

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

**N.D. Admin. Code Chapters)
75-03-07, 75-03-07.1,)
75-03-08, 75-03-09, 75-03-10,)
75-03-11, and 75-03-11.1)
Licensing of Early Childhood)
Services)
(Pages 401-452))**

**REPORT OF THE
DEPT. OF HUMAN SERVICES
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 chapters 75-03-07 through 75-03-11.1 are necessary to comply with 2013 House Bill No. 1422 and are the result of continued work with the Early Childhood Services Advisory Board.
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 12, 2013. The record was held open until 5:00 p.m. on December 23, 2013, to allow written comments to be submitted. Two written 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 \$2170.56.
6. The proposed rules amend chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The following specific changes were made:
Sections 75-03-07-06, 75-03-07.1-06, 75-03-08-27, 75-03-09-27, 75-03-10-27, 75-03-11-27, and 75-03-11.1-27. Sections 75-03-07-06, 75-03-07.1-06, 75-03-08-27, 75-03-09-27, 75-03-10-27, 75-03-11-27, and 75-03-11.1-27 are amended to remove some misdemeanor offenses from the "direct bearing" offense category, and add "human trafficking" as a direct bearing offense.
Sections 75-03-07.1-06, 75-03-08-28, 75-03-09-28, 75-03-10-28, 75-03-11-28, and 75-03-11.1-28. Sections 75-03-07.1-06, 75-03-

08-28, 75-03-09-28, 75-03-10-28, 75-03-11-28, and 75-03-11.1-28 are amended to clarify that the completed background check forms are submitted to the Department's authorized agent.

Section 75-03-07.1-10. Section 75-03-07.1-10 is amended to address the renumbering of the subsections in section 50-11.1-02 of the North Dakota Century Code.

Sections 75-03-08-14, 75-03-09-19, 75-03-10-19, and 75-03-11.1-19. Sections 75-03-08-14, 75-03-09-19, 73-03-10-19, and 75-03-11.1-19 are amended to address changes enacted in 2013 House Bill No. 1422 to outdoor space requirements if the facility has sufficient indoor recreation space.

Sections 75-03-08-29, 75-03-09-29, 75-03-10-29, 75-03-11-29, and 75-03-11.1-29. Sections 75-03-08-29, 75-03-09-29, 73-03-10-29, 75-03-11-29, and 75-03-11.1-29 are amended to require an immediate correction for violations of supervision and unsafe environments.

Section 75-03-09-03. Section 75-03-09-03 is amended to address a change to the definition of "group" enacted in 2013 House Bill No. 1422.

Section 75-03-09-09. Section 75-03-09-09 is amended to create consistency with family child care providers regarding the care of school age children by group child care providers.

Section 75-03-09-14. Section 75-03-09-14 is amended to remove language that is redundant.

Section 75-03-09-18. Section 75-03-09-18 is amended to address a change to the definition of "group" enacted in 2013 House Bill No. 1422.

Section 75-03-10-08. Section 75-03-10-08 is amended to address a change to the maximum group size enacted in 2013 House Bill No. 1422.

Section 75-03-10-24. Section 75-03-10-24 is amended to remove language that is redundant.

Section 75-03-11.1-08.3. Section 75-03-11.1-08.3 is amended to address minimum qualifications for school-age child care supervisors.

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



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-03-07,
75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, AND 75-03-11.1
EARLY CHILDHOOD SERVICES**

The North Dakota Department of Human Services (the Department) held a public hearing on December 12, 2013, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, Early Childhood Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on December 23, 2013.

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

1. Verla Jung, 920 10th St SE, Suite B, Jamestown, ND 58401
2. Sarah Myers, 515 11th St N, Suite 402 Moorhead, MN 56560

SUMMARY OF COMMENTS

Comment: I have a comment on the wording of the group regs that would pertain to facilities. In 75-03-09-18 – 1. There is a statement that reads “if only snacks or occasional cooking projects are prepared, a state department of health inspection is not required.”

Health inspectors look at much more than food preparation such as:

- Buildings, grounds and equipment – if they are clean, free from hazards, the play areas, wading pools, paint (peeling, contains lead), steps and walkways, railings, doors, light bulbs (shielded)
- Hazardous substances – are they contained in locked storage
- Hand washing and sanitizing of toys and equipment
- Diapering areas and toilet and lavatory facilities
- Water supply
- Insects/rodents
- Pets

Each health unit may have a separate form but would imagine they are fairly general in content.

