



MICHAEL L. PARSON, GOVERNOR • ROBERT J. KNODELL, DIRECTOR
SHARIE L. HAHN, DIRECTOR
DIVISION OF LEGAL SERVICES
P.O. BOX 1527 • BROADWAY STATE OFFICE BUILDING • JEFFERSON CITY, MO 65102-1527
WWW.DSS.MO.GOV • 573-751-3229 • 573-522-6092 FAX

February 23, 2024

Public Notice Regarding Proposed Amendment to HB 557

The Missouri Department of Social Services (DSS) is asking the public and stakeholders for comments and suggestions regarding proposed changes to regulations 13 CSR 35-71.015 and 13 CSR 35-71.300, which implement Sections 210.493 and 210.1250 through 210.1286, RSMo (the “Residential Care Facility Notification Act”), to protect children at child placing agencies and licensed and license-exempt residential care facilities.

DSS has posted additional information online and is soliciting informal comments and suggestions from the public and interested stakeholders before they are formally published.

Informal, written comments and suggestions regarding the new regulations can be e-mailed to dss.directoroffice@dss.mo.gov or mailed to Children’s Division, Attn. 13 CSR 35-71.015 and 13 CSR 35-71.300, Informal Comments, P.O. Box 88, Jefferson City, Missouri 65103. All comments must indicate the specific regulation it references. Informal comments must be received by 5:00 p.m., March 4th, 2024.

In addition, a virtual public comment meeting to respond to questions and comments about the draft regulations will be held on Thursday, February 29, 2024, from 2:00 to 3:00 p.m. The public has until 5:00 p.m. on February 28, 2024, to submit a question or comment, which can be emailed to dss.directoroffice@dss.mo.gov. To participate in the meeting, click on “[Join Webex Meeting](#) ” and follow instructions, providing the meeting number (access code): **2631 253 1004** and meeting password: **9wGiCUTrw35**. [Visit the DSS website](#) for more information on Sections 210.493 and the Residential Care Facility Notification Act.

AUXILIARY AIDS AND SERVICES ARE AVAILABLE UPON REQUEST TO INDIVIDUALS WITH DISABILITIES
TDD / TTY: 800-735-2966
RELAY MISSOURI: 711

TITLE 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71—Rules for Residential Treatment Agencies for Children and Youth

PROPOSED AMENDMENT

13 CSR 35-71.015 Background Checks for Personnel of Residential Care Facilities and Child Placing Agencies. The division is amending sections (1), (2), (6), (8), (10), and (12) to clarify or remove definitions in conformity with 210.493 RSMo, as amended in 2023; promulgate revised forms and instructions by reference; and to simplify and expedite the procedure for applicants to administratively appeal adverse ineligibility decisions.

PURPOSE: The amendment clarifies or removes definitions in conformity with amendments to section 210.493 RSMo, removes outdated information, and removes an unnecessary procedure.

PUBLISHER’S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Definitions. For the purpose of this regulation, unless otherwise specified in this section or unless the context clearly requires otherwise, the definitions of terms specified in sections 210.110, 210.481, and 210.1253, RSMo, shall apply to this regulation. The singular includes the plural and plural includes the singular. In addition, the following terms are defined as follows:

(A) “Applicant” means any individual who applies or is required to successfully complete the background check requirements for employment or presence at the Licensed Residential Care Facility (LRCF), License-Exempt Residential Care Facility (LERCF), or Child Placing Agency (CPA) by section 210.493, RSMo. For the purposes of background checks conducted by the Missouri State Highway Patrol of the Missouri Department of Public Safety, the term “applicant” is further defined as specified in section 43.539, RSMo.

1. Except as otherwise provided in this regulation, applicants for LRCFs, LERCFs, and CPAs who are required to complete the background check process include [officers; managers;]contractors with unsupervised access to children; volunteers with unsupervised access to children; employees; [other support staff;]owners of LRCFs and LERCFs that will have access to the facilities; and owners of LERCF, LRCF, and CPA that will have access to children.

