

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 rule-making 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 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 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 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 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 32—Telecommunications Service**

PROPOSED RESCISSION

4 CSR 240-32.110 Surety Bonding Requirements for Basic Local Telecommunications Companies. This rule established surety bonding requirements.

PURPOSE: The Public Service Commission is proposing to rescind this rule which requires that a basic local telecommunications company with less than a \$250,000 net book value in telephone plant in Missouri maintain a \$100,000 bond or other similar mechanism.

AUTHORITY: sections 386.040, RSMo 1994 and 386.250 and 392.200, RSMo Supp. 1998. Original rule filed Aug. 24, 1999, effective April 30, 2000. Rescinded: Filed June 29, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102, (573) 751-3234. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. Comments should refer to Case No. TX-2000-708, and be filed with an original and nine copies. A public hearing is scheduled for September 6, 2000, at 8:30 a.m., in Room 520B of the Truman State Office Building, 301 West High Street, Jefferson City, Missouri, for interested persons to appear and respond to Commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten days prior to the hearing at one of the following numbers: Consumer Services Hotline 1-800-392-4211, or TDD Hotline 1-800-829-7541.

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

PROPOSED RULE

4 CSR 240-32.110 Surety Instrument Requirements for Basic Local Telecommunications Companies

PURPOSE: This rule establishes requirements for surety instruments and trustees for the protection of basic local telecommunications company end-users.

(1) To ensure the protection of basic local telecommunications company end-users, any basic local telecommunications company with less than a two hundred fifty thousand dollar (\$250,000) net book value in telephone plant and/or telephone facilities located in the state of Missouri shall maintain a "surety instrument" that complies with this rule. Such surety instrument shall be a third-party surety bond issued by a surety authorized to do business in Missouri, an irrevocable bank letter of credit issued by a bank or other financial institution doing business in Missouri, an escrow account at a bank or other financial institution in Missouri, or other means of providing the protection required by this rule as may be approved by the commission.

(A) The surety instrument shall be made payable to a corporate trustee authorized to do business in Missouri.

(B) The surety instrument shall provide that a minimum of one hundred thousand dollars (\$100,000) shall be available to pay all legitimate claims permitted under this rule that are timely made by:

1. The end-users of the basic local telecommunications company; and
2. Every telecommunications company that provides transition services as a carrier-of-last-resort to those end-users pursuant to the provisions of 4 CSR 240-32.120.

(C) The surety instrument shall be maintained as long as the basic local telecommunications company has a certificate of authority to provide basic local telecommunications service in the state of Missouri, unless the commission enters an order waiving the requirements of this rule.

(D) The surety instrument shall provide that the issuer of the surety instrument (in the case of an escrow account, the holder of the escrowed funds) shall notify the commission when the surety instrument is canceled, closed or otherwise terminated prematurely.

(2) In the event a telecommunications company—1) ceases to provide basic local telecommunications service to its end-user(s) for any reason other than cause as provided for in its tariff approved by the commission and 2) fails to return end-user deposits and/or reimburse its end-user(s) for unused prepaid services, then its end-user(s) and any telecommunications company that provides transition services as a carrier-of-last-resort to that company's end-users pursuant to the provisions of 4 CSR 240-32.120 shall have the right to seek indemnification by making claims on the surety instrument for:

(A) Unreturned end-user deposits;

(B) Unused prepaid service; and

(C) The costs incurred by the carrier-of-last-resort in providing transition services to the company's end-users pursuant to 4 CSR 240-32.120.

(3) A carrier-of-last-resort that provides transition services to end-users pursuant to 4 CSR 240-32.120 shall include in the customer notice prescribed in 4 CSR 240-32.120(5) the name and address of the corporate trustee for the surety instrument, citation to this rule, and notice that end-users may submit claims to the corporate trustee for any unreturned deposits and/or payments for prepaid local services that they did not receive. The carrier-of-last-resort shall also mail a copy of the notice to the corporate trustee at the address provided by the basic local telecommunications company.

(4) The corporate trustee shall notify the commission thirty (30) days in advance of the date it will cease to be a corporate trustee for a surety instrument if it does so before the surety instrument is canceled, closed or otherwise terminates prematurely. The corporate trustee shall review all claims made to it during the period commencing the date the carrier-of-last-resort mails the notice to end-users of the right to seek indemnification from the surety instrument and ending sixty (60) days later. Legitimate claims made during the foregoing time period shall have priority over any claims that may be made and accepted at a later date, and these claims shall be paid in the following order of priority: first, end-users; and second, carriers-of-last-resort. In the event the aggregate total of the first priority claims exceed the funds available from the surety instrument, then such claims shall be paid pro rata. In the event the funds available from the surety instrument exceed the aggregate total of the first priority claims, but the excess funds are insufficient to pay the second priority claims in full, then the second priority claims shall be paid pro rata. Corporate trustees shall complete their duties in a timely manner, not to exceed six (6) months from the date the carrier-of-last-resort mails to end-users the notice required by section (3) of this rule. Within thirty (30) days of distributing the final payments for legitimate claims, the trustee shall file with the commission a report including, at a minimum, the following: the name and address of the claimant, the amount paid and the date paid.

(5) Each basic local telecommunications company certificated to provide basic local service in the state of Missouri shall file with the commission the following:

(A) Documentation demonstrating the company is exempt from the requirement of maintaining a surety instrument; or

(B) Each of the following:

1. A copy of the executed surety instrument;

2. A copy of the corporate trustee agreement executed by the corporate trustee which shall include a provision that states the corporate trustee has read and understands this rule and agrees to comply with the duties of a corporate trustee set forth therein; and

3. A copy of the letter notifying the appropriate carrier(s)-of-last-resort of the name and address of the corporate trustee.

(6) The foregoing filings shall be made at the times following:

(A) For companies that have certificates of authority to provide basic local telecommunications service when this rule becomes effective and that have not already complied with the requirements of this rule, within thirty (30) days of the date this rule becomes effective;

(B) With each application for a certificate of authority to provide basic local telecommunications services; and

(C) With each annual report filed with the commission.

(7) Each basic local telecommunications company certificated to provide basic local service in the state of Missouri that is not exempt from this rule shall maintain records that identify by customer name, address and telephone number, the dollar amount of a customer's prepaid basic local telecommunications services and any held deposits. Such records shall be made available to the commission, upon request.

(8) Upon application to the commission, the requirements of this rule may be waived if the basic local telecommunications company successfully complies with the requirements of this rule for a period of three (3) consecutive years.

