north dakota
department of
human services

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# NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES RELATING TO N.D.A.C. CHAPTER 75-02-04.1 CHILD SUPPORT GUIDELINES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-02-04.1 at 1:30 p.m. on Thursday, October 28, 2010, in Bismarck, N.D. in the AV Room – 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-02-04.1, Child Support Guidelines, are necessary to comply with requirements in federal law (42 U.S.C. § 667) which require each state to establish guidelines for child support award amounts within the state. Federal law, federal regulations (45 C.F.R. § 302.56), and state law (N.D.C.C. § 14-09-09.7) require that the child support guidelines be reviewed at least once every four years to ensure that their application results in the determination of appropriate child support award amounts. The proposed amendments are anticipated to have an impact on the regulated community in excess of $50,000.

**Section 75-02-04.1-01** is amended to update terminology; revise how to determine the number of dependent's exemptions in calculating the deduction for the hypothetical federal income tax obligation; increase the deduction from gross income for lodging expenses incurred as a condition of employment from $50 to $63 per night; and revise the definition of "obligee" to clarify that this is a person owed or alleged to be owed a duty of support on behalf of a child.

**Section 75-02-04.1-02** is amended to clarify that when awarding equal physical custody, the court is not precluded from also apportioning specific child-related expenses, such as day care and school fees, between the parents; require that an order specify the number of visitation nights when the extended visitation adjustment is applied; and authorize the court to order the obligee to reimburse the obligor for any overpayment that results when children's benefits are credited against the child support obligation.

**Section 75-02-04.1-03** is amended to update terminology and clarify that when awarding split custody or equal physical custody, the court also must specifically order a child support obligation for each parent.

**Section 75-02-04.1-05** is amended to make conforming changes to the self-employment section provisions that are applied when determining whether self-employment losses may be used to offset income that is not from self-employment.

**Sections 75-02-04.1-06.1 and 75-02-04.1-08.1** are amended to change "visitation" to "parenting time".

**Section 75-02-04.1-07** is amended to update terminology; specify that for purposes of imputing income based on earning capacity, amounts received in lieu of actual earnings, such as social security benefits, are treated as "earnings"; specify that income may not be imputed to an obligor who is receiving social security disability benefits and similar types of payments; create a methodology for imputing income to an incarcerated obligor; and specify that a voluntary change in employment made for the purpose of reducing the child support obligation can include voluntarily becoming unemployed.

**Section 75-02-04.1-08.2** is amended to update terminology; revise the definition of "equal physical custody" to give more flexibility to the court; and clarify that when awarding split custody or equal physical custody, the court also must specifically order a child support obligation for each parent.

**Section 75-02-04.1-09** is amended to update terminology; add a new rebuttal reason for obligors whose income, on paper, is reduced because of depreciation expenses; and limit the rebuttal reason for visitation travel expenses to situations in which the obligor is responsible for all visitation travel expenses.

**Section 75-02-04.1-10** is amended to revise the schedule of child support amounts.

**Section 75-02-04.1-11** is amended to clarify what it means to be an "intact family" when determining a child support obligation for a child in foster care or guardianship care.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Monday, November 8, 2010.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 29th day of July, 2010.