MISSOURI REGISTER

Executive Orders

February 17, 2004
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The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2003.

EXECUTIVE ORDER
04-01

WHEREAS, public safety is a critical priority of this administration as it is vital to the State of Missouri and the well being of its citizens and communities; and

WHEREAS, this administration strives to ensure our state and local public safety officers are recognized for extraordinary displays of valor.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby establish the Public Safety Officer Medal of Valor, and the Medal of Valor Review Board within the Department of Public Safety, as follows:

A. Medal of Valor Review Board (the "Board") – shall be composed of 7 members appointed by the Governor in accordance with subsection B and shall conduct its business in accordance with this order.

B. Membership -

1. Members: The members of the Board shall be individuals with knowledge or expertise, whether by experience or training, in the field of public safety, and shall include:

    a. the Director of the Department of Public Safety or designee;
    b. a Police Chief;
    c. a Fire Chief;
    d. an elected County Sheriff; and
    e. 3 citizens, one with experience in firefighting, one with experience in law enforcement, and one with experience in corrections or emergency services.

2. Term: The term of a Board member shall be 4 years.

3. Vacancies: Any vacancy in the membership of the Board shall not affect the powers of the Board and shall be filled in the same manner as the original appointment.

4. Operation of the Board:

    a. Chairman – The Chairman of the Board shall be elected by the members of the Board from among the members of the Board.
    b. Meetings – The Board shall conduct its first meeting not later than 90 days after the appointment of the last member of the initial group of members appointed to the Board. Thereafter, the Board shall meet at the call of the Chairman of the Board. The Board shall meet not less often than once each year and not more than 3 times each year.

c. Voting and Rules – A majority of the members shall constitute a quorum to conduct business, but the Board may establish a lesser quorum for conducting hearings scheduled by the Board. The Board may establish by majority vote any other rules for the conduct of the Board's business, if such rules are not inconsistent with this order or other applicable law.

C. Duties – The Board shall nominate candidates as recipients of the Public Safety Officer Medal of Valor from among those applications received by the Board members. Not more often than once each year, the Board shall present to the Governor the name or names of those it recommends as Public Safety Officer Medal of Valor recipients. In a given year, the Board shall not be required to nominate any recipients but may not select more than 7 recipients. The Governor may in extraordinary cases increase the number of recipients in a given year. The Board shall set an annual timetable for fulfilling its duties under the order.

D. Information from Agencies – The Board may secure directly from any department or agency such information as the Board considers necessary to carry out its duties. Upon the request of the Board, the head of such department or agency may furnish such information to the Board.

E. Information to be Kept Confidential – The Board shall not disclose any information which may compromise an ongoing law enforcement investigation or is otherwise required by law to be kept confidential.

F. The members of the Board shall serve without compensation, except that the members may be reimbursed for reasonable and necessary expenses arising from Board activities or business. Such expenses shall be paid by the Department of Public Safety.

G. Public Safety Officer – is defined as a person serving a public agency, with or without compensation, as a firefighter, law enforcement officer, or emergency personnel. The term "law enforcement officer" includes a person who is a state or local corrections or court officer or a civil defense officer.

Beginning February 26, 2004, the Governor of the State of Missouri may award and present a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Medal of Valor Review Board for extraordinary valor above and beyond the call of duty.

This Executive Order may be cited as the "Public Safety Officer Medal of Valor Order of 2004."

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 3rd day of February, 2004.

Bob Holden
Governor

ATTEST:

Matt Blunt
Secretary of State

Executive Order
04-02

WHEREAS, section 105.454(5), RSMo, of the Missouri Ethics Law requires the Governor to designate those members of his staff who have supervisory authority over each department, division, or agency of state government.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions, or agencies:

Office of Administration	Jake Zimmerman
Transportation	Patrick Lynn
Agriculture	Jack Cardetti
Conservation	Irl Scissors
Elementary and Secondary Education	Kerry Crist
Higher Education	Kerry Crist
Public Service Commission	Patrick Lynn
Revenue	Jake Zimmerman
Social Services	Patrick Lynn
Labor	David Cosgrove and Irl Scissors
Public Safety	David Cosgrove
Corrections	Irl Scissors
Natural Resources	Irl Scissors
Health and Senior Services	Tina Shannon
Insurance	Patrick Lynn
Economic Development	Jack Cardetti
Mental Health	Tina Shannon
MHDC	Jennifer Deaver

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 3rd day of February, 2004.

Bob Holden
Governor

ATTEST:

Matt Blunt
Secretary of State

EXECUTIVE ORDER
04-07

WHEREAS, on February 6, 2003, the director of the Missouri Department of Insurance issued the report "Medical Malpractice in Missouri: The Current Difficulties in Perspective;" and

WHEREAS, past proposals to deal with medical malpractice insurance crises have focused almost exclusively on tort reform and insurance industry reform; and

WHEREAS, it is equally appropriate to focus on problems such as inadequate provider/patient communications, improper clinical and administrative procedures, and preventable medical errors, which taken together, are the cause of many medical malpractice claims; and

WHEREAS, it is important to strike a balance between public accountability for the quality of health care and the need for health care providers to learn from medical errors.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby establish the Missouri Commission on Patient Safety. This Executive Order shall supersede and rescind Executive Order 03-16 of October 1, 2003.

The composition of the Missouri Commission on Patient Safety shall be as follows: the directors of the Department of Insurance and the Department of Health and Senior Services or their designees; 15 persons appointed by the Governor from a variety of professions and perspectives including, but not limited to, physicians, osteopathic physicians, pharmacists, nurses, hospital administrators and staff, risk managers, long-term care administrators and staff, medical educators, patient care review specialists, patient safety and quality improvement professionals, and health care consumers. The Governor will designate one member of the commission as chairperson and one member as vice-chairperson. The executive directors of the Boards of Healing Arts, Nursing and Pharmacy shall serve as ex-officio members of the commission.

The purpose of the commission shall be to study and recommend legislative, administrative, clinical, behavioral, and technological measures to improve medical outcomes, prevent errors, upgrade health-care delivery systems, and improve education of medical providers and patients, all with a goal of reducing the incidence of preventable medical errors and reducing the number of medical malpractice claims.

The commission is assigned to the Missouri Department of Insurance for administrative purposes. Members of the commission shall serve without compensation but may be reimbursed for reasonable and necessary expenses arising from the commission's activities.

The commission shall report its recommendations to the Governor by July 1, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 3rd day of February, 2004.

Bob Holden
Governor

ATTEST:

Matt Blunt
Secretary of State

EXECUTIVE ORDER
04-08

WHEREAS, the Missouri Office of Administration is created pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 37, RSMo.; and

WHEREAS, the Missouri Department of Labor and Industrial Relations is created pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 286, RSMo.; and

WHEREAS, the Governor's Council on Disabilities is created within the Department of Labor and Industrial Relations pursuant to Chapter 286.200, RSMo.; and

WHEREAS, Missouri is home to nearly one million persons with disabilities; and

WHEREAS, the Governor's Council on Disabilities focuses on creating a climate in which all Missourians with and without disabilities have equal access to employment opportunities; and

WHEREAS, the Council provides information about compliance with the Americans with Disabilities Act and assistive technology to maximize the productivity of people with disabilities; and

WHEREAS, the Council offers assistance to other state agencies for compliance with all laws regarding persons with disabilities; and

WHEREAS, the State of Missouri is dedicated to creating an environment where people with disabilities can enjoy equal opportunity and independence in all aspects of life; and

WHEREAS, the Governor's Council on Disability would continue to be a "voice of persons with disabilities" in the Office of Administration; and

WHEREAS, the work of the Governor's Council on Disability with other state departments would be strengthened by a move to the Office of Administration; and

WHEREAS, the Missouri Assistive Technology Advisory Council is established by Chapter 191.853, RSMo; and

WHEREAS, The Missouri Assistive Technology Advisory Council supports access to adaptive devices that increase the independence and productivity of Missourians with all types of disabilities; and

WHEREAS, chapter 191.858, RSMo, requires the transfer of the Missouri Assistive Technology Advisory Council to the Office of Administration at such time when federal funds are no longer provided pursuant to the Technology-Related Assistance for Individuals with Disabilities Act.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby order:

1. The transfer of the Governor's Council on Disability from the Department of Labor and Industrial Relations to the Office of Administration;

2. The transfer of all the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Governor's Council on Disability from the Department of Labor and Industrial Relations to the Office of Administration, by Type III transfer, as defined under the Reorganization Act of 1974.

3. The transfer of the Missouri Assistive Technology Advisory Council from the Department of Labor and Industrial Relations to the Office of Administration;

4. The transfer of all the authority, powers, duties, functions, records, personnel, property, contracts budgets matters pending, and other pertinent vestiges of the Missouri Assistive Technology Advisory Council from the Department of Labor and Industrial Relations to the Office of Administration, by Type III transfer, as defined under the Reorganization Act of 1974.

This order shall become effective no sooner than August 28, 2004, unless disapproved within sixty days of its submission to the Second Regular Session of the 92nd General Assembly.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 3rd day of February, 2004.

Bob Holden
Governor

ATTEST:

Matt Blunt
Secretary of State

Under 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."

Entirely new rules are printed without any special symbology under the heading of the 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.

An 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.

If 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*.

An 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.

If 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 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 RESCISSION

10 CSR 10-6.240 Asbestos Abatement Projects—Registration, Notification and Performance Requirements. This rule required asbestos abatement contractors to register with the department, to notify the department of each asbestos abatement project, to follow certain work practices, to allow the department to inspect asbestos abatement projects and to pay inspection fees. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for removal from 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 and phone number 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/regs/regagenda.htm.

PURPOSE: This regulation is proposed for rescission because it was determined to be void from inception. It is being replaced by 10 CSR 10-6.241. The new rule will require asbestos abatement contractors to register with the department, to allow the department to inspect asbestos abatement projects and to collect inspection fees. The new regulation should improve enforceability and reduce confusion. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the Cole County Circuit Court case number CV 197-985CC that found rule 10 CSR 10-6.240 void from inception.

AUTHORITY: section 643.050, RSMo Supp. 1992. Original rule filed Dec. 14, 1992, effective Sept. 9, 1993. Rescinded: Filed Jan. 12, 2004.

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

PRIVATE COST: This proposed rescission 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 rescission will begin at 9:00 a.m., March 25, 2004. The public hearing will be held at the Days Inn, 2345 Marvel Road, Nevada, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., April 1, 2004. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

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 RULE

10 CSR 10-6.241 Asbestos Abatement Projects—Registration, Notification and Performance Requirements. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion 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 and phone number 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/regs/regagenda.htm.

PURPOSE: This rule requires asbestos abatement contractors to register with the department, to notify the department of each asbestos

abatement project, to allow the department to inspect asbestos abatement projects and to pay inspection fees. Each person who intends to perform asbestos abatement projects in Missouri must register annually with the Missouri Department of Natural Resources, Air Pollution Control Program. Each asbestos abatement contractor must submit a notification to the appropriate agency of the department for each asbestos abatement project. Each notification for projects exceeding a certain size must be accompanied by a fee. Asbestos abatement contractors must allow representatives of the department to conduct inspections of projects and must pay inspection fees. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the decision of the Cole County Circuit Court case number CV 197-985CC that found rule 10 CSR 10-6.240 void from inception and section 643.242, RSMo that authorizes the commission to assess a fee of one hundred dollars ($100) for each on-site inspection of asbestos abatement projects.

(1) Applicability.

(A) This rule shall apply to—

1. All persons that authorize, design, conduct and work in asbestos abatement projects; and

2. All persons that monitor air-borne asbestos and dispose of asbestos waste as a result of asbestos abatement projects.

(B) Exemptions. The department may exempt a person from registration, certification and certain notification requirements provided the person conducts asbestos abatement projects solely at the person's own place of business as part of normal operations in the facility and also is subject to the requirements and applicable standards of the United States Environmental Protection Agency (EPA) and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.1101. This exemption shall not apply to asbestos abatement contractors, to those subject to the requirements of the Asbestos Hazard Emergency Response Act (AHERA) and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child daycare centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels and theaters. Business entities that have received state approved exemption status shall comply with all federal air sampling requirements for their planned renovation operations.

(2) Definitions. Definitions of certain terms specified in this rule may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Registration.

1. Any person that conducts an asbestos abatement project shall register with the department. Business entities that qualify for exemption status from the state must reapply for exemption from registration.

2. The person shall apply for registration renewal on an annual basis, and two (2) months before the expiration date shall send the application to the department for processing.

3. Annually, the person submitting a registration application to the department shall remit a nonrefundable fee of one thousand dollars ($1,000) to the department.

4. To determine eligibility for registration and registration renewal, the department may consider the compliance history of the applicant as well as that of all management employees and officers. The department may also consider the compliance record of any other entity of which those individuals were officers and management employees.

(B) Abatement Procedures and Practices.

1. Asbestos abatement contractors shall use only individuals that have been certified by the department in accordance with 10 CSR 10-6.250 and Chapter 643, RSMo on asbestos abatement projects.

2. At each asbestos abatement project site the person shall provide the following information for inspection by the department:

A. Proof of current departmental registration;

B. Proof of current departmental occupational certification for those individuals on the project;

C. Most recent available air sampling results;

D. Current photo identification for all applicable individuals engaged in the project; and

E. Proof of passage of the training course for the air sampling technicians and photo identifications for air sampling technicians.

(C) Revocation of Registration. The director may deny, suspend or revoke any person's registration obtained under section (3) of this rule if the director finds the person in violation of sections 643.225–643.250, RSMo or Missouri rules 10 CSR 10-6.241 or 10 CSR 10-6.250 or any applicable federal, state or local standard for asbestos abatement projects.

(D) Any person that authorizes an asbestos abatement project, asbestos inspection or any AHERA-related work shall ensure that Missouri registered contractors and certified workers are employed, and that all post-notification procedures on the project are in compliance with this rule and 10 CSR 10-6.250 and Chapter 643, RSMo. Business entities that have exemption status from the state are exempt from using registered contractors and from post-notification requirements, when performing in-house asbestos abatement projects.

