

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

PROPOSED AMENDMENT

19 CSR 30-82.060 Hiring Restrictions – Good Cause Waiver. The department is amending sections (1), (2), (7), (8), (11), (12), (14), (17), and (18), and changing the purpose statement and authority.

PURPOSE: This amendment changes the purpose statement, authority, and changes the rule to remove references to 660.017, 660.050, 660.315, and 660.317, RSMo, which have been repealed. The changes replace references to and requirements of that repealed statute with those of the current statutory authorities.

*PURPOSE: This rule [is being promulgated to establish] **establishes** the procedure by which persons with criminal convictions may seek a waiver allowing them to be employed by health care and mental health providers despite the hiring restrictions found in section [660.317] **192.2495**, RSMo. The waivers are to be for “good cause” as defined by that statute. This rule sets forth both the procedure for seeking waivers and the facts and circumstances to be considered by the Department of [Social Services] **Health and Senior Services** in determining “good cause.”*

(1) Definitions

(A) Applicant means a person who has been or would be rejected for employment by a provider due to the hiring restrictions found in Section [660.317] **192.2495**, RSMo.

(E) Good Cause Waiver means a finding that is reasonable to believe that the restrictions imposed by section [660.317] **192.2495**, RSMo, on the employment of an applicant may be waived after an examination of the applicant’s prior work history and other relevant factors is conducted and demonstrates that such applicant does not present a risk to the health or safety of residents, patients, or clients if employed by a provider.

(2) Any person who is not eligible for employment by a provider due to the hiring restrictions found in section [660.317] **192.2495**, RSMo, may apply to the director for a good cause waiver. If the director[, /] or the director’s designee[, /] determines that the applicant has demonstrated good cause, such restrictions prohibiting such persons from being hired by a provider shall be waived, and such persons may be employed unless rejected for employment on other grounds. Hiring restrictions based on the Department of Health and Senior Services’ employee disqualification list [established pursuant to section 660.315, /] are not subject to a waiver.

(7) The department may request **that** the applicant, prior to the completion of the review, [to] appear in person to answer questions about his or her application. If the applicant is requested to appear in person, the department, in its sole discretion, shall determine the location for the appearance and may conduct any such proceedings using electronic means, including, but not limited to, telephonic or video conferencing. The department shall review and may investigate the information contained in each application for completeness, accuracy, and truthfulness. The burden of proof shall be [upon] **on** the applicant to demonstrate that he or she no longer poses a risk to the health, safety, or welfare of residents, patients, or clients. The following factors shall be considered in determining whether a good cause waiver should be granted:

(G) Whether the applicant had been employed in good standing by a provider but subsequently became ineligible for employment due to the hiring restrictions in section [660.317] **192.2495**.

(J) Whether the applicant has ever been listed on the Employee Disqualification List maintained by the department *[as provided in section 660.315, RSMo. RSMo]*.

(8) If, at the time of an application for a waiver, or during the waiver consideration process, the applicant has been charged or indicted for, but not convicted of, any of the crimes covered under the provisions of section *[660.317] 192.2495*, RSMo, the division will hold the request for waiver in abeyance while such charges are pending or until a court of competent jurisdiction enters a judgment or order disposing of the matter.

(11) Any good cause waiver granted to applicant applies only to those disqualifying criminal convictions on incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, as covered under the provisions of section *[660.317] 192.2495*, RSMo, and shall not apply to any other hiring restriction or exclusion imposed by any other federal or state laws or regulations.

(12) The director~~[,]~~ or the director's designee~~[,]~~ may withdraw a good cause waiver if ~~[it]~~ **he or she** receives information or finds that –

(D) The applicant has omitted, misrepresented, or failed to disclose or provide any of the information required by section *[660.317] 192.2495*, RSMo, or the provisions of this rule; or

(14) No applicant may be employed in a direct care or direct service position with a provider during the pendency of a request for waiver unless the applicant has been continuously employed by that provider prior to August 28, 2003. If an applicant is employed on or after August 28, 2003, he or she may be employed following submission of a completed waiver application on a condition basis to provide in-home services or home health services to any in-home services client or home health patient during the pendency of that waiver application if:

(A) The disqualifying crime is not one that would preclude employment pursuant to subsection 6 of section *[660.317] 192.2495*, RSMo, and

(B) The applicant is not listed on the Department of Health and Senior Services' employee disqualification list *[established pursuant to section 660.315, RSMo]*.

(17) Each provider shall be responsible for—

(A) Requesting criminal background checks on all prospective employees, regardless of waiver status, in accordance with the provisions of sections *[660.317] 192.2495* and 43.540, RSMo, and

(18) Each in-home services provider or home health provider shall also be responsible for—

(A) Requesting Family Care Safety Registry background screenings on all prospective employees, regardless of waiver status, in accordance with the provisions of section *[660.317] 192.2495*, RSMo, and

*AUTHORITY: sections [660.017, RSMo 2000; 660.050 and 660.317, RSMo Supp. 2003] 192.006, 192.2000, and 192.2495, RSMo. * This rule was originally filed as 13 CSR 10.060. Emergency rule filed March 1, 1999, effective March 30, 1999, expired Jan. 10, 2000. Original rule filed March 1, 1999, effective Sept. 30, 1999. Moved to 19 CSR 30-82.060, effective Aug. 28, 2001. Emergency amendment filed Oct. 15, 2003, effective Oct. 26, 2003, expired April 22, 2004. Amended: Filed Oct. 15, 2004, effective Oct. 30, 2004.*

**Original authority: 660.017, RSMo 1993, amended 1995; 660.050, RSMo 1984, amended 1988, 1992, 1993, 1994, 1995, 2001; and 660.317, RSMO 1996, amended 1997, 1998, 2002, 2003.*

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 Missouri Department of Health and Senior Services, Family Care Safety Registry, 912 Wildwood, Jefferson City, MO 65109 or via email at Beth.Thompson@health.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.*