalaureate degree—See bachelor's degree;

9. Bachelor's degree—An academic degree conferred by a college or university upon those who complete the undergraduate curriculum. Also called baccalaureate;

10. Continuous enrollment—Attendance at an approved private institution, or approved public institution, which is not interrupted by any period of nonattendance other than customary summer vacations or breaks between semesters, quarters, etc;

11. Educational assistance (EA)—Money that soldiers/airmen receive or may be eligible to receive under provisions of this regulation to help support their postsecondary education. By law such grants will not exceed the lesser of the following:

A. The actual tuition, as defined in section 173.260, RSMo, charged at an approved institution where the recipient is enrolled or accepted for enrollment; or

B. The amount of tuition charged a Missouri resident at the University of Missouri for attendance;

C. Subject to appropriation by the legislature, EA grants may be prorated in amounts that are no less than fifty percent (50%) of the limits set forth in paragraphs (1)(B)1. and 2. above;

12. Educational Assistance Program (EAP)—State-sponsored Missouri National Guard Educational Assistance Program;

13. Educational Assistance Program Committee—The group appointed by the adjutant general to oversee the educational assistance program, also referred to as the committee. Duties include:

A. The committee shall establish policies for and exercise general direction over, the operation of the Missouri National Guard Educational Assistance Program;

B. The committee shall establish rules, regulations or standard operating procedures for determining eligibility and applicable waiting lists to ensure fair and impartial administration of the Missouri National Guard Educational Assistance Program; and

C. The committee shall develop and publish all necessary forms to ensure eligibility and payment procedures are met according to established state accounting procedures;

14. Grade point average (GPA)—An applicant's cumulative postsecondary average of grades received for courses attempted;

15. Member of the Missouri National Guard—An individual who is an active member of a Missouri Army or Air National Guard unit;

16. MONGEAP—Missouri National Guard Educational Assistance Program;

17. New enlistee—Any member serving his/her first enlistment in the Missouri Army or Air National Guard. The term includes both prior-service and nonprior-service members;

18. Program administrator—The full-time employee, appointed by the adjutant general, with authority to manage the administration of funding provided to accomplish the Missouri National Guard tuition assistance program;

19. Participating satisfactorily—Attending drills (regularly scheduled unit training assemblies);

20. Qualifications—The process by which the program administrator determines, on the basis of applications received, pertinent law and regulations, whether a given applicant has met all requirements to receive an EA grant;

21. Qualified applicant—An applicant who not only meets all the eligibility criteria but also has submitted a complete and timely application package in accordance with this rule, as determined by the adjutant general or his/her appointed representative; and

22. Recipient—A member of the MONG who receives a grant from the MONGEAP.

(3) Fiscal Management.

(A) State educational assistance on behalf of Missouri National Guard members pursuant to section 173.239 shall be used only after all available federal Department of Defense educational assistance funds have been expended.

(B) In any state fiscal year (1 July–30 June), the amount of funding for state educational assistance awarded shall not exceed the amount of state of Missouri funds appropriated for the Missouri National Guard Educational Assistance Program.

((B))/(C) At the end of any state fiscal year, the amount of funds appropriated for educational assistance for that year not utilized will revert to general revenue and will not be available for use in the subsequent fiscal year.

((C))/(D) Amounts to be awarded for educational assistance will be determined as follows:

1. State educational assistance shall not exceed the least of the following:

A. The actual tuition charged at an approved institution where the individual is enrolled or accepted for enrollment; or

B. The amount of tuition charged a Missouri resident at the University of Missouri for attendance;

2. Educational assistance provided may be prorated subject to appropriations in an amount no less than fifty percent (50%) of the limits set forth in this rule;

3. Each year the committee will establish the total amount of educational assistance to be available, subject to appropriation, and designate an amount to be awarded for each category of recipient. Based on the number and category of requests received, the committee, during the fiscal year, may adjust the funding amount programmed between categories of applicants as necessary to equitably distribute and best support the strength and readiness requirements of the Missouri National Guard; and

4. The maximum number of hours eligible for educational assistance is fifteen (15) for each fall and spring semester and nine (9) for the summer semester or the equivalent.