AUTHORITY: sections 386.040, RSMo 1994 and 386.250 and 392.200, RSMo Supp. 1999. Original rule filed Aug. 24, 1999, effective April 30, 2000. Rescinded and readopted: Filed June 29, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost private entities \$610,000 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102, (573) 751-3234. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. Comments should refer to Case No. TX-2000-708, and be filed with an original and nine copies. A public hearing is scheduled for September 6, 2000, at 8:30 a.m., in Room 520B of the Truman State Office Building, 301 West High Street, Jefferson City, Missouri, for interested persons to appear and respond to Commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten days prior to the hearing at one of the following numbers: Consumer Services Hotline 1-800-392-4211, or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Telecommunications Companies
 Type of Rulemaking: New Rule (Surety Instrument Requirement)
 Rule Number and Name: 4 CSR 240-32.110

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:
	Class A Local Telephone Companies	
	Class B Local Telephone Companies	
61	Class C Local Telephone Companies	\$610,000
61	All entities	\$610,000

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are all other companies certificated to provide basic local exchange telecommunications services.

III. WORKSHEET

1. Annual fiscal cost is based on 61 Class C Telephone Companies * \$2,000 = \$122,000.
 Total fiscal impact is based on \$122,000 annual cost * 5 years = \$610,000.

IV. ASSUMPTIONS

1. The life of the rule is estimated at five years.
2. Fiscal year 2000 dollars are used to estimate costs. No adjustment for inflation is applied.

3. Estimates assume no sudden change in technology that would influence costs.
4. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.
5. The universe of entities is based on May 16, 2000 data and is assumed to remain constant. The universe of Class C Telephone Company entities is based on the number of companies with a certificate, approved interconnection agreement, and an approved tariff to provide basic local telecommunications services.
6. All Class A and Class B Telephone Companies are assumed to have a net book value of at least \$250,000 and therefore do not require a Surety Instrument.
7. All Class C Telephone Companies are assumed to have a net book value of less than \$250,000 and therefore require a Surety Instrument.
8. Class C Telephone Companies are assumed to require a Surety Instrument.
9. All Class C Telephone Companies are assumed to require a Surety Instrument for the life of the rule.
10. The Surety Instrument is assumed to provide a minimum of \$100,000 available to pay all legitimate claims permitted under the proposed rule. In addition the Surety Instrument is assumed to provide an additional amount sufficient to recover corporate trustee costs.
11. The Surety Instrument is assumed to have an annual cost of \$2,000. This cost is based on the record contained in Case No. TX-2000-158 and additional information obtained from surety bonding companies. Case No. TX-2000-158 provided evidence \$1,075 is a reasonable estimate of the annual cost of securing a \$100,000 surety bond. Discussions with a major bonding company indicate the annual cost of a \$100,000 surety bond can vary from \$300 to \$2,000. A \$2,000 annual cost is being used as a reasonable, average estimate in securing a Surety Instrument as contemplated by the proposed rule.

**Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs**

PROPOSED AMENDMENT

9 CSR 30-4.042 Admission Criteria. The department is amending subsection (4)(B).

PURPOSE: This amendment establishes proposed additional criteria and procedures for admission of eligible individuals to the community psychiatric rehabilitation program.

(4) The criteria for admission to community psychiatric rehabilitation program services shall include:

(B) Diagnosis. A physician or licensed psychologist shall certify a primary *Diagnostic and Statistical Manual (DSM)* diagnosis or *International Classification of Diseases, Ninth Revision with Clinical Modification (ICD-9-CM)*, using the current edition of the manual. This diagnosis may coexist with other psychiatric diagnoses in Axis I or other areas.

1. Schizophrenia
 - A. Disorganized
 - (I) DSM IV code: 295.1X
 - (II) ICD-9-CM code: 295.1X
 - B. Catatonic
 - (I) DSM IV code: 295.2X
 - (II) ICD-9-CM code: 295.2X
 - C. Paranoid
 - (I) DSM IV code: 295.3X
 - (II) ICD-9-CM code: 295.3X
 - D. Schizophreniform
 - (I) DSM IV code: 295.4X
 - (II) ICD-9-CM code: 295.4X
 - E. Residual
 - (I) DSM IV code: 295.6X
 - (II) ICD-9-CM code: 295.6X
 - F. Schizoaffective
 - (I) DSM IV code: 295.7X
 - (II) ICD-9-CM code: 295.7X
 - G. Undifferentiated
 - (I) DSM IV code: 295.9X
 - (II) ICD-9-CM code: 295.9X
2. Delusional disorder
 - A. DSM IV code: 297.1X
 - B. ICD-9-CM code: 297.1X
3. Bipolar I disorders
 - A. Single manic episode
 - (I) DSM IV code: 296.0X
 - (II) ICD-9-CM code: 296.0X
 - B. Most recent episode manic
 - (I) DSM IV code: 296.4X
 - (II) ICD-9-CM code: 296.4X
 - C. Most recent episode depressed
 - (I) DSM IV code: 296.5X
 - (II) ICD-9-CM code: 296.5X
 - D. Most recent episode mixed.
 - (I) DSM IV code: 296.6X
 - (II) ICD-9-CM code: 296.6X
4. Bipolar II disorders
 - A. DSM IV code: 296.89
 - B. ICD-9-CM code: 296.89
5. Psychotic disorders NOS
 - A. DSM IV code: 298.9
 - B. ICD-9-CM code: 298.9
6. Major depressive disorder-recurr
 - A. DSM IV code: 296.3X
 - B. ICD-9-CM code: 296.3X
7. **Obsessive-Compulsive Disorder**
 - A. **DSM IV code: 300.30**
 - B. **ICD-9-CM code: 300.3**

8. Post Traumatic Stress Disorder
 - A. DSM IV code: 309.81
 - B. ICD-9-CM code: 309.81
9. Borderline Personality Disorder
 - A. DSM IV code: 301.83
 - B. ICD-9-CM code: 301.83
10. Anxiety Disorders
 - A. Generalized Anxiety Disorder
 - (I) DSM IV code: 300.02
 - (II) ICD-9-CM code: 300.02
 - B. Panic Disorder with Agoraphobia
 - (I) DSM IV code: 300.21
 - (II) ICD-9-CM code: 300.21
 - C. Panic Disorder without Agoraphobia
 - (I) DSM IV code: 300.01
 - (II) ICD-9-CM code: 300.01
 - D. Agoraphobia without Panic Disorder
 - (I) DSM IV code: 300.22
 - (II) ICD-9-CM code: 300.22
 - E. Social Phobia
 - (I) DSM IV code: 300.23
 - (II) ICD-9-CM code: 300.23

AUTHORITY: sections 630.050, RSMo [Supp. 1998] Supp. 1999 and 630.655 and 632.050, RSMo 1994. Original rule filed Jan. 19, 1989, effective April 15, 1989. For intervening history, please consult the Code of State Regulations. Emergency amendment filed June 30, 2000, effective July 11, 2000, expires Feb. 22, 2001. Amended: Filed June 30, 2000.

