

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

<b>N.D. Admin. Code Chapters</b>	)	<b><u>REPORT OF THE</u></b>
<b>75-02-02.1, Eligibility for</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>Medicaid, and 75-02-02.2,</b>	)	
<b>Children's Health Insurance</b>	)	<b>June 11, 2014</b>
<b>Program</b>	)	
<b>(Pages 155-226)</b>	)	

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

1. The proposed amendments to N.D. Admin. Code chapters 75-02-02.1 and 75-02-02.2 are related to statutory changes made by the Legislative Assembly in 2013 House Bill No. 1362.
2. These rules are related to changes in a federal statute or regulation; specifically, the eligibility provisions of the Patient Protection and Affordable Care Act.
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 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 February 7, 2014. The record was held open until 5:00 p.m. on February 18, 2014, to allow written comments to be submitted. One written comment 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 \$2,671.50.
6. The proposed rules amend chapters 75-02-02.1 and 75-02-02.2. The following specific changes are made:
  - Section 75-02-02.1-01. Section 75-02-02.1-01 is amended to add the definition of MAGI-based methodology for Medicaid.
  - Section 75-02-02.1-05. Section 75-02-02.1-05 is amended to identify changes in coverage groups eligible for coverage under the Medicaid expansion.
  - Section 75-02-02.1-08. Section 75-02-02.1-08 is amended to identify what constitutes a Medicaid unit for individuals subject to a MAGI-based methodology

and what members are included as part of a Medicaid household.

Section 75-02-02.1-08.1. Section 75-02-02.1-08.1 is amended to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-12. Section 75-02-02.1-12 is amended to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-14.1. Section 75-02-02.1-14.1 is created to address eligibility for medically frail Medicaid expansion enrollees.

Section 75-02-02.1-16. Section 75-02-02.1-16 is amended to address residency requirements for the Medicaid expansion population.

Section 75-02-02.1-18. Section 75-02-02.1-18 is amended to revise language on provision of emergency services to make it consistent with Medicaid expansion requirements.

Section 75-02-02.1-19.1. Section 75-02-02.1-19.1 is amended to update the family coverage section with the coverage requirements for the parents and caretaker relatives group.

Section 75-02-02.1-20. Section 75-02-02.1-20 is amended to update transitional and extended Medicaid benefits to include the changes to Section 75-02-02.1-19.1 and to remove child support income from the requirements. (This section was further amended in response to a comment received.)

Section 75-02-02.1-34. Section 75-02-02.1-34 is amended to update income considerations to reflect MAGI-based methodologies for determining income eligibility for Medicaid.

Section 75-02-02.1-34.1. Section 75-02-02.1-34.1 is created to add MAGI-based methodology for determining income eligibility for Medicaid.

Section 75-02-02.1-37. Section 75-02-02.1-37 is amended to clarify the application of this section on unearned income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-37.1. Section 75-02-02.1-37.1 is created to address unearned income requirements for individuals subject to a MAGI-based methodology.

Section 75-02-02.1-38. Section 75-02-02.1-38 is amended to clarify the application of this section on earned income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-38.2. Section 75-02-02.1-38.2 is amended to clarify the application of this section on disregarded income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-38.3. Section 75-02-02.1-38.3 is created to address disregarded income requirements for certain individuals subject to a MAGI-based methodology.

Section 75-02-02.1-38.4. Section 75-02-02.1-38.4 is created is address earned income requirements for

individuals subject to a MAGI-based methodology.

Section 75-02-02.1-39. Section 75-02-02.1-39 is amended to clarify the application of this section on income deductions to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-39.1. Section 75-02-02.1-39.1 is created to address income deductions for individuals subject to a MAGI-based methodology.

Section 75-02-02.1-40. Section 75-02-02.1-40 is amended to update poverty income level percentages and to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-41.1. Section 75-02-02.1-41.1 is amended to reflect deductions applicable to the calculation of recipient liability.

Section 75-02-02.1-41.2. Section 75-02-02.1-41.2 is amended to address the addition of certain individuals to an eligible Medicaid unit.

Section 75-02-02.2-01. Section 75-02-02.2-01 is amended to redefine household member and to add the definition of MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-06.1. Section 75-02-02.2-06.1 is amended to clarify the application of this section on a children's health insurance program unit to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-06.2. Section 75-02-02.2-06.2 is created to identify a children's health insurance

program MAGI-based methodology household unit.  
Section 75-02-02.2-10. Section 75-02-02.2-10 is amended to address additional eligibility criteria.  
Section 75-02-02.2-12. Section 75-02-02.2-12 is amended to clarify the application of this section on income considerations to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-12.1. Section 75-02-02.2-12.1 is created to address income considerations under a MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-12.2. Section 75-02-02.2-12.2 is created to address a MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-13. Section 75-02-02.2-13 is amended to update the calculation of self-employment income in determining household income for the children's health insurance program.

Section 75-02-02.2-13.1. Section 75-02-02.2-13.1 is amended to clarify the application of this section on income deductions to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-13.2. Section 75-02-02.2-13.2 is amended to address the treatment of excess income of a spouse or parent in determining eligibility for the children's health insurance 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 anticipated fiscal impact resulting from the implementation of the proposed amendments is \$301,167, of which \$101,085 is general fund.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were adopted as emergency (interim final) rules, under N.D.C.C. section 28-32-03, and became effective January 1, 2014. The statutory ground for declaring the rules to be an emergency is that emergency rulemaking is reasonably necessary to meet a mandate of federal law. A copy of the Governor's approval of the emergency status of the rules is attached.

Prepared by:

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June 11, 2014