(E) Asbestos Project Notification. Any person undertaking an asbestos abatement project shall submit a notification to the department for review at least twenty (20) days prior to the start of the project. Business entities with state-approved exemption status are exempt from notification except for those projects for which the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAPS) requires notification. The department may waive the twenty (20)-day review period upon request for good cause. To apply for this waiver, the person shall complete Part B, number 2 of the notification form provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. The person who applies for the twenty (20)-day waiver must obtain approval from the department before the project can begin.

1. The person shall submit the notification form provided by the department.

2. If an amendment to the notification is necessary, the person shall notify the department immediately by telephone or FAX. The department must receive the written amendment within five (5) working days following verbal agreement.

3. Asbestos abatement project notifications shall state actual dates and times of the project, the on-site supervisor and a description of work practices. If the person must revise the dates and times of the project, the person shall notify the department and the regional office or the appropriate local delegated enforcement agency at least twenty-four (24) hours in advance of the change by telephone or FAX and then immediately follow up with a written amendment stating the change. The department must receive the written amendment within five (5) working days of the phone or FAX message.

4. A nonrefundable notification fee of one hundred dollars ($100) will be charged for each project constituting one hundred sixty (160) square feet, two hundred sixty (260) linear feet, or thirty-five (35) cubic feet or greater. If an asbestos abatement project is in an area regulated by an authorized local air pollution control agency, and the person is required to pay notification fees to that agency, the person is exempt from paying the state fees. Persons conducting planned renovation projects determined by the department to fall under EPA's 40 CFR part 61 subpart M must pay this fee and the inspection fees required in subsection (3)(F) of this rule.

5. Emergency project. Any person undertaking an emergency asbestos abatement project shall notify the department by telephone and must receive departmental approval of emergency status. The person must notify the department within twenty-four (24) hours of

the onset of the emergency. Business entities with state-approved exemption status are exempt from emergency notification for state-approved projects that are part of a NESHAPS planned renovation annual notification. If the emergency occurs after normal working hours or weekends, the person shall contact the Environmental Services Program. The notice shall provide—

A. A description of the nature and scope of the emergency;

B. A description of the measures immediately used to mitigate the emergency; and

C. A schedule for removal. Following the emergency notice, the person shall provide to the director a notification on the form provided by the department and the person shall submit it to the director within seven (7) days of the onset of the emergency. The amendment requirements for notification found in subsection (3)(E) of this rule are applicable to emergency projects.

(F) Inspections. There shall be a charge of one hundred dollars ($100) per inspection for the first three (3) inspections of any asbestos abatement project. The department or the local delegated enforcement agency shall bill the person for that inspection(s) and the person shall submit the fee(s) according to the requirements of the department or of the local delegated enforcement agency.

(G) All information required under this rule must be submitted on the appropriate forms and contain accurate, legible information. Failure to provide the required information, failure to submit legible information, submission of false information or failure to provide complete information as required, shall be a violation of this rule and may result in the director's denial or revocation of the notification.

(H) Failure to comply with this rule is a violation of this rule and Chapter 643, RSMo. Compliance with this rule does not relieve the participants from compliance with any other applicable federal and state rules, laws, standards or building codes.

(4) Reporting and Record Keeping.

(A) Post-Notification.

1. Any person undertaking an asbestos abatement project that requires notification according to subsection (3)(E) of this rule, on the department-provided form shall notify the department within sixty (60) days of the completion of the project. This notice shall include a signed and dated receipt for the asbestos waste generated by the project issued by the landfill named on the notification. This notice also shall include any final clearance air monitoring results. The technician performing the analysis shall sign and date all reports of analysis.

2. Business entities are exempt from post-notification requirements, but shall keep records of waste disposal for department inspection.

(B) Additional Record Keeping. The contractor and the owner shall keep the air monitoring results for three (3) years. The person shall make the results available to representatives of the department upon request. All AHERA projects shall comply with EPA air monitoring requirements in 40 CFR part 763.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.225, RSMo 2000. Original rule filed Jan. 12, 2004.

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

PRIVATE COST: This proposed rule will cost ten thousand two hundred fifty dollars ($10,250) in FY 2005 and the total annualized aggregate cost is twelve thousand three hundred dollars ($12,300) in each subsequent fiscal year for the life of this rule. Note attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., March 25, 2004. The public hearing will be held at the Days Inn, 2345 Marvel Road, Nevada, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., April 1, 2004. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10-Department of Natural Resources

Division: 10-Air Conservation Commission

Chapter: 6-Air Quality Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.241 Asbestos Abatement Projects-Registration, Notification and Performance Requirements

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed 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:
<200	Asbestos Removal Contractors	$123,000

III. WORKSHEET

Public Entity Costs	FY2005	FY2006 – FY 2014 (yearly cost)	FY2015	Total Cost for Life of Rule
Asbestos Abatement Contractor Inspections	$10,250	$12,300	$2,050	$123,000

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The number of inspections performed during calendar year 2002 is assumed to be representative of all future years. 123 were conducted during that year.

3. The cost of the inspection fees is set at $100 each, and will not increase.

4. The FY2005 costs are for the last 10 months of the fiscal year.

5. The FY2015 costs are for the first 2 months of the fiscal year.

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 10-6.250 Asbestos Abatement Projects—Certification, Accreditation and Business Exemption Requirements. The commission proposes to amend section (1); delete original sections (2) and (6); add new section (2); renumber and amend original sections (3), (4) and (5); and add new sections (4) and (5), and removing forms from the *Code of State Regulations*. If the commission adopts this rule action, it will be submitted 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 and phone number 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/regs/regagenda.htm.

PURPOSE: This amendment is proposed to eliminate forms, correct references regarding OSHA and AHERA, and consolidate and reorganize the regulations into a more logical manner. The amended regulation should improve enforceability and reduce confusion. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is rule comment forms that describe errors and/or seek clarification on specific issues.

(1) *[Application.]* **Applicability.** This rule shall apply to—

(C) Individuals who conduct *[Asbestos Hazard Emergency Response Act (AHERA)]* asbestos inspections and develop **Asbestos Hazard Emergency Response Act (**AHERA**)** management plans and *[AHERA]* project designs; and

(D) Those who provide training for individuals involved in subsections (1)(A)–(C) **of this rule**.

[(2) General Provisions.

(A) Certification. An individual must receive certification from the department before that individual participates in an asbestos abatement project operating in Missouri according to section (3). This certification is annually renewable. Certification as an AHERA inspector, AHERA management planner and AHERA project designer apply to AHERA-related projects.

(B) Accreditation. To be a training provider for the purposes of this rule, a school shall apply for accreditation to the department and comply with the United States Environmental Protection Agency (EPA) AHERA Model Accreditation Plan 40 CFR part 763, Appendix C, subpart E. Details of the requirements for accreditation are found in section (4).

(C) Exemptions of Business Entities. The department may exempt a person from registration, certification and certain notification requirements provided the person conducts asbestos abatement projects solely at the person's own place(s) of business as part of normal operations in the facility and the person is also subject to the requirements and applicable standards of the EPA and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.58. The person shall submit an application for exemption to the department on the form found in section (6) of this rule. Details of the training and other requirements for this exemption appear in section (5). This exemption shall not apply to asbestos abatement contractors, to those subject to the requirements of AHERA and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child daycare centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels and theaters. The department shall review the exemption application within one hundred eighty (180) days. State-exempted business entities shall comply with all federal air sampling requirements for planned renovation operations. Exempt business entities shall meet the air sampling requirements of this rule when not using department-approved in-house staff and when the director requires third-party air monitoring for enforcement purposes on in-house projects.]

(2) Definitions. Definitions of certain terms specified in this rule may be found in 10 CSR 10-6.020.

(3) *[Certification.]* **General Provisions.**

(A) **Certification.**

1. An individual must receive certification from the department before that individual participates in an asbestos abatement project, inspection, AHERA management plan, abatement project design, or asbestos air sampling in the state of Missouri. This certification must be renewed annually with the exception of air sampling professionals. To become certified an individual must meet the qualifications in the specialty area as defined in the EPA's AHERA Model Accreditation Plan, 40 CFR part 763, Appendix C, subpart E. The individual must successfully complete a fully-approved EPA or Missouri-accredited AHERA training course and pass the training course exam and pass the Missouri asbestos examination with a minimum score of seventy percent (70%) and submit a completed **department-supplied** application form **to the department along with the appropriate certification fees. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. The department shall issue a certificate to each individual that meets the requirements for the job category**. *[The certification application is found in section (6) of this rule. The individual annually must apply for certification renewal.]*

[(B)] **2.** In order to receive Missouri certification, individuals must be trained by Missouri accredited providers.

[(C)] **3.** Qualifications. An individual shall present proof of these to the department with the application for certification. The following are the minimum qualifications for each job category:

[1.] **A.** An asbestos air sampling professional conducts, oversees or is responsible for air monitoring of asbestos abatement projects. Air sampling professionals must satisfy one (1) of the following qualifications for certification:

[A.] **(I)** Bachelor of science degree in industrial hygiene plus one (1) year of field experience. The individual must provide a copy of his/her diploma, a certified copy of his/her transcript, and documentation of one (1) year of experience;

[B.] **(II)** Master of science degree in industrial hygiene. The individual must provide a copy of his/her diploma and a certified copy of his/her transcript;

[C.] **(III)** Certification as an industrial hygienist as designated by the American Board of Industrial Hygiene. The individual must provide a copy of his/her certificate and a certified copy of his/her transcript, if applicable;

[D.] **(IV)** Three (3) years of practical industrial hygiene field experience including significant asbestos air monitoring and completion of a forty (40)-hour asbestos course including air monitoring instruction. At least fifty percent (50%) of the three (3)-year period must have been on projects where a degreed or certified industrial hygienist or a Missouri Certified asbestos air sampling professional was involved. The individual must provide to the department written reference by the industrial hygienist or the asbestos air

sampling professional stating the individual's performance of monitoring was acceptable and that the individual is capable of fulfilling the responsibilities associated with certification as an asbestos air sampling professional. The individual must also provide documentation of his/her experience and a copy of his/her asbestos course certificate; or

[E.] **(V)** Other qualifications including but not limited to an American Board of Industrial Hygiene accepted degree or a health/safety related degree combined with related experience. The individual must provide a copy of his/her diploma and/or certification, a certified copy of his/her transcript, and letters necessary to verify experience.

[2.] **B.** An asbestos air sampling technician is an individual who has been trained by an air sampling professional to do air monitoring and who conducts air monitoring of asbestos abatement projects. Air sampling technicians need not be certified but are required to pass a training course and have proof of passage of the course at the site along with photo identification. This course shall include:

[A.] **(I)** Air monitoring equipment and supplies;

[B.] **(II)** Experience with pump calibration and location;

[C.] **(III)** Record keeping of air monitoring data for asbestos abatement projects;

[D.] **(IV)** Applicable asbestos regulations;

[E.] **(V)** Visual inspection for final clearance sampling; and

[F.] **(VI)** A minimum of sixteen (16) hours of air monitoring field equipment training by a certified air sampling professional;

[3.] **C.** An *[AHERA]* asbestos inspector is an individual who*[, under AHERA,]* collects and assimilates information used to determine the presence and condition of asbestos-containing material in a building or other air contaminant source. An *[AHERA]* asbestos inspector must hold a diploma from a fully-approved EPA or Missouri-accredited AHERA inspector course and a high school diploma or its equivalent;

[4.] **D.** An AHERA asbestos management planner is an individual who, under AHERA, reviews the results of inspections, reinspections or assessments and writes recommendations for appropriate response actions. An AHERA asbestos management planner must hold diplomas from a fully-approved EPA or Missouri-accredited AHERA inspector course and a fully approved EPA or Missouri-accredited management planner course. The individual must also hold a high school diploma or its equivalent;

[5.] **E.** An *[AHERA]* abatement project designer is an individual who designs or plans *[AHERA]* asbestos abatement. An *[AHERA]* abatement project designer must hold a diploma from a fully-approved EPA or Missouri-accredited project designer course, must have an engineering or industrial hygiene degree, and must have working knowledge of heating, ventilation and air conditioning systems or an *[AHERA]* abatement project designer must hold a high school diploma or its equivalent, must have a diploma from a fully-approved EPA or Missouri-accredited project designer course, and must have at least four (4) years experience in building design, heating, ventilation and air conditioning systems. The department may require individuals with professional degrees for complex asbestos abatement projects;

[6.] **F.** An asbestos abatement supervisor is an individual who directs, controls or supervises others in asbestos abatement projects. An asbestos abatement supervisor shall hold a diploma from a fully-approved EPA or Missouri-accredited AHERA contractor/supervisor course and have one (1) year full-time prior experience in asbestos abatement work or in general construction work; and

[7.] **G.** An asbestos abatement worker is an individual who engages in asbestos abatement projects. An asbestos abatement worker shall hold a diploma from a fully-approved EPA or Missouri-accredited AHERA worker training course.

*[(D)]***(B)** Recertification.

1. All inspectors, management planners, abatement project designers, supervisors and workers shall pass a *[fully-approved EPA or]* Missouri-accredited annual AHERA refresher course and examination in their specialty area. The refresher course must be specific to the individual's initial certification and must meet the requirements of the EPA's AHERA Model Accreditation Plan 40 CFR part 763.

2. In the case of significant changes in Missouri statutes or rules the department will *[revise]* **require individuals to retake a revised version of** the Missouri asbestos examination **prior to being recertified**.

*[(E)]***(C)** Certification/**Recertification** Fees. The department shall assess—

1. A seventy-five dollar ($75) application fee for each individual applying for certification except for asbestos abatement workers;

2. A twenty-five dollar ($25) application fee for each asbestos abatement worker;

3. No application fees for asbestos air sampling technicians;

4. A twenty-five dollar ($25) fee for each *[certification]* **Missouri asbestos** examination; and

5. A five dollar ($5) renewal fee for each renewal certificate.

[(F) The department shall issue a certificate to each individual who meets the requirements for the job category. The certificate number shall start with seven (7), followed by three (3) spaces for the number of the training provider, the date of the course, MO for Missouri, the initial for the specialty area, and a unique number for the student. An example of a certificate number is as follows: 7-DOE-01189OMOWR/001.]