PUBLIC COST: This proposed amendment will cost state agencies an estimated \$4,613,708 each year. See fiscal note.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 Mental Health, Attn: Julie Carel, Division of Comprehensive Psychiatric Services, P.O. Box 687, Jefferson City, MO 65102. To be considered comments must be in writing and must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Fiscal Note
Public Entity Cost**

I. RULE NUMBER. (All of the information in Part I comes from the header of the rule.)

Title: 9 -- Department of Mental Health

Division: 30 -- Certification Standards

Chapter: 4 Mental Health Programs

Type of Rulemaking: Emergency Amendment

Rule Number and Name: 9 CSR 30 -- 4.042 Admission Criteria

II. SUMMARY OF FISCAL IMPACT (Present a summary of fiscal impact. Use a separate row for each public agency or political subdivision affected.)

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Mental Health	\$1,378,354
Department of Social Services (Match)	\$1,983,427

III. WORKSHEET (Present more detailed fiscal information.)

Adult: \$825,000 Anticipated Cost
 330,000 State Match (DMH)
 495,000 Federal Match (Medical Services, Department of Social Services)

Youth:
 \$2,536,781 Anticipated Cost
 1,048,354 State Match (DMH)
 1,488,427 Federal match (Medical Services, Department of Social Services)

IV. ASSUMPTIONS AND METHODOLOGY. (Present assumptions, references and methods of acquiring information that underlie the conclusions in the fiscal note. Examples of information that might be included here are the sources of information presented in the fiscal note, why those sources were chosen and eventualities that might cause the fiscal impact to be different from your estimate.)

We have identified 1,100 adult clients that would be affected by this rule change and have assumed that 50% of them will enroll in the program for a total program cost of \$825,000.

We have identified 1,850 youth clients that would be affected by this rule change and have assumed that 50% of them will enroll in the program for a total program cost of \$2,536,781.

The costs shown in this note have already been appropriated by the General Assembly and no new money will be necessary to implement this change in Rules.

It is anticipated that the costs associated with this change will increase annually at the rate of the inflation factor.

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

PROPOSED AMENDMENT

12 CSR 10-24.070 License Issuance Procedures and One License Concept of the Drivers License Compact. The director proposes to delete sections (1) and (2), amend and renumber section (3), and add a new section (2).

PURPOSE: This amendment establishes the requirements for out-of-state residents with a valid driver license and applying for a Missouri intermediate license.

[(1) An applicant for a Missouri drivers license shall meet the licensing provisions of Chapter 302, RSMo.

(2) An applicant for a new, duplicate or renewal Missouri drivers license shall be allowed to possess only one (1) valid license at any time.

(A) A person shall possess only a Class A, B, C, E, F or M license.

(B) Any change in license classification, restriction(s) or endorsement(s), or any combination of these, requires the applicant to apply for a new license with the proper change of classification, restriction(s) or endorsement(s) or any combination of these. At the time of application, a Driver License Renewal Label, containing the updated information, shall be placed on the back of the current license. The label shall be valid for sixty (60) days from the date of issuance.]

[(3)] (1) A new resident applying for a Missouri drivers license shall surrender any license in his/her possession. If the new resident has either lost or had the license(s) issued in any prior state of residence stolen, [a letter of clearance shall be approved by the Missouri State Highway Patrol or licensing office and] the Missouri State Highway Patrol may approve a letter of clearance issued by the prior licensing state or request the Drivers License Bureau to conduct an inquiry through the National Driver Register in order to determine the applicant's eligibility for a Missouri drivers license. If a letter of clearance is approved by the Missouri State Highway Patrol, it should accompany the license application.

(2) A new resident between the ages of sixteen (16) and eighteen (18) who surrenders a valid license from another state, shall receive an intermediate license if all other licensing requirements are met.

AUTHORITY: sections 302.010, [RSMo Supp. 1991] 302.301 and 302.720, RSMo [Supp. 1989] Supp. 1999 and 302.015 and 302.600, RSMo [1986] 1994. Original rule filed Sept. 1, 1986, effective Nov. 28, 1986. Amended: Filed Dec. 11, 1991, effective April 9, 1992. Amended: Filed Jan. 26, 1994, effective July 30, 1994. Amended: Filed June 29, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, com-

ments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

12 CSR 10-24.190 Drivers License Retesting Requirements After a License, School Bus Permit or Temporary Instruction Permit Expires. The director proposes to amend the purpose and sections (1) and (2).

PURPOSE: This amendment is necessary to outline the retesting requirements for a school bus permit or temporary instruction permit.

PURPOSE: This rule establishes the [drivers license] retesting requirements after a license, school bus permit or temporary instruction permit expires [pursuant to section 302.173, RSMo].

(1) Every holder of a valid Missouri drivers license, school bus permit, [or both,] or temporary instruction permit shall renew that license or permit, [or both,] on or before the date of expiration.

(2) If a person does not renew the drivers license, school bus permit, [or both,] or temporary instruction permit on or before the date of expiration, the person is allowed a grace period of six (6) months (one hundred eighty-four (184) days) to renew the license, school bus permit, [or both,] or temporary instruction permit without being required to take the written and/or skills examinations as described in 12 CSR 10-24.060 or 12 CSR 10-24.400. However, the grace period for retesting does not allow the person to continue driving on the expired license, [permit, or both] school bus permit, or temporary instruction permit.

AUTHORITY: section 302.173, RSMo [Supp. 1989] Supp. 1999. Original rule filed Oct. 30, 1989, effective Feb. 25, 1990. Amended: Filed July 15, 1991, effective Oct. 31, 1991. Amended: Filed Nov. 21, 1991, effective April 9, 1992. Amended: Filed June 29, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105-0629. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

12 CSR 10-24.200 Drivers License Classes. The director proposes to amend sections (5), (6), (16) and (17).

PURPOSE: This proposed amendment adds the intermediate license restrictions that are outlined in Senate Bill 19 and defines an "emergency situation" as required in section 302.178.2 of Senate Bill 19.

(5) Class E—The holder of a Class E license who receives compensation in wages, salary, commission or fare to drive any motor vehicle in the transportation of persons or property, or is an owner or employee and drives a motor vehicle carrying passengers or property for hire, or regularly drives a commercial motor vehicle of another person in the course of or as an incident to his/her employment, but whose principal occupation is not the driving of that motor vehicle, may drive any of the described vehicles [*provided, the license bears the proper endorsement(s), if any, required for the type of vehicle being driven*]. A holder of a Class E license shall not be entitled to drive any vehicle whose operation requires the driver to hold a Class A, Class B or Class C license. A holder of a Class E license may drive all vehicles which may be driven by a holder of a Class F license, but not motorcycles or vehicles which require an endorsement(s) unless the proper endorsement(s) appears on the license.