I would like to propose that the sentence referencing if only snacks are prepared be removed and that for all “facilities” such as the group 30 or centers read the same as it does in the center regs.

Response: The Department will consider this in a future rulemaking project. Requiring all group child care facilities to have a health inspection would create a fiscal impact to those providers affected by the requirement. Because of the fiscal impact, the Department believes that this revision should not be changed now but should be considered in a separate rulemaking process, which would include a review by the Early Childhood Advisory Board, and would provide an opportunity for all affected providers to consider and comment on the proposed revision.

Comment: Please consider the following (this would apply to family, group, and center care):

Under Sleeping:

- (5) add "pacifiers cannot be attached to clothing and bibs must be removed"
- (6) The operator shall ensure that mattresses/matrix manufacturer's pads and sheets are properly fitted. Matrix/matrix manufacturer's pad must maintain shape, lay flat, and meet all four corners of the crib or portable crib's frame. The operator shall ensure that sheets are changed whenever they become soiled or wet, when used by different infants, or at least weekly.
- (7) The operator shall ensure that a staff member responsible for caring for or teaching children visually checks on sleeping infants regularly and uses a monitor that is in the room with the infants.

Under Feeding:

- (3) The operator shall ensure that mixed formula that has been offered to an infant or has been unrefrigerated is discarded after one hour. Microwaves cannot be used to heat formula.
- (4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours. Breast milk must be heated separately in warm water or bottle warmer. Breast milk that has been offered to an infant must be discarded after one hour or given to the parent at the end of the day.
- Add that "infants must be fed on demand unless otherwise instructed in writing by the infant's medical provider."

Response: The Department appreciates the comments regarding infant care. Because these comments are not in regard to rules currently under review, and because these comments may require a change in practice for many providers, the Department believes that these comments should be considered in a separate rulemaking process which would allow for a review by the Early Childhood Advisory Board, and would provide an opportunity for all affected providers to consider and comment on the proposed revisions.

N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11,
and 75-03-11.1
Summary of Comments
December 30, 2013

Prepared by:

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

In Consultation with: Jennifer Barry, Early Childhood Services

December 30, 2013

Cc: Jennifer Barry, ECS

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator, Children and Family Services

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapters 75-04-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1.

DATE: October 11, 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 amendments to North Dakota Administrative Code chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

Most of the proposed amendments are required as a response made to changes to N.D.C.C. chapter 50-11.1 during the 2013 Legislative Session. A review of the proposals was completed by, and guidance was provided by, the Early Childhood Advisory Board.

Classes of Persons Who Will be Affected

In-home providers, self-declared child care providers, and operators of family, group, center, preschool, and school age early childhood service programs will be affected.

Probable Impact

Since most of the proposed revisions are already in effect in statute, these proposals do not represent a significant impact to providers.

Probable Cost of Implementation

There are no expected costs of implementation of these rules. The only costs associated with this revision will be the regular rulemaking costs of publishing and mailing notices and printing of new rule books.

Consideration of Alternative Methods

The division suggests no alternative methods, because the department is required to update rules at this time, based on statutory changes.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator, Children and Family Services Division

DATE: October 11, 2013

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

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 chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. Federal law does not mandate the proposed rules, however state law does mandate some of the proposed changes.

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 proposed revisions do not represent an increase in compliance or reporting requirements.

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 requirements. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

Consolidation and simplification of compliance requirements were considered where possible in all chapters.

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

The proposed amendments do not impose any design standards or operational standards.

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

There are no exemptions contained in the proposed rules.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator, Children and Family Services

DATE: October 11, 2013

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendment to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1.

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 a proposed amendment to N.D. Admin. Code chapters 75-03-01, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. The proposed rules are not mandated by federal law. The proposed rules are not anticipated to 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 in-home providers, self-declared providers, licensed family, group, center, preschool, and school-age program operators.

There are no other small entities subject to the proposed amendments.

2. Costs For Compliance

Administrative and other costs required of these entities for compliance with the proposed amendments are expected to be zero.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rules is zero.

4. Probable Effect on State Revenue

The probable effect on state revenue is expected to be zero.

5. Alternative Methods

Most of the proposed revisions are required in response to changes made to N.D.C.C. chapter 50-11.1 during the 2013 Legislative Session. The division suggests no alternative methods at this time.



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

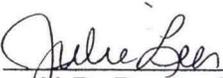
TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1.

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 11th day of October, 2013.

by: 
N.D. Dept. of Human Services