

Jason Kander
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SEP 15 2016
SECRETARY OF STATE
ADMINISTRATIVE RULES
COPY

Rule Number 13 CSR 70-4.090

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Billie Waite Phone 573-751-6922 FAX 573-751-6564

Email address Debbie.Meller@dss.mo.gov

Data Entry Debbie Meller Phone 573-751-6922 FAX 573-751-6564

Email address Debbie.Meller@dss.mo.gov

Interagency mailing address 615 Howerton Court, Jefferson City, MO 65109

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
- Proposed Rulemaking
- Withdrawal Rule Action Notice In Addition Rule Under Consideration
- Request for Non-Substantive Change
- Statement of Actual Cost
- Order of Rulemaking

Effective Date for the Order _____

Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO

YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

SEP 15 2016

ADMINISTRATIVE RULES

 *Missouri Department of*
SOCIAL SERVICES
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JEREMIAH W. (JAY) NIXON, GOVERNOR • BRIAN KINKADE, DIRECTOR

MO HEALTHNET DIVISION
P.O. BOX 6500 • JEFFERSON CITY, MO 65102-6500
WWW.DSS.MO.GOV • 573-751-3425

September 15, 2016

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Kander:

Re: 13 CSR 70-4.090 Uninsured Women's Health Program

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Department of Social Services, MO HealthNet Division.

The Department of Social Services, MO HealthNet Division has determined and hereby certifies that this proposed rulemaking will have an economic impact on small businesses. A small business impact statement is attached. The Department of Social Services, MO HealthNet Division further certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of HB 191, Section 1, regarding user fees.

The Department of Social Services, MO HealthNet Division has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of HB 191, Section 1, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with HB 191, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: 208.040 and 208.201, RSMo Supp. 2013 and section 660.017, RSMo 2000.

If there are any questions regarding the content of this proposed rulemaking, please contact:

Billie A. Waite
MO HealthNet Division
615 Howerton Court
Jefferson City, MO 65109
(573) 751-6922
Debbie.Meller@dss.mo.gov


Joseph Parks, M.D., Director
Department of Social Services
MO HealthNet Division

Interpretive services are available by calling the Participant Services Unit at 1-800-392-2161.
Prevodilačke usluge su dostupne pozivom odjela koji učestvuje u ovom servisu na broj 1-800-392-2161.
Servicios Intreprative están disponibles llamando a la unidad de servicios de los participantes al 1-800-392-2161.

RELAY MISSOURI

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MO HEALTHNET DIVISION

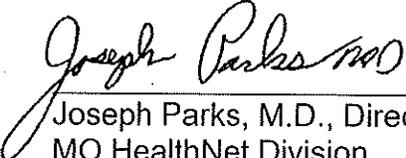
September 15, 2016

Cindy Kadlec, Director
Joint Committee on Administrative Rules
Capitol Building, Room B-8
Jefferson City, MO 65101

Dear Ms. Kadlec:

Attached is an accurate and complete copy of the proposed rule regarding 13 CSR 70-4.090 which is to be submitted to the Secretary of State on this date.

Statutory authority: 208.040 and 208.201, RSMo Supp. 2013 and section 660.017, RSMo 2000.



Joseph Parks, M.D., Director
MO HealthNet Division

JP:dm

Enclosure:
Proposed Rule 13 CSR 70-4.090

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AFFIDAVIT

PUBLIC COST

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Brian Kinkade, Director of the Department of Social Services, first being duly sworn, on my oath, state that it is my opinion that the attached fiscal note for the proposed amendment to 13 CSR 70-4.090 is a reasonably accurate estimate.



Brian Kinkade *Per Brian Kinkade*
Director
Department of Social Services

Subscribed and sworn to before me this 15th day of September, 2016. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on March 5, 2019.