(6) Class F—The holder of a Class F license may drive any motor vehicle other than one requiring the driver to hold a Class A, Class B, Class C or Class E license, including any recreational vehicle being used solely for personal use, except that the holder of a Class F license may not drive motorcycles or vehicles which require an endorsement(s) unless the proper endorsement(s) appears on the license. Nothing in this section shall be construed to prevent operators of recreational motor vehicles for personal use from operating those vehicles with a Class F license. **The holder of a Class F intermediate license may drive the same types of vehicles as those driven by the holder of a Class F drivers license except that the holder of a Class F intermediate license cannot operate a motor vehicle on the highways of the state between the hours of 1:00 a.m. and 5:00 a.m. unless accompanied by a person who is at least twenty-one (21) years of age. The licensee is not required to be accompanied by someone twenty-one (21) years of age or older if the travel is to or from a school or educational program or activity, a regular place of employment or in emergency situations. An emergency situation is defined as any sudden or unexpected event in which a potential injury or death may occur to a living being that requires the operation of a motor vehicle.**

(16) In addition to any other restrictions prescribed by the director, the holder of a Class A, Class B or Class C license who has not qualified to drive a motor vehicle equipped with air brakes shall have a restriction L shown on the license. The restriction L does not allow the holder of a license to drive a **commercial** motor vehicle equipped with air brakes.

(17) In addition to any other restrictions prescribed by the director, a person who takes the skills test for a Class A license in a vehicle whose combined registered gross weight is twenty-six thousand one **(26,001) pounds** *[(26,001 lbs.)]* or more, but whose combined gross vehicle weight rating as specified by the manufacturer is twenty-six thousand **(26,000) pounds** *[(26,000 lbs.)]* or less **towing a unit(s) whose gross vehicle weight rating as specified by the manufacturer is greater than ten thousand (10,000) pounds**, shall be restricted to operating vehicle combinations or single vehicles with a manufacturer's specified gross vehicle weight rating of twenty-six thousand **(26,000) pounds** *[(26,000 lbs.)]* or less.

AUTHORITY: sections 302.015, *RSMo* 1994 and 302.700, *RSMo Supp.* 1999. Original rule filed Jan. 16, 1990, effective May 11,

1990. For intervening history, please consult the *Code of State Regulations*. Amended: Filed June 29, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105-0629. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED RULE

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers

PURPOSE: Section 144.020.1(1), *RSMo* imposes a tax on the retail sale of tangible personal property. Section 144.030.2(2), *RSMo* exempts materials that become a component part or ingredient of new personal property, which is intended to be sold ultimately at retail. Sections 144.030.2(4) and (5), *RSMo* exempts certain machinery, equipment, parts, materials, supplies and parts that are for replacement or are for a new or expanded plant. This rule explains the taxation rules for photographers, photofinishers and photoengravers and what elements must be met to qualify for these exemptions.

(1) In general, sales of photographs, photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and similar products are subject to tax. Purchases of materials and supplies that become component parts or ingredients of the final product, such as paper, are exempt. Purchases of machinery and equipment for replacement or for a new or expanded plant are exempt if directly used in the manufacturing process. This may include cameras and lenses.

(2) Definition of Terms: See the definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to consumers for use or consumption, whether on special order, contract or otherwise, are subject to tax.

(B) Sales of finished photographs by photographers are subject to tax. Services rendered by the photographer frequently represent a substantial portion of the total charges. Fees for the photographer's consultative and photographic services up to the point of previews are not subject to tax, if separately stated. Other charges for labor involved in creating the finished photographs are subject to tax even if separately stated. Sales by photographers are taxable because the true object of the photographers' customers is to obtain the finished photograph produced by the service.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process.

(D) Photographers, photofinishers, photoengravers, blueprinters and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product that will ultimately be sold at retail, may purchase their supplies under a resale exemption certificate.

(E) Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable. Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(G) A photographer who enters into an exclusive contract with an elementary or high school to photograph students is liable for tax on photographs sold to students. The sales are not exempt as sales to an exempt organization because the sales are made to the students, not to the school.

(4) Examples.

(A) A couple arranged for a photographer to take pictures at their wedding. The photographer charged \$150 to take the pictures, develop the film and print proofs. The \$150 separately stated labor charge for taking the pictures and developing the proofs is not subject to tax. The couple decides to purchase \$200 worth of finished pictures. The \$200 for the finished pictures is subject to tax.

(B) If the photographer in example (4)(A) does not separately state the labor charges the entire sale price is taxable.

(C) A person went to a photographer to have glamour portraits taken. The photographer met with the person to discuss the desired results and the purpose of these photographs. The photographer advised the person on clothing to wear, makeup tips, described the setting and lighting, and other means the photographer uses. The photographer took several pictures and created proofs for the person to preview. The photographer charged a nonrefundable "sitting fee." This sitting fee is not subject to tax because this is a distinct and separate charge from the photographs.

(D) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.

(E) A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

(F) A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 29, 2000.

PUBLIC COST: This proposed rule will not cost the state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105-0629. To be considered,

comments must be received within thirty days after the publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration**

PROPOSED RULE

12 CSR 10-104.030 Filing Requirements

PURPOSE: This rule provides general guidance for determining a taxpayer's filing frequency and the taxpayer's obligation to file a return and remit tax on the due date according to sections 144.080, 144.081, 144.090, 144.100, 144.140, 144.160, 144.170, and 144.250, RSMo.

(1) In general, sellers of tangible personal property and taxable services are required to file and remit tax on an annual, quarterly or monthly basis. Some sellers who file on a monthly basis may be required to remit tax on a quarter-monthly basis. Failure to file or remit taxes when due results in interest and additions to tax on the unpaid amount.

(2) Definitions.

(A) Calendar month—the first day to the last day of any of the twelve (12) months of the Gregorian calendar.

(B) Calendar quarter—the period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31.

(C) Quarter-month—

1. The first seven (7) days of a calendar month;
2. The eighth through the fifteenth day of a calendar month;
3. The sixteenth through the twenty-second day of a calendar month; and
4. The twenty-third day through the last day of a calendar month.

(3) Basic Application.

(A) Every licensed taxpayer must file a return and remit tax due by the statutory due date. The taxpayer must file a return even if no sales were made during the reporting period. The taxpayer is responsible for obtaining the necessary forms for filing. Failure to obtain tax forms does not relieve the taxpayer from filing.

(B) The taxpayer's filing frequency is determined by the amount of state sales tax collected by the taxpayer for all business locations during the previous calendar year. The filing frequency of a new business is based on the estimated taxable sales for the first year of operation. Local, conservation or parks and soils taxes are not considered in determining filing frequency.