((D))/(E) Payments for recipients' educational assistance will be made directly to the institution attended. The State Educational Assistance Program administrator will notify recipients in writing of the amount paid to the educational institution and the date payment was made.

((E))/(F) Should appropriated and available funding not be adequate to support the number and/or funding amount of educational assistance applications received, the committee will establish waiting lists and the priority for award of educational assistance. Separate lists will be established for each category of applicant. The program administrator will advise, by letter, each guard member of his/her status on the lists.

((F))/(G) Should the committee determine the amount of funds available for Category I, II, or both for the current fiscal year are inadequate to support the requests received, the following actions may take place:

1. The committee may recommend that a supplemental state appropriation be requested; and

2. The authorized amount of payment to be made per credit hour for the current fiscal year may be revised during the year. The minimum amount paid per credit hour for the current fiscal year shall not be less than the minimum payment authorized in subsection 11 CSR 10-3.015(3)**((C))/(D)**.

((G))/(H) Payments are not authorized for tuition costs incurred prior to enlistment in the Missouri National Guard. Retroactive tuition payments are authorized only under the following circumstances:

1. In the event of the full obligation of state appropriated funds for the fiscal year, a supplemental appropriation request may be submitted. If authorized and appropriated, upon receipt of additional funding, the committee may authorize retroactive payments. Waiting lists will be utilized to establish the priority for educational assistance awards; and

2. During the fiscal year, should the committee determine the money set aside for Category I or II be excessive to the fiscal year needs of that category, funding amounts may be transferred between categories. Should the amount of educational assistance originally awarded have been less than the maximum authorized in subsection 11 CSR 10-3.015(3)**((C))/(D)**, the committee may authorize retroactive payments increasing the amount of educational assistance received for that fiscal year.

((H))/(I) Loss of Membership.

1. If a recipient of state educational assistance ceases to be a member of the Missouri National Guard while enrolled in a course of study or within three (3) years after completion of a course of study for any reason except death or disability, educational assistance shall be terminated and the recipient shall repay to the state of Missouri any amounts awarded.

2. Recipients of state educational assistance who cease to be members of the Missouri National Guard, and who are required to reimburse the state of Missouri, will be notified of the amount owed by certified letter from the program administrator. Reimbursement payments will be accepted only in the form of check or money order payable to the Treasurer, State of Missouri.

((I))/(J) In the event a recipient drops or fails to complete a course or courses (fails to receive a grade) for which educational assistance was received, the recipient must reimburse the state of Missouri for the credit hour costs of educational assistance awarded and not completed.

((J))/(K) Recoupment action will be taken against all recipients not reimbursing the state of Missouri within forty-five (45) days of notification. The adjutant general may utilize any available administrative or legal process to collect educational assistance payments awarded to effect recoupment and satisfaction of the debt incurred.

((K))/(L) Required Records.

1. Accounting records will be maintained by the State Educational Assistance Program administrator to ensure that the State Military Educational Assistance Program is administered in accordance with state law and payments are made within appropriation limits.

2. The program administrator will maintain a file for each recipient. The file will include all required application informa-

tion, payment notifications, correspondence with the recipient and other information deemed necessary by the committee.

3. State Educational Assistance Program records will be maintained the latter of a minimum of three (3) years from the date the last semester ended that a recipient received state educational assistance and/or through the completion of state audit. The director, state resources must be contacted prior to the purging of educational assistance records and files.

AUTHORITY: section 173.239, RSMo [Supp. 1997] 2000. Emergency rule filed July 30, 1998, effective Aug. 28, 1998, expired Feb. 25, 1999. Original rule filed July 30, 1998, effective Feb 28, 1999. Emergency amendment filed July 20, 2000, effective Aug. 28, 2000, expires Feb. 23, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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

EMERGENCY AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is amending section (13) by adding a new paragraph (13)(B)9.

PURPOSE: This emergency amendment provides for a Quality Assurance Incentive per-diem increase of \$3.20.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of nursing facility services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2001. The appropriation reflects the increased cost of providing nursing facility services and is dispersed in the form of an increase to the providers' per diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to the 26,594 Medicaid patients in nursing facilities. The Division of Medical Services finds an immediate danger to public health which requires emergency action and the amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protection extended by the Missouri and United States Constitutions. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed July 18, 2000, effective July 28, 2000, expires January 24, 2001.

