

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

N.D. Admin. Code Chapters)	<u>REPORT OF THE</u>
75-01-03 and 75-08-01, Appeals)	<u>DEPT. OF HUMAN SERVICES</u>
and Hearings and Vocational)	
Rehabilitation)	
)	December 3, 2018
(Pages 95-99 and 115-144))	

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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 75-01-03 and 75-08-01 are not related to statutory changes made by the 2017 Legislative Assembly.
2. These rules are necessary, in part, to comply with federal law, the Workforce Innovation and Opportunity Act (WIOA) and final regulations.
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 board directors, 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. No Comments were received at the public hearing held in Bismarck on September 21, 2018. The record was held open until October 1, 2018, to allow written comments to be submitted. Two written comments were received within the comment period. A "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 \$2401.31.
6. The proposed rules amend chapters 75-01-03 and 75-08-01. The following specific changes were made:
 - Section 75-01-03-02** is repealed as necessary language from this section was added to section 75-08-01-37.
 - Section 75-01-03-18** is amended to remove language regarding dismissing a vocational rehabilitation appeal as necessary language was added to section 75-08-01-37; and to make a necessary clerical change.
 - Section 75-01-03-21** is amended as necessary language was added to section 75-08-01-37 regarding the director of vocational rehabilitation's authority regarding appeals.
 - Section 75-01-03-22** is amended as necessary language was added

to section 75-08-01-37 regarding the director of vocational rehabilitation's authority regarding appeal decisions.

Section 75-01-03-23 is amended as necessary language was added to section 75-08-01-37 regarding the director of vocational rehabilitation's authority regarding appeal decisions and notices.

Section 75-08-01-01 is amended to add a definition of "appeal", "division", "pre-employment transition services", "student with a disability", "youth with a disability", and "youth with a most significant disability"; to remove definitions for "extended evaluation", "homemaker", "ongoing support services", and "traditional employment services"; and to amend and update the definition of "client assistance program", "employment outcome", "existing data", "extended employment", "extreme medical risk", "individual with a disability", "individual with a significant disability", "mediation", "pre-employment transition services", "qualified rehabilitation professional", "substantial impediment to employment", "supported employment", and "trial work experiences".

Section 75-08-01-02 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" and to clarify the verification process if an individual is not a United States citizen.

Sections 75-08-01-03, 75-08-01-04, 75-08-01-08, 75-08-01-12, 75-08-01-13, 75-08-01-22, 75-08-01-27, and 75-08-01-31 are amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" or "division".

Section 75-08-01-07 is repealed as the necessary language was added to section 75-08-01-37.

Section 75-08-01-09 is amended to clarify language and to create consistency in terms used throughout the chapter by changing the word "representative" to "authorized representative".

Sections 75-08-01-11 and 75-08-01-15 are amended to clarify language and to create consistency in terms used throughout the chapter by changing the word "representative" to "authorized representative" and replacing "vocational rehabilitation" with "the division".

Section 75-08-01-14 is repealed as the necessary language was added to section 75-08-01-37.

Section 75-08-01-16 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" or "division" and to remove the "an extended evaluation is necessary" exception to the time period to determine eligibility.

Section 75-08-01-17 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" or "division".

Section 75-08-01-18 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" or "division" and to add "advance in" for vocational rehabilitation eligibility and documentation requirements.

Section 75-08-01-20 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" and to remove language that provided for extended evaluation services where an individual was not able to obtain trial work experiences.

Section 75-08-01-21 is amended to create consistency in terms

used throughout the chapter by replacing "vocational rehabilitation" with "the division" and to update a citation.

Section 75-08-01-23 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division"; to replace "results in serious functional limitation" with "seriously limits"; to replace "areas" with "capacities"; to make changes to reflect changes made in section 75-08-01-37 relating to mediation and the client assistance program; and to add additional categories of individuals in a priority list of who is entitled to receive services under an individualized plan for employment.

Section 75-08-01-24 is amended to clarify language and to create consistency in terms used throughout the chapter by changing the word "representative" to "authorized representative" and replacing "vocational rehabilitation" with "the division"; to change the time period for when an individualized plan for eligible individuals must be developed; to update a citation; and to extend the maximum period "time-limited services" may be provided from eighteen to twenty-four months.

Section 75-08-01-25 is amended to update and create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division".

Section 75-08-01-26 is amended to create consistency in terms used throughout the chapter by replacing "vocational rehabilitation" with "the division" and by changing the word "representative" to "authorized representative"; to update language regarding needs test, fee scale and financial participation; to clarify that a vocational rehabilitation administrator may adjust or waive client financial participation to ensure the level of an individual's participation in the

cost of services is not so high as to effectively deny services; and to update a citation.

Section 75-08-01-28 is amended to create consistency in terms used throughout the chapter by replacing “vocational rehabilitation” with “the division” and to update language regarding financial participation.

Section 75-08-01-29 is amended to create consistency in terms used throughout the chapter by replacing “vocational rehabilitation” with “the division”; to clarify language regarding postemployment services for an individual with disabilities; and to extend the maximum period “time-limited services” may be provided from eighteen to twenty-four months.

Section 75-08-01-30 is amended to create consistency in terms used throughout the chapter by replacing “vocational rehabilitation” with “the division” and to clarify that an individual may choose to participate in the cost attendance postsecondary training through the use of college work study and student loans.

Sections 75-08-01-32 and 75-08-01-33 are amended to create consistency in terms used throughout the chapter by replacing “vocational rehabilitation” with “the division”; to replace “due process procedures” with “informal review”; to replace “chief of field services of the division” with “division’s chief of field services”; to clarify written notification requirements; to clarify language regarding the closing of an individual’s case; and to change the individual with whom an appeal may be filed from the appeals supervisor to the chief of field services of the division.

Section 75-08-01-34 is amended to create consistency in terms used throughout the chapter by replacing “vocational rehabilitation”

with "the division"; to replace "due process procedures" with "informal review"; to replace "chief of field services of the division" with "division's chief of field services"; to change the individual with whom an appeal may be filed from the appeals supervisor to the chief of field services of the division; to remove language relating to the determination of rehabilitation of an individual in supported employment when an individual is stabilized for a minimum of sixty days; to extend the period for which an individual in supported employment must maintain employment after transition to extended services to be determined rehabilitated from sixty to ninety days; to remove a requirement that an individual earning less than minimum wage is subject to an annual review upon closure; and to remove language regarding closing an individual's case while working in a temporary transitional employment placement.

Section 75-08-01-35 is amended to remove language regarding procedures to be used when an individual in extended employment has their case closed and to add language requiring division to review, document, and assess the employment outcomes of certain individuals as they attempt to obtain employment at or above the federal minimum wage.

Section 75-08-01-36 is created to detail the pre-employment transition services the division must provide or make available.

Section 75-08-01-37 is created to describe a claimant's right to receive notices; mediation rights and process; appeal rights and process; reasonable accommodation; informal review rights and process; and claimant's right to continue to receive services pending resolution of claimant's appeal.

7. No written requests for regulatory analysis have been filed by the

Governor or by any agency. The rule amendments are not 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 implementation of the proposed amendments is nominal.
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:

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