2. Except as otherwise provided in this regulation, applicants for LERCFs who are required to complete a background check also include any applicant as defined in section 43.539, RSMo, who has unsupervised contact with a resident of the LERCF. The following individuals or classes of individuals who may have unsupervised contact with a child who is a resident of an LERCF are not deemed to be applicants and are not required to submit to background checks as provided in this subsection unless otherwise required by law or court order:

A. Legal parents, step-parents, grandparents, siblings, legal guardians, and prospective adoptive parents who do not reside on or at the LERCF but who have contact or visits with a child who resides on the property of an LERCF;

B. Licensed or other lawfully qualified individuals who do not reside at or on the property of an LERCF, who are not employees, [officers,]volunteers, staff, [support staff of the LERCF,]and who provide occasional emergency professional services within the scope of their employment pertaining to a child who resides at or on the property of the LERCF, such as licensed physicians, licensed nurses, licensed emergency medical technicians, POST certified law enforcement officers, juvenile officers, division employees, prosecuting attorneys, court appointed special advocates (CASA) assigned by a court to a child who resides at an LERCF, attorneys, and court appointed guardians *ad litem* for children who reside at an LERCF; and/or

C. Licensed or other lawfully qualified individuals who do not reside at or on the property of an LERCF, who are not employees, [officers,]volunteers, staff, [support staff of the LERCF,]and who provide reasonably necessary, professional services, maintenance in an emergency when it is necessary to protect the health and safety of individuals at the facility and background checks are not reasonably possible under the circumstances, or government inspections on the premises of an LERCF to ensure the health and safety of the residents such as fire, health, and safety inspectors, and nationally recognized accrediting agencies, heating, construction, electrical, and plumbing contractors;

(B) "Boarding school" includes any educational institution in which some or all of the children who attend the institution reside during their attendance at the institution. Boarding schools include facilities where the children lodge in dorms, in private homes whose owners are contracted with, associated or affiliated with the institution, or in homes owned or operated by the institution regardless of whether or not the child's residence is located on or off the institution's campus;

(C) The "department" or the "division" shall refer to the Children's Division of the Missouri Department of Social Services;

(D) "Employee" is any individual who works in the service of a LERCF, LRCF, or Child Placing Agency under an express or implied contract for hire, whether written or unwritten, full time or part time, under which the LERCF, LRCF, or Child Placing Agency has the right to control the details of work performance in whole or in part. [Other support staff may be employees and employees may be staff.] For purposes of this regulation and any regulations implementing the background check process requirements prescribed by section 210.493, RSMo, employees of an LERCF, LRCF, or Child Placing Agency who neither work in nor perform services in Missouri, nor have access to children in Missouri, nor have access to a residential care facility in Missouri, and who are not otherwise required to successfully complete the background check process, are [deemed other support staff who are]not required to complete the background check process requirements in their capacities as employees;

(E) "Licensed Residential Care Facility" or "LRCF" means a facility providing twenty-four- (24-) hour care in a group setting to children who are unrelated to the person operating the facility and who are unattended by a parent or guardian, and which is required to have a license to operate as a Residential Care Facility under section 210.516, RSMo. LRCFs do not include licensed foster family homes or unlicensed kinship placements made pursuant to a juvenile or family court order;

(F) [*"License-Exempt Residential Care Facility" or "LERCF" means any place, facility, or home operated by any person who receives children who are not related to the operator and whose parent or guardian is not a resident of the same facility and that provides such children with supervision, care, lodging, and maintenance for twenty-four (24) hours a day, with or without transfer of custody, and that is not required to be licensed under section 210.516, RSMo.*] **"License-Exempt Residential Care Facility" or "LERCF" means a place, facility, or home that: provides children with supervision, care, lodging, and maintenance for twenty-four (24) hours a day, with or without transfer of custody; is not required to be licensed under section 210.516, RSMo; and either receives children unrelated to the operator or receives the children of parents or guardians who are not residents of the residential care facility.** Unless exempted as provided below, LERCFs include, but are not limited to, boarding schools, juvenile detention facilities, license-exempt foster homes as defined in section 210.516, RSMo, and other congregate care facilities. LERCFs do not include—

1. Hospitals, sanitariums, and clinics operated to provide medical care and treatment and operating pursuant to a valid license issued by the Missouri Department of Health and Senior Services (DHSS), the Missouri Department of Mental Health (DMH), the United States (such as Veterans' Administration Hospitals and hospitals administered by the armed forces of the United States);

2. Boarding schools operated by the Missouri Department of Elementary and Secondary Education (DESE), provided [that]DESE requires background checks equivalent or more stringent than the requirements of section 210.493, RSMo;

