

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

**N.D. Admin. Code Chapter
75-02-04.1, Child Support
Guidelines
(Pages 131-158)**

) **REPORT OF THE**
) **DEPT. OF HUMAN SERVICES**
) **June 9, 2011**
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code section 75-02-04.1-09, in part, are to implement 2009 House Bill No. 1329. House Bill No. 1329 also specifically granted the Department the authority to include this change in this next set of changes to the rules that the Department undertakes every four years pursuant to North Dakota Century Code section 14-09-09.7. The remaining proposed amendments to N.D. Admin. Code chapter 75-02-04.1 are not related to statutory changes made by the Legislative Assembly.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services 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 boards, the regional human service centers, Legal Services offices in 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 rule-making. 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 October 28, 2010. The record was held open until 5:00 p.m. on November 8, 2010, to allow written comments to be submitted. A summary of the comments received 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 \$2,342.38.
6. The proposed rule amends chapter 75-02-04.1. The following specific changes were made:
 - Section 75-02-04.1-01 is amended to update terminology; revise how to determine the number of dependent's exemptions in calculating the deduction for the hypothetical federal income tax obligation; increase the deduction from gross income for lodging expenses incurred as a condition of employment from \$50 to \$63 per night; and revise the definition of "obligee" to clarify that this is a person owed or alleged to be owed a duty of support on behalf of a child.

Section 75-02-04.1-02 is amended to clarify that when awarding equal physical custody, the court is not precluded from also apportioning specific child-related expenses, such as day care and school fees, between the parents; require that an order specify the number of visitation nights when the extended visitation adjustment is applied; and authorize the court to order the obligee to reimburse the obligor for any overpayment that results when children's benefits are credited against the child support obligation.

Section 75-02-04.1-03 is amended to update terminology and clarify that when awarding split custody, the court also must specifically order a child support obligation for each parent.

Section 75-02-04.1-05 is amended to make conforming changes to the self-employment section provisions that are applied when determining whether self-employment losses may be used to offset income that is not from self-employment.

Sections 75-02-04.1-06.1 and 75-02-04.1-08.1 are amended to change "visitation" to "parenting time".

Section 75-02-04.1-07 is amended to update terminology; specify that for purposes of imputing income based on earning capacity, amounts received in lieu of actual earnings, such as social security benefits, are treated as "earnings"; specify that income may not be imputed to an obligor who is receiving social security disability benefits and similar types of payments; create a methodology for imputing income to an incarcerated obligor;

and specify that a voluntary change in employment made for the purpose of reducing the child support obligation can include voluntarily becoming unemployed.

Section 75-02-04.1-08.2 is amended to update terminology; revise the definition of “equal physical custody” to give more flexibility to the court; and clarify that when awarding equal physical custody, the court also must specifically order a child support obligation for each parent.

Section 75-02-04.1-09 is amended to update terminology; add a new rebuttal reason for obligors whose income, on paper, is reduced because of depreciation expenses; and limit the rebuttal reason for visitation travel expenses to situations in which the obligor is responsible for all visitation travel expenses.

Section 75-02-04.1-10 is amended to revise the schedule of child support amounts.

Section 75-02-04.1-11 is amended to clarify what it means to be an “intact family” when determining a child support obligation for a child in foster care or guardianship care.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed amendments may 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. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were not adopted as emergency (interim final) rules.

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North Dakota Department of Human Services

June 9, 2011