

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

N.D. Admin. Code Chapter 75-02-02, Medical Services (Pages 137-154))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> June 11, 2014
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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 75-02-02 are not related to statutory changes made by the Legislative Assembly.
2. These rules are not related to changes 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 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 April 3, 2014. The record was held open until 5:00 p.m. on April 14, 2014, to allow written comments to be submitted. No 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 \$2,024.73.
6. The proposed rules amend chapter 75-02-02. The following specific changes were made:

Section 75-02-02-08. Section 75-02-02-08 is amended to identify the type of entity that may provide dental services that may be reimbursed under 42 C.F.R. 440.90.

Section 75-02-02-10.2. Section 75-02-02-10.2 is amended to clarify that ambulatory behavioral health care may be hospital-based or community-based, to update the labels of the different levels of ambulatory behavioral health care to American Society of Addiction Medicine (ASAM) levels, to increase the allowed number of days for payment under ASAM levels II.5 and II.1, and to allow approval of additional days for ASAM I ambulatory behavioral health care services.

Section 75-02-02-13.1. Section 75-02-02-13.1 is amended to clarify travel expenses payable to foster parents of a medicaid-eligible child.

Section 75-02-02-29. Section 75-02-02-29 is amended to correct a misspelled word.

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 fiscal impact of these rules is a potential net savings of approximately \$7,100.
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
June 11, 2014



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-02
MEDICAL SERVICES**

The North Dakota Department of Human Services held a public hearing on April 3, 2014, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-02, Medical Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, April 14, 2014.

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:

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

April 15, 2014

Cc: Cindy Sheldon, Medical Services

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Medical Services Division

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

DATE: October 21, 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 75-02-02. 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 75-02-02. 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:

- Recipients that receive services through the Medicaid program
- Providers

These groups will be affected by:

- Recipients will be affected by allowing additional ambulatory behavioral health outpatient services per calendar year, per individual.
- Providers will be affected by using nationally accepted labeling for ambulatory behavioral health levels of care.
- Recipients/providers will be affected by removing the restriction that a foster child must be court-appointed in order to receive Medicaid reimbursement for transportation.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Recipients will benefit by potentially receiving more ambulatory behavioral health services per calendar year.
- Providers will benefit as North Dakota Medicaid will now be utilizing nationally accepted labeling by implementing the American Social of Addiction Medicine standards for consistency.

Probable Cost of Implementation

There is no probable cost of implementation. However, the fiscal impact savings for the proposed rules are \$7,130.27 per calendar year.

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 to Medicaid recipients, Medical Service providers and fiscally.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Medical Services Division

DATE: October 21, 2013

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

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 75-02-02. 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 small providers. The impact will not be a negative one, but more importantly a helpful one. The rules will utilize the nationally recognized American Society of Addiction Medicine labeling for ambulatory behavioral health services which will assist with consistency in services.

The proposed amendments are as least stringent as possible to incorporate program changes. 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; however, if they are not an enrolled provider, they will be required to enroll as a provider with Medical Services.

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 all recipients and providers receiving or rendering services for Medicaid; there are no exceptions.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Cindy Sheldon, Deputy Director, Medical Services

DATE: October 24, 2013

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

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 75-02-02.

1. Small Entities Subject to the Proposed Rules

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

2. Costs For Compliance

There are no expected administrative and other costs required for compliance with the proposed rules.

3. Costs and Benefits

There are no expected probable costs to private persons and consumers who are affected by the proposed rule.

The probable benefit to private persons and consumers who are affected by the proposed rule: an increase in ambulatory behavioral health services.

4. Probable Effect on State Revenue

The probable positive effect on savings from the proposed rules is approximately \$3,565.14 (\$7,130.27 @ 50% FMAP) per year.

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 Dalrymple, Governor
Maggie D. Anderson, Executive Director

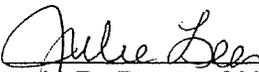
TAKINGS ASSESSMENT

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

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 21st day of October, 2013.

by: 
N.D. Dept. of Human Services