

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-02-01.3, Child Care Assistance)	<u>DEPT. OF HUMAN SERVICES</u>
(Page 2367))	September 12, 2018
)	

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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 75-02-01.3 are not related to statutory change made by the Legislative Assembly.
2. These rules are not related 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 June 27, 2018. The record was held open until 5:00 p.m. on July 9, 2018, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No 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 \$2,426.08.
6. The proposed rules amend chapter 75-02-01.3. The following specific changes were made:
 - Section 75-02-01.3-06. Section 75-02-01.3-06 is amended to establish a process for a provider to ask for a payment rate exemption if the provider provides quality child care services to children in vulnerable populations.
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. The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.
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
September 10, 2018



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Doug Burgum, Governor
Christopher Jones, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE**

The North Dakota Department of Human Services held a public hearing on June 27, 2018, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-01.3, Child Care Assistance.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, July 9, 2018.

No one attending the public hearing provided comments. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

There will be no change to the proposed amendment as no comments were received.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

July 12, 2018

Cc: Samantha O'Brien, Economic Assistance

MEMO

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Michele Gee, Director of Public Assistance

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-01.3, Child Care Assistance Program

DATE: May 2, 2018

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed to North Dakota Administrative Code Article 75-02-01.3. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

No anticipated adverse impact on families that receive services under the Child Care Assistance Program (CCAP). The proposed amendment would allow the department to grant an exception to the payment limit which would allow a provider to receive Child Care Assistance Program benefits under certain circumstances.

Probable Impact

No anticipated adverse impact on the regulated community. Providers may receive a benefit if they request an exemption and the exemption is granted allowing the provider to receive Child Care Assistance Program benefits.

Probable Cost of Implementation

No anticipated costs for implementing changes.

Consideration of Alternative Methods

No alternative methods were considered.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Michele Gee, Director of Public Assistance

DATE: May 2, 2018

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-01.3.

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. Federal law does not mandate the proposed rules.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The proposed amendments will not alter in any material way any required compliance or reporting requirements of County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting requirement of County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required compliance or reporting requirements of County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or

deadlines for compliance or reporting requirements for these small entities was not considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The County Social Service Boards are responsible to meet performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards for County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

The requirements of the proposed amendments will have no adverse impact on families receiving Child Care Assistance benefits. For this reason, exemption of small entities was not considered.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit
FROM: Michele, Director of Public Assistance
DATE: May 2, 2018
SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-01.3.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. The proposed changes have no anticipated adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

No anticipated adverse economic impact to county social service offices or providers subject to the proposed amended rules.

2. Costs For Compliance

No probable cost or anticipated benefits to private persons or consumers for the proposed rules.

3. Costs and Benefits

No probable cost or anticipated benefits to private persons or consumers for the proposed rules.

4. Probable Effect on State Revenue

No effects on state revenue expected because of the proposed rules.

5. Alternative Methods

Because small entities will not experience administrative costs or other costs and no probable effect on State Revenue, exploring alternative methods was not necessary.

FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.



Doug Burgum, Governor
Christopher Jones, Executive Director

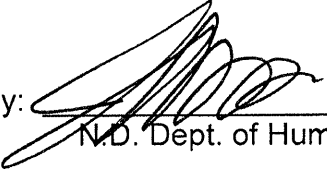
TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-02-01.3.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 2nd day of May, 2018.

by: 
N.D. Dept. of Human Services