

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

**PROPOSED AMENDMENT**

**13 CSR 35-71.015 Background Checks for Personnel of Residential Care Facilities and Child Placing Agencies.** The division is amending section (12).

*PURPOSE: This amendment provides an administrative review process for Children’s Division to make preliminary and provisional eligibility determinations for applicants to commence employment at Licensed Residential Care Facilities (LRCFs), License-Exempt Residential Care Facilities (LERCFs), and Child Placing Agencies (CPAs) while the Division completes the background check required by §210.493 RSMo.*

(12) **Administrative Review and Appeal Procedure.**

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

(B) **Administrative Review.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Appeal.

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

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

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

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

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

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

- C. A copy of a letter or official communication from the applicable state, county, or local government agency stating that the applicant is listed as a perpetrator of child abuse or neglect in the state, county, or local government agency's registry or database of perpetrators of child abuse or neglect;
- D. A copy of the report of the fingerprint-based background check conducted pursuant to section (3) of this regulation; and
- E. A copy of a letter, official communication, or a print out of the applicable page of the National Sex Offender Registry or state sex offender registry.
5. The applicant or division may object to the hearing officer considering the information outlined in this regulation. The burden shall be on the objecting party to establish that the items of evidence shall not be considered by the hearing officer.
6. The hearings held under this section shall be informal, but they shall be held on the record and testimony will be adduced under oath. The rules of evidence do not apply. The applicant may be represented by an attorney.
7. Upon written request the division will provide the applicant with a copy of the fingerprint-based state and FBI background check.
8. The hearing shall not be an opportunity to collaterally attack or relitigate the validity of the underlying plea of guilt, plea of *nolo contendere*, or the underlying finding of child abuse, neglect, or maltreatment by the applicable state or local agency, or the accuracy of information in the federal, state, or local registry or repository.
9. The hearing shall be based upon the written submissions of the parties unless the applicant or the division requests a hearing by video or teleconference. The hearing officer may hold an in-person hearing only upon a showing that an in-person hearing is necessary to accommodate a special need of an applicant or the division.
10. The hearing officer shall issue a decision in writing, which will be sent by first-class mail (or by email at the election of the applicant) to the applicant at the applicant's address of record. If the applicant is represented by an attorney, the decision will be sent to the applicant's attorney. The written decision of the hearing officer shall be the final decision of the department.

**[(C)](D) Judicial Review.**

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

*AUTHORITY: sections 207.020 and 660.017, RSMo 2016, and sections 210.493 and 210.1286, RSMo Supp. 2023. \* Emergency rule filed Sept. 17, 2021, effective Oct. 1, 2021, expired March 29, 2022. Original rule filed Sept. 17, 2021, effective March 30, 2022. Emergency amendment filed May 30, 2023, effective June 13, 2023, expired Dec. 9, 2023. Amended: Filed May 30, 2023, effective Dec. 30, 2023. Amended: Filed April 23, 2024. This emergency amendment was filed October 24, 2024, becomes effective November 7, 2024, and expires May 5, 2025. Amended: November 21, 2024.*

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

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

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

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, P.O. Box 1527, Jefferson City, MO 65102-1527, or by email to [Rules.Comment@dss.mo.gov](mailto:Rules.Comment@dss.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.