

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-03-42, Authorized Electronic)	<u>DEPT. OF HUMAN SERVICES</u>
Monitoring)	March 4, 2020
(Pages 193-194 and 197-199))	

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

1. The proposed creation of N.D. Admin Code Chapter 75-03-42 is necessary to comply with 2019 Senate Bill No. 2113, codified as N.D.C.C. § 50-10.2-02.1.
2. These rules are not related to a change 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 human service zone directors (formerly known as 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 and the Attorney General's review.

4. No comments were received at the public hearing held in Bismarck on December 10, 2019. The record was held open until December 20, 2019, to allow written comments to be submitted. No written comments were received during the comment period. A 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 \$2373.78
6. The rules were created to comply with 2019 Senate Bill No. 2113, codified as N.D.C.C. § 50-10.2-02.1. The following specific changes were made:

Section 75-03-42-01 is created to clarify that definitions used in this chapter are the same as the definitions contained in North Dakota Century Code section 50-10.2-01. The section also defines "roommate".

Section 75-03-42-02 is created to establish the process to determine whether a resident of a long-term care facility has the capacity to consent to authorized electronic monitoring in their room. The section also permits the resident's representative to consent to authorized electronic monitoring if the resident does not have capacity.

Section 75-03-42-03 is created to identify the documentation that

must be submitted in order to permit authorized electronic monitoring in a resident's room. Required documentation includes: written notice to the facility of the intent to place an authorized electronic monitoring device; a statement that the facility is not civilly or criminally liable for a violation of any resident's right to privacy; written consent for placement from the resident's roommate, if applicable; and an authorization signed by the resident's roommate that complies with title 45, Code of Federal Regulations, parts 160 and 164 (HIPAA).

Section 75-03-42-04 is created to require a facility to post signage to ensure that residents, staff, and visitors are aware that authorized electronic monitoring is being conducted within the facility.

Section 75-03-42-05 is created to establish encryption requirements for authorized electronic monitoring devices placed in a resident's room. The section establishes procedures for access to the internet to operate an authorized electronic monitoring device.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The impact of 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 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:

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February 28, 2020