DONNA A. SYBOUTS
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: March 05, 2019
Commission Number: 15633724



Notary Public

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Title 13 – DEPARTMENT OF SOCIAL SERVICES
Division 70 – MO HealthNet Division
Chapter 4 – Conditions of Participant Participation, Rights and Responsibilities

PROPOSED AMENDMENT

COPY

13 CSR 70-4.090 [Uninsured Women's Health] State-Funded Missouri Woman's Health Services Program

PURPOSE: This amendment changes the name of the program that pays for woman's health services for uninsured women, clarifies the income limits for the program, suspends the federal expenditure authority for the program, and restricts payment for woman's health services for uninsured women from being made to any organization that provides abortion services.

*PURPOSE: This rule establishes the [Uninsured Women's Health] **State-Funded Missouri Woman's Health Services Program**. This program will provide payment for women's health services for uninsured women who do not qualify for other medical assistance benefits, and would lose their MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and for women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) (**which is the same as a modified adjusted gross family income of at or below two hundred one percent (201%)**) of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), in order to reduce the possibility of a family's future dependence on welfare as authorized pursuant to section 208.040, RSMo. [The program is authorized pursuant to award of the Missouri's Women's Health Services Program approved by the Centers for Medicare and Medicaid Services.]*

JOINT COMMITTEE ON
SEP 15 2016
ADMINISTRATIVE RULES

(1) Uninsured women who do not qualify for other medical assistance benefits, and would lose their MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) **(which is equivalent to a modified adjusted gross family income of at or below two hundred one percent (201 %))** of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), shall be eligible to receive medical services to the extent and in the manner provided in this regulation. Uninsured women who do not qualify for other medical assistance benefits, and would lose their MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage regardless of income, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) **(which is equivalent to a modified adjusted gross family income of at or below two hundred one percent (201%))** of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), will continue to be eligible for women's health services only. Women's health services are defined as: pelvic exams and pap tests, sexually transmitted disease testing and treatment (the treatments of medical complications occurring from the sexually transmitted disease are not covered for this program), family planning counseling/education on various methods of birth control, United States Department of Health and Human Services approved methods of contraception including sterilization and x-ray services related to the sterilization, and drugs (excluding antiretrovirals), supplies, or devices related to the women's health services described in this rule when they are prescribed by a physician or advanced practice nurse, subject to the National Drug Rebate Program requirements.

(2) Uninsured women who do not qualify for other benefits, and would lose their MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) **(which is equivalent to a modified adjusted gross family income of at or below two hundred one percent (201%))** of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), are not required to pay a co-payment for women's health services.

(3) The Department of Social Services, MO HealthNet Division shall provide for granting an opportunity for a fair hearing to any applicant or participant whose claim for benefits under the [Section 1115, Missouri's Women's Health Services] **State-Funded Missouri Woman's Health Services** Program is denied by the MO HealthNet Division. [There are established positions of state hearing officers within the Department of Social Services, Division of Legal Services in order to comply with all pertinent federal and state law and regulations.] The state hearing officers shall have authority to conduct state level hearings of an appeal nature and shall serve as direct representative of the director of the MO HealthNet Division.

(4) Reimbursement. Funding of the family planning and family planning-related services, pregnancy testing, sexually transmitted disease testing and treatment, including pap tests and pelvic exams, and follow-up services of the Missouri Woman's Health Services

Program shall be from general revenue only and none of the funds appropriated may be expended to directly or indirectly subsidize abortion services or procedures or administrative functions and none of the funds appropriated herein may be paid or granted to an organization that provides abortion services. An otherwise qualified organization shall not be disqualified from receipt of these funds because of its affiliation with an organization that provides abortion services provided that the affiliated organization that provides abortion services is independent of the qualified organization. An independent affiliate that provides abortion services must be separately incorporated from any organization that receives these funds. Such services shall be available to uninsured women who are at least 18 to 55 years of age who have a net family income of at or below one hundred eighty-five percent (185%) (which is equivalent to a modified adjusted gross family income for the household size of at or below two hundred one percent (201%)) of the Federal Poverty Level (FPL) and who is a legal resident of the state.

