

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

<b>N.D. Admin. Code Chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and Children’s Health Insurance Program  (Pages 113-137)</b>	) ) ) ) ) ) )	<u><b>REPORT OF THE DEPT. OF HUMAN SERVICES</b></u>  <b>December 3, 2019</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, relating to Eligibility for Medicaid and Children’s Health Insurance Program, are necessary to comply with an appropriations measure passed during the 2019 legislative session, as directed by 2019 Senate Bill No. 2012, to comply with the requirements of 2019 House Bill Nos. 1115, 1318, and 1515, and to comply with 2019 Senate Bill No. 2106.
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 rulemaking. 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 and the Attorney General's review.

4. A public hearing on the proposed rules was held in Bismarck on September 11, 2019. The record was held open until 5:00 PM on, September 23, 2019, to allow written comments to be submitted. No comments were received at the public hearing. No 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 \$2655.34.
6. The proposed rules amend chapter 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program. The following specific changes were made:  
**Section 75-02-02.1-01** is amended to provide definitions for "children's health insurance program" and "credible health insurance coverage" within this chapter, as existing definitions for

these terms that had been provided in chapter 75-02-02.2 are being repealed. Definitions for "applicant", "long-term care", "recipient", and "title XXI" were added to provide clarity. Existing definitions for "child", "disabled adult child", and "student" were amended to change references from "person" to "individual". An existing definition for "county agency" was amended to reflect the move to the human service zone model. The definition for "healthy steps" was removed as it will be known as "children's health insurance program".

**Sections 75-02-02.1-02.1 and 75-02-02.1-03** are amended to remove the word "Medicaid" from these sections to allow for consistency in wording throughout the chapter.

**Section 75-02-02.1-05** is amended to remove the word "Medicaid" from this section to allow for consistency in wording throughout the chapter. The section is also amended to change references from "person" to "individual". Language identifying individuals screened for breast or cervical cancer was updated consistent with 2019 House Bill No. 1115. The income eligibility level for children with disabilities was raised from two hundred to two hundred fifty percent of the poverty level, based on language in 2019 Senate Bill No. 2012. Language identifying individuals eligible through the children's health insurance program was added to this section due to the repeal of similar language with the repeal of Chapter 75-02-02.2.

**Section 75-02-02.1-08** is amended to clarify the income budgeting process for certain groups of individuals who may meet medically needy eligibility criteria. New language provides for the use of a non-MAGI income methodology with the exclusion of

assets.

**Section 75-02-02.1-10** is amended to remove reference to the “healthy steps program” and to replace it with reference to the “children’s health insurance program”.

**Section 75-02-02.1-24.3** is amended to update language regarding income eligibility for children with disabilities from two hundred percent to two hundred fifty percent of the poverty level, based on changes made in 2019 Senate Bill No. 2012.

**Section 75-02-02.1-28** is amended to update burial fund requirements based on changes made in 2019 House Bill No. 1318.

**Section 75-02-02.1-40** is amended to update the income eligibility for pregnant women based on the language in 2019 House Bill No. 1515; and to update language regarding income eligibility for children with disabilities based on changes made in 2019 Senate Bill No. 2012, which provided that the income level for children with disabilities is now two hundred fifty percent of the poverty level applicable to a family of the size involved.

**Section 75-02-02.1-41.1** is amended for clarity by removing references to MAGI based methodology.

**Section 75-02-02.1-44** is created to provide administrative rules relating to the children’s health insurance program within chapter 75-02-02.1, due to the repeal of chapter 75-02-02.2, which had contained the previously existing administrative rules regarding the children’s health insurance program. The section provides for a more condensed set of rules regarding the children’s health insurance program than had existed in chapter 75-02-02.2, including provisions on eligibility

criteria, asset considerations, the children's health insurance program unit, income considerations, and income deductions as the children's health insurance program transfers from a managed care arrangement to a Medicaid "look-alike" fee for service administration pursuant to 2019 Senate Bill No. 2106.

**Chapter 75-02-02.2** is repealed based on 2019 Senate Bill No. 2106 to transition the children's health insurance program from a managed care arrangement to a Medicaid "look-alike" fee for service model that is administered by the Department.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule 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 overall anticipated fiscal impact of the general fund resulting from implementation of the proposed amendments is a net savings of \$740,061.
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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