[(4)] **(D)** Accreditation of Training Programs. To be a training provider for the purposes of this rule, a person shall apply for accreditation to the department and comply with EPA's AHERA Model Accreditation Plan 40 CFR part 763, Appendix C, subpart E. Business entities that are determined by the department to fall under subsection *[(2)(C)]***(3)(E)** of this rule are exempt from this section.

[(A)] **1.** Training providers shall apply for approval of a training course(s) as provided in section 643.228, RSMo, on the **department-supplied** Asbestos Training Course Accreditation form *[found in section (6) of this rule]*. **After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period.**

[1.] **A.** In addition to the written application, the training provider shall present each initial course for the department to audit. The department may deny accreditation of a course if the applicant fails to provide information required within sixty (60) days of receipt of written notice that the application is deficient. All training providers must apply for reaccreditation biennially.

[2.] **B.** Training providers must submit documentation that their courses meet the criteria set forth in this rule. Out-of-state providers must submit documentation of biennial audit by an accrediting agency with a written verification that Missouri rules are addressed in the audited course.

[3.] **C.** Providers must pay an accreditation fee of one thousand dollars ($1,000) per course category prior to issuance or renewal of an accreditation. No person shall pay more than three thousand dollars ($3,000) for all course categories for which accreditation is requested at the same time.

[(B)] **2.** At least two (2) weeks prior to the course starting date, training providers shall notify the department of their intent to offer initial training and refresher courses. The notification shall include the course title, starting date, the location at which the course will take place and a list of the course instructors.

[(C)] **3.** All training courses shall have a ratio of students to instructors in hands-on demonstrations that shall not exceed ten-to-one (10:1).

[(D)] **4.** Instructor *[Q]***q**ualifications.

A. An individual must be Missouri-certified in a specialty area before they will be allowed to teach in that specialty area, except that instructors certified as supervisors may also instruct a worker course.

[1.] **B.** An individual with experience and education in industrial hygiene shall teach the sections of the training courses concerning the performance and evaluation of air monitoring programs and the design and implementation of respiratory protection programs. The department does not require that the instructor hold a degree in industrial hygiene, but the individual must provide documentation and written explanation of experience and training.

[2.] **C.** An individual who is a Missouri-certified supervisor, and who has sufficient training and work experience to effectively present the assigned subject matter, shall teach the hands-on training sections of all courses.

[3.] **D.** An individual who teaches the portions of the project designer's course involving heating, ventilation and air conditioning (HVAC) systems, must be a licensed architect, a licensed engineer or must provide documentation of training and at least five (5) years' experience in the field.

[(F)] **5.** The course provider must administer and monitor all course examinations. The course provider assumes responsibility for the security of exam contents and shall ensure that the participant passes the exam on his/her own merit. Minimum security measures for the written exams include ample space between participants, absence of written materials other than the examination and supervision of the exam by course provider.

[(G)] **6.** When the provider offers training on short notice, the training provider shall notify the department as soon as possible but no later than two (2) days prior to commencement of that training.

[(H)] **7.** When the provider cancels the course, the training provider should notify the department at the same time s/he notifies course participants, and shall follow up with written notification.

[(I)] **8.** When rules, policies or procedures change, the training provider must update the initial and refresher courses. The training provider must notify the department as soon as s/he makes the changes.

[(J)] **9.** The department may withdraw accreditation from providers who fail to accurately portray their Missouri accreditation in advertisements, who fail to ensure security of examinations, who fail to ensure that each student passes the exam on his/her own merit, or who issue improper certificates.

[(K)] **10.** Training course providers must notify the department of any changes in training course content or instructors. Training course providers must submit resumés of all new instructors to the department as soon as substitutions or additions are made.

[(L)] **11.** The department may revoke or suspend accreditation of any course subject to this rule if alterations in the course cause it to fail the department's accreditation criteria.

[(M)] **12.** Training providers shall have thirty (30) days to correct identified deficiencies in training course(s) before the department revokes accreditation.

[(5)] **(E)** Business Exemptions. **The department may exempt a person from registration, certification and certain notification requirements provided the person conducts asbestos abatement projects solely at the person's own place(s) of business as part of normal operations in the facility and the person is also subject to the requirements and applicable standards of the EPA and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.1101. The person shall submit an application for exemption to the department on the department-supplied form. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. This exemption shall not apply to asbestos abatement contractors, to those subject to the requirements of AHERA and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child daycare centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels and theaters. The department shall review the exemption application within one hundred eighty (180) days. State-exempted business entities shall comply with all federal air sampling requirements for planned renovation operations.**

[(A)] **1.** Training *[C]*course *[R]*requirements.

[1.] **A.** The person shall fill out *[a]* **the department-supplied** form *[found in section (6)]* describing training provided to employees and an explanation of how the training meets the applicable OSHA and EPA standards. **After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period.**

[2.] **B.** The person shall notify the department two (2) weeks before the person conducts training programs. This notification shall include the course title, start-up date, location and course instructor(s).

[3.] **C.** If the person cancels the course, the person shall notify the department at the same time the person notifies course participants. The person shall follow up with written notification to the department.

[4.] **D.** When regulations, policies or procedures change, the person must update the initial and refresher courses. The person must notify the department as soon as the person makes the changes.

[5.] **E.** When the person conducts hands-on training, the ratio of students to instructors shall not exceed ten-to-one (10:1).

[6.] **F.** The person must allow representative(s) of the department to attend the training course for purposes of determining compliance with this rule.

[7.] **G.** Exempted persons shall submit to the director changes in curricula, instructors and other significant revisions to the training program as they occur. The person must submit resumés of all new instructors to the department as soon as substitutions or additions are made.

[8.] **H.** The department may revoke or suspend an exemption if on-site inspection indicates that the training fails the exemption requirements. These include, but are not limited to, a decrease in course length, a change in course content or use of different instructors than those indicated in the application. The department, in writing, shall notify the person responsible for the training of deficiencies. The person shall have thirty (30) days to correct the deficiencies before the department issues final written notice of exemption withdrawal.

[(B)] **2.** If the department finds an exemption application deficient, the person has sixty (60) days to correct the deficiencies. If, within sixty (60) days, the person fails to provide the department with the required information, the department may deny approval of the exemption.

[(C)] **3.** The person shall submit a fee of two hundred *[and]* fifty dollars ($250) with the application for exemption. This is a nonrefundable one (1)-time fee.

[(6) Appendices.
(A) Appendix A. Official Forms.
1. Certification.
2. Certification renewal.
3. Accreditation.
4. Business exemption.]

(4) Reporting and Record Keeping. ***(Not Applicable)***

(5) Test Methods. ***(Not Applicable)***

*AUTHORITY: section 643.050, RSMo [1994] **2000**. Original rule filed Dec. 14, 1992, effective Sept. 9, 1993. Emergency amendment filed July 26, 1994, effective Aug. 5, 1994, expired Dec. 2, 1994. Emergency amendment filed Nov. 15, 1994, effective Dec. 2, 1994, expired March 31, 1995. Amended: Filed Aug. 1, 1994, effective March 30, 1995. Amended: Filed Jan. 12, 2004.*

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., March 25, 2004. The public hearing will be held at the Days Inn, 2345 Marvel Road, Nevada, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., April 1, 2004. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 13—Peace Officer Licenses

PROPOSED AMENDMENT

11 CSR 75-13.030 Procedure to Upgrade Peace Officer License Classification. The department is amending section (2), by deleting the word upgrade.

PURPOSE: This amendment removes the word "upgrade" in section (2). There is no longer an upgrade application.

(2) An applicant shall submit to the Director a peace officer license *[upgrade]* application.

*AUTHORITY: section 590.030.4, RSMo Supp. [2001] **2003**. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed Jan. 15, 2004.*

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 Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 13—Peace Officer Licenses

PROPOSED AMENDMENT

11 CSR 75-13.060 Veteran Peace Officer Point Scale. The department is amending paragraphs (5)(A)3. and 4. to reflect the correct number of hours.

PURPOSE: This amendment updates the hours for basic training in paragraphs (5)(A)3. and 4. because the hours for a Class B license has changed from 470 hours to 480 hours.

(5) The Director shall score each applicant according to the following point system.

(A) For basic training:

1. 120 to 179 hours, 1 point;
2. 180 to 299 hours, 3 points;
3. 300 to *[469]* **479** hours, 5 points;
4. *[470]* **480** to 599 hours, 8 points;
5. 600 hours or more, 14 points.

*AUTHORITY: section 590.030.3, RSMo Supp. [2001] **2003**. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed Jan. 15, 2004.*

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 Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 14—Basic Training Centers

PROPOSED AMENDMENT

11 CSR 75-14.030 Standard Basic Training Curricula and Objectives. The department is amending subsections (1)(F), (H) and (I) by changing the hour amount. The incorporated material is being updated also.

PURPOSE: This amendment changes the required amount of hours for a Class B license in subsection (1)(F). Four hundred eighty hours are now required for a Class B license because the required amount of hours in Defensive Tactics changed. This amendment also changes the required amount of hours for a Class R and Class S license in subsections (1)(H) and (I), for the extra hours required in the core curricula area of Defensive Tactics.

(1) The Peace Officer Standards and Training (POST) Commission shall develop a mandatory basic training curriculum for each class of peace officer license. The minimum number of training hours for each class of peace officer license shall be as follows:

(F) Class B. *[Four hundred seventy (470)]* **Four hundred eighty (480)** hours;

(H) Class R. *[Two hundred eighty-one (281)]* **Two hundred ninety-seven (297)** hours;

(I) Class S. *[Four hundred seventy (470)]* **Four hundred eighty (480)** hours.

*AUTHORITY: section 590.030.1, RSMo Supp. [2002] **2003**. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed April 25, 2003, effective Oct. 30, 2003. Amended: Filed Jan. 15, 2004.*

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 Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 16—Peace Officer Standards and Training Commission Fund

PROPOSED AMENDMENT

11 CSR 75-16.010 Peace Officer Standards and Training Commission Fund. The department is amending subsection (2)(A).

PURPOSE: This amendment will allow distribution of the Peace Officer Standards and Training Commission Fund to be extended one month.

(2) The Director shall distribute monies from the POST Fund to participating counties and municipalities as follows:

(A) Distribution shall be made annually on or before *[September]* **October** 1 based on contributions made during the preceding state fiscal year;

*AUTHORITY: sections 590.120, RSMo Supp. [2001] **2003** and 590.178, RSMo 2000. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed Jan. 15, 2004.*

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 Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 80—Payment of Residential Facilities

PROPOSED RULE

13 CSR 35-80.010 Residential Foster Care Maintenance Methodology

PURPOSE: This rule establishes a methodology for determination of the costs associated with the provision of foster care maintenance based on the statutory criteria contained in 42 U.S.C. 672/675(4)(A) and related rates for residential care agencies.

(1) Objectives. This rule establishes a methodology for determination of the costs associated with the provision of foster care maintenance based on the statutory criteria contained in 42 U.S.C. 672/675(4)(A) and related rates for residential care agencies.

(2) General Principles.

(A) Four (4) child-specific foster care maintenance rates shall be determined in accordance with section (3) Residential Foster Care Maintenance Rate Methodology.

(B) Residential child caring agencies will be required to complete a cost report detailing their most recent fiscal year's operating costs. Providers must also submit audited financial statements with their report for verification purposes.

(C) Foster care maintenance costs shall be obtained from residential care providers using the standard cost report completed in accordance with applicable instructions.

1. In order to be considered "Foster Care Maintenance," agency costs shall first meet the general definition as ascribed within federal regulation, accompanying clarification or audit finding and be allowable as defined within OMB Circular A-122, OMB Circular A-87, and the Child Welfare Policy Manual.

2. Reported agency costs shall be reasonable in nature as defined with OMB Circular A-122 and OMB Circular A-87.

3. Cost must be appropriately allocated to all benefiting programs or services offered by an agency.

4. The calculation of the foster care maintenance rate must consider any applicable credits or payments received either directly from federal or state funding sources or indirectly via contracted services or reimbursement.

(D) Statewide foster care maintenance costs shall be rebased every three (3) years.

(E) The Department of Social Services (DSS) will submit budget items for the General Assembly's consideration to revise rates in accordance with the results of the rate setting methodology. Rates will be adjusted in accordance with the Truly Agreed and Finally Passed appropriation by the General Assembly subject to veto by the Governor.

(3) Residential Foster Care Maintenance Rate Methodology. The foster care maintenance rate will contain two (2) separate components. A statewide average room and board component and a child-specific daily supervision component.

(A) Room and Board Component.

1. Because the general cost of providing room and board will not vary based on a child's identified level of care or other programmatic considerations, a core, statewide, board rate will be calculated based on the average cost of all agencies providing such services.

2. The room and board component will be calculated by dividing the total net applicable room and board related costs for all agencies by the statewide total days of residential child caring services provided.

(B) Daily Supervision Component.

1. The daily supervision component will vary based upon required staffing ratios as defined within the *Missouri Code of State Regulations* "Rules of Department of Social Services, Division 40—Division of Family Services, Chapter 71—Licensing Rules for Residential Care Agencies." This document establishes basic expectations for staff/child ratios within residential care agencies as identified within Exhibit 1, Residential Child Care Agency Staff/Child Ratios.

Exhibit 1

Category	Age	Child Awake	Child Asleep
Basic Core Requirements	Birth – 6 6 – 8 8 – 21 7 – 21 7 – 21	1:4 1:6 1:10	1:6 (staff awake) 1:12 (staff asleep) 1:20 (staff awake)
Infant/Toddler /Preschool	Birth – 6	1:4	1:6 (staff awake)
Residential Treatment (DFS Levels II & III)	6 7 8 – 21	1:4 1:6 1:8	1:6 (staff awake) 1:6 (staff awake) 1:16 (staff awake)
Intensive Residential Care (DFS Level IV)	6 7–21	1:4 1:6	1:6 (staff awake) 1:6 (staff awake)

2. Agencies will report days by type of service provided. To determine the child-specific daily supervision portion of the rate, agencies will be classified into one of four categories based upon the average level of supervision required by children in their care. This classification will allow for adequate differentiation of cost incurred in the provision of daily supervision across each category and permit calculation of the related rate component. After categorization of agencies into each of the defined categories, the daily supervision rate will be calculated by dividing the total net applicable supervision costs for all agencies within a category by the total days of child caring services provided by those agencies.