*AUTHORITY: sections 208.040 and 208.201, RSMo Supp. [2008]2013 and section 660.017, RSMo 2000. * Emergency rule filed Sept. 13, 1999, effective Sept. 23, 1999, terminated Oct. 15, 1999. Original rule filed Aug. 16, 1999, effective March 30, 2000. For intervening history, please consult the **Code of State Regulations**. Amended: Filed*

**Original authority: 208.040, RSMo 1939, amended 1941, 1949, 1951, 1953, 1955, 1957, 1973, 1977, 1982, 1983, 1984, 1987, 1994, 1999, 2001; 208.201, RSMo 1987, amended 2007; and 660.017, RSMo 1993, amended 1995*

PUBLIC COST: This proposed amendment will result in a loss of federal funds of eight million three hundred fifteen thousand two hundred twelve dollars (\$8,315,212) in the aggregate on an annual basis.

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

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

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Title 13 – Department of Social Services
Division Title: Division 70 – MO HealthNet Division
Chapter Title: Chapter 4 – Conditions of Participant Participation, Rights and Responsibilities**

Rule Number and Title:	13 CSR 70-4.090 State-Funded Missouri Woman’s Health Services Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
The Department of Social Services does not know how many providers billing for services provided through the Women’s Health Services program provide abortion services. Abortion services are not a part of the Women’s Health Services program benefit. Over 100 health care providers billing for the Women’s Health Services Program are hospitals or ambulatory surgical centers with licenses allowing them to abortion services. In addition there may be clinics or pharmacies affiliated with hospitals that may provide abortion services. These clinics may be impacted, depending on the business relationship with the hospitals.	Hospitals, clinics and pharmacies affiliated with hospital(s) or ambulatory surgical center(s).	\$0

II. WORKSHEET

IV. ASSUMPTIONS

The Department of Social Services does not know which providers billing for services under the Women's Health Services Program provide abortion services or are affiliated with a provider of abortion services. It is known that over 100 providers who are licensed to have the option to provide abortion services in Missouri also billed for services provided under the Women's Health Services program. It is also unknown how many clinics and pharmacies are affiliated with hospitals that provide abortion services and because of this affiliation would be ineligible to participate in the state-funded Women's Health Services program.

There may be providers that cannot qualify as eligible providers under the state-funded Women's Health Services program because they provide abortion services. Additionally, there may be pharmacies and clinics receiving payments for services under the Women's Health Services program that may be ineligible to provide services under the state-funded Women's Health Services program because of their affiliation with a provider that does provide abortion services. In both cases, it is assumed there will be a sufficient number of eligible providers to provide services under the Women's Health Services program; thus, the fiscal impact in the aggregate is \$0. The Department of Social Services will continue to pay for the same level of services; however, the providers delivering these services may change.

Abortion services are not a part of the Women's Health Services program benefit.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Title 13 – Department of Social Services
Division Title: Division 70 – MO HealthNet Division
Chapter Title: Chapter 4 – Conditions of Participant Participation, Rights and Responsibilities**

Rule Number and Name:	13 CSR 70-4.090 State --Funded Missouri Women’s Health Services Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	Annual loss of federal funds \$8,315,212

III. WORKSHEET

State Funds:

General Revenue	\$2,258,921
Federal Reimbursement Allowance	\$ 167,756
Pharmacy Federal Reimbursement Allowance	\$ 49,034

Federal Funds: **\$8,315,212**

Total Funds: **\$10,790,923**

Estimated loss of up to \$8,315,212 federal funds to be replaced by General Revenue

IV. ASSUMPTIONS

The estimated loss in federal funds is the result of the Department of Social Services, MO HealthNet Division’s statutory obligation to abide by the provision of *Truly Agreed To And Finally Passed Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill NO.2011 98th General Assembly Section 11.550*. The Governor recommended federal funding for the Women’s Health Services program for FY 2017; this is consistent with how the program had been funded in the past. The final Truly Agreed To and Finally Passed (TAFP) budget, Section 11.550

that funds the Women's Health Services program for FY 2017 has no federal funding authority for funding family planning and family planning-related services, pregnancy testing, sexually transmitted disease testing and treatment, including pap tests and pelvic exams, and follow-up services provided to uninsured women who are at least 18 to 55 years of age with a family modified adjusted gross income for the household size that does not exceed two hundred one percent (201%) of the Federal Poverty Level.