1. If state tax collections equal or exceed five hundred dollars (\$500) per calendar month, the taxpayer must file and remit taxes on a monthly basis.

2. If state tax collections are less than five hundred dollars (\$500) per calendar month but equal or exceed forty-five dollars (\$45) in a calendar quarter; the taxpayer must file and remit taxes on a quarterly basis.

3. If state tax collections are less than forty-five dollars (\$45) per quarter, the taxpayer must file and remit taxes on an annual basis.

(C) A monthly return is due on the twentieth day of the following month, except for the last month of a quarter. A quarterly return and a monthly return filed for the last months of a quarter are due on the last day of the following month. An annual return is due on January 31 following the calendar year. If the due date

falls on a Saturday, Sunday or state of Missouri holiday the return is due on the next business day.

(D) The United States Postal Service postmark date determines the date the return is filed. If the postmark date is on or before the due date, it is timely. If the postmark is after the due date, the return is late. If a return contains both a taxpayer's metered postal impression and the U.S. Postal Service postmark, the date of the U.S. Postal Service postmark date determines the date the return is filed. If the return is mailed by registered mail, the date of registration determines the date the return is filed.

(E) A taxpayer filing a return and remitting the tax due on or before the due date is permitted a two percent (2%) timely payment allowance.

(F) A taxpayer failing to file a return by the due date will be assessed additions to tax of five percent (5%) on the unpaid amount for each month a return is late, up to a maximum of twenty-five percent (25%). A taxpayer failing to pay a return by the due date will be assessed additions of five percent (5%) on the unpaid amount. If a taxpayer both fails to timely file and fails to timely pay, the additions for failing to timely file applies. A taxpayer that fails to pay the proper amount of tax by the due date must pay interest on the unpaid amount at a rate determined pursuant to section 32.065, RSMo.

(G) The department may extend the time to file or pay a return for up to sixty (60) days. In order to obtain an extension, the taxpayer must obtain approval from the department prior to the due date. Extensions will only be granted for good cause. If the department approves an extension to file or pay, the taxpayer is not permitted a two percent (2%) timely payment allowance. Interest also accrues on any amount not paid by the due date.

(H) The department may require a taxpayer to remit state tax on a quarter-monthly basis if the taxpayer's state tax is fifteen thousand dollars (\$15,000) or more per month in each of at least six (6) months of the prior twelve (12) months. A quarter-monthly taxpayer must remit the tax within three (3) banking days after the end of each quarter-monthly period. The postmark date or registration date of the remittance will determine timeliness of the quarter-monthly payment. A quarter-monthly taxpayer must file a monthly return and remit any unpaid amounts.

(I) A taxpayer failing to remit a quarter-monthly payment is assessed a five percent (5%) penalty on the underpayment. A penalty will not be assessed if the quarter-monthly remittances are at least:

1. Ninety percent (90%) of the state tax due for the month; or
2. Twenty-five percent (25%) of the average monthly state tax liability of the taxpayer for the previous calendar year. The department excludes the highest and lowest monthly liability when calculating the average monthly liability.

(J) If a penalty is due, the underpayment amount is calculated as the difference between any timely remittance and the lesser of the two (2) amounts above. The penalty will not be imposed in the first two (2) months the seller is obligated to remit quarter-monthly tax or if the taxpayer can demonstrate reasonable cause.

(4) Examples.

(A) A taxpayer's average monthly taxable sales are \$15,000. The taxpayer's filing frequency is monthly because state tax collections computed as follows exceeds \$500 per calendar month— $\$15,000 \times 4\%$ (state rate) = \$600. Note: Local, conservation or parks and soils taxes are not considered in determining filing frequency.

(B) A taxpayer prepares its February return on March 20 and calculates tax due at \$25,000. When preparing the return the taxpayer takes the 2% timely payment allowance equaling \$500. The postal carrier picks up the return and payment on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because the return is postmarked on March 21, the return is 1 day late. The taxpayer loses the 2% timely payment

allowance. The \$25,000 is subject to 5% additions to tax. Interest accrues on \$500 until it is paid to the department.

(C) A taxpayer prepares its February return on March 19. When preparing the return the taxpayer takes the 2% timely payment allowance equaling \$500. The taxpayer sends the return and payment to its mailroom for metering. The taxpayer's mailroom meters the envelope on March 20. The postal carrier picks up the return on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because U.S. Postal Service's postmark is March 21, the return is 1 day late.

(D) A taxpayer sends a check for its February tax on March 10. The taxpayer discovers it sent the check without the return and mails the return on April 30. The taxpayer retains its 2% allowance because payment was received before the due date.

(E) A business' average monthly state tax for the previous calendar year equals \$20,000. The estimated quarter-monthly payment is \$5,000 per quarter-monthly period. The business' actual state tax collections are \$6,000 per quarter-monthly period. If the business remits quarter-monthly payments of \$5,000 timely, no penalty is charged. If the business underpays 1 of the estimated quarter-monthly payments by \$2,000 (it remits \$3,000), the penalty is 5% of the difference between the amount paid, \$3,000, and the estimate, \$5,000. The penalty is calculated as follows: $\$5,000 - \$3,000 = \$2,000 \times 5\%$ penalty = \$100.

(F) A business elects to make quarter-monthly payments on an actual basis. If the business pays at least 90% of the state tax collections for the month with the quarter-monthly payments, no penalty is charged. If the business does not meet the required 90% state tax collections for the month with the quarter-monthly payments, the penalty is 5% of the difference between the amount paid and the required 90% state tax collections.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed June 29, 2000.

PUBLIC COST: The proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

PROPOSED RULE

12 CSR 10-110.990 Tax—Sales of Food

PURPOSE: Section 144.014, RSMo provides for a reduced tax rate for certain sales of food. This rule explains when the reduced rate applies.

(1) In general, qualified sales of food by a qualified business are taxed at a reduced state rate of 1.225% plus any applicable local tax. All other sales of food are taxed at the full state rate of 4.225% plus any applicable local tax.

(2) Basic Application of Rule.

(A) Sales of food subject to the reduced rate include food that qualifies under the Federal Food Stamp Program. This includes food or food products for home consumption and seeds and plants

for use in gardens to produce foods for personal consumption. Alcoholic beverages, tobacco and hot food items ready for immediate consumption do not qualify for the reduced rate. Food items refrigerated or at room temperature qualify for the reduced rate, even if the purchaser elects to heat the item on the business' premises. Bakery items, even if still warm from baking, are qualified foods.