3. Foster homes and congregate care facilities or homes licensed or certified by the DMH, provided [that] DMH requires background checks equivalent or more stringent than the requirements of section 210.493, RSMo;

4. Juvenile corrections programs operated by the Department of Social Services, Division of Youth Services or juvenile detention facilities operated by juvenile officers or juvenile courts which are subject to the Prison Rape Elimination Act (PREA) standards and auditing;

5. Facilities operated by the Missouri Department of Corrections and county or local jails;

6. **Residences where any** [Any] individual (but not a corporation, partnership, organization, or association) [who] receives on a voluntary basis, the child of close, personal friends or relatives as an occasional and personal guest in their personal home or the home of the child's parent, guardian, or legal custodian, who is otherwise unaffiliated with an LRCF or LERCF and who receives custody of or provides care of no other child unrelated by consanguinity, adoption, or affinity;

7. **Residences where any** [Any] individual (but not a corporation, partnership, organization, or association) who is otherwise unaffiliated with an LRCF or LERCF who receives legal custody or guardianship of a child or sibling group pursuant to a judgment or order of a court of competent jurisdiction in cases where a state or local government is not a party and in cases where the judgment or order is entered by a court outside the state of Missouri, all of the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Interstate Compact for the Placement of Children (ICPC), or the Interstate Compact for the Placement of Juveniles (ICJ) have been fully satisfied; and

8. Any camp which is not a boarding school, which is operated solely during certain months of the year, not to exceed four (4) months, which is conducted in good faith primarily to provide recreation or religious instruction for children, in which the children do not spend more than thirty (30) consecutive overnight periods during any twelve (12) month period, and not for ongoing residential or treatment purposes;

(G) [*“Manager” is any individual who administers or supervises the affairs of the LERCF, LRCF, or Child Placing Agency, including, but not limited to any individual who supervises any employees, staff, or volunteers of the LERCF, LRCF, or Child Placing Agency;*

(H) [*“Missouri State Highway Patrol” or “MSHP” shall mean the Missouri State Highway Patrol of the Missouri Department of Public Safety;*

(I) [*“Officer” is any individual who holds an executive position with the LERCF, LRCF, or Child Placing Agency, including but not limited to President and/or Chairperson of the Board, Board Vice President and/or Vice Chair, Board Secretary, Board Treasurer, any other position designated as an officer in the bylaws or articles of incorporation or organization; and General Counsel, Headmaster, Principal, Head Teacher, and Director and/or Chief Executive Officer of the LERCF, LRCF, or Child Placing Agency;*

(J) (H) [*“Owner” of an LERCF, LRCF, or Child Placing Agency is any individual who holds an equity interest in the LERCF, LRCF, or Child Placing Agency;*

(K) (I) [*“Sponsoring Organization” shall mean the entity that sponsors the LERCF, LRCF, or Child Placing agency, including but not limited to the sponsoring church or religious organization;*

(L) [*“Other Support Staff” of a LERCF, LRCF, or Child Placing Agency include any individual who works for or performs services, including professional services, for the LERCF, LRCF, or Child Placing Agency, whether compensated or not. Other support staff may be employees and employees may be other support staff. For purposes of this regulation and any regulations implementing the background check requirements prescribed by section 210.493, RSMo. Other support staff who neither work in Missouri, nor perform services in Missouri, nor have access to children in Missouri, nor have access to a residential care facility in Missouri, and who are not otherwise required to successfully complete the background check process, are not required to complete the background check process requirements in their capacities as other support staff;]* and

(M) (J) [*“Volunteer” of an LERCF, LRCF, or Child Placing Agency is any individual who performs a service for or on behalf of the LERCF, LRCF, or Child Placing Agency of their own free will without obligation, or without any expectation of reward or compensation.*

(2) The background checks conducted pursuant to this regulation shall consist of the following:

(A) A fingerprint-based background check of open and closed criminal history conducted in conjunction with the MSHP pursuant to section (3) of this regulation; and

(B) A search of the national **sex** offender registry conducted by the division; and

(C) A search of the following registries, repositories, or databases in Missouri, the state where the applicant resides, and each state where the applicant resided during the preceding five (5) years conducted by the division:

1. The state sex offender registry or repository (in Missouri this is a search of the MSHP Sex Offender Registry); and
2. The state family care safety registry (in Missouri this is a search of the family care safety registry); and
3. The state-based child abuse and neglect registry and database (in Missouri this is a search of the Central Registry of the division).