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(B) Special Per-Diem Rate Adjustments. Special per-diem rate adjustments may be added to a qualifying facility's rate without regard to the cost component ceiling if specifically provided as described below.

1. Patient care incentive. Each facility with a prospective rate on or after January 1, 1995, shall receive a per-diem adjustment equal to ten percent (10%) of the facility's allowable patient care per diem subject to a maximum of one hundred thirty percent (130%) of the patient care median when added to the patient care per diem as determined in subsection (11)(A). This adjustment will not be subject to the cost component ceiling of one hundred twenty percent (120%) for the patient care median.

2. Ancillary incentive. Each facility with a prospective rate on or after January 1, 1995, and which meets one (1) of the following criteria shall receive a per-diem adjustment:

A. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is below ninety percent (90%) of the ancillary median, the adjustment is equal to one-half (1/2) of the difference between one hundred twenty percent (120%) and ninety percent (90%) of the ancillary median. The following is an illustration of how the ancillary per-diem adjustment is calculated:

120% of median	\$6.62
90% of median	\$4.97
Difference	\$1.65
1/2 the difference	<u> .82</u>
Per-diem adjustment	\$.83

B. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is between ninety percent (90%) and one hundred twenty percent (120%) of the median, the adjustment is equal to one-half of the difference between one hundred twenty percent (120%) of the median and the facility's allowable ancillary per diem. The following is an illustration of how the ancillary per-diem adjustment is calculated:

90% of median	\$4.97
120% of median	\$6.62
Ancillary per diem	\$5.21
Difference	\$1.41
1/2 the difference	<u> .71</u>
Per-diem adjustment	\$.71

3. Multiple component incentive. Each facility with a prospective rate on or after January 1, 1995, and meets the following criteria shall receive a per-diem adjustment:

A. If the sum of the facility's patient care per diem and ancillary per diem, as determined in subsections (11)(A) and (B), is greater than or equal to sixty percent (60%) but less than or equal to eighty percent (80%), rounded to four (4) decimal places (.5985 or .8015 would not receive the adjustment), of the facility's total per diem, the adjustment is as follows:

<u>Percent of Total Per-Diem Rate</u>	<u>Incentive</u>
< 60%	\$0.00
> or = 60% but < 65%	\$1.15
> or = 65% but < 70%	\$1.30
> or = 70% but < 75%	\$1.45
> or = 75% but < or 80% =	\$1.60

B. A facility shall receive an additional incentive if it receives the adjustment in subparagraph (13)(B)3.A. and the following calculation is greater than seventy-five percent (75%), rounded to four (4) decimal places (.7485 would not receive the adjustment): Medicaid days divided by the licensed nursing facility patient days from the facility's desk audited and/or field audited 1992 cost report. The adjustment is as follows:

<u>Calculated Percentage</u>	<u>Incentive</u>
< 75%	\$0.00
> or = 75% but < 80%	\$0.15
> or = 80% but < 85%	\$0.30
> or = 85% but < 90%	\$0.45
> or = 90% but < 95%	\$0.60
> or = 95%	\$0.75

4. 1967 Life Safety Code (LSC). Currently certified nursing facilities that must comply with a recent interpretation of paragraph 10-133 of the 1967 LSC which requires corridor walls to extend to the roof deck or achieve equivalency under the Fire

Safety Evaluation System (FSES) will be reimbursed the reasonable and necessary cost to meet those standards required for compliance through their reimbursement rate. The reimbursement shall not be effective until the Division of Aging has confirmed that the corrective action to comply with the 1967 LSC or FSES is operational and has reviewed the cost for compliance. Fire sprinkler systems shall be reimbursed over a depreciation life of twenty-five (25) years, and other alternative corrective action will be reimbursed over a depreciable life of fifteen (15) years. The division will use a desk audited and/or field audited cost report with the latest period ending in calendar year 1992 which is on file with the division as of December 31, 1993. This adjustment will be computed based on the documented cost submitted to the division as follows:

A. Depreciation. The cost incurred for the approved corrective action to continue in compliance divided by the depreciable useful life;

B. Interest. The interest cost incurred to finance this project shall be documented by a statement from the lending institution detailing the total interest cost of the loan period. The total interest cost will be divided by the loan period on a straight line basis; and

C. The total of subparagraph (13)(B)4.A. and B. will be divided by twelve (12) and then multiplied by the number of months covered by the 1992 cost report. This amount will be divided by the greater of actual patient days from the 1992 cost report or eighty-five percent (85%) of the licensed bed days from the 1992 cost report.