A. Days of service provided under the basic core requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following categories:

(I) Emergency shelter;

(II) REHAB—RT emergency crisis intervention;

(III) Maternity care; and

(IV) Maternity care with infant.

B. Days of service provided under the infant/toddler/preschool requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

(I) Infant care; and

(II) Toddler care.

C. Days of service provided under residential treatment requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

(I) Moderate need (Level II);

(II) REHAB—RT moderate need (Level II);

(III) Severe need (Level III);

(IV) REHAB—RT severe need (Level III); and

(V) Family focused residential services.

D. Days of services provided under intensive residential care requirements regardless of payor source. Examples of services under this category reimbursed by DSS include the following contract categories:

(I) Intensive need (Level IV); and

(II) REHAB—RT intensive need (Level IV).

(4) Inflation/Trend Factor Adjustments.

(A) For the purpose of establishing base year costs, the room and board component will be adjusted based on the change in the USDA Expenditures on Children by Families. For State Fiscal Year 2004, this amount would be two and seventy-five hundredths percent (2.75%). The child-specific daily supervision component will be adjusted by the percentage COLA (cost of living adjustment) provided to state employees. For State Fiscal Year 2004, this amount would be one and thirty-five hundredths percent (1.35%).

(B) For the purpose of interim inflation/trend factor adjustments until rates are rebased, the department will submit budget items for the General Assembly's consideration to revise rates in accordance with the results of the rate setting methodology. Rates will be adjusted in accordance with the Truly Agreed and Finally Passed appropriation by the General Assembly subject to veto by the Governor.

AUTHORITY: section 207.020, RSMo 2000. Emergency rule filed Jan. 16, 2004, effective Jan. 26, 2004, expires July 23, 2004. Original rule filed Jan. 16, 2004.

PUBLIC COST: This proposed rule will have an impact greater than five hundred dollars ($500) on public entities. A fiscal note is attached.

PRIVATE COST: This proposed rule 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 rule with the Children's Division, 615 Howerton Court, Jefferson City, MO 65102. 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. RULE NUMBER

Rule Number and Name:	13 CSR 35-80.010 – Residential Foster Care Maintenance Methodology
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Dept. of Social Services, Children's Division	$165,000

III. WORKSHEET

IV. ASSUMPTIONS

The Department of Social Services went through a bid process and awarded a contract for development, training and implementation of the Residential Foster Care Maintenance Methodology. The contracted price for this service is $165,000.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 80—Payment of Residential Facilities

PROPOSED RULE

13 CSR 35-80.020 Residential Care Agency Cost Reporting System

PURPOSE: This rule establishes a uniform cost reporting system to be used in reporting actual cost incurred in the operation of residential care agencies. The uniform cost reporting system provides the data necessary for the determination of the costs and rates associated with the provision of foster care maintenance.

(1) Objectives. This rule establishes a uniform cost reporting system to be used in reporting actual cost incurred in the operation of residential care agencies. The Residential Care Agency Cost Report included is one part of the two (2)-part process set forth by the State of Missouri Department of Social Services in fulfilling the requirements for identifying foster care maintenance related expenditures within residential care agencies. The other part of the process involves participation in either a time study or random moment sample to determine the portion of time direct care staff spend performing foster care maintenance related activities.

(2) General Cost Reporting Principles. Residential Care Agency Cost Report line specific reporting instructions are included as an appendix to this rule included herein. The cost report must include all costs incurred by the residential care agency. Costs included in the report can be grouped/categorized in several different ways and are subject to certain guidelines or requirements:

(A) Costs directly attributable to a function or activity may be charged in their entirety to that function or activity. Example: A staff person working in a single function or activity may have one hundred percent (100%) of their time charged to that function or activity.

(B) Costs not attributable to a single function or activity must be distributed based on an appropriate allocation methodology. Example: A staff person who spends a portion of their time working for several different functions or activities should have their related cost allocated across each program by some substantially documented methodology.

(C) Some staff will have their associated cost allocated through the application of activity-based time study or random moment sample (RMS) results: All agency staff responsible for the provision of direct daily supervision of children on a regular basis will be included in the activity based allocation time study process. Those staff that should NOT participate in the time study include:

1. Agency administration. It should be noted that, in some agencies, an agency administrator might perform a significant amount of direct care of residents. In these instances, the individual should participate in the time study process.

2. Staff involved in the provision of a single function such as the provision of counseling or therapy; medical service; food preparation; cleaning; or facility maintenance.

(D) Costs are either considered allowable or unallowable, based on federal definitions and guidelines, for inclusion in the calculation of the residential foster care maintenance rate.

(E) Costs must be net of applicable credits when determining the portion attributable to the residential foster care maintenance rate. Any credits to reported costs will be applied as a function of the rate calculation process. Examples of applicable credits may include, but are not limited to:

1. IV-E training payments;

2. USDA reimbursements;

3. Payments from school districts or the Department of Elementary and Secondary Education for the provision of educational services;

4. Reimbursements from the Department of Social Services (DSS), the Department of Mental Health (DMH) or other third party payors that offset reported costs such as, including but not limited to:

A. Reimbursements for the development of the initial treatment plan, quarterly updates to the initial treatment plan and other treatment planning services reimbursed by others;

B. Reimbursements for day treatment; and

C. Reimbursements for counseling or other therapeutic services.

5. Reimbursements for medical and behavioral health services covered by the state's Medicaid State Plan (either directly or indirectly through MC+ Plans) including, but not limited to:

A. Physician's services;

B. Pharmacy-related services;

C. Psychology and counseling services; and

D. Targeted case management.

6. Other reimbursement from Medicaid or the MC+ plans for the provision of other medically necessary services.

7. Reimbursements for medical and behavioral health services covered by other third party payors.

(3) Explanation of Common Terms. To facilitate the completion of the cost report cost-related terms used throughout the instructions are defined, and a brief explanation of their application is given.

(A) Reported Costs. For a cost to be included on the cost report it must meet the following general criteria:

1. Be reasonable for the performance of the activities of the agency;

2. Be accorded consistent treatment; and

3. Be adequately documented.

(B) Reasonable. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. Reasonable costs are further defined in OMB Circular OMB A-87.

(C) Allowable. Allowable costs are those costs that are generally considered eligible for federal reimbursement based on the cost principles established in federal transmittals such as OMB Circular A-87 or A-122. Appendix A gives a list of items that are generally considered to be allowable. This is not an all-inclusive list and other costs not listed may be allowable. Although a cost may be considered ineligible for inclusion in the foster care maintenance rate based upon federal rules, regulations, or guidelines. (See "Eligible Cost")

(D) Unallowable. A cost is unallowable for reimbursement under, or claim to, any federal program based on established cost principles. Appendix A includes a list of items considered to be unallowable. All costs should be included on the cost report. Costs that are not allowable based on the federal guidelines should be placed in the "Unallowable" column on the cost report.

(E) Administrative Cost. Refers to those costs related to general operation and management of an agency or to those costs incurred in the support of multiple agency functions or programs. Examples of administrative costs include, but are not limited to:

1. Executive direction and supervision;

2. Bookkeeping and fiscal management;

3. Secretarial and clerical support;

4. Physical plant management;

5. Staff training (unless clearly related to a primary activity area); and

6. Related occupancy costs.

(F) Allocation Methodology. Documentation and/or description of the procedures/methods used to distribute costs to programs and to the direct service categories on the cost report. In general, costs should be allocated across the cost report's direct service categories/activities if there is a clear delineation and documentation for

the allocation. Documentation must be maintained recording the methodology and detailing the specific calculation used to distribute costs. The use of estimates not based on a statistically sound methodology is unacceptable.

(G) Applicable Credits. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the federal government either as a cost reduction or cash refund, as appropriate. In some instances, the amounts received from the federal government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec. 24 of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

(H) Random Moment Sample (RMS)/Time Study: A time study or RMS is a statistically based process to gather information from direct service child care staff members on how they spend their time. The information collected will be used for distributing the cost of direct staff among various activities. The results of this study are used to determine the portion of the direct service providers cost related to foster care maintenance.

(I) Eligible Cost. For the purpose of determining the residential foster care maintenance rate, only those costs incurred in the provision of the following items/activities will be considered. The federal Department of Health and Human Services, Administration for Children and Families has published guidance in this regard in the *Child Welfare Policy Manual* Section 8.3.B.1. In general, this includes the cost of, and the cost of providing, the following:

1. Food;
2. Clothing;
3. Shelter;
4. Daily supervision;
5. School supplies;
6. Personal incidentals;
7. Liability insurance with respect to the child care;
8. Reasonable travel for the child for visitation as defined within the *Child Welfare Policy Manual*; and
9. Related administrative costs.

(4) Entities Covered by the Cost Report. The Missouri Residential Care Agency Cost Report is to be used in reporting actual costs incurred in the operation of residential care licensed under the Department of Social Services, Division 40—Division of Family Services, Chapter 71—Licensing Rules for Residential Care Agencies. Each cost report establishes the portion of that agency's cost attributable to the provision of foster care maintenance. Information from all reporting agencies will be used, in aggregate, to establish foster care maintenance rates for each of the following four (4) categories based upon Missouri licensing rules for residential care agencies:

(A) Basic Core Requirements;
(B) Infant/Toddler/Preschool;
(C) Residential treatment (DFS Levels II and III); and
(D) Intensive Residential Care (DFS Level IV).

(5) Reporting Period and Filing Requirements.

(A) The cost report must reflect actual audited costs incurred in the provision of residential child care and related services by an agency for the most recent fiscal year.

(B) An initial cost report for the twelve (12) months which ended December 31, 2003 must be submitted by March 31, 2004.

(C) An annual cost report for fiscal years ending after December 31, 2003 must be submitted within ninety (90) days of the close of the fiscal year.

(D) Audited financial statements must be submitted with cost reports.

(6) Record Retention. Records used in support of costs reported on the cost report must be retained for a minimum of three (3) years from the end of the rate year for which the report is applicable. Records include, but are not limited to, financial, programmatic, statistical, recipient records, and supporting documentation. If any litigation, administrative review, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3)-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3)-year period, whichever is later. As part of the residential foster care maintenance rate calculation process, the state and/or its contracted representative may conduct reviews of the financial and programmatic information used as the basis for completion of an agency's cost report. After completion of any such review, a written report will be completed addressing whether reported costs are adequately supported, allocated appropriately, and reasonable in nature. Documentation created while completing the cost report should be maintained recording the compilation of costs included in the report, and any methodologies or calculations used in the allocation of costs.

PUBLISHER'S NOTE: The forms, which are "included herein" as a part of this rule, are published in the emergency rules section of this issue of the ***Missouri Register*** *(29 MoReg 274–301).*

AUTHORITY: section 207.020, RSMo 2000. Emergency rule filed Jan. 16, 2004, effective Jan. 26, 2004, expires July 23, 2004. Original rule filed Jan. 16, 2004.

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

PRIVATE COST: This proposed rule will cost private entities more than five hundred dollars ($500) in the aggregate. A fiscal note is attached.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Children's Division, 615 Howerton Court, Jefferson City, MO 65102. 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. RULE NUMBER

Rule Number and Name:	13 CSR 35-80.020 – Residential Care Agency Reporting System
Type of Rulemaking:	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 proposed 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:
150	Residential Care Agencies	$150,000

III. WORKSHEET

IV. ASSUMPTIONS

This rule will require 150 Residential Care Agencies to file an annual cost report. The estimated $1,000 cost for completion of the report will be considered in rates established for the Residential Care Agencies.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 90—Home Health Program

PROPOSED AMENDMENT

13 CSR 70-90.010 Home Health-Care Services. The Department of Social Services is amending section (7).

PURPOSE: This amendment will allow home health agencies to submit their claims electronically in addition to paper submittal and incorporates reference to portions of the home health provider manual for the criteria for development of required documentation.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(7) To be reimbursed by Medicaid, all home health services and supplies must be provided in accordance with a written plan of care authorized by the recipient's physician. *[The plan of care must document the need for services and specify the amount, frequency and duration of need for each service and item of supply to be delivered. It also must contain a physician's signed and dated certification of the patient's need for home health services. This certification shall be for a specified period of time not to exceed two (2) calendar months or sixty-two (62) days. A plan of care for any certification period must be signed and dated by the attending physician either within the certification dates or no earlier than ten (10) days before the beginning of the certification period. All plans of care must be signed and dated by the physician before a claim is submitted for payment. All changes to the services ordered must be documented by an interim order signed by the physician and submitted with the claim for services and the plan of care.]* **The criteria for the development of the written plan of care and changes to the written plan of care through interim order(s) are described in Sections 13.14C, 13.14D, 14.2, 14.3, 14.4, and 14.5 of the home health provider manual, which are incorporated by reference in this rule and available through the Department of Social Services, Division of Medical Services website at www.dss.mo.gov/dms. Paper copies of plans of care and interim orders must be submitted with paper claims. Information from the plan of care and interim order(s) must be included in the appropriate data fields when the provider is submitting an electronic claim. Plans of care and interim order(s) are to be maintained in the client record.**

*AUTHORITY: sections 208.153[, RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] **2000**. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 15, 2004.*

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 Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 91—Personal Care Program

PROPOSED AMENDMENT

13 CSR 70-91.010 Personal Care Program. The Division of Medical Services is amending sections (1), (3), (4), (5), (6), and (7).

PURPOSE: This proposed amendment replaces several references to the Division of Aging with references to the Department of Health and Senior Services; the amendment addresses the name changes of the Department of Health and Senior Services and the Division of Senior Services and Regulation and the transfer of the former Division of Aging to the Department of Health and Senior Services; this amendment adds two (2) training exclusions; this amendment changes the definition of a unit of service as a result of implementation of standardized code sets required by the Health Insurance Portability and Accountability Act of 1996.

(1) Persons Eligible for Personal Care Services. Any person who is determined eligible by the *[Division of Family Services]* **Family Support Division** for Title XIX benefits and is found to be in medical need of personal care services as an alternative to institutional care. Persons must be assessed, approved and case managed by *[Division of Aging]* **the Department of Health and Senior Services or its designee** as described in this rule, to be eligible for personal care services. Eligibility procedures for personal care services are as follows:

(A) *[Recommendations]* **Requirements** for Personal Care Services.