(6) Application Process.

(A) The applicant shall apply for background screening through the division's online portal on forms promulgated by the division. The application forms and instructions are incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>, [October 1, 2021] _____, 2024. This rule does not incorporate any subsequent amendments or additions. The applicant shall submit the completed application form and upload any supporting or supplemental forms and documentation through the division's online portal. The application must be signed by the applicant (e-signature is acceptable).

1. The applicant may apply to the division for permission to file the application and supporting documentation by mail or private delivery service rather than through the online portal when there are unusual, compelling, and extenuating circumstances which make filing the application through the online portal impossible. The applicant shall apply for permission to file the application form, supporting, or supplemental materials with the division in writing, and shall explain the circumstances why the applicant cannot submit the application through the online portal. A copy of the application forms for use in submitting application by mail is incorporated by reference and made a part of this rule as published by the Department of Social Services, Children's Division, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, MO 65102, at its website at <https://www.dss.mo.gov/provider-services/children/residential-program/background-checks.htm>, [October 1, 2021] _____, 2024. This rule does not incorporate any subsequent amendments or additions. Applicants may download a copy of the forms. The applicant shall attach all documentation that may be necessary to complete the required application. If the division grants permission under this section, the applicant may submit the form with supporting materials by mail, by private delivery service, or in person to the offices of the division at Children's Division, Attn: Background Screening Team, 205 Jefferson Street, 10th Floor, PO Box 88, Jefferson City, Missouri 65102; or by email at CDScreen@dss.mo.gov.

(B) The application shall contain all of the following information:

1. The applicant's current, full legal name, residence address, mailing address, business address, telephone number, and email address. The applicant's mailing address and email addresses shall be the applicant's address of record for purposes of this regulation;
2. The applicant's date of birth and full Social Security number;
3. Any other names or aliases that the applicant has used or been known by during the five- (5-) year period preceding the application;
4. Any other residence address, mailing address, county and state of residence, business address, telephone number, and email address that the applicant has had during the five- (5-) year period preceding the application;
5. Whether the applicant is registered, or is required to be registered, on a state sex offender registry or repository or in the National Sex Offender Registry. If the applicant is so registered or required to be registered, the applicant shall provide the following additional information:

A. The national, federal, state, or local jurisdiction in which the applicant is registered or required to be registered;

B. The specific crime or offense for which the applicant is registered or required to be registered including—

(I) The date or approximate date that the crime or offense was committed;

(II) The statute or section number of the crime or offense;

