

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

N.D. Admin. Code Section)	
75-09.1-01-01, Definitions; Article)	<u>REPORT OF THE</u>
75-09.2, Substance Use Disorder)	<u>DEPT. OF HUMAN SERVICES</u>
Early Intervention; and Chapter)	
75-09.2-01, Alcohol and Drug)	
Early Intervention Program)	
)	March 13, 2018
(Pages 559-564))	

.....

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

1. The proposed amendments to N.D. Admin. Code article 75-09.2 and chapter 75-09.2-01 are being created as a result of 2017 House Bill No. 1040.
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 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 8, 2017. The record was held open until 5:00 p.m. on December 18, 2017, to allow written comments to be submitted. No comments were received at the public hearing or 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 \$2,447.88.
6. The proposed rules amend section 75-09.1-01-01 and create article 75-09.2 and chapter 75-09.2-01. The following specific changes were made:

Section 75-09.1-01-01 is amended to reflect the current addition of ASAM criteria and the DSM (diagnostic and statistical manual of mental disorders).

Article 75-09.2 is created to establish a new article for the placement of the new chapter 75-09.2-01, Alcohol and Drug Early Intervention Program.

Section 75-09.2-01-01 is created to add definitions.

Section 75-09.2-01-02 is created to establish application requirements for minor in possession program certification.

Section 75-09.2-01-03 is created to establish requirements for recertification, displaying of license, and establishing that licenses are nontransferable.

Section 75-09.2-01-04 is created to establish criteria and documentation requirements to become a provider.

Section 75-09.2-01-05 is created to establish the required background checks and potential investigations on an applicant and provider.

Section 75-09.2-01-06 is created to establish the effects of a criminal conviction on an applicant or provider's status.

Section 75-09.2-01-07 is created to establish the minor in possession program certification program criteria.

Section 75-09.2-01-08 is created to establish provider's annual reporting requirements to the Department.

Section 75-09.2-01-09 is created to establish the Department's right to suspend a provider's minor in possession program certification.

Section 75-09.2-01-10 is created to establish the denial and revocation process of an applicant's application or program's minor in possession program certification.

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. SECTION 75-09.1-01-01 DEFINITIONS, ARTICLE 75-09.2 SUBSTANCE
USE DISORDER EARLY INTERVENTION AND CHAPTER 75-09.2-01 ALCOHOL
AND DRUG EARLY INTERVENTION PROGRAM**

The North Dakota Department of Human Services held a public hearing on December 8, 2017, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Section 75-09.1-01-01 Definitions, Article 75-09.2 Substance Use Disorder Early Intervention and Chapter 75-09.2-01 Alcohol and Drug Early Intervention Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on December 18, 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: Pamela Sagness, Behavioral Health Division

MEMO

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Laura Anderson, Prevention Administrator
Pamela Sagness, Behavioral Health Division Director

RE: Regulatory Analysis of Proposed North Dakota Administrative Code section 75-09.1-01-01 Definitions, article 75-09.2, Substance Use Disorder Early Intervention, and chapter 75-09.2-01, Alcohol and Drug Early Intervention Program

DATE: October 30, 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 creation of North Dakota Administrative Code section 75-09.1-01-01, article 75-09.2, and chapter 75-09.2-01. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

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 section 75-09.1-01-01, article 75-09.2, and chapter 75-09.2-01. Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

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

- Providers licensed under article 75-09.1 as the definition of ASAM patient placement criteria and DSM is amended to the current edition.
- Individuals who provide minor in possession early intervention services.
 - Providers will need certification including background checks.
 - Providers are expected to charge a reasonable fee for service
- Individuals who receive a minor in possession or minor in consumption charge.
 - Youth will receive quality services in a safe environment.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Individuals who provide minor in possession early intervention services will be required to utilize evidence-based programs

- Some providers may need to complete training to meet this requirement.

Probable Cost of Implementation

- Communication and training to current and potential providers = \$10,000

Consideration of Alternative Methods

- Rules are required by Section 2 of 2017 House Bill No. 1040

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Laura Anderson, Prevention Administrator
Pamela Sagness, Behavioral Health Division Director

DATE: October 30, 2017

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendment of N.D. Admin. Code section 75-09.1-01-01 and the Creation of N.D. Admin. Code article 75-09.2 and chapter 75-09.2-01.

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 amendment of N.D. Admin. Code section 75-09.1-01-01 and new article 75-09.2 and chapter 75-09.2-01. Federal law does not mandate the proposed rules.

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 proposed rule provides an opportunity for small providers to enhance the quality of their services and to update the definition of ASAm patient placement criteria and DSM.

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

The proposed rule requires re-certification every three years, which is less than current early intervention DUI certification.

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

The proposed rule requires only annual reporting and is less stringent than current early intervention DUI certification.

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

The proposed rule allows providers to choose evidence-based programs based on proven outcomes.

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

The proposed rule provides an opportunity for providers and small entities to enhance services.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Laura Anderson, Prevention Administrator
Pamela Sagness, Behavioral Health Division Director

DATE: October 30, 2017

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendment of N.D. Admin. Code section 75-09.1-01-01 and the Creation of N.D. Admin. Code article 75-09.2 and chapter 75-09.2-01.

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 amendment of N.D. Admin. Code section 75-09.1-01-01 and the creation of N.D. Admin. Code article 75-09.2 and chapter 75-09.2-01. The proposed rules are mandated by Section 2 of 2017 House Bill No. 1040. The proposed rules could have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed rules are early intervention providers.

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 be no change to private persons or consumers for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule: With the proposed rules, private persons and consumers will receive quality services in a safe environment.

4. Probable Effect on State Revenue

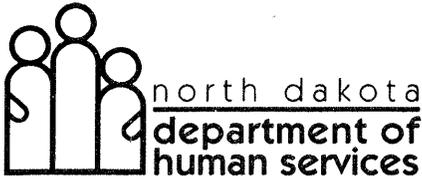
The probable effect of the proposed rule on state revenues is expected to be: No effects on state revenue expected because of the proposed rules.

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 was 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 of N.D. Admin. Code section 75-09.1-01-01 and the creation of article 75-09.2 and chapter 75-09.2-01.

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 30th day of October, 2017.

by:



N.D. Dept. of Human Services