

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

<b>N.D. Admin. Code Chapter</b> ) <b>75-04-01, 75-04-05, and 75-04-06,</b> ) <b>Licensing of Programs and Services</b> ) <b>For Individuals with Intellectual</b> ) <b>Disabilities-Developmental</b> ) <b>Disabilities, Payment for Provider</b> ) <b>Agencies of Services to Individuals</b> ) <b>With Intellectual Disabilities-</b> ) <b>Developmental Disabilities, and</b> ) <b>Eligibility for Intellectual</b> ) <b>Disabilities-Developmental</b> ) <b>Disabilities Program Management</b> ) <b>Services</b> ) <b>(Pages 200-219)</b> )	<u><b>REPORT OF THE</b></u> <u><b>DEPT. OF HUMAN SERVICES</b></u> <b>March 4, 2020</b>
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For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendment of N.D. Admin Code Chapters 75-04-01, 75-04-05, and 75-04-06, regarding Developmental Disabilities, are not related to a change in a state statute.
2. These proposed rules are not related to a change in a federal statute or regulation. These proposed rules are necessary to comply with guidance issued by Centers for Medicare and Medicaid Services.
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 human service zone directors (formerly known as 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.

4. No comments were received at the public hearing held in Bismarck on December 12, 2019. The record was held open until December 23, 2019, to allow written comments to be submitted. One written comment was received during 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 \$3011.36.
6. These proposed rules are necessary to comply with guidance issued by Centers for Medicare and Medicaid Services. The following specific changes were made:

**Section 75-04-01-01** is amended to remove the definition of "independent habilitation", and to change the definition of

“residential habilitation” to “residential services”, which will now include both independent habilitation and residential habilitation. **Sections 75-04-01-17** is amended to reflect that the definition of “residential habilitation” has been changed to “residential services”, which now may include both independent habilitation and residential habilitation.

**Section 75-04-01-23** is amended to replace language referring to “residential service facilities” with “group home facilities”.

**Section 75-04-05-01** is amended to remove definitions for “absence factor”, “independent habilitation”, and “residential services”. The definition of “hospital leave day” and “in-house day” were changed to replace a reference to “intermediate care facility or residential habilitation setting” with “intermediate care facility for individuals with intellectual disabilities setting”. A definition is added for “personal assistance retainer”. The definition for “residential habilitation” was renamed “residential services”, and reflects that residential services include independent habilitation and residential habilitation. Changes were made within the definition of “units of service” to change references to “residential services” to “residential habilitation and intermediate care facility for individuals with intellectual disabilities”. The definition of “vacancy factor” was amended to provide that it now means a cost component of the residential habilitation and intermediate care facility for individuals with intellectual disabilities rate intended to cover costs when a client is no longer in the setting, with no intent to return.

**Section 75-04-05-08** is amended to include “personal assistance retainer” within an identification of type of day that

must be included within daily census records. New language is added to provide that a maximum of thirty personal assistance retainer days per client per calendar year may be allowed for payment, and that personal assistance retainer days over that amount are not billable to the medical assistance program.

**Section 75-04-05-09** is amended to state that the direct care hourly rate for intermediate care facilities for individuals with disabilities, as well as for residential habilitation, must now include vacancy factor. The section removes language stating that the direct care hourly rate for in home supports and parenting supports must include direct care wage, employment related expenses, program support, and administrative costs. Language is added to permit an intermediate care facility for individuals with intellectual disabilities to use an existing process to determine the maximum authorized assessment score hours for a client. The section removes language which had contained a process for determining a vacancy rate add-on. The section changes references to "residential facilities" with "group homes" and "residential services" with "residential habilitation and intermediate care facility for individuals with intellectual disabilities".

**Section 75-04-05-11** is amended to remove a reference to "residential settings".

**Section 75-04-06-08** is created to outline caseload requirements and other work responsibilities of developmental disabilities program managers.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The impact of the proposed 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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