- (III) The name and address of the court where the case was adjudicated;
 - (IV) The case number; and
 - (V) The date of the plea, finding, judgment, or sentence;
6. Whether the applicant is listed as a perpetrator of child abuse or neglect under sections 210.109 to 210.183, RSMo, or any other finding of child abuse or neglect based on any other state's registry or database. In states where the official registry of substantiated findings of child abuse or neglect are made or kept by a county, this information must also be disclosed. If the applicant is listed, the applicant shall also provide—
- A. The state or county registry or database in which the applicant is listed;
 - B. The specific finding(s) of the state or county agency and the conduct for which the applicant is listed, including—
 - (I) The date(s) of the conduct;
 - (II) The date the applicant was listed; and
 - (III) The name and address of the state or local government entity that maintains the list;
7. Whether the applicant has ever been found guilty of or pled guilty or nolo contendere to any crime or offense listed in section 210.493[.11(5)], RSMo. If the applicant has ever been found guilty of or pled guilty or nolo contendere to any such crime or offense, the applicant shall also provide—
- A. The national, federal, state, or local jurisdiction where the applicant was found guilty of or pled guilty or nolo contendere;
 - B. The specific crime or offense for which the applicant is registered or required to be registered, including—
 - (I) The date or approximate date that the crime or offense was committed;
 - (II) The statute or section number of the crime or offense;
 - (III) The name and address of the court where the case was adjudicated;
 - (IV) The case number; and
 - (V) The date of the plea, finding, judgment, or sentence;
8. Whether the applicant consents to the division notifying the LRCF, LERCF, or Child Placing Agency of its decision on eligibility or ineligibility and/or sending a copy of its eligibility or ineligibility finding to the LRCF, LERCF, or Child Placing Agency;
9. Whether the person is requesting a response and notice of final decision by first-class mail or by email;
10. The name and address of any LRCF, LERCF, or Child Placing Agency that the applicant wishes the division to send a finding of eligibility or ineligibility to upon the completion of the background check process;
11. A fully completed and signed MOVECHS Waiver Agreement and Statement (SHP-981G) form. The completed and signed waiver form must be submitted with the application;
12. Acknowledgement and certification by the applicant, under penalty of perjury that all submitted information is true, accurate, and complete to the best of the applicant's knowledge; and the applicant understands that a knowing violation of section 210.493, RSMo, may constitute a criminal offense and knowingly making a materially false statement in connection with a background check shall render the applicant ineligible;
13. Any other information and documents that the applicant wishes the division to consider in making its decision about eligibility; and
14. An explanation of why the applicant is unable to provide any of the information that must be provided to support the application.
- (C) The applicant shall register with the Family Care Safety Registry and execute any documents necessary for the division to access the applicant's results in the Family Care Safety Registry.
 - (D) The applicant shall execute any authorizations necessary to obtain information from state, local, and federal registries.
 - (E) The applicant shall submit fingerprint cards and any required fees to the Missouri State Highway Patrol's central repository and follow all of the Missouri State Highway Patrol's procedures for requesting a fingerprint-based criminal background check. The applicant shall further execute any documents and consents necessary for the Missouri State Highway Patrol to complete the fingerprint-based criminal background check and to notify the division of any criminal history record, or lack of criminal history record information discovered on the applicant as required by law.

(F) The applicant must submit a completed MOVECHS Waiver Agreement and Statement (SHP-981G) to the division with the application form to the division before reporting to be fingerprinted.

(G) The application will not be complete until the division receives a fully completed application form, MOVECHS Waiver Agreement and Statement (SHP-981G) and the results of the fingerprint-based criminal background check from the Missouri State Highway Patrol, and the applicant has registered for the Family Care Safety Registry and executed any authorizations necessary to obtain information from any registries.

(H) Eligibility.

1. Preliminary Eligibility.

A. Upon receipt and review of a complete application, and MOVECHS Waiver Agreement and Statement, the division may grant the applicant preliminary eligibility to commence employment, service, or presence at a LRCF, LERCF, or CPA for a period of thirty (30) days.

B. Within this thirty- (30-) day period, the division shall provide the applicant with a notice of withdrawal, provisional eligibility, final eligibility, or ineligibility.

C. Applicants granted preliminary eligibility shall be ineligible for employment, presence or service after the thirty- (30-) day period unless they have received a notice of provisional or final eligibility.

D. Applicants granted preliminary eligibility shall not have access to children prior to receiving notice of provisional or final eligibility.

E. The division shall provide a notice of preliminary eligibility to the applicant and any LRCF, LERCF, or CPA designated by the applicant.

2. Provisional Eligibility.

A. Upon receipt and review of a complete application, and MOVECHS Waiver Agreement and Statement, the division may grant the applicant provisional eligibility to commence employment, service, or presence at a LRCF, LERCF, or CPA if the applicant has complied with all steps necessary for the division to obtain background check results, but—

(I) The division is still awaiting results from a state child abuse and neglect registry and database;

(II) The applicant is unable to timely register with the Family Care Safety Registry due to no fault of the applicant; or

(III) The division cannot timely complete the background check process for other reasons beyond the control of the applicant.

3. Final Eligibility.

A. Upon receipt and review of a complete application, and MOVECHS Waiver Agreement and Statement and the applicant's complete background check results, the division will notify the applicant of eligibility or ineligibility.

B. The final eligibility notice will indicate whether the applicant is eligible or ineligible for employment, service, or presence at the LRCF, LERCF, or CPA.

C. The final eligibility notice will advise the applicant of the applicant's right to request administrative [*review and*] appeal **of** the decision and the process for requesting administrative [*review or*] appeal.

D. The final eligibility notice will advise the applicant of the applicant's responsibility to notify the division, LRCF, LERCF, or CPA of any event which would impact the applicant's eligibility as provided in this regulation.