(B) A business whose gross receipts from sales of food and drink prepared for immediate consumption, either on or off premises, are 80% or less of its total gross receipts must remit tax on its food sales at a reduced state tax rate of 1.225% plus any applicable local tax.

(C) Sales of qualifying food through vending machines are subject to the reduced tax rate.

(3) Examples.

(A) A grocery store sells nonfood items and qualifying food items. The store will charge the regular tax rate on the nonfood items and the reduced tax rate on the qualifying food items.

(B) A vending machine company provides two vending machines to a business. One machine is for cold items and one machine keeps items hot. Only the cold items are eligible for the reduced tax rate. The hot items are subject to the regular tax rate.

(C) A convenience store sells burritos from its freezer. The convenience store provides a microwave so the purchaser can heat it. The sale of the burrito is taxed at the reduced rate because it is a qualifying food item.

(D) A vending machine company sells popcorn and soup in microwave pouches and containers. These items are sold at room temperature and are heated by the purchaser in a microwave provided in the vending area. These items are eligible for the reduced tax rate.

(E) A fast food restaurant sells cold salads and cold soft drinks. These cold items represent approximately 10% of total gross receipts. Because the restaurant's total food sales of items prepared for immediate consumption are more than 80% of the total sales, the restaurant should charge the regular tax rate on all its food sales.

(F) A convenience store sells prepared cold sub sandwiches, ice cream and cold drinks. The store also prepares and sells hot dogs and chili. All items are sold "to go." The store should charge the reduced tax rate on the cold items, but should charge the regular tax rate on the hot items.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed June 29, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$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 Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is amending section (13).

PURPOSE: This proposed amendment provides for a quality assurance incentive per-diem increase of \$3.20 and an adjustment to the reimbursement rate for high volume providers.

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

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

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

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

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

120% of median	\$6.62
90% of median	\$4.97
Difference	\$1.65
1/2 the difference	<u> .825</u>
Per-diem adjustment	\$.83

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

90% of median	\$4.97
120% of median	\$6.62
Ancillary per diem	\$5.21
Difference	\$1.41
1/2 the difference	<u> .705</u>
Per-diem adjustment	\$.71

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

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

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

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

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

4. 1967 Life Safety Code (LSC). Currently certified nursing facilities that must comply with a recent interpretation of paragraph 10-133 of the 1967 LSC which requires corridor walls to extend to the roof deck or achieve equivalency under the Fire Safety Evaluation System (FSES) will be reimbursed the reasonable and necessary cost to meet those standards required for compliance through their reimbursement rate. The reimbursement shall not be effective until the Division of Aging has confirmed that the corrective action to comply with the 1967 LSC or FSES is operational and has reviewed the cost for compliance. Fire sprinkler systems shall be reimbursed over a depreciation life of twenty-five (25) years, and other alternative corrective action will be reimbursed over a depreciable life of fifteen (15) years. The division will use a desk audited and/or field audited cost report with the latest period ending in calendar year 1992 which is on file with the division as of December 31, 1993. This adjustment will be computed based on the documented cost submitted to the division as follows:

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

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

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

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

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

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

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

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

B. Extraordinary circumstances include:

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

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

C. The rate increase shall be calculated as follows:

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

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

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

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

exceed the cost component ceiling. The rate adjustment, subject to ceiling limits will be added to the prospective rate.

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

9. Quality Assurance Incentive.

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

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

10. High Volume Adjustment. Effective for dates of service July 1, 2000, a high volume adjustment shall be granted to qualifying providers. A provider must qualify each July 1, the beginning of each state fiscal year (SFY), for the high volume adjustment and the adjustment will be effective for services rendered during the SFY, July 1 through June 30. For a provider who has a high volume adjustment on June 30, but does not qualify for the high volume adjustment on July 1 of the subsequent SFY, that provider's prospective rate will be reduced by the amount of the high volume adjustment included in the facility's prospective rate in effect June 30.

A. Each facility with a prospective rate on or after July 1, 2000, and which meets all of the following criteria shall receive a per-diem adjustment:

(I) Have on file at the division a full twelve (12)-month cost report ending in the third calendar year prior to the state fiscal year in which the adjustment is being determined (i.e., for SFY 2001, the third prior year would be 1998, for SFY 2002, the third prior year would be 1999, etc.);

(II) The Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds eighty-five percent (85%) of the total patient days for all nursing facility licensed beds;

(III) The allowable cost per patient day as determined by the division from the applicable cost report for the patient care, ancillary and administration cost components, as set forth in paragraphs (11)(A)1., (11)(B)1. and (11)(C)1., exceeds the per-diem ceiling for each cost component in effect at the end of the cost report period; and

(IV) Government owned or operated facilities shall not be eligible for this adjustment.

B. The adjustment will be equal to ten percent (10%) of the sum of the per-diem ceilings for the patient care, ancillary and administration cost components in effect on July 1 of each year.

C. The division may reconstruct and redefine the qualifying criteria and payment methodology for the high volume adjustment.

PUBLIC COST: This proposed amendment will cost state agencies \$32,758,989 for SFY 2001 and annually thereafter.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Office of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

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

**FISCAL NOTE
PUBLIC ENTITY COSTS**

I. RULE NUMBER

Title : 13 - Department of Social Services
 Division : 70 - Division of Medical Services
 Chapter : 10 - Nursing Home Program
 Type of Rulemaking : Proposed Amendment
 Rule Number and Name : 13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	Annual estimated cost = \$32,758,989

III. WORKSHEET

Quality Assurance Incentive:	
Estimated annual Medicaid days	9,735,468
Quality Assurance Incentive	<u>x \$3.20</u>
Estimated annual cost	<u>\$31,153,498</u>
High Volume Adjustment:	
Estimated qualifying Medicaid days	223,606
Add-On Rate	<u>x \$7.18</u>
Estimated annual cost	<u>\$1,605,491</u>
Total Annual Impact	<u>\$32,758,989</u>

IV. ASSUMPTIONS

Quality Assurance Incentive: The annual impact of the \$3.20 quality assurance incentive is \$31,153,498 based on an estimated annual Medicaid days of 9,735,468.

High Volume Adjustment: Facilities must have 85% or greater Medicaid occupancy and have allowable costs in excess of the patient care, ancillary and administration cost component ceilings. Based on the 1998 cost reports, five (5) facilities qualify for this adjustment with an estimated annual Medicaid days of 223,606. The add-on rate of \$7.18 is equal to 10% of the patient care, ancillary and administration cost component ceilings at July 1, 2000.

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

PROPOSED AMENDMENT

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

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

(13) Rate Adjustments.

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

1. Quality Assurance Incentive.

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

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

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 1994. Original rule filed Sept. 26, 1989, effective Feb. 11, 1990. For intervening history, please consult the Code of State Regulations. Amended: Filed June 30, 2000.

