

**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>75-02-06 Ratesetting For</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>Nursing Home Care</b>	)	
	)	<b>December 3, 2019</b>
<b>(Pages 138-168)</b>	)	
	)	

.....

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

1. The proposed amendments to N.D. Admin. Code Chapter 75-02-06, relating to Ratesetting for Nursing Home Care, are necessary to comply with an appropriations measure passed during the 2019 legislative session, as directed by 2019 Senate Bill No. 2012, and the requirements of 2019 House Bill No. 1124.
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 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. One individual attended and provided oral comments at the public hearing and provided written comments 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 \$2659.50.
6. The proposed rules amend chapter 75-02-06. The following specific changes were made:
  - Section 75-02-06-01** is amended to update the definition for "depreciation guidelines" to reference the most current copy of American Hospital Association guidelines, and to add a definition of "rate adjustment percentage".
  - Section 75-02-06-02.2** is amended to clarify what items qualify as supplies allowable for direct care costs for nursing supplies based on feedback received from providers.

**Subsection 1 of Section 75-02-06-02.4** is amended to remove “computer software costs” from the list of costs that are classified as direct costs for administration based on 2019 House Bill No. 1124.

**Section 75-02-06-02.5** is amended to provide that computer software and related technology costs, including cloud-based costs, are now to be classified as property-related costs based on 2019 House Bill No. 1124.

**Section 75-02-06-03** is amended to provide a new per bed cost limitation basis for double occupancy and single occupancy beds, effective July 1, 2019.

**Section 75-02-06-05** is amended to update the top management compensation limit to use the previous year’s top compensation, increased by the consumer price index for all urban consumers.

**Section 75-02-06-14** is amended to remove the requirement that residents admitted to the facility through a hospice program or electing hospice benefits while in a facility must be identified as hospice residents for census purposes. Now residents must only be identified as hospice residents for billing purposes.

**Section 75-02-06-16** is amended to change the facility operating margin from a previous amount of three percent, to four and four tenths percent from January 1, 2020 to June 30, 2021, and then back to three percent as of July 1, 2021 based on 2019 Senate Bill No. 2012; to remove language regarding notification of rates by facsimile transmission; and amended to use the rate adjustment percentage as the threshold for changes to the desk audit rate and final rate. The language requiring adjustments for an audit of home office costs in the year the costs were incurred was also removed.

**Section 75-02-06-17** is amended to require the assessment reference date for resident assessments to be between day seven and day fourteen and to update the extensive service category to remove "infection isolation" as a condition that would qualify for this category.

**Section 75-02-06-25** is amended to establish the use of rate methodology percentage as the threshold for a retroactive rate adjustment.

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 anticipated fiscal impact resulting from implementation of the proposed amendments is \$3,758,601 (total funds), \$1,000,000 (health care trust funds), and \$848,300 (general funds).
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  
November 29, 2019