5. Any facility that had a 1967 LSC adjustment included in their December 31, 1994, reimbursement rate shall have that adjustment added to their January 1, 1995, reimbursement rate.

6. Replacement beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for replacement beds that resulted in the same number of beds being delicensed with the Division of Aging or the Department of Health. The facility shall provide documentation from the Division of Aging or the Department of Health that verifies the number of beds used for replacement have been delicensed from that facility. The rate adjustment will be calculated as the difference between the capital component per diem (fair rental value (FRV)) prior to the replacement beds being placed in service and the capital component per diem (FRV) including the replacement beds placed in service as calculated in subsection (11)(D) including the replacement beds placed in service. The capital component is calculated for the replacement beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the replacement beds are placed in service.

7. Additional beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for additional beds. The facility must obtain an approved certificate of need or applicable waiver for the additional beds. The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the additional beds being placed in service and the capital component per diem (FRV) including the additional beds as calculated in subsection (11)(D) including the additional beds placed in service. The capital component is calculated for the additional beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the additional beds are placed in service.

8. Extraordinary circumstances. A participating facility which has a prospective rate may request an adjustment to its prospective rate due to extraordinary circumstances. This request must be submitted in writing to the division within one (1) year of the occurrence of the extraordinary circumstance. The request must clearly and specifically identify the conditions for which the rate adjustment is sought. The dollar amount of the requested rate

adjustment must be supported by complete, accurate and documented records satisfactory to the division. If the division makes a written request for additional information and the facility does not comply within ninety (90) days of the request for additional information, the division shall consider the request withdrawn. Requests for rate adjustments that have been withdrawn by the facility or are considered withdrawn because of failure to supply requested information may be resubmitted once for the requested rate adjustment. In the case of a rate adjustment request that has been withdrawn and then resubmitted, the effective date shall be the first day of the month in which the resubmitted request was made providing that it was made prior to the tenth day of the month. If the resubmitted request is not filed by the tenth of the month, rate adjustments shall be effective the first day of the following month. Conditions for an extraordinary circumstance are as follows:

A. When the provider can show that it incurred higher costs due to circumstances beyond its control, the circumstances were not experienced by the nursing home industry in general and the costs have a substantial cost effect;

B. Extraordinary circumstances include:

(I) Natural disasters such as fire, earthquakes and flood that are not covered by insurance and that occur in a federally declared disaster area; and

(II) Vandalism and/or civil disorder that are not covered by insurance; and

C. The rate increase shall be calculated as follows:

(I) The one (1)-time costs, (costs that will not be incurred in future fiscal years):

(a) To determine what portion of the incurred costs will be paid, the division will use the patient occupancy days from latest available quarterly occupancy survey from the Division of Aging for the time period preceding when the extraordinary circumstances occurred; and

(b) The costs directly associated with the extraordinary circumstances will be multiplied by the above percent. This amount will be divided by the paid days for the month the rate adjustment becomes effective per paragraph (13)(B)8. This calculation will equal the amount to be added to the prospective rate for only one (1) month, which will be the month the rate adjustment becomes effective. For this one (1) month only, the ceiling will be waived.

(II) For ongoing costs (costs that will be incurred in future fiscal years): Ongoing annual costs will be divided by the greater of: annualized (calculated for a twelve (12)-month period) total patient days from the latest cost report on file or eighty-five percent (85%) of annualized total bed days. This calculation will equal the amount to be added to the respective cost center, not to exceed the cost component ceiling. The rate adjustment, subject to ceiling limits will be added to the prospective rate.

(III) For capitalized costs, a capital component per diem (FRV) will be calculated as determined in subsection (11)(D). The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the extraordinary circumstances and the capital component per diem (FRV) including the extraordinary circumstances.