1. The recipient must need an institutional level of care which is defined as twenty-four (24)-hour institutional care on an inpatient or residential basis in a hospital or nursing facility (NF) and approved by the *[Division of Aging]* **Department of Health and Senior Services or its designee**.

2. Level of care will be determined by *[Division of Aging]* **the Department of Health and Senior Services or its designee**.

3. The recipient must agree to an in-home assessment *[as]* performed by *[Division of Aging staff]* **the Department of Health and Senior Services or its designee** of his/her physical, social and functional ability to benefit from personal care services;

(B) Obtaining Personal Care Services.

1. If the recipient meets all of the eligibility and assessment criteria, the *[Division of Aging staff]* **Department of Health and Senior Services or its designee** will develop an initial personal care plan to authorize personal care services on a scheduled basis to eligible recipients in their own homes or licensed Residential Care Facility I or II as an alternative to twenty-four (24)-hour institutional care on an inpatient or residential basis in a hospital or NF. The *[Division of Aging]* **Department of Health and Senior Services or its designee** will forward a copy of the personal care plan to the client's attending physician and to the personal care provider who will be delivering care. Upon the receipt of the personal care plan, the provider of care must initiate care within seven (7) days of receipt and the physician must register any comments or requests for changes, within thirty (30) days of receipt or the personal care plan

will stand as written by the *[Division of Aging]* **Department of Health and Senior Services or its designee**.

2. The personal care plan will be developed in collaboration with and signed by the recipient. The plan will include a list of tasks to be performed, weekly schedule of service delivery, and the maximum number of units of service for which the recipient is eligible per month.

3. A new in-home assessment and personal care plan may be completed by the *[Division of Aging]* **Department of Health and Senior Services or its designee** as needed to redetermine need for personal care services or to adjust the monthly amount of authorized units. In collaboration with the service recipient, the service agency may develop a new or revised set of personal care tasks, and weekly schedule of service delivery which shall be forwarded to the *[Division of Aging]* **Department of Health and Senior Services or its designee**. The service provider must always have, and provide services in accordance with, a current service plan. Only the *[Division of Aging]* **Department of Health and Senior Services or its designee**, not the service provider, may increase the maximum number of units for which the individual is eligible per month. Any service plan developed in accordance with paragraphs (1)(B)2. and 3. is a state approved service plan.

4. The recipient will be informed of the option of services available to him/her in accordance with the level-of-care determination and assessment findings;

(C) Discontinuing Personal Care Services. The following policies and procedures for discontinuing personal care services shall be followed:

1. Services for a client shall be discontinued by a provider agency under the following circumstances:

A. When the client's case is closed by the *[state agency]* **Department of Health and Senior Services or its designee**;

B. When the provider learns of circumstances that require the closure of a case for reasons including, but not limited to: death; entry into a nursing home; or the client no longer needs services. In these circumstances, the provider shall notify the *[state agency case manager]* **Department of Health and Senior Services or its designee** in writing and request that the client's services be discontinued;

C. When the client is noncompliant with the agreed upon plan of care. Noncompliance requires persistent actions by the client or family which negate the services provided by the agency. After all alternatives have been explored and exhausted, the provider shall notify the *[state agency case manager]* **Department of Health and Senior Services or its designee** in writing of the noncompliant acts and request that the client's services be discontinued;

D. When the client or client's family threatens or abuses the personal care aide or other agency staff to the point where the staff's welfare is in jeopardy and corrective action has failed. The provider shall notify the *[state agency case manager]* **Department of Health and Senior Services or its designee** of the threatening or abusive acts and may request that the service authorization be discontinued;

E. When a provider is unable to continue to meet the maintenance needs of a client. In these circumstances, the provider shall notify the *[state agency case manager]* **Department of Health and Senior Services or its designee** in writing and request that the client's services be discontinued; or

F. When a provider is unable to continue to meet the maintenance needs of a client whose plan of care requires advanced personal care services. In these circumstances the provider shall provide written notice of discharge to the client or client's family and the *[state agency case manager]* **Department of Health and Senior Services or its designee** at least twenty-one (21) days prior to the date of discharge. During this twenty-one (21)-day period, the *[state agency case manager]* **Department of Health and Senior Services or its designee** shall assist in making appropriate arrangements with the client for transfer to another agency, institutional placement, or other appropriate care. Regardless of circumstances, the personal care provider must continue to provide care in accordance with the plan of care for these twenty-one (21) days or until alternate arrangements can be made by the *[case manager]* **Department of Health and Senior Services or its designee**, whichever comes first; and

2. Discontinuing services for a client still in need of assistance shall occur only after appropriate conferences with the *[state agency case manager]* **Department of Health and Senior Services or its designee**, client and client's family.

(3) Criteria for Providers of Personal Care Services.

(A) The provider of personal care services must have a valid participation agreement with the state Medicaid agency. The issuance of the participation agreement is dependent upon the Department of Social Services' acceptance of an application for enrollment. The provider must submit to the Department of *[Social Services]* **Health and Senior Services**, Division of *[Aging]* **Senior Services and Regulation**, the written proposal required to become a Title XX in-home services provider and be approved to provide Title XX in-home services. Once approved to provide Title XX in-home services by the Division of *[Aging]* **Senior Services and Regulation**, the provider will be allowed to execute a Title XIX participation agreement with the Division of Medical Services. Thereafter, a provider is not required to actually accept or deliver services to clients who are authorized for both programs or to clients who are authorized for Title XX services only. For residential care facilities that wish to provide services only to the eligible residents of their own facility, only the verification of a state residential care facility license will be required for the Medicaid enrollment application. Providers must maintain their approval to participate as a Title XX provider, whether or not they actually serve Title XX eligible clients, in order to remain qualified to participate in the Title XIX (Medicaid) Personal Care Program.

(B) The providers must agree to comply with any evaluation conducted by the Department**s** of Social Services **and Health and Senior Services**. *[In circumstances in which t]***T**he Division of *[Aging]* **Senior Services and Regulation may, in accordance with the protective service mandate (Chapter 660, RSMo),** *[has]* take*[n]* action to protect clients from providers who are found to be out of compliance with the requirements of its regulations and of any other regulations applicable to the Personal Care Program, when such noncompliance is determined by the Division of *[Aging]* **Senior Services and Regulation** to create a risk of injury or harm to clients. Evidence of such risk may include: unreliable or inadequate provider documentation of services or training due to falsification or fraud; the provider's failure to deliver services in a reliable and dependable manner; or use of personal care aides who do not meet the minimum training standards of this regulation. Immediate action by the Division of *[Aging]* **Senior Services and Regulation** may include, but is not limited to:

1. Removing the provider from any list of providers, and for clients who request the unsafe and noncompliant provider, informing the clients of the determination of noncompliance after which any informed choice will be honored by the *[Division of Aging]* **Department of Health and Senior Services or its designee**; or

2. Informing current clients served by the provider of the provider's noncompliance and that the Division of *[Aging]* **Senior Services and Regulation** has determined the provider unable to deliver safe care. Such clients will be allowed to choose a different provider from the list maintained by the *[Division of Aging]* **Department of Health and Senior Services or its designee** which will then be immediately authorized to provide service to them.

(D) The provider agency must monitor the overall physical care needs of the service recipient. If the client's condition warrants, contact the client's physician and inform the *[Division of Aging]* **Department of Health and Senior Services or its designee** when additional *[Division of Aging]* case management activities **by the**

Department of Health and Senior Services or its designee are required.

(E) For newly employed aides, the provider agency must, at a minimum, provide twenty (20) hours of orientation training.

1. In calculating these hours, the following requirements shall apply:

A. At least two (2) hours orientation to the provider agency and the agency's protocols for handling emergencies, within thirty (30) days of employment;

B. With eight (8) hours of classroom training being completed prior to client contact;

C. Twelve (12) hours of orientation may be waived with adequate documentation in the employee's records that the aide received similar training during the current or preceding state fiscal year or has been employed as an aide at an in-home or home health agency at least half-time for six (6) months or more within the current or preceding state fiscal year;

D. If an aide is a certified nurse assistant, licensed practical nurse, or registered nurse, the provider agency may waive all orientation training, except the two (2) hours' provider agency orientation, with documentation placed in the aide's personnel record. The documentation shall include the employee's license or certification number current at the time the training was waived.

2. An additional ten (10) hours of in-service training annually are required after the first twelve (12) months of employment. **At least six (6) of the required ten (10) hours shall be classroom instruction. The additional four (4) hours may be via any appropriate training method. The provider may waive the required annual ten (10) hours of in-service training and require only two (2) hours of refresher training annually, when the aide has been employed for three (3) years and has completed thirty (30) hours of in-service training.**

3. Personal care aides employed by an RCF II are exempt from the training requirements defined in paragraphs (3)(E)1. and 2. of this rule if they have completed the training requirements described in subdivisions (9) and (10) of subsection 3 of section 198.073, RSMo *[Supp. 1999]* **2000**.

4. The provider agency shall have written documentation of all basic and in-service training provided which includes, at a minimum, a report of each employee's training in that employee's personnel record. The report shall document the dates of all classroom or on-the-job training, trainer's name, topics, number of hours and location, the date of the first client contact and shall include the aide's signature. If a provider waives any in-service training, the employee's training record shall contain supportive data for the waiver.

(F) The requirements that have been adopted by the Division of *[Aging]* **Senior Services and Regulation** at *[13]* **19** CSR 15-7.021(18)(A) through (R) and (18)(U) through (W) shall apply to all providers of personal care services and advanced personal care services.

(H) The supervisor's responsibilities shall include, at a minimum, the following:

1. Establish, implement, and enforce a policy governing communicable diseases that prohibits provider staff contact with clients when the employee has a communicable condition, including colds or flu. Assure that reporting requirements governing communicable diseases, including hepatitis and tuberculosis, as set by the Missouri Department of Health **and Senior Services** (19 CSR 20-20.020), are carried out;

2. Monitor the provision of services by the personal care worker to assure that services are being delivered in accordance with the personal care plan. This shall be primarily in the form of an at least monthly review and comparison of the worker's records of provided services with the personal care plan. The monitoring reports shall be available for review by the Departments of Social Services **and Health and Senior Services** upon request. Documentation must be kept on clients with a delivery rate of less than eighty percent (80%) of the authorized units of in-home service. For each client with a delivery rate less than eighty percent (80%) of the number of units of in-home services authorized for the time period being reviewed, the number of units of service delivered and *[nondelivered code]* **the reason(s) for nondelivered services** will be sent to the *[Division of Aging regional manager]* **Department of Health and Senior Services** monthly. Discrepancies for these clients concerning the frequency of delivered services and/or the in-home service tasks delivered, **and** the corrective action taken, will be signed and dated by the supervisor and be readily available for monitoring or inspection;

3. Make an on-site visit at least annually to evaluate each personal care worker's performance and the adequacy of the service plan, including review of the plan of care with the recipient. The personal care worker must be present for this evaluation. A written record of the evaluation shall be maintained in the personnel file of the personal care worker. This record must contain, at a minimum, the service recipient's name and address; the date and time of the visit, personal care worker's name and observations of both the personal care worker's performance and the adequacy of the service plan. In addition, the evaluation shall be signed and dated by the supervisor who prepared it and by the personal care worker. If the required evaluation is not performed or not documented, the personal care worker's qualifications to provide the services may be presumed inadequate and all payments made for services by that personal care worker may be recouped. Unless, medically, the recipient's condition supports a visit or all recipients have been visited, a service recipient shall not receive more than one (1) combined on-site supervisory visit and RN on-site visit as specified in paragraph (3)(J)1. per state fiscal year;

4. Approve, in advance, all changes to the plan of care based on supervisory on-site visits, information from the personal care worker, or observation by the RN, or a combination of these. Approval of changes shall be noted and dated in the service recipient's file;

5. Make appropriate recommendations to the *[Division of Aging worker]* **Department of Health and Senior Services or its designee** including **proposed** increase, reduction or termination of services; or need for increased *[Division of Aging]* **Department of Health and Senior Services** case management involvement based on supervisory on-site visits, review of reports, information from the personal care worker, observation by the RN*[,]***;** or a combination of these;

6. Be available for regular case conferences with the *[Division of Aging case manager]* **Department of Health and Senior Services or its designee**; and

7. Assist in orientation and personal care training for personal care workers.

(4) Reimbursement.

(A) Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services.

1. A unit of service is *[one (1) hour]* **fifteen (15) minutes**.

2. Documentation for services delivered by the provider must include the following:

A. The recipient's name and Medicaid number;

B. The date of service;

C. The time spent providing the service which must be documented in one of the following manners:

(I) When personal care aide is providing services to one (1) individual in a private home setting and devotes undivided attention to the care required by that individual, the actual clock time the aide began the services for that visit is the start time, and the actual clock time the aide finished the care for the visit is the stop time; and

(II) When the personal care services are provided in a congregate living setting, such as a Residential Care Facility I and II, when on-site supervision is available and personal care aide staff will divide their time among a number of individuals, the following must be documented: all tasks performed for each recipient by date of services and by staff shifts during each twenty-four (24)-hour period;

D. A description of the service;

E. The name of the personal care aide who provided the service; and

F. For each date of service: the signature of the recipient, or the mark of the recipient witnessed by at least one (1) person, or the signature of another responsible person present in the recipient's home or licensed Residential Care Facility I or II at the time of service. "Responsible person" may include the personal care aide's supervisor, if the supervisor is present in the home at the time of service delivery. The personal care aide may only sign on behalf of the recipient when the recipient is unable to sign and there is no other responsible person present.

3. A provider may not bill time spent in the delivery of service of less than one (1) unit of service for any recipient. However, time spent in the delivery of service of less than one (1) full *[hour]* **unit** for any recipient may be accrued by the provider to establish a unit of service. In no event may time spent in the delivery of service be accrued beyond the last day of the calendar month in which such services were rendered.

4. The fee per unit of service will be based on the determination by the state agency of the reasonable cost of providing the covered services on a statewide basis and within the mandatory maximum payment limitations.

(5) Advanced personal care services are maintenance services provided to a recipient in the individual's home to assist with activities of daily living when this assistance requires devices and procedures related to altered body functions.

