

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

<b>N.D. Admin. Code Chapter</b>	)	<b><u>REPORT OF THE</u></b>
<b>75-02-05, Provider Integrity</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
	)	<b>March 13, 2018</b>
<b>(Pages 375-387)</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 Chapter 75-02-05 are necessary to comply with 2017 Senate Bill No. 2117.
2. These rules are related to federal statute or regulations, specifically, Title 42, Code of Federal Regulations, part 455.
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 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 December 15, 2017. The record was held open until 5:00 p.m. on December 26, 2017, to allow written comments to be submitted. No comments were received at the public hearing or within the comment period. 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 \$2,089.47.
6. The proposed rules amend chapter 75-02-05. The proposed changes are as follows:
  - Section 75-02-05-01** is amended to update language to add children's health insurance program.
  - Section 75-02-05-02** is amended to update century code references, federal law references, to add children's health insurance program, and to update language for consistency within the rules.
  - Section 75-02-05-03** is amended to update language for consistency purposes and due to federal Medicaid program changes, to add definitions of "children's health insurance program," "direct owner," "disclosing entity," "group of

practitioners," "high risk providers," "indirect ownership interest," "institutional provider," "managed care organization," "ownership interest," "provider specialty," "provider type," and to remove definitions of "closed-end Medicaid provider agreement," "offsetting of payments," and "open-end Medicaid provider agreement."

**Section 75-02-05-04** is amended to update language for consistency within the rules, to clarify provider billing practices for Medicaid or children's health insurance program recipients in accordance with clarifications received from Centers for Medicare and Medicaid Services, and to add language regarding providers providing certain records to the department.

**Section 75-02-05-04.1** is created to address the department's ability to deny an application to become a Medicaid or children's health insurance program provider.

**Section 75-02-05-05** is amended to update language for consistency within the rules, add children's health insurance program, to add language to capture best practices from other states, to add language to address submitting false, intentionally misleading or fraudulent information, failure to provide requested documents for evaluation and failing to provide required standards for services, and to clarify that the department can sanction providers for failure to make certain records available to the department.

**Section 75-02-05-06** is amended to update language for consistency within the rules.

**Section 75-02-05-07** is amended to update language for consistency within the rules, to add children's health insurance program, and to clarify suspension of Medicaid payments for providers also enrolled in managed care organizations under contract with the department.

**Section 75-02-05-09** is amended to update language for consistency within the rules and to add language establishing appeal process for receiving notice of denial.

**Section 75-02-05-11** is created to establish fingerprint-based criminal background checks for enrolled and newly enrolling providers and indirect owners in compliance with federal requirements and 2017 Senate Bill No. 2117.

**Section 75-02-05-12** is created to establish an application fee for all institutional providers in compliance with federal requirements.

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 the 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:

Jonathan Alm  
Legal Advisory Unit  
North Dakota Department of Human Services  
March 9, 2018



Doug Burgum, Governor  
Christopher Jones, Executive Director

**SUMMARY OF COMMENTS RECEIVED  
REGARDING PROPOSED AMENDMENTS TO  
N.D. ADMIN. CODE CHAPTER 75-02-05  
PROVIDER INTEGRITY**

The North Dakota Department of Human Services held a public hearing on December 15, 2017, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-05, Provider Integrity.

Written comments on these proposed amendments could be offered through 5:00 p.m. on December 26, 2017.

No one attending the public hearing provided comments. No written comments were received within the comment period.

**SUMMARY OF COMMENTS**

No comments were received.

There will be no change to the proposed rule as no comments were received.

Prepared by:

Jonathan Alm, Director  
Legal Advisory Unit  
N.D. Dept. of Human Services

January 4, 2018

Cc: Dawn Mock, Medical Services

## MEMO

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Dawn Mock, Medicaid Program Integrity

**RE:** Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-05, Provider Integrity

**DATE:** September 11, 2017

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Chapter 75-02-05. These amendments are anticipated to have a fiscal impact on the regulated community of approximately \$30 per individual required to submit fingerprints for the fingerprint-based criminal background check requirement.

### Purpose

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-05. Federal law does not mandate the proposed rules; however federal rule and State law changes do require the rule changes.

### Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

Providers and owners with 5 percent or more ownership interest in a provider that is categorized as “high risk” will be impacted by this requirement. If a provider is only considered “high” risk for North Dakota Medicaid, they will be subject to providing fingerprints in order for the Department to conduct a fingerprint-based criminal background check. If the provider is also “high risk” with Medicare, then the provider will only need to submit fingerprints to Medicare and any background check resulting from that process shall be used by the Department.

### Probable Impact

The proposed amendments may impact the regulated community as follows:

- Any provider and owners with 5 percent ownership interest in that provider, which is “high risk” only to North Dakota Medicaid, will be impacted by this requirement.

### Probable Cost of Implementation

- Any provider and owners with 5 percent ownership interest in that provider, which is “high risk” only to North Dakota Medicaid, will be required to cover the cost of conducting the fingerprint-based criminal background check. The current anticipated cost per check is \$30.
- The anticipated cost for implementing changes to the Department’s enrollment and revalidation process is minimal.

### Consideration of Alternative Methods

The Department must comply with implementing fingerprint-based criminal background checks to conform to Federal regulations. There is no alternate means to satisfy this requirement.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Dawn Mock, Medicaid Program Integrity Administrator

**DATE:** September 11, 2017

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-05.

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The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapter 75-02-05. Federal law does not mandate the proposed rules; however federal rule and State law changes do require rule changes.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

### 1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by the proposed amendments are small healthcare providers that are deemed "high risk". The fee for a background check is insignificant and should not be a hardship. For these reasons, establishment of less stringent compliance for these small entities was not considered.

### 2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting that providers may be subject to. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

### 3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required compliance or reporting requirements. For this reason, the establishment of less

stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

#### 4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

All small entities enrolled as healthcare providers with the Department shall comply with operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards or operational standards for small entities. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

#### 5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

The requirements of the proposed amendments are federally mandated and monetarily insignificant.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Dawn Mock, Medicaid Program Integrity

**DATE:** September 11, 2017

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-05

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-05. The proposed rules are mandated by federal law subpart E of 42 CFR, Part 455 and 2017 Senate Bill number 2117. The proposed rules will not have an adverse economic impact on small entities.

### 1. Small Entities Subject to the Proposed Rules

Any small entity that is deemed a “high risk” provider.

### 2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No administrative or other costs are required by the small entities for compliance with the proposed rules.

### 3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: There will not be probable cost to private persons or consumers for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule: No anticipated benefits to private persons or consumers by the proposed rules.

### 4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: No effects on state revenue expected because of the proposed rules.

## 5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Because small entities will not experience administrative costs or other costs and no probable effect on State Revenue, exploring alternative methods were not necessary.

## FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.



Doug Burgum, Governor  
Christopher Jones, Executive Director

### **TAKINGS ASSESSMENT**

concerning proposed amendment to N.D. Admin. Code chapter 75-02-05.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 11th day of September, 2017.

by:

A handwritten signature in black ink, consisting of several loops and flourishes, is written over a horizontal line.

N.D. Dept. of Human Services