PUBLIC COST: This proposed amendment will cost public entities or political subdivisions \$5,498 annually.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, Director of Medicaid, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Office of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COSTS**

I. RULE NUMBER

Title : 13 - Department of Social Services

Division : 70 - Division of Medical Services

Chapter : 10 - Nursing Home Program

Type of Rulemaking : Proposed Amendment

Rule Number and Name : 13 CSR 70-10.050 Pediatric Nursing Care Plan

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	Annual estimated cost = \$5,498

III. WORKSHEET

Estimated annual Medicaid days	1,718
Quality Assurance Incentive	<u>x \$3.20</u>
Estimated annual cost	<u><u>\$5,498</u></u>

IV. ASSUMPTIONS

The annual impact of the \$3.20 quality assurance incentive is \$5,498 based on an estimated annual Medicaid days of 1,718.

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

PROPOSED AMENDMENT

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services. The division is amending sections (4) and (13).

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

(4) Definitions.

(YY) Incorporation by Reference. This rule adopts and incorporates by reference the provisions of the—

1. Missouri Department of Social Services, Division of Medical Services, Financial and Statistical Report for Nursing Facilities (Titles XIX Cost Report);

2. Missouri Medicaid Nursing Home Manual.

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

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

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

2. Additional beds. A facility with a prospective rate in effect after November 30, 1995, may request a rate adjustment for additional beds. The facility must obtain an approved certificate of need or applicable waiver for the additional beds. The rate adjustment will be calculated as the difference between the capital component per diem FRV prior to the additional beds being placed in service and the capital component per diem FRV including the additional beds as calculated in subsection (11)(D) including the additional beds placed in service. The capital component is calculated for the additional beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the additional beds are placed in service.

3. Extraordinary circumstances. A participating facility which has a prospective rate may request an adjustment to its prospective rate due to extraordinary circumstances. This request must be submitted in writing to the division within one (1) year of the occurrence of the extraordinary circumstance. The request must clearly and specifically identify the conditions for which the rate adjustment is sought. The dollar amount of the requested rate adjustment must be supported by complete, accurate and documented records satisfactory to the division. If the division makes a written request for additional information and the facility does

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

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

B. Extraordinary circumstances include:

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

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

C. The rate increase shall be calculated as follows:

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

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

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

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

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

4. Quality Assurance Incentive.

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

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

AUTHORITY: sections [197.319,] 208.153, and 208.201, RSMo 1994. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed June 30, 2000.

PUBLIC COST: This proposed amendment will cost public entities or political subdivisions \$16,189 annually.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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, Director of Medicaid, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Office of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COSTS**

I. RULE NUMBER

Title : 13 - Department of Social Services
Division : 70 - Division of Medical Services
Chapter : 10 - Nursing Home Program
Type of Rulemaking : Proposed Amendment
Rule Number and Name : 13 CSR 70-10.080 Prospective Reimbursement Plan for HIV
Nursing Facility Services

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	Annual estimated cost = \$16,189

III. WORKSHEET

Estimated annual Medicaid days	5,059
Quality Assurance Incentive	<u>x \$3.20</u>
Estimated annual cost	<u>\$16,189</u>

IV. ASSUMPTIONS

The annual impact of the \$3.20 quality assurance incentive is \$16,189 based on an estimated annual Medicaid days of 5,059.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.030 Drugs Covered by Medicaid. The division proposes to amend section (1).

PURPOSE: This amendment corrects errors in the current section.

(1) Limiting Definition—As defined in the Social Security Act, section 1927(k)(3), “the term ‘covered outpatient drug’ does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as any of the following (and for which payment may be made under this title as part of payment for the following and not as direct reimbursement for the drug):

“(A) Inpatient [*H*]/hospital services.

“(B) Hospice services.

“(C) Dental services, except that drugs for which the [*s*]/State plan authorized direct reimbursement to the dispensing dentist are covered outpatient drugs.

“(D) Physicians’ services.

“(E) Outpatient hospital services [**** emergency room visits*].

“(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

“(G) Other laboratory and [*X*]/x-ray services.

“(H) Renal dialysis.

“Such term also does not include any such drug or product for which [*is*] a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication.”

AUTHORITY: sections 208.152, 208.153, [RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] 1994. This rule was previously filed as 13 CSR 40-81.010. Original rule filed Jan. 21, 1964, effective Jan 31, 1964. For intervening history, please consult the Code of State Regulations. Amended: Filed June 29, 2000.

PUBLIC COST: This proposed amendment will not cost public entities or political subdivisions more than \$500 in the aggregate over the life of the rule.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication in the Missouri Register. If to be hand-delivered, comments must be brought to the Office 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 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.031 List of [Restricted] Excludable Drugs for Which Prior Authorization is Required. The division proposes to amend section (3).

PURPOSE: The Division of Medical Services is proposing to amend this rule by clarifying the language to more accurately define the products affected, and by moving two drug product entries to another proposed rule published in this issue of the Missouri Register.

(3) List of drugs or categories of **excludable** drugs which are restricted to require prior authorization for certain specified indications—

Drug or Category of Drug	Allowed Indications
Amphetamines	Attention Deficit Hyperactivity Disorder Narcolepsy
Barbiturates (with the exception of phenobarbital and mephobarbital and methobarbital which do not require prior authorization)	All medically accepted uses
Isotretinoin [<i>Ketoralac, oral</i>]	Noncosmetic uses [<i>Short-term treatment of moderately severe acute pain following injection of same entity</i>]
Orlistat Retinoic Acid, topical [<i>Sildenafil Citrate</i>]	Dyslipidemia Noncosmetic uses [<i>Erectile dysfunction</i>]

AUTHORITY: sections 208.153 and 208.201, RSMo 1994. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 1, 1996, effective Oct. 30, 1996. Amended: Filed May 27, 1999, effective Dec. 30, 1999. Amended: Filed June 29, 2000.

PUBLIC COST: This proposed amendment will not cost public entities or political subdivisions more than \$500 in the aggregate over the life of the rule.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:30 a.m., August 31, 2000, in Conference Room 210, 615 Howerton Court, Jefferson City, Missouri.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.032 List of Drugs Excluded From Coverage Under the Missouri Medicaid Pharmacy Program. The division proposes to amend section (2).

PURPOSE: The Division of Medical Services is proposing to amend this rule by adding two listings under Exceptions, making them reimbursable.

