

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

N.D. Admin. Code Chapters 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program (Pages 155-226))))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> June 11, 2014
--	---------------------------------	--

.....

For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code chapters 75-02-02.1 and 75-02-02.2 are related to statutory changes made by the Legislative Assembly in 2013 House Bill No. 1362.
2. These rules are related to changes in a federal statute or regulation; specifically, the eligibility provisions of the Patient Protection and Affordable Care Act.
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 February 7, 2014. The record was held open until 5:00 p.m. on February 18, 2014, to allow written comments to be submitted. One written comment was 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 \$2,671.50.
6. The proposed rules amend chapters 75-02-02.1 and 75-02-02.2. The following specific changes are made:
 - Section 75-02-02.1-01. Section 75-02-02.1-01 is amended to add the definition of MAGI-based methodology for Medicaid.
 - Section 75-02-02.1-05. Section 75-02-02.1-05 is amended to identify changes in coverage groups eligible for coverage under the Medicaid expansion.
 - Section 75-02-02.1-08. Section 75-02-02.1-08 is amended to identify what constitutes a Medicaid unit for individuals subject to a MAGI-based methodology

and what members are included as part of a Medicaid household.

Section 75-02-02.1-08.1. Section 75-02-02.1-08.1 is amended to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-12. Section 75-02-02.1-12 is amended to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-14.1. Section 75-02-02.1-14.1 is created to address eligibility for medically frail Medicaid expansion enrollees.

Section 75-02-02.1-16. Section 75-02-02.1-16 is amended to address residency requirements for the Medicaid expansion population.

Section 75-02-02.1-18. Section 75-02-02.1-18 is amended to revise language on provision of emergency services to make it consistent with Medicaid expansion requirements.

Section 75-02-02.1-19.1. Section 75-02-02.1-19.1 is amended to update the family coverage section with the coverage requirements for the parents and caretaker relatives group.

Section 75-02-02.1-20. Section 75-02-02.1-20 is amended to update transitional and extended Medicaid benefits to include the changes to Section 75-02-02.1-19.1 and to remove child support income from the requirements. (This section was further amended in response to a comment received.)

Section 75-02-02.1-34. Section 75-02-02.1-34 is amended to update income considerations to reflect MAGI-based methodologies for determining income eligibility for Medicaid.

Section 75-02-02.1-34.1. Section 75-02-02.1-34.1 is created to add MAGI-based methodology for determining income eligibility for Medicaid.

Section 75-02-02.1-37. Section 75-02-02.1-37 is amended to clarify the application of this section on unearned income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-37.1. Section 75-02-02.1-37.1 is created to address unearned income requirements for individuals subject to a MAGI-based methodology.

Section 75-02-02.1-38. Section 75-02-02.1-38 is amended to clarify the application of this section on earned income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-38.2. Section 75-02-02.1-38.2 is amended to clarify the application of this section on disregarded income to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-38.3. Section 75-02-02.1-38.3 is created to address disregarded income requirements for certain individuals subject to a MAGI-based methodology.

Section 75-02-02.1-38.4. Section 75-02-02.1-38.4 is created is address earned income requirements for

individuals subject to a MAGI-based methodology.

Section 75-02-02.1-39. Section 75-02-02.1-39 is amended to clarify the application of this section on income deductions to individuals not subject to a MAGI-based methodology.

Section 75-02-02.1-39.1. Section 75-02-02.1-39.1 is created to address income deductions for individuals subject to a MAGI-based methodology.

Section 75-02-02.1-40. Section 75-02-02.1-40 is amended to update poverty income level percentages and to remove language that is inconsistent with Medicaid expansion requirements.

Section 75-02-02.1-41.1. Section 75-02-02.1-41.1 is amended to reflect deductions applicable to the calculation of recipient liability.

Section 75-02-02.1-41.2. Section 75-02-02.1-41.2 is amended to address the addition of certain individuals to an eligible Medicaid unit.

Section 75-02-02.2-01. Section 75-02-02.2-01 is amended to redefine household member and to add the definition of MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-06.1. Section 75-02-02.2-06.1 is amended to clarify the application of this section on a children's health insurance program unit to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-06.2. Section 75-02-02.2-06.2 is created to identify a children's health insurance

program MAGI-based methodology household unit.
Section 75-02-02.2-10. Section 75-02-02.2-10 is amended to address additional eligibility criteria.
Section 75-02-02.2-12. Section 75-02-02.2-12 is amended to clarify the application of this section on income considerations to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-12.1. Section 75-02-02.2-12.1 is created to address income considerations under a MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-12.2. Section 75-02-02.2-12.2 is created to address a MAGI-based methodology for the children's health insurance program.

Section 75-02-02.2-13. Section 75-02-02.2-13 is amended to update the calculation of self-employment income in determining household income for the children's health insurance program.

Section 75-02-02.2-13.1. Section 75-02-02.2-13.1 is amended to clarify the application of this section on income deductions to applications and reviews prior to January 1, 2014.

Section 75-02-02.2-13.2. Section 75-02-02.2-13.2 is amended to address the treatment of excess income of a spouse or parent in determining eligibility for the children's health insurance program.

7. No written requests for regulatory analysis have been filed by the

Governor or by any agency. The proposed amendments are 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 anticipated fiscal impact resulting from the implementation of the proposed amendments is \$301,167, of which \$101,085 is general fund.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were adopted as emergency (interim final) rules, under N.D.C.C. section 28-32-03, and became effective January 1, 2014. The statutory ground for declaring the rules to be an emergency is that emergency rulemaking is reasonably necessary to meet a mandate of federal law. A copy of the Governor's approval of the emergency status of the rules is attached.

