

Emergency Rule

Title 19—DEPARTMENT OF HEALTH AND SENIORSERVICES
Division 30—Division of Regulation and Licensure
Chapter 82—General Licensure Requirements

EMERGENCY AMENDMENT

19 CSR 30-82.010 General Licensure Requirements. The department is amending section (3).

PURPOSE: This emergency amendment creates a temporary closure procedure for those Medicare and Medicaid federally certified facilities (skilled nursing facilities and intermediate care facilities) licensed in Missouri which experience staffing shortages from the COVID-19 vaccine mandate issued by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services emergency regulation 42 CFR part 483 for long term care facilities and intermediate care facilities on November 4, 2021, with an effective date of November 5, 2021.

EMERGENCY STATEMENT: The United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) issued an emergency regulation on November 4, 2021, with an effective date of November 5, 2021, which amended 42 CFR part 483. The emergency amendments made to 42 CFR part 483 affect long term care facilities in Missouri, which are federally certified by CMS as skilled nursing facilities and intermediate care facilities. These emergency amendments made to 42 CFR part 483 require, among other things, that current staff as well as any new staff who provide any care, treatment, or other services for the facility and/or its patients must receive the COVID-19 vaccine. However, there is an exemption procedure outlined in the emergency regulation. Facilities covered by this regulation are required to establish a policy ensuring all eligible staff have received the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine prior to providing any care, treatment, or other services by December 5, 2021. All eligible staff must have received the necessary shots to be fully vaccinated – either two doses of Pfizer or Moderna or one dose of Johnson & Johnson – by January 4, 2022. The Missouri Department of Health and Senior Services anticipates most eligible staff at these long term care facilities (skilled nursing facilities and intermediate care facilities) will be required to get an approved COVID-19 vaccination as most of these eligible staff will not meet the requirements for the exemption procedure as set forth in emergency regulation 42 CFR part 483. Currently, approximately forty-four percent (44%) of staff working at Missouri long term care facilities are not fully vaccinated for COVID-19. The Missouri Department of Health and Senior Services anticipates many of the forty-four percent (44%) of unvaccinated staff working at these long term care facilities will not choose to get vaccinated, even with this vaccine mandate from CMS. Therefore, there may be some long term care facilities (skilled nursing facilities and intermediate care facilities) that will not have enough staff to care for the residents in its facilities and be in compliance with federal and state law. These facilities may be forced to temporarily close or consolidate until the staffing issues get rectified in such a manner as these facilities will be able to comply with federal and state law. Currently, the Missouri Department of Health and Senior Services does not have a procedure in its regulations which would allow for the temporary closure of skilled nursing facilities and intermediate care facilities licensed in Missouri by the Missouri Department of Health and Senior Services. This emergency amendment will allow skilled nursing facilities and intermediate care facilities to temporarily close due to staffing shortages as a result of the vaccine mandate contained in 42 CFR part 483. Temporary closures allow the skilled nursing facilities and intermediate care facilities to

not have to voluntarily relinquish their license. If skilled nursing facilities or intermediate care facilities close, then they have to give up their Medicare and Medicaid provider agreement with CMS. It can take up to six (6) months to apply for and get approved to be a Medicare and Medicaid provider again. Additionally, if skilled nursing facilities and intermediate care facilities close, then these facilities must comply with all new requirements since these facilities will be considered to be new facilities and not existing facilities. This can be very expensive for facilities to meet new requirements that they did not have to meet as existing facilities. This amendment is an emergency as facilities, which anticipate additional staffing shortages, will be needing to make plans to begin discharging residents and pursuing temporary closures before the December 5, 2021 and January 4, 2022, deadlines mandated by 42 CFR part 483. As a result, the department finds a compelling governmental interest, which requires this emergency action. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed November 10, 2021, becomes effective November 29, 2021, and expires May 27, 2022.

(3) Licensed Facility Closures.

(A) If a licensed facility discontinues operation as evidenced by the fact that no residents are in care or at any time the department is unable to freely gain entry into the facility to conduct an inspection, the facility shall be considered closed. The department shall notify the operator in writing requesting the voluntary surrender of the license. If the department does not receive the license within thirty (30) days, it shall be void. If the operator should choose to again license the facility, the operator shall submit a complete application. The provisions of section (1) shall apply.

(B) If any licensed skilled nursing facility or intermediate care facility is required to temporarily close for two (2) years or less from the effective date of the temporary closure due to staffing shortages as a result of a COVID-19 vaccine mandate first issued in emergency regulation by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) on November 4, 2021, effective on November 5, 2021, or any amendment changes or amendments thereafter, then the skilled nursing and intermediate care facilities shall do the following:

1. The facility operator shall submit a closure plan to the department which is in compliance with state and federal law, including 42 CFR part 483.15(c) (detailed in federal deficiency F623 in the State Operations Manual appendix PP), 42 CFR part 483.70(l) (detailed in federal deficiency F845 in the State Operations Manual appendix PP), and 42 CFR 483.70(m) (detailed in federal deficiency F846 in the State Operations Manual appendix PP). The State Operations Manual appendix PP revised November 22, 2017, which is incorporated by reference in this rule, as published by the Centers for Medicare and Medicaid Services and is available at www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf or the United States Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244. This rule does not incorporate any subsequent amendments or additions. After review of the temporary closure plan, the department shall either approve or disapprove the plan;

2. Facilities with approved closure plans by the department shall ensure that all residents residing at the facility are provided discharge notices in accordance with federal and state law and the facility shall assist all residents with discharge planning in accordance with federal and state law;

3. Facilities with approved closure plans by the department

Emergency Rule

shall enter into a consent agreement with the department for a probationary license. These facilities shall agree to discharge all residents by the effective date of the temporary closure and to admit no residents while the facility is temporarily closed;

4. Temporary closure of facilities shall not be allowed past two (2) years from the effective date of the temporary closure. The effective date of the temporary closure is the date the last resident left the facility;

5. Facilities shall be reopened within two (2) years of the effective date of the temporary closure. Prior to reopening, the department shall conduct a full survey/inspection and the facility may be approved by the department to reopen after this survey or inspection. Facilities shall not reopen until approved by the department;

6. Facilities shall be reopened by the facility operator which initiated the temporary closure and a change of operator may not occur during this period of temporary closure;

7. Facilities shall submit plans of corrections, applications, licensure and certification fees in accordance with state law regardless of temporary closure status;

8. Facilities approved by the department to be temporarily closed will be noted as temporarily closed on state directories. The department will communicate temporary closure status of these facilities approved for temporary closure to CMS; and

9. Facilities not approved for temporary closure by the department which have closed or those facilities which stayed closed longer than two (2) years from the effective date of the temporary closure shall be considered closed. The department shall notify the operator in writing requesting the voluntary surrender of the license. If the department does not receive the license within thirty (30) days, it shall be void. If the operator should choose to again license the facility, the operator shall submit a complete application. The provisions of section (1) shall apply.

AUTHORITY: Executive Order 77-9 of the Governor filed Jan. 31, 1979, effective Sept. 28, 1979, and sections 198.018, 198.073, 198.076, and 198.079, RSMo [Supp. 2007] 2016. This rule was originally filed as 13 CSR 15-10.010. Emergency rule filed Aug. 13, 1979, effective Oct. 1, 1979, expired Jan. 25, 1980. Original rule filed Aug. 13, 1979, effective Dec. 13, 1979. Emergency amendment filed Nov. 10, 2021, effective Nov. 29, 2021, expires May 27, 2022. An emergency amendment and a proposed amendment covering this same material will be published in the Dec. 15, 2021 issue of the Missouri Register.

PUBLIC COST: This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.