(2) List of drugs or classes which are excluded from reimbursement through the Missouri Medicaid Pharmacy Program—

<u>Drug or Category</u>	<u>Exceptions—(Reimbursable)</u>
Drugs used to promote fertility	
Drugs used to promote weight loss	

<u>[Drug or Category]</u>	<u>Exceptions—(Reimbursable)</u>
Drugs used to promote hair growth	
Drugs used for cosmetic purposes	
Nonlegend vitamins, multi-vitamins and minerals, adult	Children’s chewable multivitamins Calcium preparations Iron preparations

Drugs used to promote smoking cessation	
Nonlegend lotions, shampoos and medicinal soaps	
Nonlegend acne preparations	
Nonlegend weight control products	
Nonlegend ophthalmic products	Artificial tear products Eyewash products

<u>[Ocular lubricants]</u>	<u>Ocular lubricants</u>
Contact lens products	
Nonlegend oral analgesics	All nonlegend strengths and dosage forms of: Acetaminophen Aspirin Buffered Aspirin Ibuprofen Naproxen sodium

Nonlegend stimulant products	
Nonlegend external analgesic products	
Nonlegend hemorrhoidal products	
Halazepam	
Prazepam	
Estazolam	
Quazepam	

AUTHORITY: sections 208.153, [RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] 1994. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. Amended: Filed June 30, 2000.

PUBLIC COST: This proposed amendment will not cost public entities or political subdivisions more than \$500 in the aggregate over the life of the rule.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:30 a.m., August 31, 2000, in Conference Room 210, 615 Howerton Court, Jefferson City, Missouri.*

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

PROPOSED RULE

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization Is Required

PURPOSE: This rule establishes a listing of non-excludable drugs and categories of drugs for which prior authorization is required in order for them to be reimbursable under the Missouri Medicaid Pharmacy Program.

(1) As specified in section 1927(d)(1) of the Social Security Act, states may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of section 1927(d)(5) of the Social Security Act.

(2) List of drugs or categories of drugs which are restricted to require prior authorization for certain specified indications—

<u>Drug or Category of Drug</u>	<u>Allowed Indications</u>
Abortifacients	Termination of pregnancy resulting from an act of rape or incest or when necessary to protect the life of the mother
Butorphanol, nasal spray	Override of quantity restriction allowed for medically accepted uses
Drugs used to treat sexual dysfunction	Sexual dysfunction
Histamine 2 Receptor Antagonists	Medically accepted uses
Ketorolac, oral	Short-term treatment of moderately severe acute pain following injection of same entity
Linezolid, oral	Medically accepted uses
Modafanil	Narcolepsy
Proton Pump Inhibitors	Medically accepted uses

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 1994. Original rule filed June 29, 2000.

PUBLIC COST: This proposed rule will not cost public entities or political subdivisions more than \$500 in the aggregate over the life of the rule.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:30 a.m., August 31, 2000, in Conference Room 210, 615 Howerton Court, Jefferson City, Missouri.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED RULE

13 CSR 70-20.045 Thirty-One Day Supply Maximum Restriction on Pharmacy Services Reimbursed by the Division of Medical Services

PURPOSE: The purpose of this is to establish a thirty-one day supply maximum restriction per dispensing on pharmacy services reimbursed by the Division of Medical Services on behalf of patients eligible for any of the fee-for-service programs.

(1) The maximum days supply of medication which may be provided per dispensing on behalf of a patient eligible for any of the fee-for-service programs is thirty-one (31) day supply, except for those drugs and/or categories under the provisions of this rule. Medication may be dispensed in quantities less than a thirty-one (31) day supply, if so ordered by the prescriber, except as specified elsewhere in this rule.

(2) Drugs and/or categories of medications which are exempt from the thirty-one (31) day supply limitation and therefore may be dispensed in quantities exceeding a thirty-one (31) day supply are as follows:

<u>Drug or Category</u>	<u>Maximum Limitation, If Applicable</u>
Antiretroviral Agents	
Contraceptives, Oral	One year
Drug products limited by packaging requirements	Packaging requirements
Vitamins, Children's	100 days
Vitamins, Prenatal	100 days

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 1994. Original rule filed June 29, 2000.

PUBLIC COST: This proposed rule will not cost public entities or political subdivisions more than \$500 in the aggregate over the life of the rule.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the Office of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 1—Life Insurance and Annuity Standards

PROPOSED AMENDMENT

20 CSR 400-1.130 Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities. The department is amending sections (1)–(4), adding one new section and deleting the Tables that follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment recognizes the following mortality tables for use in determining the minimum standard of valuation

for annuity and pure endowment contracts: 1983 Table A, 1983 Group Annuity Mortality (GAM) Table, Annuity 2000 Mortality Table, and 1994 Group Annuity Reserving (GAR) Table.

(1) Definitions.

(C) As used in this rule 1994 Group Annuity Reserving (GAR) Table means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force. The 1994 GAR Table is included in the report on pages 865–919 of Volume XLVII of the “Transactions of the Society of Actuaries (1995).”

(D) As used in this rule Annuity 2000 Mortality Table means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211–249 of Volume XLVII of the “Transactions of the Society of Actuaries (1995).”

(2) Individual Annuity or Pure Endowment Contracts.

(A) Except as provided in subsections (B) and (C) of this section, [T]the 1983 Table A is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after September 28, 1979.

(B) Except as provided in subsection (C) of this section, either [T]the 1983 Table A or the Annuity 2000 Mortality Table is to be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

(C) Except as provided in subsection (D) of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1 of the year following the effective date of this rule.

(D) The 1983 Table A without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1 of the year following the effective date of this rule, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. Settlements involving similar actions such as workers' compensation claims; or
3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

(3) Group Annuity or Pure Endowment Contracts.

(A) Except as provided in subsections (B) and (C) of this section, [T]the 1983 GAM Table, [and] the 1983 Table A and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, [either] any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after September 28, 1979, under a group annuity or pure endowment contract.

(B) Except as provided in subsection (C) of this section, either [T]the 1983 GAM Table or the 1994 GAR Table is to be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 under a group annuity or pure endowment contract.

(C) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1 of the year following the effective date of this rule under a group annuity or pure endowment contract.

(4) Application of the 1994 GAR Table. In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994}(1 - AA_x)^n$$

where the q_x^{1994} s and AA_x s are as specified in the 1994 GAR Table.

[(4)](5) Separability. If any provision of this rule or the application of this rule to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of that provision to other persons or circumstances shall not be affected by it.

AUTHORITY: sections 374.045, RSMo [1978] Supp. 1999 and 376.380, RSMo [Supp. 1984] 1994. This rule was previously filed as 4 CSR 190-13.270. Original rule filed April 2, 1986, effective Aug. 25, 1986. Amended: Filed June 23, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$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 September 6, 2000. The public hearing will be held at the Harry S Truman State Office Building, Room 630, 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 September 6, 2000. Written statements shall be sent to Stephen R. Gleason, Department of Insurance, P.O. 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) 526-4636 at least five working days prior to the hearing.