

**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>75-03-17, Psychiatric Residential</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>Treatment Facilities for Children</b>	)	<b>March 14, 2016</b>
<b>(Pages 351-379)</b>	)	
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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 chapter 75-03-17 are necessary to comply with 2015 Senate Bills Nos. 2046 and 2047.
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.

4. A public hearing on the proposed rules was held in Bismarck on December 14, 2015. The record was held open until 5:00 p.m. on December 24, 2015, to allow written comments to be submitted. Ten individuals attended the public hearing and two comments were provided. Three 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 \$2,321.84.
6. The proposed rules amend chapter 75-03-17. The following specific changes are made:  
Section 75-03-17-01. Section 75-03-17-01 is amended to add the definition of "employee" and "nonemployee" to be consistent with chapter 75-03-16; to modify the definition of "person with a mental illness" to include people first language; to modify the definition of "clinical supervision," "diagnostic assessment," "individual person-centered treatment plan," "serious occurrence" and "special treatment procedures"; to remove the definition of "qualified mental health professional" in response to Senate Bill No. 2047; and to remove the definition of "mental health professional," "out-based activity" and

“solo activity.”

Section 75-03-17-02. Section 75-03-17-02 is amended to remove “qualified mental health professionals” and “mental health professional” in response to Senate Bill No. 2047 and added “or contracting with” in response to a comment to ensure all professionals working with children are licensed.

Section 75-03-17-03. Section 75-03-17-03 is amended to further establish the role of the Department in licensing; to ensure the quality of services; accessibility of policies and procedures; and to create consistency with chapter 75-03-16 in regards to outcomes and data collection.

Section 75-03-17-04. Section 75-03-17-04 is amended to clarify the admission process and to provide a non-discrimination statement consistent with chapter 75-03-16.

Section 75-03-17-05. Section 75-03-17-05 is amended to reduce the time period to provide a progress report; to clarify the requirements of information included in an individual person-centered treatment plan; to clarify who must develop an individual person-centered treatment plan; to remove language in response to Senate Bill No. 2047; to remove outdated language regarding diagnostic and statistical manual of mental disorders; and to add screening for brain injury and fetal alcohol spectrum disorder.

Section 75-03-17-06. Section 75-03-17-06 is amended to ensure compliance with title 42, Code of Federal Regulations, part 483 by adding a requirement that the facility inform the identified individuals on its policies regarding restraint and seclusion procedures; to update outdated language regarding the use of “staff”; to allow for an identified professional to order the use of

physical restraint or seclusion and to ensure that a physician will review and sign the physical restraint or seclusion order; to clarify and require the facility to perform certain procedures after the use of seclusion or physical restraint to ensure compliance with title 42, Code of Federal Regulations, part 483, sections 366 and 370; and to amend reporting requirements to add inappropriate sexual contact.

Section 75-03-17-07. Section 75-03-17-07 is amended to update outdated language regarding the use of "staff".

Section 75-03-17-10. Section 75-03-17-10 is amended to update outdated language regarding the use of "staff", "volunteers", and "interns"; to add a requirement for training on institutional child abuse and neglect; to add a requirement for certification to document competencies to ensure compliance with title 42, Code of Federal Regulations, part 483, section 376; and to add the use of positive behavior supports to the child person-centered treatment plan.

Section 75-03-17-12. Section 75-03-17-12 is amended to clarify a facility's responsibilities and procedures regarding discharge and to ensure compliance with discharge planning standards located in title 42, Code of Federal Regulations, part 441, section 155.

Section 75-03-17-14. Section 75-03-17-14 is amended to update outdated language regarding the use of "staff", "volunteers", and "interns".

Section 75-03-17-15. Section 75-03-17-15 is amended to update outdated language regarding the use of "staff".

Section 75-03-17-16. Section 75-03-17-16 is amended to update outdated language regarding the use of "staff"; to require certain

policies to apply to nonemployees; to remove the criminal background check process information; to establish employee and nonemployee individual file documentation requirements; and to create greater consistency with chapter 75-03-16.

Section 75-03-17-16.1. Section 75-03-17-16.1 is amended to update outdated language regarding the use of "staff", "interns", "volunteers", and "student placement workers".

Section 75-03-17-16.2. Section 75-03-17-16.2 is created to reinsert the criminal background check process information that was removed from section 75-03-17-16; amended to ensure consistency with chapter 75-03-16; to establish that an individual is not sufficiently rehabilitated until any term or probation, parole, or other form of community corrections has elapsed; to allow the Department to discontinue processing a request for criminal background check for any individual who provides false or misleading information; to establish the criteria as to when an offense is known; to require a facility to have policy regarding criminal histories; and to establish the ability for the Department to excuse a person from providing fingerprints.

Section 75-03-17-17. Section 75-03-17-17 is amended to update outdated language regarding the use of "staff" and "volunteers".

Section 75-03-17-18. Section 75-03-17-18 is amended to update outdated language regarding the use of "staff".

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. These rules are not expected to have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department.
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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