To comply with Section 11.550 (HB 2011 – 2016), the State-Funded Missouri Women's Health Services Program will not cover or pay for services provided by an organization that also provides abortion services. With the addition of this provision, Missouri cannot comply with the terms and conditions of the Title XIX (Medicaid) federal waiver and receive Title XIX federal funds to help pay the costs of the program. General Revenue is budgeted to cover those costs paid by federal funds in the past.

All women enrolled in the federally-funded Section 1115 family planning demonstration will be automatically enrolled in the State-Funded Missouri Women's Health Services Program. The available services will remain the same. Only the provider qualifications have changed. There will be no additional cost for woman finding a provider who does not provide any abortion services.

Small Business Regulatory Fairness Board

Small Business Impact Statement

Date: September 15, 2016

Rule Number: 13 CSR 70-4.090

Name of Agency Preparing Statement: Department of Social Services, MO
HealthNet Division

Name of Person Preparing Statement: Billie Waite

Phone Number: (573) 751-6922 **Email:** Debbie.meller@dss.mo.gov

Name of Person Approving Statement: Joseph Parks, M.D.

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

This amendment changes the name of the program that pays for woman's health services for uninsured women, clarifies the income limits for the program, suspends the federal expenditure authority for the program, and restricts payment for woman's health services for uninsured women from being made to any organization that provides abortion services.

The Department of Social Services does not know which providers billing for services under the Women's Health Services Program provide abortion services or are affiliated with a provider of abortion services. It is known that over 100 providers who are licensed to have the option to provide abortion services in Missouri also billed for services provided under the Women's Health Services program. It is also unknown how many clinics and pharmacies are affiliated with hospitals that provide abortion services and because of this affiliation would be ineligible to participate in the state-funded Women's Health Services program.

Please explain how your agency has involved small businesses in the development of the proposed rule.

Associations of the small businesses were allowed to review and comment on the draft proposed amendment.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

The estimated loss in federal funds is the result of the Department of Social Services, MO HealthNet Division's statutory obligation to abide by the provision of *Truly Agreed To And Finally Passed Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill NO.2011 98th General Assembly Section 11.550*. The Governor recommended federal funding for the Women's Health Services program for FY 2017; this is consistent with how the program had been funded in the past. The final Truly Agreed To and Finally Passed (TAFP) budget, Section 11.550 that funds the Women's Health Services program for FY 2017 has no federal funding authority for funding family planning and family planning-related services, pregnancy testing, sexually transmitted disease testing and treatment, including pap tests and pelvic exams, and follow-up services provided to uninsured women who are at least 18 to 55 years of age with a family modified adjusted gross income for the household size that does not exceed two hundred one percent (201%) of the Federal Poverty Level.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Hospitals, clinics and pharmacies affiliated with hospital(s) or ambulatory surgical center(s).

The Department of Social Services does not know how many providers billing for services provided through the Women's Health Services program provide abortion services. Abortion services are not a part of the Women's Health Services program benefit. Over 100 health care providers billing for the Women's Health Services Program are hospitals or ambulatory surgical centers with licenses allowing them to abortion services. In addition there may be clinics or pharmacies affiliated with hospitals that may provide abortion services. These clinics may be impacted, depending on the business relationship with the hospitals.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

Estimated loss of up to \$8,315,212 federal funds to be replaced by General Revenue.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Hospitals, clinics and pharmacies affiliated with hospital(s) or ambulatory surgical center(s).

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes No

If yes, please explain the reason for imposing a more stringent standard.

To comply with Section 11.550 (HB 2011 – 2016), the State-Funded Missouri Women's Health Services Program will not cover or pay for services provided by an organization that also provides abortion services. With the addition of this provision, Missouri cannot comply with the terms and conditions of the Title XIX (Medicaid) federal waiver and receive Title XIX federal funds to help pay the costs of the program. General Revenue is budgeted to cover those costs paid by federal funds in the past.

For further guidance in the completion of this statement, please see §536.300, RSMo.