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 AND CREATION OF
N.D. ADMIN. CODE CHAPTERS 75-02-02.1 AND 75-02-02.2
ELIGIBILITY FOR MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM**

The North Dakota Department of Human Services (the Department) held a public hearing on February 7, 2014, in Bismarck, ND, concerning the proposed amendments and creation of N.D. Administrative Code chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and Children's Health Insurance Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on February 18, 2014.

No one attended or provided comments at the public hearing. One written comment was received within the comment period. The commentor was:

1. Howard C. Anderson, PO Box 1354 Bismarck, ND 58502-1354

SUMMARY OF COMMENTS

Comment: In Section 2 of 75-02-02.1-05 (3)(a) you have changed the age to "individuals under the age of nineteen..." and then in Section 9 of 75-02-02.1-19.1 (2) you use the language "The child described in this subsection must be: under the age of eighteen..." and I [cannot] tell if this is an inconsistency or a totally different situation.

In Section 10 of 75-02-02.1-20 (2) and (4) I noticed that the other references to "the family coverage group" had been changed to "parent and caretaker relative group" but perhaps these two were missed.

Response: Section 2 of 75-02-02.1-05 (3)(a) refers to the medically needy coverage group. Because ND is a Medically Needy state, and covers the elderly and disabled under Medically Needy, we are also required to cover children (now defined as individuals under age 19) and pregnant women. Section 9 of 72-02-02.1-19.1(2) is specific to defining the parent and caretaker relative group. To be eligible, the old AFDC rule still applies to this group and the child must be under 18. This section does not define the child's eligibility, but rather the parent's or caretaker's.

The references to "family coverage group" should have been changed to "parent and caretaker relative group." Subsections 2 and 4 of section 75-02-02.1-20 are amended to address this and read as follows:

2. Families that include at least one individual who was eligible under the ~~family coverage~~ parent and caretaker relative group in at least three of the six months immediately preceding the month in which the family became ineligible wholly or partly as a result of the collection or increased collection of ~~child or~~ spousal support continue to be eligible for extended medicaid for four calendar months:
 - a. The family has a child living in the home who meets the ~~family coverage~~ parent and caretaker relative group age requirements; and
 - b. The caretaker relative remains a resident of the state.

4. Children who no longer meet the age requirements under the ~~family coverage~~ parent and caretaker relative group are not eligible for transitional or extended medicaid benefits.

Prepared by:

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

In Consultation with: Cindy Sheldon, Medical Services and Deb Masad, Medical Services

April 4, 2014

cc: Cindy Sheldon, Medical Services
Deb Masad, Medical Services

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit Director

FROM: Deb Masad and Cindy Sheldon, Medical Services

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-02.1 and 75-02-02.2.

DATE: December 16, 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, chapter 75-02-02.1 and 75-02.02.2.

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 75-02-02.1 and 75-02-02.2.

Classes of Persons Who Will be Affected

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

- Individuals applying for most Medicaid coverage, including Medicaid Expansion;
- Individuals applying for the Children's Health Insurance Program;
- Individuals eligible for the Medicaid Expansion who may be medically frail.

These groups will be affected by:

- Implementation of the Modified Adjusted Gross Income methodology.
- New criteria for establishing Medicaid Expansion enrollee eligibility for medically frail.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Criteria for applications for many individuals applying for Medicaid and the Children's Health Insurance Program will now be based on Modified Adjusted Gross Income.
- Medicaid Expansion enrollees will have an option, if determined eligible by the Department, to receive Medicaid State Plan services if they are determined medically frail.

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 possible fiscal impact to Medicaid beneficiaries.

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit Director

FROM: Deb Masad and Cindy Sheldon, Medical Services Division

DATE: December 16, 2013

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-02.1 and 75-02-02.2.

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 75-02-02.1 and 75-02-02.2.

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 small entities that are subject to the proposed amended rules are: individuals applying for most Medicaid coverage, including Medicaid expansion; individuals applying for the Children's Health Insurance Program; and individuals eligible for the Medicaid Expansion who may be medically frail.

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.

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. 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.

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

There are no exceptions to the proposed rules, other than those explicitly stated in the rule itself.

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit Director

FROM: Deb Masad and Cindy Sheldon, Medical Services

DATE: December 16, 2013

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-02.1 and 75-02-02.2.

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 and 75-02-02.2.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are: individuals applying for most Medicaid coverage, including Medicaid expansion; individuals applying for the Children's Health Insurance Program; and individuals eligible for the Medicaid Expansion who may be medically frail.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rules 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 private persons or consumers are expected to incur costs as a result of the proposed rules.

4. Probable Effect on State Revenue

The probable effect of State revenue was anticipated in the fiscal note for 2013 House Bill No.1362.

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 chapters 75-02-02.1 and 75-02-02.2.

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 16th day of December, 2013.

by: *Julie Lell*
N.D. Dept. of Human Services



— State of —
North Dakota
Office of the Governor

Jack Dalrymple
Governor

December 19, 2013

Maggie Anderson
Department of Human Services
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Maggie,

On December 19, 2013, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code Chapter 75-02-02.1 relating to Eligibility for Medicaid and Chapter 75-02-02.2 relating to the Children's Health Insurance Program.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03 and I find that an emergency rulemaking is reasonably necessary to meet a mandate of federal law. I therefore approve adoption of your proposed rules as interim final rules.

Sincerely,

A handwritten signature in cursive script that reads "Jack Dalrymple".

Jack Dalrymple
Governor

37:74: 58