(I) If the division finds the applicant eligible, the division shall forward a copy of the finding to any LRCF, LERCF, or Child Placing Agency indicated by the applicant. If the division finds the applicant ineligible, the division shall not send a copy of the notice to any indicated LRCF, LERCF, or Child Placing Agency, until the division determines the applicant has exhausted the applicant's administrative remedies and the division has received a written consent from the applicant authorizing the division to disclose such information.

(8) Notice and Communications. The division will send all communications and notices pertaining to an application and request for administrative [review or] appeal by first-class mail unless the applicant or entity requesting administrative [review or] appeal affirmatively notifies the division, in writing, that the applicant or person would like to receive communications by email and provides the division with the email address. It is the responsibility of the applicant or person to notify the division of any change in the applicant's or person's contact information. All notices shall be sent to the address or email address of record, and all correspondence sent to that address shall be deemed received and sufficient service for all purposes.

(10) Continuing Obligation to Notify and Expiration of Determination.

(A) The division's decision of eligibility or ineligibility shall be based upon the information that the division receives through the background check process, and any additional information that may be made available to the division during administrative [review and] appeal.

(B) The division's finding is only valid through the date of the decision and only for the LRCF, LERCF, or Child Placing Agency indicated by the applicant on the application. The applicant may designate more than one LRCF, LERCF, or Child Placing Agency on a single application.

(C) The applicant shall be responsible for notifying the division of any change in circumstance which may render the applicant ineligible and shall submit a new application based upon the subsequent information.

(D) The applicant's fingerprint-based background check is valid for five (5) years from the date the fingerprints were taken, or until there is any change in the circumstances of the applicant which would render the applicant ineligible under the statute, whichever occurs first. It is the responsibility of the applicant to track the expiration date of the fingerprints and submit an application for a new background check.

(E) The division's finding automatically expires thirty (30) days from the date of the division's decision. It is the responsibility of the applicant to submit a new application for a new determination and fingerprint-based criminal background check following the procedures specified in this regulation.

(12) Administrative [Review and] Appeal Procedure.

(A) The decision of the division shall be final unless the applicant or person who is aggrieved by a decision of the division under this regulation files a request for administrative [review] **appeal** of the decision within fourteen (14) days of the mailing of the decision. Any request for administrative [review] **appeal** that the division receives after the deadline is untimely and will not be subject to further administrative [review or] appeal.

(B) [Administrative Review.

1. A request for administrative review shall be made in writing, either on a form provided by the division or by letter. The division will publish a form on its website. The request for administrative review shall—

A. Include the name, address, telephone number, and email address of the person requesting administrative review;

B. State whether the division should provide the response and notice of final decision by first-class mail or by email;

C. Identify the decision the requestor wishes to be reviewed, the specific reasons the requestor believes the division's decision is erroneous, and why the requestor is aggrieved by the decision;

D. Include copies of any relevant documents, materials, or information that the requestor wishes to submit in support of the administrative review request; and

E. State whether the person requests that the review be considered on the basis of the materials submitted or whether the person requests a conference. If the person requests a review conference, then the person shall also provide dates and times within the next thirty (30) days when the person may be available and the reasons why the administrative review cannot be processed on the basis of the materials presented.

2. The request for administrative review shall be submitted to the division by certified first-class mail through the United States Postal Service return receipt requested to the address specified on the notice of ineligibility or submitted electronically by email to the division to the email address specified in the notice of ineligibility.

3. The administrative review shall be conducted and decided based upon the written materials submitted to the division and any information and materials presented at a review conference. The division will provide a review conference upon written request.

4. The review conference may take place by telephone conference call, video conference, or in-person meeting.

5. The administrative review process shall be informal. The rules of evidence shall not apply. There is no right to conduct discovery. There shall be no right to compel the production of witnesses or evidence by subpoena or otherwise.

6. The administrative review shall be conducted by an individual designated by the director of the department or the division, who may be an employee of the division or the department. However, the individual shall not have been involved in making the decision which is subject to review.

7. The individual conducting the administrative review shall conduct the administrative review and render a written decision no later than thirty (30) days from the date that the division received the request for administrative review.

8. The decision upon administrative review shall be the final decision of the department as to any person that is not an applicant.]

[(C)] Appeal.