(A) Persons Eligible for Advanced Personal Care Services. Any person who is determined eligible for Title XIX benefits from the *[Division of Family Services]* **Family Support Division**, found to be in need of personal care services as an alternative to institutional care as specified in section (1) of this rule, and who requires devices and procedures related to altered body functions is eligible for advanced personal care services.

(B) The following activities constitute advanced personal care services and shall be provided according to the plan of care:

1. Routine personal care of persons with ostomies (including tracheostomies, gastrostomies, colostomies all with well-healed stoma) which includes changing bags, and soap and water hygiene around ostomy site;

2. Personal care of persons with external, indwelling and suprapubic catheters which include*[s]* changing bags, and soap and water hygiene around site;

3. Removal of external catheters, inspect skin and reapply catheter;

4. Administration of prescribed bowel programs, including use of suppositories and sphincter stimulation per protocol and enemas (prepacked only) with clients without contraindicating rectal or intestinal conditions;

5. Application of medicated (prescription) lotions, ointments or dry, aseptic dressings to unbroken skin including stage I *decubitus*;

6. Application of aseptic dressings to superficial skin breaks or abrasions as directed by a licensed nurse;

7. Manual assistance with noninjectable medications as set up by a licensed nurse;

8. Passive range of motion (nonresistive flexion of joint within normal range) delivered in accordance with the care plan; and

9. Use of assistive device for transfers.

(C) Instruction and encouragement to the client in ways to become more self-sufficient in advanced personal care may be a component of all tasks as described above*[,]***; however, instruction and encouragement** in and of themselves *[and]* do not constitute a task.

(D) Advanced Personal Care Plans. Plans of care which include advanced personal care services must be developed by the provider agency RN in collaboration with state agency staff **or its designee**.

(E) Criteria for Providers of Advanced Personal Care Services. Providers of advanced personal care must meet all criteria for providers of personal care services described in section (3) of this rule. Providers must sign an addendum to their Title XIX Personal Care Provider Agreement, and must possess a valid contract with the *[Department of Social Services]* **Department of Health and Senior Services**, Division of *[Aging]* **Senior Services and Regulation** to provide Title XX services including advanced personal care services. Residential care facilities wishing to provide advanced personal care services to the eligible residents of their own facility only may do so with only a signed addendum to their Title XIX Personal Care Provider Agreement.

1. All advanced personal care aides employed by the provider must be an LPN, or a certified nurse assistant; or a competency evaluated home health aide having completed both written and demonstration portions of the test required by the Missouri Department of Health **and Senior Services** and 42 CFR 484.36; or have successfully worked for the provider for a minimum of three (3) consecutive months while working at least fifteen (15) hours per week as an in-home aide that has received personal care training. In addition, advanced personal care aides may not be related to the recipient to whom they provide personal care, as defined in paragraph (3)(K)4. of this rule.

2. Personal care providers are required to provide training to advanced personal care aides, in addition to the preservice training requirements described in section (3) of this rule. The additional training shall consist of eight (8) classroom hours and must be completed prior to the provision of any advanced personal care tasks. Providers may waive this eight (8) hours of training if **one of the following are met:**

A. *[t]***T**he proposed advanced personal care (APC) aide is an LPN or certified nurse assistant (CNA) currently licensed or registered in the state of Missouri*[.]***; or**

B. The proposed advanced personal care aide has previously completed advanced personal care training from a Medicaid or Social Services Block Grant (SSBG) in-home provider agency, and that same personal care aide has been employed at least half-time by a Medicaid or SSBG in-home provider agency as an advanced personal care aide within the prior six (6) months.

3. Advanced personal care aides employed by an RCF II are exempt from the training requirements defined in paragraphs (5)(E)1. and 2. of this rule if they have completed the training requirements described in subdivisions (9) and (10) of subsection 3 of section 198.073, RSMo *[Supp. 1999]* **2000, as amended**.

4. The additional advanced personal care training must include, at a minimum, the following topics:

A. Observation of the client and reporting observation;

B. Application of ointments/lotions to unbroken skin;

C. Manual assistance with oral medications;

D. Prevention of *decubiti*;

E. Bowel routines (rectal suppositories, sphincter stimulation);

F. Enemas;

G. Personal care for persons with ostomies and catheters;

H. Proper cleaning of catheter bags;

I. Positioning and support of the client;

J. Range of motion exercises;

K. Application of nonsterile dressings to superficial skin breaks; and

L. Universal precaution procedures as defined by the Center for Disease Control.

5. Advanced personal care tasks as specified at (5)(B)1. through 9. shall not be assigned to or performed by any advanced personal care aide who is not a licensed nurse until the aide has been fully trained to perform the task, the RN supervisor has personally observed successful execution of the task and the RN supervisor has personally certified this in the aide's personnel record. Only RN visits necessary for task observation and certification in the home may be prior authorized and billed to Medicaid as an authorized nurse

visit, as described in section (6) of this rule. RN task observation and certification in a laboratory, or other non-home setting, may not be billed.

6. The RN supervisor may observe the execution of any of the tasks in a recipient's home. However, tasks specified in paragraphs (5)(B)1., 2., 3., 4., and 9. must be observed in the home, while those specified in paragraphs (5)(B)5., 6., 7., and 8. may be observed in either a home or lab setting.

7. For clients receiving advanced personal care services, it is required that on-site RN visits be conducted at intervals of no greater than six (6) months. During these visits, the RN must conduct and contemporaneously record and certify by his/her signature an individualized valuation of the client's condition and the adequacy of the service plan.

(F) Reimbursement.

1. Payment for advanced personal care services will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services. The fee per unit (*[hour]* **fifteen (15) minutes**) of service will be based on the determination of the state agency of the reasonable cost of providing the covered services on a statewide basis and within the mandatory maximum payment limitations.

2. Conditions for reimbursement.

A. An advanced personal care plan is required. It is to be developed by *[state agency staff]* **the Department of Health and Senior Services or its designee** in cooperation with the provider agency's RN. The provider agency is responsible for obtaining the recipient's physician's approval for the plan.

B. The total monthly payment for advanced personal care services as described in this section and for personal care services as described in sections (1)–(7) of this rule made in behalf of an individual cannot exceed one hundred percent (100%) of the average statewide monthly cost for care in an NF as defined in 13 CSR 70-10.010(4)(Q) (excluding ICFs/MR).

C. The average monthly cost to the state for care in an NF, as defined in 13 CSR 70-10.010(4)(Q) (excluding ICF/MR), will be established in the month of May of each state fiscal year which will become effective on July 1 of the following state fiscal year.

D. Payment will be made on the lower of the established rate per service unit or the provider's billed charges.

3. Rates will be established for personal care services in private homes and in licensed Residential Care Facilities I and II.

(6) Separately Authorized Nurses Visits.

(A) The provisions of paragraphs (3)(J)1.and (3)(H)3. notwithstanding, reimbursement will be made for visits by a nurse to particular clients with special needs, when the visits are prior authorized by the *[Division of Aging]* **Department of Health and Senior Services or its designee**. Providers of personal care services must have the capacity to provide these authorized nurse visits in addition to the nonauthorized nurse visits required by subsection (3)(J); however, any client who receives an authorized nurse visit in one (1) month shall not be included in the population from which the ten percent (10%) sample for that month's supervisory visits is drawn in accordance with paragraph (3)(J)1. Anytime an authorized nurse visit is made, the nurse shall also, in addition to other duties, evaluate the adequacy of the plan of care, including a review of the plan of care with the recipient.

(B) To be eligible to receive the authorized nurse visit, the recipient must—

1. Be determined eligible for Title XIX benefits from the *[Division of Family Services]* **Family Support Division** and found to be in need of personal care services as an alternative to institutional care as specified in section (1) of this rule;

2. Have no other person available who could and would provide the services;

3. Require one (1) or more of the services described in subsection (6)(D) as an alternative to institutionalized care; and

4. Meet any additional criteria of need set forth in subsection (6)(D).

(D) The services of the nurse shall provide increased supervision of the aide, assessment of the client's health and the suitability of the care plan to meet the client's needs. These services also shall include any referral or follow-up action indicated by the nurse's assessment. These services, in addition, must include one (1) or more of the following where appropriate to the needs of the client and authorized by the *[Division of Aging]* **Department of Health and Senior Services or its designee**:

1. The RN may fill a one (1)-week supply of insulin syringes for diabetics who can self-inject the medication but cannot fill their own syringe. This service would include monitoring the patient's continued ability to self-administer the insulin;

2. The RN may set up oral medications in divided daily compartments for a client who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

3. The RN may monitor a recipient's skin condition when a client is at risk of skin breakdown due to immobility, incontinency, or both;

4. The RN may provide nail care for a diabetic or client with other medically contraindicating conditions, if the recipient is unable to perform this task;

5. The RN will be authorized to visit all personal care recipients who also receive advanced personal care as described in section (4) of this rule, on a monthly basis, to evaluate the adequacy of the authorized services to meet the needs and conditions of the client, and to assess the advanced personal care aide's ability to carry out the authorized services;

6. The RN may provide on-the-job training to advanced personal care aides as described in paragraph *[(4)(C)4]* **(3)(E)6**. of this rule;

7. The visits authorized under section (6) except (6)(D)6. may be carried out by an LPN, if under the direction of an RN; or

8. The RN may be authorized to provide other services in other situations, subject to the conditions set forth in subsection (6)(C).

(E) Payment for the authorized nurse visit will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services.

1. A unit of service is the visit. No minimum or maximum time is required to constitute a visit.

2. The maximum number of units which a client can receive is twenty-six (26) within a six (6)-month period of time. The cost of the nurse visits*[,]* are not included in the spending cap set forth in paragraph (4)(B)2. but must be included in the spending cap specified at subparagraph (5)(F)2.B.

[(7) In accordance with the specific provisions of this rule for assessment, determination and management of level-of-care need and the delivery of personal care services and, as limited to and in accordance with, the terms of an interagency agreement between the Missouri Department of Health and the Missouri Department of Social Services, Division of Medical Services under which personal care services are provided on and after July 1, 1989, as a state plan service to certain recipient victims of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC) and human immunodeficiency virus (HIV)-related illnesses, the role and function of the Division of Aging shall be assumed by the Department of Health and its contract service coordination staff.]

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.125. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 15, 2004.*

PUBLIC COST: This proposed amendment will cost the Department of Social Services, Division of Medical Services six hundred nine thousand, one hundred seventy-two dollars ($609,172) 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, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-91.010 Personal Care Program
Type of Rulemaking	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	$609,172

III. WORKSHEET

See Attachments

IV. ASSUMPTIONS

- The Health Insurance Portability and Accountability Act of 1996 mandated the use of standardized code sets, requiring Medicaid personal care services to be billed in 15-minute units.
- Currently hourly reimbursement rates are not equally divisible by four (4); therefore, reimbursement rates were rounded up.
- Providers will now be reimbursed for each 15-minute unit provided, rather than each 1-hour unit.
- Billing in 15-minute units creates the potential of additional services being billed each month. The Division of Medical Services projects that telephony providers' billing could increase as follows:

  0 additional units would be billed on 25% of the clients each month,
  1 additional unit would be billed on 25% of the clients each month,
  2 additional units would be billed on 25% of the clients each month, and
  3 additional units would be billed on 25% of the clients each month.

Procedure Code and Current Unit Cost	Unduplicated Count of Users	25% of Users- No Additional Units Billed/Cost	*25% of Users- One (1) Additional Unit Billed/Cost	*25% of Users- Two (2) Additional Units Billed/Cost	*25% of Users- Three (3) Additional Units Billed/Cost	Total Cost of Additional Units Billed	Increase as a Result of Rounding Up Unit Cost	Net Impact
Personal Care - $3.43 (15-min. unit)	7,337	0	$75,487	$150,893	$226,339	$452,719	$72,592	$525,311
Advanced Personal Care - $4.44 (15-min.unit)	465	0	6,180	12,361	18,541	37,082	3,879	40,961
Personal Care in RCF - $3.29 (15-min. unit)	**						42,848	42,848
Advanced Personal Care in RCF - $3.80 (15-min. unit)	**						52	52
TOTALS		0	$81,667	$163,254	$244,880	$489,801	$119,371	$609,172

*Users x 25% x 12 months x number of units x cost

**As RCFs historically bill more units than authorized, increase in billed units due to accrual policy not anticipated

Procedure Code and Current Unit Cost	Cost in CY 2002	# of 1 Hour Units	15 min. unit cost X # of units (rate increased)	Cost	Cost Increase
Personal Care, $13.71/hour	$99,528,859	7,259,581	$3.43 x 7,259,581 x 4 ($13.72/hour)	$99,601,451	$72,592
Advanced Personal Care, $17.75/hour	$6,884,532	387,861	$4.44 x 387,861 x 4 ($17.76/hour)	$6,888,411	$3,879
Personal Care in RCF, $13.14/hour	$28,147,135	2,142,096	$3.29 x 2,142,096 x 4 ($13.16/hour)	$28,189,983	$42,848
Advanced Personal Care in RCF, $15.18/hour	$33,525	2,209	$3.80 x 2,209 x 4 ($15.20/hour)	$33,577	$52
TOTALS	$134,594,051			$134,713,422	$119,371

Clients: served in same time period (numbers of clients in RCFs not included, as RCFs historically bill more units than authorized; increase in billed units due to accrual policy not anticipated):

Personal Care – 7,334

25% - 1834		
25% - 1834	x 3.43 x 12 x 1	75,487
25% - 1833	x 3.43 x 12 x 2	150,893
25% - 1833	x 3.43 x 12 x 3	226,339
Total		452,719

Advanced Personal Care - 465

25% - 117		
25% - 116	x 4.44 x 12 x 1	6,180
25% - 116	x 4.44 x 12 x 2	12,361
25% - 116	x 4.44 x 12 x 3	18,541
Total		37,082

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 91—Personal Care Program

PROPOSED AMENDMENT

13 CSR 70-91.030 Personal Care Assistance. The Division of Medical Services is amending the Purpose statement and sections (2), (3), and (4).

PURPOSE: This proposed amendment updates the name of the Division of Senior Services and Regulation; updates the references to regulations promulgated by the Department of Elementary and Secondary Education, Division of Vocational Rehabilitation; defines a unit of service as a result of implementation of standardized code sets required by the Health Insurance Portability and Accountability Act of 1996; and revises the Purpose statement of the program rule to indicate the program is administered according to 13 CSR 70-91.030 and 5 CSR 90-7.010–5 CSR 90-7.320.