9. Quality Assurance Incentive.

A. Each nursing facility with an interim or prospective rate on or after July 1, 2000, shall receive a per-diem adjustment of \$3.20. The Quality Assurance Incentive adjustment will be added to the facility's current rate.

B. The Quality Assurance Incentive per-diem increase shall be used for the wages and salaries of direct patient care staff. Any increases in wages and benefits already codified in a collective bargaining agreement in effect as of July 1, 2000, will not be counted towards the expenditure requirements of

the Quality Assurance Incentive as stated above. Nursing facilities with collective bargaining agreements shall provide such agreements to the division.

AUTHORITY: sections 208.153, 208.159, and 208.201, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the *Code of State Regulations*. Amended: Filed June 29, 2000. Emergency amendment filed July 18, 2000, effective July 28, 2000, expires Jan. 24, 2001.

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

EMERGENCY AMENDMENT

13 CSR 70-10.050 Pediatric Nursing Care Plan. The division is amending section (13).

PURPOSE: This emergency amendment provides for a Quality Assurance Incentive per-diem increase of \$3.20 for pediatric nursing facilities participating in the Medicaid program.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of nursing facility services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2001. The appropriation reflects the increased cost of providing nursing facility services and is dispersed in the form of an increase to the providers' per-diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to the Medicaid patients in pediatric nursing facilities. The Division of Medical Services finds an immediate danger to public health which requires emergency action and the amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protection extended by the *Missouri and United States Constitutions*. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency Amendment filed July 18, 2000, effective July 28, 2000, expires January 24, 2001.

(13) Rate Adjustments.

(D) Special Per-Diem Rate Adjustments. Special per-diem rate adjustments may be added to a qualifying facility's rate without regard to the level of care ceiling if specifically provided as described below.

1. Quality Assurance Incentive.

A. Each pediatric nursing facility with an interim or prospective rate on or after July 1, 2000, shall receive a per-diem adjustment of \$3.20. The Quality Assurance Incentive adjustment will be added to the facility's current rate.

B. The Quality Assurance Incentive per-diem increase shall be used for the wages and salaries of direct patient care staff. Any increases in wages and benefits already codified in a collective bargaining agreement in effect as of July 1, 2000, will not be counted towards the expenditure requirements of the Quality Assurance Incentive as stated above. Nursing facilities with collective bargaining agreements shall provide such agreements to the division.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 1994. Original rule filed Sept. 26, 1989, effective Feb. 11, 1990. For intervening history, please consult the *Code of State*

Regulations. Amended: Filed June 30, 2000. Emergency amendment filed July 18, 2000, effective July 28, 2000, expires Jan. 24, 2001.

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

EMERGENCY AMENDMENT

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

PURPOSE: This emergency amendment provides for a Quality Assurance Incentive per-diem increase of \$3.20 for HIV nursing facilities participating in the Medicaid program.

EMERGENCY STATEMENT: This emergency amendment is necessary to implement the increased reimbursement to providers of HIV nursing facility services included in the Appropriations Bill enacted by the Legislature for State Fiscal Year 2001. The appropriation reflects the increased cost of providing HIV nursing facility services and is dispersed in the form of an increase to the providers' per-diem rates. It must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to the 14 Medicaid patients in HIV nursing facilities. The Division of Medical Services finds an immediate danger to public health which requires emergency action and the amendment is necessary to preserve a compelling governmental interest that requires an early effective date. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protection extended by the *Missouri and United States Constitutions*. Therefore, the Division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. Emergency amendment filed July 18, 2000, effective July 28, 2000, expires January 24, 2001.

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(B) Special Per-Diem Rate Adjustments. Special per-diem rate adjustments may be added to a qualifying HIV nursing facility's rate without regard to the cost component ceiling if specifically provided as described below.

1. Replacement beds. A facility with a prospective rate in effect after November 30, 1995, may request a rate adjustment for replacement beds that resulted in the same number of beds being delicensed with the Division of Aging. The facility shall provide documentation from the Division of Aging that verifies the number of beds used for replacement have been delicensed from that facility. The rate adjustment will be calculated as the difference between the capital component per diem (fair rental value, FRV) prior to the replacement beds being placed in service and the capital component per diem FRV including the replacement beds placed in service as calculated in subsection (11)(D) including the replacement beds placed in service. The capital component is calculated for the replacement beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the replacement beds are placed in service.