1. Any applicant who is aggrieved by a decision [upon administrative review] **finding the applicant ineligible** shall have the right to appeal the decision to the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The applicant shall submit a notice of appeal to the division, within fourteen (14) days of the date of the [administrative review decision]**notice of ineligibility**, by certified first-class mail through the United States Postal Service return receipt requested to the address specified on the notice of ineligibility or submitted electronically by email to the division to the email address specified in the notice of [decision upon administrative review]**ineligibility**. The division must receive the notice of appeal within fourteen (14) days of the date of the decision. Any notice of appeal that is received after the deadline is untimely and the appeal will be dismissed. [Completion of the administrative review process is a condition precedent to the applicant's right to appeal.]

2. The parties to the appeal shall be the division and the applicant.

3. All appeals shall be processed and decided by a hearing officer from the Administrative Hearings Unit of the Division of Legal Services of the Department of Social Services. The decision of the hearing officer shall be the final decision of the department.

4. The following evidence shall be admitted and considered by the hearing officer on appeal as provided in this section without further foundation:

A. A copy of the application form and all supporting documentation;

B. A copy of the record of the court establishing that the applicant pled guilty or nolo contendere or has been found guilty of a crime or offense listed in 210.493, RSMo;

C. A copy of a letter or official communication from the applicable state, county, or local government agency stating that the applicant is listed as a perpetrator of child abuse or neglect in the state, county, or local government agency's registry or database of perpetrators of child abuse or neglect;

D. A copy of the report of the fingerprint-based background check conducted pursuant to section (3) of this regulation; and

E. A copy of a letter, official communication, or a print out of the applicable page of the National Sex Offender Registry or state sex offender registry.

5. The applicant or division may object to the hearing officer considering the information outlined in this regulation. The burden shall be on the objecting party to establish that the items of evidence shall not be considered by the hearing officer.

6. The hearings held under this section shall be informal, but they shall be held on the record and testimony will be adduced under oath. The rules of evidence do not apply. The applicant may be represented by an attorney.

7. Upon written request the division will provide the applicant with a copy of the fingerprint-based state and FBI background check.

8. The hearing shall not be an opportunity to collaterally attack or re-litigate the validity of the underlying plea of guilt, plea of *nolo contendere*, or the underlying finding of child abuse, neglect, or maltreatment by the applicable state or local agency, or the accuracy of information in the federal, state, or local registry or repository.

9. The hearing shall be based upon the written submissions of the parties unless the applicant or the division request a hearing by video or teleconference. The hearing officer may hold an in-person hearing only upon a showing that an in-person hearing is necessary to accommodate a special need of an applicant or the division.

10. The hearing officer shall issue a decision in writing, which will be sent by first-class mail (or by email at the election of the applicant) to the applicant at the applicant's address of record. If the applicant is represented by an attorney the decision will be sent to the applicant's attorney. The written decision of the hearing officer shall be the final decision of the department.

[(D)](C) Judicial Review.

1. Any applicant aggrieved by the final decision of the department after appeal may seek judicial review as provided in section 536.150, RSMo.

2. Any person who is not an applicant who is aggrieved by the final decision of the department after administrative review may seek judicial review as provided in section 536.150, RSMo.

AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2023. Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expired March 29, 2022. Original rule filed Sept. 17, 2021, effective March 30, 2022. Emergency amendment filed May 30, 2023, effective June 13, 2023, expired Dec. 9, 2023. Amended: Filed May 30, 2023, effective Dec. 30, 2023. Amended: Filed _____, 2024.*

**Original authority: 207.020, RSMo 1945, amended 1961, 1965, 1977, 1981, 1982, 1986, 1993, 2014; 210.493, RSMo 2021, amended 2023; 210.1286, RSMo 2021; and 660.017, RSMo 1993, amended 1995.*

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, Legal Services Division-Rulemaking, P.O. Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

TITLE 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 71—Rules for Residential Treatment Agencies for Children and Youth

PROPOSED AMENDMENT

13 CSR 35-71.300 Notification Requirements for License-Exempt Residential Care Facilities. The division is amending subsection (5)(D) to remove an unnecessary procedure for the verification of medical record retention by deleting subparagraph 8.B of subsection (5)(D).

PURPOSE: The amendment removes outdated information and an unnecessary procedure.

(5) Notification Procedures.