*PURPOSE: This rule revises an existing program, known as Personal Care Assistance, administered by the Division of Vocational Rehabilitation to permit Medicaid reimbursement for PCA services to persons who are Medicaid eligible and also meet PCA eligibility. This program will be administered according to this rule and 5 CSR 90-7.010–**5 CSR 90-7.320**.*

(2) Medicaid-eligible persons who do not meet criteria for PCA as defined in 178.662, RSMo shall be referred to the Division of *[Aging]* **Senior Services and Regulation** for assessment for personal care under 13 CSR 70-91.010.

(3) Criteria for Providers: Providers of PCA must—

(B) Have a valid contract with the Division of Vocational Rehabilitation (DVR) as an independent living center. The contract with DVR certifies the center is capable of providing the following services:

1. Client assessment and evaluation by a team which includes an independent living specialist, physical or occupational therapist, and a registered nurse;
2. The personal care assistance plan developed by the assessment team will be made available for review by the client's physician;
3. Maintenance of a list of qualified personal care attendants available for selection by the client; and
4. Training the client in recruitment and training of attendants as specified in 5 CSR 90-*[9.010]***7.200**.

(4) Reimbursement.

(D) One (1) hour of service equals *[one (1)]* **four (4) fifteen (15)-minute** units.

*AUTHORITY: sections 208.153 and 208.201, RSMo [1994] **2000**. Emergency rule filed Oct. 3, 1994, effective Nov. 1, 1994, expired Jan. 29, 1995. Original rule filed Oct. 28, 1994, effective June 30, 1995. Amended: Filed March 2, 1998, effective Sept. 30, 1998. Amended: Filed Jan. 15, 2004.*

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 Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70— Division of Medical Services
Chapter 95—Private Duty Nursing Care Under the Healthy Children and Youth Program

PROPOSED AMENDMENT

13 CSR 70-95.010 Private Duty Nursing. The Division of Medical Services is amending sections (2), (6), (8) and (9) and deleting the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: This amendment corrects the name of the Department of Health and Senior Services, changes the definition of a unit of service, and corrects reimbursement information.

(2) Persons Eligible for Private Duty Nursing Care. Medicaid-eligible children under the age of twenty-one (21) may be eligible for private duty nursing care under the Healthy Children and Youth Program (HCY) when there is a medical need for a constant level of care, exceeding the family's ability to independently care for the child at home on a long-term basis without the assistance of at least a four (4)-hour shift of home nursing care per day. Private duty nursing services for children are prior authorized by the Bureau of Special Health Care Needs of the Department of Health **and Senior Services**.

(6) Requirements for Training for Private Duty Staff.

(B) Prior to delivering services *[for the first time for each child they are assigned to care for]*, LPNs must demonstrate competency in each task required by the plan of care. The competency demonstration must be conducted by an RN and must be documented in the LPN's personnel file.

(8) Requirements for the Contents of Medical Records. Appropriate medical records for each Medicaid recipient served must be maintained at the private duty nursing agency. Records should be kept confidential and access should be limited to private duty nursing staff and representatives of the Departments of Social Services and Health **and Senior Services**.

(9) Reimbursement.

(A) Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services.

1. A unit of service is *[one (1) hour]* **fifteen (15) minutes**.

[2. A separate fee per unit of service will be established for the services of the RN or LPN.]

[3.] **2.** The fee per unit of service will be based on the determination by the state agency of the reasonable cost of providing the covered services on a statewide basis and within the mandatory maximum payment limitations.

[4.] **3.** Payment will be made on the lower of the established rate per service unit or the provider's billed charges. The charge billed to Medicaid may not be more than a provider's ordinary charge to the general public for the same services.

*AUTHORITY: sections 208.152, [RSMo Supp. 1993,] 208.153, [RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] **2000**. Original rule filed Sept. 2, 1993, effective April 9, 1994. Amended: Filed April 4, 1994, effective Oct. 30, 1994. Amended: Filed Jan. 15, 2004.*

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 Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 98—Psychiatric/Counseling/Clinical Social Work Program

PROPOSED RULE

13 CSR 70-98.020 Prior Authorization Process for Non-pharmaceutical Mental Health Services

PURPOSE: This rule establishes the process by which non-pharmaceutical mental health services will be prior authorized in order to be reimbursable by the Missouri Medicaid Program. The prior authorization process will serve as a utilization management measure allowing payment only for this treatment and services (interventions) that are medically necessary, appropriate and cost-effective, and to reduce over-utilization or abuse of services without compromising the quality of care to Missouri Medicaid recipients.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) This rule establishes a Medicaid non-pharmaceutical mental health services prior authorization committee in the Department of Social Services, Division of Medical Services. The committee shall be composed of practicing clinicians who are also licensed in their respective fields. The committee shall be composed of three (3) practicing psychiatrists, three (3) practicing psychologists, three (3) practicing social workers, and three (3) practicing counselors. All members shall be appointed by the director of the Department of Social Services. The members shall serve for a term of four (4) years, except that of the members first appointed, three (3) shall be appointed for one (1) year, three (3) shall be appointed for two (2) years, three (3) shall be appointed for three (3) years, and three (3) shall be appointed for four (4) years. Members of the committee shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred related to participation on the committee, as approved by the Division of Medical Services out of appropriations made for that purpose.

(2) All persons eligible for medical assistance benefits shall have access to non-pharmaceutical mental health services when they are determined medically necessary when using diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM-IV), published by the American Psychiatric Association, or the most currently published version of the DSM manual. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services and shall be included in the Medicaid Psychology/Counseling Provider Manual and Section 13 of the Physician Provider Manual, which are incorporated by reference in this rule and available through the Department of Social Services, Division of Medical Services website at www.dss.mo.gov/dms. The Medicaid non-pharmaceutical mental health services prior authorization committee shall develop the prior authorization process. The Medicaid non-pharmaceutical mental health services prior authorization committee shall hold a public hearing in order to make recommendations to the department prior to any final decisions by the division on the prior authorization process. The recommendations of the non-pharmaceutical mental health services prior authorization committee shall be provided to the Division of Medical Services, in writing, prior to the division making a final determination. The policy requirements regarding the prior authorization process for non-pharmaceutical mental health services shall be available through the Department of Social Services, Division of Medical Services website at www.dss.mo.gov/dms.

(3) The prior authorization requirements shall be reviewed at least every twelve (12) months by the non-pharmaceutical mental health services prior authorization committee.

(4) The prior authorization process will not apply to emergency and inpatient hospital interventions.

(5) The prior authorization process will not apply to the first four (4) visits to receive non-pharmaceutical mental health interventions. A visit is defined as four (4) dates of service.

AUTHORITY: section 208.201, RSMo 2000. Original rule filed Jan. 15, 2004.

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

PRIVATE COST: This proposed rule 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 rule with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received with thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comment must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 25—Division of Administration
Chapter 30—Determination of Blood Alcohol by Blood, Breath, Saliva and Urine Analysis; and Determination for the Presence of Drugs in Blood and Urine

PROPOSED AMENDMENT

19 CSR 25-30.051 Standard Simulator Solutions. The department is adding a new subsection (3)(D).

PURPOSE: This amendment expands the list of standard simulator solutions to be used in verifying and calibrating breath analyzers to include those offered by an additional supplier.

(3) Approved suppliers of standard simulator solutions are:

(D) Draeger Safety, Inc.
Durango, CO 81303-7911

*AUTHORITY: sections 192.006 and 577.026, **RSMo [1994] 2000 and** 577.020 and 577.037, RSMo Supp. **[1997] 2003**. Emergency rule filed Aug. 22, 1997, effective Sept. 1, 1997, expired Feb. 27, 1998. Original rule filed Aug. 25, 1997, effective Feb. 28, 1998. Emergency rescission and emergency rule filed April 17, 1998, effective May 4, 1998, expired Oct. 30, 1998. Rescinded and readopted: Filed May 1, 1998, effective Oct. 30, 1998. Amended: Filed Jan. 15, 2004.*

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

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 Larry Evert, Director, State Public Health Laboratory, PO Box 570, 307 W. McCarty, Jefferson City, MO 65102, Phone (573) 751-4437. 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 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 7—Health Maintenance Organizations

PROPOSED AMENDMENT

20 CSR 400-7.095 HMO Access Plans. The director is amending sections (1), (2) and (4) as well as parts of Exhibit B.

PURPOSE: This amendment clarifies some of the definitions and accreditation criteria used in determining whether an HMO's access plan is acceptable.

(1) Definitions.

(H) Hospitals—

1. Basic—Hospitals *[with central services, dietary services, emergency services, medical records, nursing services, pathology and medical laboratory services, pharmaceutical services, radiology services, social work services and an inpatient care unit.]* **that meet any of the following criteria:**

A. Are licensed as general acute care hospitals, excluding hospitals that treat only children and hospitals that are not available to the general population, such as Veterans Health Administration facilities;

B. Are state-owned hospitals that provide general medical-surgical care and are available to the general population, such as a university teaching institution; and

C. Are located in an adjacent state, appropriately licensed by that state, and offering general medical-surgical care to the general population.

2. Secondary—**Basic** *[H]***h**ospitals with *[all of the facilities listed under "Basic," plus]* one (1) or more operating rooms, obstetrics unit, and intensive care unit.

(O) Specialist—A licensed health care *[provider]* **professional** whose area of specialization is in an area other than general medicine, family medicine or general internal medicine. A professional whose area of specialization is pediatrics, obstetrics and/or gynecology may be either a PCP or a specialist within the meaning of this rule.

(2) Requirements for Filing Access Plans.

(A) Annual filing—By March 1 of each year, an HMO must file an access plan for each managed care plan it was offering in this state on January 1 of that same year. An HMO may file separate access plans for each managed care plan it offers, or it may file a consolidated access plan incorporating information for multiple managed care plans that it offers, so long as the information submitted with the consolidated access plan clearly identifies the managed care plan or plans to which it applies. The access plan must contain the following information for each managed care plan to which it applies:

1. Pursuant to section 354.603.2(1), RSMo, either:

A. Information regarding the participating providers in each managed care plan's network and the enrollees covered by each managed care plan in a format to be determined by the Department of Insurance including, but not limited to, the following:

(I) The name, address where medical care is provided, zip code, professional license number or other unique identifier as assigned by the appropriate licensing or oversight agency, and specialty, degree or type of each provider;

(II) Whether or not the provider is a closed practice provider, as defined in subsection (1)(C) of this regulation, above; and

(III) The number of enrollees by either work or residence zip code in each managed care plan to which the access plan applies; or

B. *[A]* **Proof of accreditation identifying the accredited entity and an** affidavit in the form contained in Exhibit B, which is included herein, certifying that the managed care plan to which the affidavit applies has met one (1) or more of the following standards:

(I) The managed care plan is a Medicare+Choice coordinated care plan operated by the HMO pursuant to a contract with the federal Centers for Medicare and Medicaid Services;

(II) The managed care plan is accredited by the National Committee for Quality Assurance (NCQA) at a level of "accredited" or better, and such accreditation is in effect at the time the access plan is filed;

(III) The managed care plan's network is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) at a level of *["accreditation without type I recommendations"]* **"accredited"** or better, and such accreditation is in effect at the time the access plan is filed**. The presence of Type I recommendations for standards related to access to care shall prevent JCAHO accreditation from fulfilling the requirements of this part. The department shall annually review current JCAHO requirements and notify, through annual written instruction, all HMOs of the specific JCAHO standards that address access to care**;

(IV) The managed care plan is accredited by the *[American Accreditation Healthcare Commission (URAC)]* **utilization review accreditation commission (URAC), or successor organizations,** at a level of full URAC Health Plan accreditation, and such accreditation is in effect at the time the access plan is filed; or

(V) The managed care plan or its network is accredited by any other nationally recognized managed care accrediting organization, similar to those above, that is approved by the Department of Insurance prior to the filing of the access plan, and such accreditation is in effect at the time the access plan is filed. Requests for

approval of another nationally recognized managed care accrediting organization must be submitted to the department no later than October 15 of the year prior to the year the access plan is filed.

2. Pursuant to section 354.603.2(2) through (8), RSMo, a written description with any relevant supporting documentation addressing each of the requirements set forth in the statute.

3. Pursuant to section 354.603.2(9), RSMo, the following information:

A. For all managed care plans, information demonstrating that:

(I) Emergency medical services—A written triage, treatment and transfer protocol for all ambulance services and hospitals is in place;

(II) Home health providers—Home health providers are contracted to serve enrollees in each county where enrollment is reported. A home health provider need not be physically located or headquartered in each county. However, there must be at least one (1) home health provider under contract to serve enrollees in each county if the need arose; and

(III) Administrative measures are in place which ensure enrollees timely access to appointments with the medical providers listed in Exhibit A, based on the following guidelines:

(a) Routine care, without symptoms—within thirty (30) days from the time the enrollee contacts the provider;

(b) Routine care, with symptoms—within one (1) week or five (5) business days from the time the enrollee contacts the provider;

(c) Urgent care for illnesses/injuries which require care immediately, but which do not constitute emergencies as defined by section 354.600, RSMo—within twenty-four (24) hours from the time the enrollee contacts the provider;

(d) Emergency care—a provider or emergency care facility shall be available twenty-four (24) hours per day, seven (7) days per week for enrollees who require emergency care as defined by section 354.600, RSMo;

(e) Obstetrical care—within one (1) week for enrollees in the first or second trimester of pregnancy; within three (3) days for enrollees in the third trimester. Emergency obstetrical care is subject to the same standards as emergency care, except that an obstetrician must be available twenty-four (24) hours per day, seven (7) days per week for enrollees who require emergency obstetrical care; and

(f) Mental health care—Telephone access to a licensed therapist shall be available twenty-four (24) hours per day, seven (7) days per week*[.]***;**

B. For all managed care plans, a section demonstrating that the entire network is available to all enrollees of a managed care plan, including reference to contracts or evidences of coverage that clearly state the entire network is available and describing any network management practices that affect enrollees' access to all participating providers;

C. For employer specific networks, a section demonstrating that the group contract holder agreed in writing to the different or reduced network. An employer specific network is subject to the standards in this rule;

D. For all managed care plans, a listing of the product names used to market those plans; *[and]*

E. For all managed care plans, written policies and procedures to assure that, with regard to providers not addressed in Exhibit A of this regulation, access to providers is reasonable. The policies and procedures must show that the HMO will provide out-of-network access at no greater cost to the enrollee than for access to in-network providers if access to in-network providers cannot be assured without unreasonable delay; and

[E.] **F**. Any other information the director may require.

