

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

N.D. Admin. Code Chapters)	<u>REPORT OF THE</u>
75-02-02.1 and 75-02-02.2,)	<u>DEPT. OF HUMAN SERVICES</u>
Eligibility for Medicaid and)	March 14, 2012
Children's Health Insurance)	
Program)	
(Pages 217-276))	

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

1. The proposed amendments to N.D. Admin. Code chapter 75-02-02.1 are related, in part, to statutory changes made by the Legislative Assembly in 2011 House Bill No. 1320.
2. These rules are related, in part, to changes in a federal statute or regulation.
3. The Department of Human Services 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 December 28, 2011. The record was held open until 5:00 p.m. on January 9, 2012, to allow written comments to be submitted. No comments were received. 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 \$2,069.82.
6. The proposed rules amend chapters 75-02-02.1 and 75-02-02.2.

The following specific changes are made:

Section 75-02-02.1-01. Section 75-02-02.1-01 is amended to move the definitions of nursing care services and student from other sections of chapter 75-02-02.1 to section 75-02-02.1-01 which contains definitions for the chapter.

Section 75-02-02.1-05. Section 75-02-02.1-05 is amended to reflect the increase in the asset level for Medicare Savings Programs.

Section 75-02-02.1-15. Section 75-02-02.1-15 is amended to clarify requirements for establishing incapacity of a parent for purposes of determining eligibility.

Section 75-02-02.1-24.2. Section 75-02-02.1-24.2 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75- 02-02.1.

Section 75-02-02.1-25. Section 75-02-02.1-25 is amended to clarify parental assets that are considered available to a disabled child under age eighteen.

Section 75-02-02.1-26. Section 75-02-02.1-26 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-27. Section 75-02-02.1-27 is repealed to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-28. Section 75-02-02.1-28 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1, to clarify the requirements of what constitutes a good faith effort to sell real property or a mobile home, to clarify that preneed burial contracts are considered pre-payments or deposits set aside for burial, and to add employer-sponsored retirement plans as an excluded asset for purposes of determining medical eligibility.

Section 75-02-02.1-28.1. Section 75-02-02.1-28.1 is amended to correct internal references that changed due to combining the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-33.1. Section 75-02-02.1-33.1 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1 and to

move the definition of “nursing care services” to section 75-02-02.1-01.

Section 75-02-02.1-33.2. Section 75-02-02.1-33.2 is amended to correct internal references that changed due to combining the sections on exempt and excluded assets in chapter 75-02-02.1, to move the definition of “nursing care services” to section 75-02-02.1-01, and to clarify how to rebut the presumption that assets or income have been transferred to an implied trust.

Section 75-02-02.1-38.1. Section 75-02-02.1-38.1 is amended to include certain real estate taxes in the types of income that may be disregarded in determining Medicaid eligibility.

Section 75-02-02.1-38.2. Section 75-02-02.1-38.2 is amended to move the definition of “student” and “full-time student” to section 75-02-02.1-01.

Section 75-02-02.1-39. Section 75-02-02.1-39 is amended to clarify that reasonable child care expenses do not include payments to parents to care for their own children and to correct a typographical error.

Section 75-02-02.2-13.1. Section 75-02-02.2-13.1 is amended to clarify that reasonable child care expenses do not include payments to parents to care for their own children.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed 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. These rules do have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department. The total Department costs are anticipated to be \$79,920 for the 2011-2013 biennium of which \$35,644 is general fund and \$44,276 is federal 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:

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