

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

**N.D. Admin. Code Chapters)
75-03-23, Provision of Home)
and Community-Based Services)
Under the Service Payments for)
Elderly and Disabled Program)
and the Medicaid Waiver)
for the Aged and Disabled)
Program, and 75-03-24,)
Expanded Service)
Payments for Elderly and)
Disabled (Pages 103-127))**

**REPORT OF THE
DEPT. OF HUMAN SERVICES**

September 15, 2014

.....

For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code chapters 75-03-23 and 75-03-24 are not related to statutory changes made by the Legislative Assembly, but they are the result of an appropriation provided in the Department's appropriation bill, 2013 House Bill No. 1012. At the June 11, 2014 meeting of this committee, the Department requested and received an extension until October 1, 2014.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional

human service centers, Legal Services of North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rulemaking. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on July 2, 2014. The record was held open until 5:00 p.m. on July 14, 2014, to allow written comments to be submitted. One set of written comments was received. The "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,324.32.
6. The proposed rules amend chapters 75-03-23 and 75-03-24. The following specific changes were made:
 - Section 75-03-23-01. Section 75-03-23-01 is amended to remove a duplicate definition and to revise

the definition of "functional assessment".

Section 75-03-23-02. Section 75-03-23-02 is amended to clarify eligibility for services for an applicant under eighteen years of age.

Section 75-03-23-05. Section 75-03-23-05 is amended to allow for the provision of extended personal care services under the SPED program, to clarify what is included in extended personal care services under the SPED program, to allow for the provision of home-delivered meals to certain clients under the SPED program, to clarify what is included in homemaker services under the SPED program, to explain the homemaker services funding cap, and to clarify who may provide respite care services under the SPED program to a client who resides in an adult family foster care home.

Section 75-03-23-06. Section 75-03-23-06 is amended to update language consistent with other changes being made, to clarify what is included in homemaker services under the medicaid waiver program, to explain the homemaker services funding cap, to allow for the provision of supervision to clients with cognitive or physical impairment under the medicaid waiver program, and to clarify who may provide respite care services under the medicaid waiver program to a client who resides in an adult family foster care home.

Section 75-03-23-07. Section 75-03-23-07 is amended to clarify application requirements for qualified service provider applicants, to add direct-bearing offenses pursuant to federal requirements, and to clarify impact of a criminal case against an applicant on the application status.

Section 75-03-23-08. Section 75-03-23-08 is amended to add the federal requirements in reference to disqualification of a qualified service provider, and conditions under which a qualified service provider's application may be denied.

Section 75-03-23-15. Section 75-03-23-15 is created to specify application requirements and require an applicant to prove the applicant's eligibility. This section was also amended based on the comment received to clarify the role of an "individual properly seeking services on behalf of another individual."

Section 75-03-23-16. Section 75-03-23-16 is created to identify limitations on an individual to request qualified service provider status after the individual's status has previously been terminated or denied.

Section 75-03-23-17. Section 75-03-23-17 is created to identify the need and use of a functional assessment.

Section 75-03-24-07. Section 75-03-24-07 is amended to create consistency with other changes and to allow for the provision of home-delivered meals to certain clients under the expanded SPED program.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. The estimated fiscal impact resulting from the implementation of the proposed amendments was anticipated in the Department's budget. The estimated fiscal impact is \$676,255, of which \$431,329 is general fund. Prior to the implementation, the Centers for Medicare and Medicaid Services (CMS) must also approve the changes contained in the proposed language for subsection 14 of section 75-03-23-06. Last week, CMS advised the Department that the rate proposed for services to be provided pursuant to the proposed language for subsection 14 of section 75-03-23-06 needs to be reviewed to ensure compliance with provisions of the Social Security Act and the Fair Labor Standards Act. Department staff are in the process of analyzing the rate, and it may be necessary to increase the proposed rate. Based on the results of the analysis and the time needed by CMS for final review and approval, it is possible that the services to be provided pursuant to the changes proposed to subsection 14 of section 75-03-23-06 may not be implemented on October 1, 2014.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
September 15, 2014