(4) Approval or Disapproval of Access Plans.

(A) For a managed care plan for which network and enrollee information is submitted pursuant to the provisions of (2)(A)1.A. above, the department will:

1. Approve the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is ninety percent (90%) or better, and the average enrollee access rate in each county in an HMO's approved service area for that managed care plan is ninety percent (90%) or better, and the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is satisfactory;

2. Conditionally approve the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is ninety percent (90%) or better, but the average enrollee access rate in any county for that managed care plan is less than ninety percent (90%), and the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is satisfactory. If an access plan or portion of an access plan is conditionally approved, the department *[will]* **may** require the HMO to present an action plan for increasing the enrollee access rate for that managed care plan's network to ninety percent (90%) or better in those counties where this standard is not met; or

3. Disapprove the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is less than ninety percent (90%) and/or the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is unsatisfactory. Disapproval of the access plan or portion of the access plan will subject the HMO and its managed care plan to the enforcement mechanisms described in section (5), below, of this regulation.

(C) Approval of an access plan or portion of an access plan is subject to the following:

1. Approval of an access plan shall not remove any HMO's obligations to provide adequate access to care as expressed in this regulation or in *[Exhibit A]* **section 354.603, RSMo**. In any case where a managed care plan's network has an insufficient number or type of participating providers to provide a covered benefit, the HMO shall ensure that the enrollee obtains the covered benefit at no greater cost than if the benefit was obtained from a participating provider, or shall make other arrangements acceptable to the director. This may include, but is not limited to, the following:

A. With regard to the types of providers listed in Exhibit A and only those types of providers, allowing an enrollee access to a nonparticipating provider at no additional cost when no participating provider of that same type is within the distance standard prescribed by Exhibit A; and

B. With regard to *[the services listed in (2)(A)3.A.(III), above,]* **types of providers listed in Exhibit A and only those types of providers,** allowing an enrollee access to a nonparticipating provider at no additional cost when no participating provider is available to provide the service within the time prescribed **in (2)(A)3.A.(III), above,** for timely access to appointments; **and**

C. With regard to medical providers not expressly stated in Exhibit A, all HMOs must assure that access to providers is reasonable. Reasonableness of access to a provider shall be based on the clinical facts of the enrollee's situation and on the general availability, regardless of participation status, of appropriate providers within the applicable community. If reasonable access to a provider can only be achieved by allowing the enrollee to access a nonparticipating provider, then the HMO must permit access to a nonparticipating provider. In this situation, access to the nonparticipating provider shall be at no greater cost to the member than if the benefit was obtained from a participating provider. No HMO shall cause access to providers to be unreasonable by requiring enrollees to use participating providers only;

2. If there is no participating provider in a managed care plan's network with the appropriate training and experience to meet the particular health care needs of an enrollee, the HMO shall make arrangements with an appropriate nonparticipating provider, pursuant to a treatment plan developed in consultation with the primary care provider, the nonparticipating provider and the enrollee or enrollee's designee, at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received within the network.

Exhibit B

AFFIDAVIT PURSUANT TO 20 CSR 400-7.095(2)(A)1.B.

State of _____)
) ss.
County of _____)

_____, first being duly sworn, on his/her oath states:
(Insert Name)

He/she is the _____ of _____,
(Insert Title of Individual) (Insert Name of HMO)

a(n) _____ corporation, and as such officer is duly authorized to make this affidavit
(Insert State of Incorporation)

on behalf of said corporation;

The managed care plan to which this affidavit applies is known by the product name(s):

_____
_____;
(Insert Product Name(s) used by the HMO for this Managed Care Plan; if none, so state)

The form number(s) of the health benefit plan for this managed care plan are:

_____
_____
_____;
(Insert Form Numbers as Filed for Approval with the Department of Insurance)

The effective dates for each accreditation for M+C contract are:

_____
_____
_____;

This managed care plan meets the following criteria:
(Insert an "X" in one or more of the following, as applicable.)

____ The managed care plan is a Medicare+Choice coordinated care plan offered pursuant to a contract with the federal Centers for Medicare and Medicaid Services, and the contract is currently in effect;

____ The managed care plan is accredited by the National Committee for Quality Assurance (NCQA) at a level of "accredited" or better, and the accreditation is currently in effect;

____ All/some (circle one) of the managed care plan's network is accredited by the Joint Commission on the Accreditation of Health Organizations (JCAHO) at a level of "*[accreditation without type recommendations]* **accredited**" or better, and the accreditation is currently in effect. **There are no Type I recommendations for standards related to access to care, as identified annually by the department.** (If "some" is circled, additional information for that portion of the Network not covered by the JCAHO accreditation must be submitted pursuant to 20 CSR 400-7.095(2)(A)1.A. or B.)

____ The managed care plan is accredited by the *[American Accreditation Healthcare Commission (]*URAC*[)]***, or successor organizations,** for full URAC Health Plan accreditation, and the accreditation is currently in effect;

____ The managed care plan or its network is accredited by _____, this accreditation was approved by the department prior to the date of this affidavit, and this accreditation is currently in effect.

_____
(Signature of Affiant Corporate Officer)

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires _____, 20___.

_____
Notary Public

*AUTHORITY: sections [354.405] 354.615 and 374.045, RSMo 2000; **354.405** and 354.603, RSMo Supp. [2001] **2003**. Original rule filed Nov. 3, 1997, effective May 30, 1998. Rescinded and readopted: Filed Oct. 1, 2002, effective April 30, 2003. Amended: Filed Jan. 13, 2004.*

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 will be held on this proposed amendment at 10:00 a.m. on Tuesday, March 23, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on March 23, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 13—Boll Weevil Eradication

ORDER OF RULEMAKING

By the authority vested in the Department of Agriculture under sections 263.505, 263.512, 263.517, 263.527, and 263.534, RSMo 2000, the department amends a rule as follows:

2 CSR 70-13.030 Program Participation, Fee Payment and Penalties **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2003 (28 MoReg 1561–1562). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 100—Missouri Agricultural and Small Business Development Authority
Chapter 6—Single-Purpose Animal Facilities Loan Guarantee Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Agriculture under section 348.190, RSMo 2000, the department amends a rule as follows:

2 CSR 100-6.010 Description of Operation, Definitions, Fee Structures, Applicant Requirements, and Procedures for Making and Collecting Loans and Amending the Rules for the Single-Purpose Animal Facilities Loan Guarantee Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2003 (28 MoReg 1762). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-7.455 Turkeys: Seasons, Methods, Limits **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2003 (28 MoReg 2089). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 8—Wildlife Code: Trapping: Seasons, Methods

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-8.505 Trapping **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2003 (28 MoReg 2089). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission adopts a rule as follows:

4 CSR 240-32.180 Definitions—Caller Identification Blocking Service **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 15, 2003 (28 MoReg 2221–2222). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Public Service Commission received comments from the Office of the Public Counsel and from the staff of the commission, both expressing support for the rule.
RESPONSE: None required.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission adopts a rule as follows:

4 CSR 240-32.190 Standards for Providing Caller Identification Blocking Service **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 15, 2003 (28 MoReg 2222). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Public Service Commission received three (3) comments on the proposed rule. AT&T Communication of the Southwest, Inc. stated that it opposed the last sentence of section (2), which prohibits any telecommunications company from providing per-line blocking to anyone except specified agencies. The staff of the commission said it was indifferent about that sentence, but expressed general support for the proposed rule. The Office of the Public Counsel stated that it supports the rule.

COMMENT: AT&T opposed the provision that would prohibit companies from providing per-line blocking to anyone other than law enforcement agencies and certain domestic violence intervention agencies or their employees. AT&T said that although its own present tariff contains restrictions like those in the proposed rule, it believes that, in a competitive marketplace, it should be free to offer products that differentiate it from its competitors, so that its customers can have a choice of options and services. AT&T also said that this limitation on per-line blocking would increase its cost of doing business.
COMMENT: The staff of the commission supported the proposed rule. It said the proposed rule complements a rule of the federal communications commission, and that it outlines the basic requirements that the commission established in a 1993 case, which authorized Southwestern Bell Telephone Company to offer a caller identification service to its customers. The staff said that all, or nearly all, local telecommunications companies presently comply with the requirements laid down in that 1993 case. The staff said the proposed rule would not unduly restrain the affected law enforcement agencies and domestic violence centers, and that there would be very little or no fiscal impact on any telecommunications company, business or individual. The staff said it is unclear whether the commission would now reject a telecommunications company's request to offer per-line blocking to other parties, and said it is indifferent about whether the last sentence of section (2) should be removed.
COMMENT: The Office of the Public Counsel stated that the proposed rule is necessary for the health, safety, welfare and convenience of the ratepayers and the public. It also stated that it has sought a requirement that per-line blocking be available to all customers for an additional charge, but said that that proposal is beyond the scope of this rule.
RESPONSE: The proposed rule is consistent with the policy that the commission established in 1993, which has been followed by virtually all local telecommunications companies since then. It provides benefits to members of the public, does not unduly burden the affected agencies, and there is no evidence that this rule would have an appreciable fiscal impact. Allowing telecommunications companies to provide per-line blocking to others would dilute the value of the service and is not advisable.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 162.685, RSMo 2000, the board hereby amends a rule as follows:

5 CSR 70-742.140 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Between September 21 and October 24, 2003, the Division of Special Education conducted three (3) public hearings regarding proposed changes to the Part B State Plan implementing the Individuals with Disabilities Education Act (IDEA). The hearings were conducted in Springfield, Columbia, and St. Louis. Comments received were considered prior to submitting the application to the United States Department of Education.

This rule becomes effective thirty (30) days after publication in the *Code of State Regulations*. This rule describes Missouri's services for children with disabilities, in accordance with Part B of the Individuals with Disabilities Education Act (IDEA).

5 CSR 70-742.140 Individuals with Disabilities Education Act, Part B. This order of rulemaking amends the incorporated by reference material, *Regulations Implementing Part B of the Individuals with Disabilities Education Act*, to bring the program plan in compliance with federal statutes.

AUTHORITY: section 162.685, RSMo 2000. Original rule filed April 11, 1975, effective April 21, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 5, 2004.*

PUBLIC COST: The current public cost for this rule is estimated to be $643,235,000 for Fiscal Year 2004, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly, the United States Congress, and local tax.

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title:	5 - Department of Elementary and Secondary Education
Division:	70 - Division of Special Education
Chapter:	742 - Special Education
Type of Rulemaking:	Order of Rulemaking
Rule Number and Name:	5 CSR 70-742.140 Individuals with Disabilities Education Act, Part B

II. SUMMARY OF FISCAL IMPACT

The current public cost of this order of rulemaking for the Department of Elementary and Secondary Education is estimated to be $643,235,000 for Fiscal Year 2004, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly, the United State Congress, and local tax. The order of rulemaking will not add additional cost to the implementation of the rule.

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
The following public agencies that provide special education services to children and youth with disabilities are affected by this rule. 524 local school districts Missouri School for the Blind Missouri School for the Deaf State Schools for Severely Handicapped Division of Youth Services Department of Corrections Charter Schools	$643,235,000

III. WORKSHEET

Expenses	Amount
Local	$174,000,000
State	$285,135,000
Federal	$184,100,000
Administrative Costs	
Project Total	$643,235,000

IV. ASSUMPTIONS

No increased cost is anticipated.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2003, the board hereby amends a rule as follows:

5 CSR 70-742.141 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Between September 21 and October 24, 2003, the Division of Special Education conducted three (3) public hearings regarding proposed changes to the Part C State Plan implementing the Individuals with Disabilities Education Act (IDEA). The hearings were conducted in Springfield, Columbia, and St. Louis. Comments received were considered prior to submitting the application to the United States Department of Education.

This order of rulemaking becomes effective thirty (30) days after publication in the *Code of State Regulations*. This rule describes Missouri's services for infants and toddlers with disabilities, in accordance with Part C of the Individuals with Disabilities Education Act, Public Law 105-17.

5 CSR 70-742.141 Individuals with Disabilities Education Act, Public Law 105-17, Part C. This order of rulemaking amends the incorporated by reference material, *State Plan for Part C—Infants and Toddlers*, to bring the program plan in compliance with federal statutes.

AUTHORITY: section 161.092, RSMo Supp. 2003, Executive Order 94-22 of the Governor, Public Law 105-17, Individuals with Disabilities Education Act. Original rule filed Dec. 29, 1997, effective March 30, 1998. Amended: Filed July 31, 1998, effective Oct. 30, 1998. Amended: Filed Dec. 7, 2000, effective Feb. 28, 2001. Amended: Filed Dec. 7, 2000, effective March 30, 2001. Amended: Filed Feb. 18, 2003, effective April 30, 2003. Amended: Filed Jan. 5, 2004.

PUBLIC COST: This order of rulemaking will cost state agencies or political subdivisions $18,810,248 in the aggregate for Fiscal Year 2004.

FISCAL NOTE
PUBLIC ENTITY COST

1. Rule Number

Title: 5 - Department of Elementary and Secondary Education

Division: 70 - Special Education

Chapter: 742 - Special Education

Type of Rulemaking: Order of Rulemaking

Rule Number and Name: 5 CSR 70-742.141 Individuals with Disabilities Education Act, Public Law 105-17, Part C

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Elementary & Secondary Education	$18,810,248

III. WORKSHEET

Cost estimates are based on projected expenditures from all sources during Fiscal Year 2004. Expenditures support early intervention services, training, technical assistance, and administrative costs for the First Steps system.

IV. ASSUMPTIONS

Fund 0101 Appropriation 4112	3,017,369
Fund 0105 Appropriation 4580	10,506,837
Fund 0859 Appropriation 3180	5,286,042
	18,810,248