2. Additional beds. A facility with a prospective rate in effect after November 30, 1995, may request a rate adjustment for additional beds. The facility must obtain an approved certificate of need or applicable waiver for the additional beds. The rate adjustment will be calculated as the difference between the capital component per diem FRV prior to the additional beds being placed in service and the capital component per diem FRV including the

additional beds as calculated in subsection (11)(D) including the additional beds placed in service. The capital component is calculated for the additional beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the additional beds are placed in service.

3. Extraordinary circumstances. A participating facility which has a prospective rate may request an adjustment to its prospective rate due to extraordinary circumstances. This request must be submitted in writing to the division within one (1) year of the occurrence of the extraordinary circumstance. The request must clearly and specifically identify the conditions for which the rate adjustment is sought. The dollar amount of the requested rate adjustment must be supported by complete, accurate and documented records satisfactory to the division. If the division makes a written request for additional information and the facility does not comply within ninety (90) days of the request for additional information, the division shall consider the request withdrawn. Requests for rate adjustments that have been withdrawn by the facility or are considered withdrawn because of failure to supply requested information may be resubmitted once for the requested rate adjustment. In the case of a rate adjustment request that has been withdrawn and then resubmitted, the effective date shall be the first day of the month in which the resubmitted request was made providing that it was made prior to the tenth day of the month. If the resubmitted request is not filed by the tenth of the month, rate adjustments shall be effective the first day of the following month. Conditions for an extraordinary circumstance are as follows:

A. When the provider can show that it incurred higher costs due to circumstances beyond its control, the circumstances were not experienced by the nursing home industry in general and the costs have a substantial cost effect;

B. Extraordinary circumstances include:

(I) Natural disasters such as fire, earthquakes and flood that are not covered by insurance and that occur in a federally declared disaster area; and

(II) Vandalism and/or civil disorder that are not covered by insurance; and

C. The rate increase shall be calculated as follows:

(I) The one (1) time costs (costs that will not be incurred in future fiscal years):

(a) To determine what portion of the incurred costs will be paid, the division will use the patient occupancy days from latest available quarterly occupancy survey from the Division of Aging for the time period preceding when the extraordinary circumstances occurred; and

(b) The costs directly associated with the extraordinary circumstances will be multiplied by the above percent. This amount will be divided by the paid days for the month the rate adjustment becomes effective per paragraph (13)(B)3. This calculation will equal the amount to be added to the prospective rate for only one (1) month, which will be the month the rate adjustment becomes effective. For this one (1) month only, the ceiling will be waived.

(II) For ongoing costs (costs that will be incurred in future fiscal years): Ongoing annual costs will be divided by the greater of: annualized (calculated for a twelve (12)-month period) total patient days from the latest cost report on file or eighty-five percent (85%) of annualized total bed days. This calculation will equal the amount to be added to the respective cost center, not to exceed the cost component ceiling. The rate adjustment, subject to ceiling limits will be added to the prospective rate.

(III) For capitalized costs, a capital component per diem FRV will be calculated as determined in subsection (11)(D). The rate adjustment will be calculated as the difference between the capital component per diem FRV prior to the extraordinary cir-

cumstances and the capital component per diem FRV including the extraordinary circumstances.

4. Quality Assurance Incentive.

A. Each HIV nursing facility with an interim or prospective rate on or after July 1, 2000, shall receive a per-diem adjustment of \$3.20. The Quality Assurance Incentive adjustment will be added to the facility's current rate.

B. The Quality Assurance Incentive per-diem increase shall be used for the wages and salaries of direct patient care staff. Any increases in wages and benefits already codified in a collective bargaining agreement in effect as of July 1, 2000, will not be counted towards the expenditure requirements of the Quality Assurance Incentive as stated above. Nursing facilities with collective bargaining agreements shall provide such agreements to the division.

AUTHORITY: sections 197.319 and 208.153, RSMo 1994. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed June 30, 2000. Emergency amendment filed July 18, 2000, effective July 28, 2000, expires Jan. 24, 2001.