

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-03-23 Provision of Home and)	<u>DEPT. OF HUMAN SERVICES</u>
Community-Based Services Under)	
The Service Payments for Elderly)	December 3, 2019
And Disabled Program and the)	
Medicaid Waiver for the Aged)	
And Disabled Program)	
(Pages 194-210))	

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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 75-03-23, relating to Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program, is necessary to comply with an appropriations measure passed during the 2019 Legislative Session, as directed by 2019 Senate Bill No. 2012, and the requirements of 2019 House Bill No. 1099.
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 rulemaking. 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 11, 2019. The record was held open until 5:00 PM on, September 23, 2019, 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 \$2812.29.
6. The proposed rules amend Chapter 75-03-23. The following specific provisions were amended:
Section 75-03-23-01 is amended to add a definition for "Sanction".
Section 75-03-23-05 is amended to add, with regard to services covered under the SPED program, that adult foster care is expanded to include a client who would benefit from a shared living environment.

Section 75-03-23-06 is amended to add, with regard to services covered under the Medicaid waiver program, that adult foster care is expanded to include a client who would benefit from a shared living environment. New language provides that the Department may provide residential habilitation and community support services for up to twenty-four hours per day to a client who lives alone or with an adult who is unable to provide care and needs formalized training; and that residential habilitation and community support services may be provided in an agency foster home for adults facility or in a private residence. This section also provides that the Department may provide companionship services up to ten hours per month to clients who live alone and could benefit from services to help reduce social isolation. These changes are based on 2019 House Bill No. 1099 and 2019 Senate Bill No. 2012.

Section 75-03-23-07 is amended to update direct bearing criminal offenses regarding criminal convictions; clarify sufficient evidence of rehabilitation; permit the Department to consider an offense to be non-direct bearing on an individual's ability to become a qualified service provider; and to require qualified service providers of community support services and residential habilitation to provide evidence of competency in generally accepted procedures for certain grooming, feeding, cleaning, and assistance techniques.

Section 75-03-23-08 is amended to remove the qualified service provider termination provisions. The qualified service provider termination provisions are now located in section 75-03-23-08.1 to help clarify the difference between denials and terminations.

Section 75-03-23-08.1 is created to provide for sanctions of qualified service providers. Previously existing termination language

from section 75-03-23-08 has been placed within this section and new language allowing for sanctions of qualified service providers has been added.

Section 75-03-23-12 is being amended to reflect that a provider's right to request a review of denial of payment is in accordance with North Dakota Century Code section 50-24.1-24.

Section 75-03-23-16 is amended to clarify when a qualified service provider or applicant whose qualified service provider status has been terminated or denied may or may not reapply.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule 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. The anticipated net fiscal impact resulting from implementation of the proposed amendments is \$6,620,808 (total funds) and \$3,310,417 (general 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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