

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

N.D. Admin. Code Chapter 75-02-05, Provider Integrity (Pages 395-400))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> March 11, 2014
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapter 75-02-05 are necessary to comply with 2013 Senate Bill No. 2114.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services (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 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 December 5, 2013. The record was held open until 5:00 p.m. on December 16, 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 \$1,957.60.
6. The proposed rules amend chapter 75-02-05. The following specific changes were made:
 - Section 75-02-05-07. Section 75-02-05-07 is amended to clarify language based on changes made to section 75-02-05-09.
 - Section 75-02-05-09. Section 75-02-05-09 is amended to reflect changes in the sanction review and appeal process for providers as set forth in North Dakota Century Code section 50-24.1-36.
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. There is no anticipated fiscal impact resulting from the implementation of the proposed amendments.
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
March 11, 2014



Legal Advisory Unit

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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-05
PROVIDER INTEGRITY**

The North Dakota Department of Human Services held a public hearing on December 5, 2013, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-05, Provider Integrity.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, December 16, 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

December 18, 2013

Cc: Cindy Sheldon, Medical Services



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Deputy Director, Medical Services Division

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-05, Medical Services

DATE: October 14, 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 North Dakota Administrative Code Article 75-02-05. 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 75-02-05. Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

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

- Providers

These groups will be affected by:

- The appeals process for providers will be governed by North Dakota Century Code (N.D.C.C) 50-24.1-36 and North Dakota Administrative Code (NDAC) 75-02-05-09. Based on the passage of Senate Bill 2114 during the 2013 Legislative session, and subsequent N.D.C.C. 50-24.1-36

implementation, the NDAC citation needs to be updated to eliminate duplication and inconsistencies.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- The Division anticipates no impact to the regulated community as there is no change in the appeals process.

Probable Cost of Implementation

No cost of implementation.

Consideration of Alternative Methods

A review of Medicaid policies, federal and state laws, which lead to the proposed amendments, was undertaken to determine the best approach to changes. The review included a discussion of current policy, possible alternatives, and recommendations to the Department. The amendments provide the least impact as possible to providers and fiscally.



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Deputy Director, Medical Services Division

DATE: October 14, 2013

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-05.

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 75-02-05. 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 only small entities affected by these proposed amendments are providers that have agreements with the Department to furnish services under Medicaid and Home and Community Based Services.

The proposed amendments support Medicaid program integrity. The reporting requirements have not changed.

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 providers.

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 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 design and operational standards required in the proposed rules will not change for providers.

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 providers rendering services for Medicaid; there are no exceptions.



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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Deputy Director, Medical Services

DATE: October 14, 2013

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-05.

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. Administrative Code chapter 75-02-05.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are Medicaid providers.

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: no costs to private persons or consumers are expected for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule: this language will continue to allow Medicaid providers appeal rights.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: The fiscal impact is undeterminable; however, if there was an impact due to monetary sanction activity from the rules, it would be positive.

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, exploring alternative methods was not necessary.



Jack Dairymple, Governor
Maggie D. Anderson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-02-05.

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 14th day of October, 2013.

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