

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-02-02 and 75-02-02.1,)	<u>DEPT. OF HUMAN SERVICES</u>
Medical Services and Eligibility)	March 14, 2016
For Medicaid)	
(Pages 229-256))	

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

1. The proposed amendments to N.D. Admin. Code chapters 75-02-02 and 75-02-02.1 are related to an appropriations measure passed by the Legislative Assembly in 2015 House Bill No. 1012.
2. The proposed amendments ensure comprehensive consistency with the federal language included in the American Recovery and Reinvestment Act in regards to Native-American cost-sharing exemptions; to which the Department has been adhering to. The proposed amendments also clarify the rules related to an exemption from cost sharing that relates to provisions in the Deficit Reduction Act.
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 December 7, 2015. The record was held open until 5:00 p.m. on December 17, 2015, to allow written comments to be submitted. No one attended or provided comments at the public hearing. One written comment was 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 \$2,302.64.
6. The proposed rules amend chapters 75-02-02 and 75-02-02.1. The following specific changes are made:
 - Section 75-02-02-03.2. Section 75-02-02-03.2 is amended to create a definition for "psychological service".
 - Section 75-02-02-08. Section 75-02-02-08 is amended to clarify who can refer clients for speech, hearing, and language disorder services to be consistent with federal Medicaid

regulations; to ensure consistency with the Medicaid state plan with regard to coverage for home health and private duty nursing services; and to specify the pharmacy reimbursement methodology for generic drugs by ensuring both the brand name and generic pricing information are included in the rules.

Section 75-02-02-09.1. Section 75-02-02-09.1 is amended to clarify the cost-sharing exemption applying to all medical institutions; to ensure the reference to cost sharing exemptions for Native Americans is consistent with federal Medicaid regulations; to include that cost sharing exemption language applies to individuals eligible for Medicaid under the breast and cervical cancer treatment program, and to inmates, otherwise eligible for Medicaid and receiving qualifying inpatient services; to make a correction to emergency services that are exempt from cost-sharing; and to clarify the application of the copayment for an office visit.

Section 75-02-02-09.3. Section 75-02-02-09.3 is amended to correct an error in the rule.

Section 75-02-02-09.4. Section 75-02-02-09.4 is amended to include evaluation limits and clarify language.

Section 75-02-02-09.5. Section 75-02-02-09.5 is amended to add "psychiatric residential treatment facility" to be consistent with federal Medicaid regulations.

Section 75-02-02-11. Section 75-02-02-11 is amended to add "physician assistant" as a provider type that can be chosen or assigned as a Coordinated Service provider; to account for a provider's acceptance of the recipient's selection as a coordinated services provider; and to address what will

occur if a selection is received after a recipient has been placed on medically necessary medical and pharmacy services.

Section 75-02-02-12. Section 75-02-02-12 is amended to add other practitioners of the healing arts within their scope of practice to those directing emergency services.

Section 75-02-02-13.1. Section 75-02-02-13.1 is amended to clarify who can be reimbursed for services; that enrollment in the Medicaid program is required if a provider wants to receive reimbursement; and that attendant services need authorization and proof of medical necessity.

Section 75-02-02-13.2. Section 75-02-02-13.2 is amended to move the words "medical center" prior to the word "city" to ensure it is consistent with the definition in this subsection.

Section 75-02-02-29. Section 75-02-02-29 is amended to clarify the eligibility groups subject to selection of a primary care provider; to add physician assistants to the list of providers that can serve as primary care providers; to remove "osteopathy" as a specialty for a primary care provider; to exempt individuals eligible under Medicaid expansion and who are medically frail, from selecting a primary care provider; and to extend the redetermination period from six to twelve months.

Section 75-02-02.1-24. Section 75-02-02.1-24 is amended to update the monthly maintenance needs allowance to the legislatively authorized increase.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. 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 the implementation of the proposed amendments is \$539,838, of which \$269,919 is general fund.
 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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