

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

**N.D. Admin. Code Chapter
75-02-04.1, Child Support
Guidelines
(Pages 49-72)**

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**REPORT OF THE
DEPT. OF HUMAN SERVICES**

June 10, 2015

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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 75-02-04.1 are not related to statutory changes made by the Legislative Assembly.
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 of 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 September 18, 2014. The record was held open until 5:00 p.m. on September 29, 2014, to allow written comments to be submitted. One set of written comments was received. 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 \$2,019.54.
6. The proposed rules amend chapter 75-02-04.1. The following specific changes were made:
 - Section 75-02-04.1-01. Section 75-02-04.1-01 is amended to add certain military housing allowances and nonrecurring capital gains as exclusions from gross income, to account for a one-half child tax credit in calculating net income, to clarify that health insurance policies or health service contracts include coverage for dental and vision care, to increase the deduction for lodging expense, and to allow a deduction from gross income for personal mileage between work locations that

is not reimbursed by the employer. Pursuant to comments received, this section was changed further to clarify the deduction for mileage expense and to clarify that the documentation requirement applies to the entire provision that includes the mileage expense.

Section 75-02-04.1-05. Section 75-02-04.1-05 is amended to set forth conditions under which an obligor can offset self-employment income with self-employment losses from another business, as long as the self-employment activity is legitimate and not deliberately run at a loss or as a hobby. Pursuant to a comment received, this section was changed to clarify that "statewide average earnings" refers to North Dakota statewide average earnings.

Section 75-02-04.1-07. Section 75-02-04.1-07 is amended to update the list of subsections that provide for exceptions to imputing income, to extend the "look-back" period from 24 months to the current partial calendar year and the previous two full calendar years when imputing income based on prior earnings rather than actual income, to establish a methodology for imputing income when an obligor is both a minor and has a disability or is both incarcerated and has a disability, and to change the imputation provisions for an obligor who fails to provide income information in a proceeding to establish a child support obligation. Pursuant to comments received, this section was changed further to clarify when income may not be imputed to an incarcerated obligor and to clarify

that "statewide average earnings" refers to North Dakota statewide average earnings.

Section 75-02-04.1-08.1. Section 75-02-04.1-08.1 is amended to clarify adjustments for extended parenting time are not authorized when the parents have equal residential responsibility.

Section 75-02-04.1-08.2. Section 75-02-04.1-08.2 is amended to expand the current rule regarding equal physical custody to include those cases where some, but not all, of the siblings are shared equally.

Section 75-02-04.1-09. Section 75-02-04.1-09 is amended to specify that a deviation for a high-income obligor must be based on demonstrated needs of the child, to increase the amount that is considered to be "high-income" from \$12,500 to \$25,000 per month, to address an obligor's reduced ability to provide support when the obligor is maintaining two households because the obligor is in the military on a temporary duty assignment, and to clarify how a deviation must be applied in cases involving split or equal residential responsibility. Pursuant to a comment received, this section was further changed to clarify what is included in "demonstrated needs of the child".

Section 75-02-04.1-10. Section 75-02-04.1-10 is amended to increase the table of presumptively correct child support amounts to include monthly increments of up to \$25,000.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The impact of the proposed amendments cannot be precisely determined, but they may 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 estimated fiscal impact resulting from the implementation of the proposed amendments was anticipated in the Department's budget. The estimated fiscal impact is \$59,367, of which \$20,185 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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June 10, 2015