(D) The notification shall contain the information required in this subsection and otherwise in this regulation.

1. The LERCF shall list its full name, street address, mailing addresses, email address, and phone number. The mailing address and email addresses shall be the addresses of record of the LERCF and all official correspondence to the LERCF will be sent to the mailing or email address on record.

2. The LERCF shall identify the name of the director, owner, operator, all staff members, volunteers, and any individual eighteen (18) years of age or older who resides at or on the property of the LERCF. The LERCF shall provide the name, street address, physical and electronic mailing addresses, and phone number of the director or director’s designee who will serve as the point of contact between the division and the LERCF.

3. The LERCF shall provide a full description of the agency or organization operating the LERCF, including a statement as to whether the agency or organization is incorporated.

A. The description of the agency or organization shall specify the type of agency or organization.

B. If the agency or organization is incorporated then the LERCF shall provide the state in which the LERCF was incorporated and the corporate name of the LERCF.

4. The LERCF shall identify the name and address of the sponsoring organization of the residential care facility, if applicable.

5. The LERCF shall identify the school or schools attended by the children served by the residential care facility. The LERCF shall list the name and address of each school.

6. Fire and safety inspection certificates.

A. The LERCF shall include with the notification a copy of any and all fire and safety inspection certificates required by law in the jurisdiction where the LERCF operates, and shall indicate the date of the inspection and the date that each certificate expires, if any. If the LERCF operates in more than one (1) county or local jurisdiction then the LERCF shall submit the required certificates for each

facility at each location. The LERCF shall indicate the date of the inspection and the date that each certificate expires, if applicable.

B. LERCFs operating in jurisdictions where there are no required fire and safety inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain fire and safety inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection when available.

7. Local health department inspection certificates.

A. The LERCF shall include with the notification a copy of any and all state or local health department inspection certificates required in the jurisdiction in which the facility operates. If the LERCF operates in more than one (1) county or local jurisdiction, then the LERCF shall obtain the required certificates for each facility at each location. The LERCF shall indicate the date of the inspection and the date that each certificate expires, if any.

B. LERCFs operating in jurisdictions where there are no required local or county government health department inspections shall include a statement to that effect in the notification form.

C. If the LERCF is unable, after exercising diligent efforts, and due to no fault of its own, to obtain any required local health department inspection certificates in jurisdictions where such certificates are required by state law or local ordinance, then the LERCF shall submit a statement describing the efforts made to obtain the certificate(s) and the reason why the LERCF was unable to obtain the certificate. The LERCF shall attach copies of any correspondence from any state, county, or local jurisdictions declining to conduct the inspection when available.

8. Proof that medical records are maintained for each child.

A. The division will accept a written attestation, made under oath, subject to penalty of perjury, and executed by the director of the LERCF, that the LERCF actually maintains medical records for each child served by the LERCF according to the written policy of the LERCF, which shall be attached to the attestation.

[B. The LERCF shall provide the division access to the facility upon request to inspect the medical records maintained by the LERCF on the children served by the LERCF in order to verify that the medical records are being kept. The division will request access to this information only when the division has reasonable basis to believe that the LERCF is not maintaining records for any child as required by law.]

9. Background Check completion/eligibility. The director of the LERCF, or his or her authorized designee, shall certify, under oath subject to the penalties of perjury that all individuals who are required to complete a background check have successfully completed the background checks and have been found eligible for employment or presence at the LERCF pursuant to section 210.493, RSMo, and 13 CSR 35-71.015.

A. Phase-in period for LERCFs in operation as of July 14, 2021. For all original notifications submitted by LERCFs which were both in operation and had

children in its facility as of July 14, 2021, the division will accept a written certification from the director of the LERCF that all individuals who are required to submit to a background check pursuant to section 210.493, RSMo, and 13 CSR 35-71.015 either have completed the background check requirements or will have successfully completed the background check by the end of the phase-in period. Upon completion of this process the director or the director's designee shall provide written or electronic notice to the division certifying that the background check process for these individuals has been successfully completed. The division may extend this period for up to an additional one hundred twenty (120) days if the LERCF establishes, in writing, that it is unable to successfully complete the process by the deadline.

AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2023. Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expired March 29, 2022. Original rule filed Sept. 17, 2021, effective March 30, 2022. Amended: Filed _____, 2024.*

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