

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

N.D. Admin. Code Chapter 75-02-01.2, Temporary Assistance for Needy Families Program (Pages 145-167))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> December 12, 2013
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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 75-02-01.2 are related, in part, to statutory changes made by the Legislative Assembly in 2013 House Bill No. 1176.
2. These rules are related, in part, to changes in federal statutes and regulations.
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 20, 2013. The record was held open until 5:00 p.m. on September 30, 2013, to allow written comments to be submitted. No comments were 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 \$2,177.78.
6. The proposed rules amend chapter 75-02-01.2. The following specific changes were made:
 - Section 75-02-01.2-01. Section 75-02-01.2-01 is amended to remove unnecessary definitions and to correct a defined term.
 - Section 75-02-01.2-18. Section 75-02-01.2-18 is amended to clarify the expectations for when an incapacitated parent returns to work.
 - Section 75-02-01.2-22. Section 75-02-01.2-22 is amended to reflect federal law requirements for when federal income tax credits and earned income tax

credits are exempt.

Section 75-02-01.2-34. Section 75-02-01.2-34 is amended to clarify language and to create consistency.

Section 75-02-01.2-50. Section 75-02-01.2-50 is amended to change how self-employment income is determined to more accurately reflect a household's countable income.

Section 75-02-01.2-68. Section 75-02-01.2-68 is amended to create efficiency in administering special item of need payments.

Section 75-02-01.2-68.1. Section 75-02-01.2-68.1 is amended to create efficiency in administering special item of need payments.

Section 75-02-01.2-72. Section 75-02-01.2-72 is amended to update the requirements for intentional program violations to reflect changes in federal law and to clarify how an intentional program violation disqualification period is determined when it is not otherwise specifically addressed.

Section 75-02-01.2-72.1. Section 75-02-01.2-72.1 is amended to address changes to drug felony disqualifications made in 2013 House Bill No. 1176.

Section 75-02-01.2-73. Section 75-02-01.2-73 is amended to create efficiency in administering special item of need payments.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. 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 expected fiscal impact of these rules is \$11,136 in state general fund dollars. This is as reported in the fiscal note to 2013 House Bill No. 1176.
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:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
December 12, 2013



Jack Dalrymple, Governor
Maggie D. Anderson, Interim Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM**

The North Dakota Department of Human Services (the Department) held a public hearing on Friday, September 20, 2013, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-01.2, Temporary Assistance for Needy Families Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, September 30, 2013.

No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

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

Prepared by:

A handwritten signature in cursive script that reads "Julie Leer".

Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

October 2, 2013

Cc: Brenda Peterson, TANF

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

RE: Regulatory Analysis of Proposed North Dakota Administrative Code Chapter 75-02-01.2.

DATE: July 17, 2013

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 75-09.1. These amendments are anticipated to have no fiscal impact on the regulated community.

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. 75-02-01.2. 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:

- Families that receive services under the Temporary Assistance for Needy Families (TANF) program may be affected by some of the rule changes.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- A small number of additional individuals who were previously disqualified from TANF as a result of a drug felony conviction will be TANF eligible, due to the HB 1176 passed during the 2013 Legislative Session.
- A small number of individuals may be disqualified for an Intentional Program Violation for utilizing their TANF debit card at liquor stores, casinos, gambling casinos or gaming establishments and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, when access to their funds was available through an ATM, financial institution or other means within a reasonable distance of their residence.
- The change in self-employment income considerations is not expected to have an impact to the TANF Program. The remainder of the proposed

changed are minor wording changes for clarification purposes and this will assist with administration of the program.

Probable Cost of Implementation

- The number of newly eligible individuals due to the change in the felony drug disqualification is very minimal. At this time, the change may result in an additional four (4) individuals, whose children are current in receipt of TANF.
- No anticipated costs for implementing the change in treatment of self-employment income. In almost all situations, individuals who have established self-employment businesses will not meet the TANF Asset limits.
- No anticipated increase or decrease in costs for changing the High School Graduate Incentive, Housing Allowance or Health Tracks wording. The amount of the payment the household will receive will not change.
- No anticipated costs due to the minor wording changes for clarification purposes.

Consideration of Alternative Methods

A review of TANF final rules, state laws, and TANF policy, which led to the proposed amendments, was undertaken to determine the best approach to required changes which would result in the North Dakota TANF Program to meet the Federal Work Participate Rate. The review included a discussion of current policy, possible alternatives, and recommendations to the Department. The amendments provide the least fiscal impact as well as the least impact TANF families and county social services.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

DATE: July 17, 2013

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed [New/ Amendments to] N.D. Admin. Code Chapter 75-02-01.2.

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 75-02-01.2. The proposed rules are not mandated by federal law.

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 only small entities affected by these proposed amendments are small political subdivisions consisting of the County Social Service Boards. County Social Service Boards are responsible for locally administering economic assistance programs, including Temporary Assistance for Needy Families. The County Social Service Boards must meet, or assist the North Dakota Department of Human Services to meet, compliance and reporting requirements imposed by federal and state law. For these reasons, establishment of less stringent compliance or reporting requirements for these small entities 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 any required schedules or deadlines for compliance or reporting requirements of County Social Service Boards. It is anticipated that small entities will not be affected by the rule change.

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

The proposed amendments will not alter any required schedules or deadlines for compliance or reporting requirements of County Social Service Boards. It is anticipated that small entities will not be affected by the rule change.

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.

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

The requirements of the proposed amendments are imposed on families receiving Temporary Assistance for Needy Families Benefits. For this reason, the proposed rules do not exempt County Social Service Boards from all or any part of the requirements contained in the proposed rule. It is anticipated that small entities will not be affected by the rule change.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

DATE: July 17, 2013

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code, Chapter 75-02-01.2 - Temporary Assistance for Needy Families.

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 75-02-01.2 - Temporary Assistance for Needy Families. The proposed rules would not have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are County Social Service Boards.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No administrative or other costs are required by the small entities for compliance with the proposed rules.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: Individuals convicted of an Intentional Program Violation (IPV) for utilizing their TANF debit card will be disqualified from receiving TANF benefits for a specified period of time and their TANF benefits will be reduced.

The probable benefit to private persons and consumers who are affected by the proposed rule: Private persons who have been convicted of a drug felony will be eligible to receive Temporary Assistance for Needy Families if their drug felony conviction was more than seven (7) years in the past. Also, income tax and earned income tax credits will not be counted as an asset for twelve months following the month of receipt.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: No effects on state revenue expected because of the proposed rules.

5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Because small entities will not experience administrative costs or other costs and no probable effect on State Revenue, exploring alternative methods was not necessary.



Jack Dalrymple, Governor
Maggie D. Anderson, Interim Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-02-01.2.

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 17th day of July, 2013.

by: Julie Beer
N.D. Dept. of Human Services