

**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>75-03-21, Licensing of Foster</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>Homes for Adults</b>	)	
<b>(Pages 230-241)</b>	)	<b>September 13, 2016</b>
	)	

.....

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

1. The proposed amendments to N.D. Admin. Code chapter 75-03-21 are not related to statutory changes made by the Legislative Assembly.
2. These rules are necessary to comply with the requirements of the Patient Protection and Affordable Care Act of 2010 and "Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers" final rule.
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 June 16, 2016. The record was held open until 5:00 p.m. on June 27, 2016, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No written comments were received 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 \$2,187.33.
6. The proposed rules amend chapter 75-03-21. The following specific changes are made:

Section 75-03-21-01. Section 75-03-21-01 is amended to add a definition for "home- and community-based setting experience interview"; to add additional monitoring requirements to the definition of "monitoring"; to add a

definition of “person-centered service plan”; and to add N.D.C.C. chapter 12.1-41 to the definition of “sexual abuse”.

Section 75-03-21-02. Section 75-03-21-02 is amended to correct a citation.

Section 75-03-21-04. Section 75-03-21-04 is amended to ensure the facility is physically accessible for the resident; to ensure privacy in shared bedrooms; to allow the resident a choice of roommate; and to require lockable bedroom and bathroom doors with keys provided to resident and staff with any restrictions to be documented and justified in the person-centered service plan or the service and rental agreement.

Section 75-03-21-05. Section 75-03-21-05 is amended to update the citation to the plumbing code.

Section 75-03-21-09. Section 75-03-21-09 is amended to clarify language and indicate notification should be provided to the county agency, not the department; to add a subsection to assure residents or the resident’s legal representatives the right to manage the resident’s finances; to require notification to the county agency in writing if a provider is requested to serve as the representative payee; to amend the twenty-four hour care requirement to allow for less than twenty-four hour care; and to allow choice of respite care provider by resident or resident’s legal representative.

Section 75-03-21-09.1. Section 75-03-21-09.1 is amended to update the citations for North Dakota Century

Code chapter 12.1-41, uniform act on prevention of and remedies for human trafficking; North Dakota Century Code sections 14-09-22, abuse of child; and 14-09-22.1, neglect of child.

Section 75-03-21-10. Section 75-03-21-10 is amended to clarify language to reflect that substitute caregiver and respite care provider provides resident care on behalf of a facility and that a respite care provider's reimbursement is limited to the funding cap established by the department for each qualifying resident.

Section 75-03-21-11. Section 75-03-21-11 is amended to add a subsection to address residents' rights to access food at any time and meal choices unless otherwise documented and justified in the person-centered service plan or the service and rental agreement.

Section 75-03-21-12. Section 75-03-21-12 is amended to change the title of the section; to clarify language; to include landlord tenant eviction and appeals process requirements, to include resident's right to telephone access, right to furnish and decorate their bedroom, and to address the resident's right to control their own schedules, activities, and right to have visitors; to clarify language regarding resident expectations to include the identification of whether or not a resident requires twenty-four hour supervision; to include resident's right to be free from coercion and restraint; to add a subsection that states any changes to the agreement must be supported by specific assessed need and documented and justified in

the person-centered service plan or the service and rental agreement; and to add subsections that states all agreement modifications must be in writing and signed, furnished to the resident or the resident's legal representative, and kept in the resident's records.

Section 75-03-21-13. Section 75-03-21-13 is amended to clarify language regarding the resident's legal representative; to require the provider to comply with the provider's service and rental agreement and landlord tenant eviction laws; and to reflect the department staff responsible for licensing must be contacted by the county agency prior to the department making the decision to waive the thirty-day requirement.

Section 75-03-21-19. Section 75-03-21-19 is amended to clarify language.

Section 75-03-21-21. Section 75-03-21-21 is amended to correct citations and to reflect additional subsection violations subject to penalties.

Section 75-03-21-23. Section 75-03-21-23 is created to add monitoring 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  
September 9, 2016