

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

**N.D. Admin. Code Chapter )  
75-03-14, Family Foster Home )  
for Children )  
(Pages 210-220) )**

**REPORT OF THE  
DEPT. OF HUMAN SERVICES  
  
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 75-02-14 are not related to statutory changes made by the Legislative Assembly.
2. These rules are related to requirements in two federal statutes: Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008 and Public Law 109-248, Adam Walsh Child Protection and Safety Act of 2006.
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 24, 2013. The record was held open until 5:00 p.m. on October 4, 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 \$2,502.29.
6. The proposed rules amend chapter 75-03-14. The following specific changes were made:

Section 75-03-14-01. Section 75-03-14-01 is amended to add a definition of "background" check and to remove redundant language.

Section 75-03-14-02. Section 75-03-14-02 is amended to clarify language.

Section 75-03-14-03. Section 75-03-14-03 is amended to refine the requirements for the use of basement sleeping rooms, the requirements for certain doors, and to clarify language.

Section 75-03-14-04. Section 75-03-14-04 is amended to clarify expectations for a non-foster child

living in a family foster home.

Section 75-03-14-04.1. Section 75-03-14-04.1 is amended to clarify language and to allow the Department to consider an applicant, provider, or household member to be rehabilitated after having been convicted of certain crimes.

Section 75-03-14-05. Section 75-03-14-05 is amended to clarify language and to identify prohibited forms of punishment for children in foster care.

Section 75-03-14-06. Section 75-03-14-06 is amended to clarify language.

Section 75-03-14-07. Section 75-03-14-07 is amended to ensure compliance with background check requirements found in federal law.

Section 75-03-14-08. Section 75-03-14-08 is amended to be consistent with requirements found in federal law.

Section 75-03-14-09. Section 75-03-14-09 is created to allow certain provisions of chapter 75-03-14 to be waived for a proposed foster parent who is a relative of the foster child. This is to ensure compliance with requirements found in federal law.

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. These rules are not expected to have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department.
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 75-03-14  
FAMILY FOSTER CARE HOMES**

The North Dakota Department of Human Services held a public hearing on Tuesday, September 24, 2013, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-03-14, Family Foster Care Homes.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Friday, October 4, 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 7, 2013

Cc: Kelsey Bless, CFS

## MEMO

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Dean Sturn, Foster Care Administrator, Children and Family Services.

**RE:** Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-14.

**DATE:** August 19, 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 not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

### Purpose

The purpose of ND Admin Code chapter 75-03-14 is to provide directions of compliance for Licensing Family Foster Homes across the state of North Dakota. The proposed amendments are to incorporate federal law Section 471 of Social Security Act and to provide updates and clarification to the rule since the last update of April 2006.

### Classes of Persons Who Will be Affected

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

1. Public Agency Providers (County Social Services, Tribal Social Services,...)
2. Private Agency Providers (Licensed Child Placing Agencies- LCPA)
3. Clients: Children, Foster Families, Adoptive Families

Family foster homes will be affected positively by the proposed amendments. It is intended that foster care providers will receive the clarification needed. Majority of family foster homes will not be affected by the proposed amendment. However, some foster families who did not count fire safety training separately to their annual training allotment will be required to count fire safety in addition to

their minimum required training going forward. This requirement is proposed to be placed in rule as clarification to existing state policy.

#### Probable Impact

Providing updates and clarification will positively impact our agency partners and family foster homes across the state. Necessary updates and clarification to rule will assist providers in delivering appropriate and consistent services to children and families statewide.

#### Probable Cost of Implementation

There are no expected costs to agency providers or family foster homes. The projected costs associated with the proposed amendments would be newspaper advertisements (\$2500) to inform the community of the Administrative Code chapter 75-03-14 amendment process as well as a mailing to inform seven hundred family foster homes of the process (\$500).

#### Consideration of Alternative Methods

The Department could consider no amendment and continue to license family foster homes with the existing rule; however rule would remain inconsistent with federal law.

## MEMORANDUM

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Dean Sturn, Foster Care Administrator, Children and Family Services.

**DATE:** August 19, 2013

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-03-14

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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 75-03-14. The proposed rules are 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 minimum standard of compliance has been established to ensure appropriate licensing for family foster homes. Less stringent standards have been considered in an effort to be consistent Public Law 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 which allows for a relative waiver. A relative waiver could be implemented "upon written application and good cause shown to the satisfaction of the department, the department may grant a waiver to family foster homes providing foster care for relatives from the provision of this chapter upon such terms as the department may prescribe. No waiver may permit or authorize a danger to the health or safety of any child cared for by the relative family foster home and no waiver may be granted except at the discretion of the department." Children and Family Services support the federal law implementation to allow for relative homes to be granted a waiver when appropriate There have been times that family (ie: tribal affidavit) homes may have two families living in that house (all need to pass the background check), but a waiver could be given to the grandma of a child in foster care who has her

son's family also living with her as well. Children and Family Services recommend, "a refusal to grant or revoke a waiver is not subject to appeal" as there would be a licensing reason to not grant a waiver or a compliance issue present for the department to revoke the waiver.

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

N/A

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

N/A

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

The proposed amendments reflect a minimum standard of compliance for family foster homes licensed by county social service agencies or Licensed Child Placing Agencies (LCPAs) all who partner with Children and Family Services and the Department. North Dakota requires that all foster family homes are re-licensed each year to ensure the home is meeting minimum standards to care for children in our state.

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

It is expected that all family foster homes will need to meet a minimum standard of compliance set forth in N.D. Admin. Code chapters 75-03-14 to ensure health and safety of any child cared for or placed by the agency. Public Law 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 allows for a relative waiver. No waiver may permit or authorize a danger to the health or safety of any child cared for by the relative family foster home and no waiver may be granted except at the discretion of the department. In addition, Children and Family Services would also recommend that a refusal to grant or revoke a waiver is not subject to appeal.

## MEMORANDUM

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Dean Sturn, Foster Care Administrator, Children and Family Services

**DATE:** August 19, 2013

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code Chapter 75-03-14.

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 75-03-14. Many of the proposed rule adjustments are mandated by federal law; specifically Section 471 of the Social Security Act as a result of Public Law 110-351 Fostering Connections to Success and Increasing Adoptions Act of 2008 and Public Law 109-248 Adam Walsh Child Protection and Safety Act of 2006. The proposed rules should 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 amended rules are:

- *Public Agency Providers (County Social Services, Tribal Social Services)*
- *Private Agency Providers (Licensed Child Placing Agencies (LCPA))*
- *Family Foster Homes*

The following small entities may also be subject to the rule: *N/A*

### 2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: *No costs to agencies or family foster homes is expected.*

### 3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: *N/A*

The probable benefit to private persons and consumers who are affected by the proposed rule: *A benefit is the amendments will provide a clear expectation to stakeholders that will ensure the safety and wellbeing of children in their care is delivered.*

### 4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: *None, there will be no impact on state revenues. Costs for printing and dissemination of amended rules will be provided by the foster care administrative budget.*

### 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. Those alternatives included: *Continuing to license family foster homes with existing rule. The alternatives were not selected because incorporating federal law and providing clarification to existing rule is necessary.*



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

### TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-03-14.

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 16th day of April, 2013.

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