BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

N.D. Admin. Code Chapters 75-03-15, Ratesetting for Providers of Services to Foster Children – Group Homes and Residential Child Care Facilities, and 75-03-16, Licensing of Group Homes and Residential Child Care Facilities (Pages 240-292)	**)**	**REPORT OF THE DEPT. OF HUMAN SERVICES** **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 chapters 75-03-15 and 75-03-16 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. Two sets of 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 $2,481.82.

6. The proposed rules amend chapters 75-03-15 and 75-03-16. The following specific changes were made:

   Section 75-03-15-01. Section 75-03-15-01 is amended to add pertinent definitions, clarify language, and create consistency in terms used throughout the chapter.

   Section 75-03-15-02. Section 75-03-15-02 is amended to clarify language relative to child census.

   Section 75-03-15-03. Section 75-03-15-03 is amended to clarify the three types of identified child census days allowed,

clarify language, and create consistency in terms used throughout the chapter.

Section 75-03-15-04. Section 75-03-15-04 is amended to clarify language relative to desk audit rates, to create consistency in terms used throughout the chapter, to add the ability to notify facilities by electronic mail of any desk adjustments, to remove rehabilitation rate language that is no longer used in ratesetting, to exempt shelter care beds from the occupancy rate, and to establish a process for facilities to request a waiver of minimum bed occupancy allowance.

Section 75-03-15-06. Section 75-03-15-06 is amended to remove rehabilitation rate language that is no longer used in ratesetting, to clarify language, and to create consistency in terms used throughout the chapter.

Section 75-03-15-07. Section 75-03-15-07 is amended to clarify language, to create consistency in terms used throughout the chapter, to add nursing services, cellular phones, satellite television, and electronic communication systems to the maintenance rate, and to add computer software costs and maintenance to administration costs. (This section was further amended in response to a comment received to include monthly service fees associated with cellular phones and electronic communication systems.)

Section 75-03-15-08. Section 75-03-15-08 is amended to clarify language and ratesetting, to create consistency in terms used throughout the chapter, and to remove rehabilitation rates that are no longer used in ratesetting.

Section 75-03-15-09. Section 75-03-15-09 is amended to

clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-15-10. Section 75-03-15-10 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-15-11. Section 75-03-15-11 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-15-12. Section 75-03-15-12 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-15-12.1. Section 75-03-15-12.1 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-15-13.1. Section 75-03-15-13.1 is amended to clarify language, to create consistency in terms used throughout the chapter, and to increase the historical costs minimum for a depreciable asset from one thousand to five thousand dollars.

Section 75-03-15-14. Section 75-03-15-14 is amended to clarify language.

Section 75-03-15-15. Section 75-03-15-15 is amended to create consistency in terms used throughout the chapter.

Section 75-03-16-01. Section 75-03-16-01 is amended to add "custodian" to the definitions.

Section 75-03-16-02. Section 75-03-16-02 is amended to remove outdated language.

Section 75-03-16-02.3. Section 75-03-16-02.3 is amended

to correct a citation and to create consistency in terms used throughout the chapter.

Section 75-03-16-02.4. Section 75-03-16-02.4 is amended to create consistency in terms used throughout the chapter.

Section 75-03-16-03. Section 75-03-16-03 is amended to clarify language, to create consistency in terms used throughout the chapter, to add a new paragraph to subsection 1 regarding a facilities governing body if the facility is owned by a tribe or the Department of Public Instruction, and to clarify the requirements for notification of a membership change occurring within a facility's governing body. (This section was further amended in response to a comment identifying an unintended deletion from this rule. The language has been restored.)

Section 75-03-16-04. Section 75-03-16-04 is amended to clarify language.

Section 75-03-16-05. Section 75-03-16-05 is amended to clarify what facilities are required to include in employees' and nonemployees' files, to clarify language, and to create consistency in terms used throughout the chapter.

Section 75-03-16-06. Section 75-03-16-06 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-16-07. Section 75-03-16-07 is amended to clarify language and to remove outdated language.

Section 75-03-16-08. Section 75-03-16-08 is amended to clarify language, to create consistency in terms used throughout the chapter, and to remove duplicate language.

Section 75-03-16-09. Section 75-03-16-09 is amended to clarify language, to clarify required supervision for employees in clinical, treatment, and case management roles, and to require facilities to document annual supervisor training.

Section 75-03-16-10. Section 75-03-16-10 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-16-11. Section 75-03-16-11 is amended to clarify language, to create consistency in terms used throughout the chapter, and to require nonemployees who provide services at the facility to follow suspected child abuse and neglect and zero tolerance policies of the facility.

Section 75-03-16-12. Section 75-03-16-12 is amended to add zero tolerance language regarding sexual abuse and harassment, and to require the documentation of policy reviews, revisions, and employee participation, to clarify language, and to create consistency in terms used throughout the chapter.

Section 75-03-16-12.2. Section 75-03-16-12.2 is amended to clarify the status of nonemployees, to clarify and add language regarding background, driving record, and child abuse and neglect checks, and to create consistency in terms used throughout the chapter.

Section 75-03-16-12.3. Section 75-03-16-12.3 is amended to clarify health requirements for employees and nonemployees, and to create consistency in terms used throughout the chapter.

Section 75-03-16-14. Section 75-03-16-14 is amended to

clarify what constitutes employee professional development and to whom it applies, and to create consistency in terms used throughout the chapter.

Section 75-03-16-15. Section 75-03-16-15 is amended to clarify language, to create consistency in terms used throughout the chapter, and to clarify an internal investigation is not to be conducted by a facility if law enforcement or the department is investigating an allegation of child abuse and neglect.

Section 75-03-16-16. Section 75-03-16-16 is amended to add private placement language, to clarify and identify discharge report requirements, and to create consistency in terms used throughout the chapter.

Section 75-03-16-17. Section 75-03-16-17 is amended to clarify language, to create consistency in terms used throughout the chapter, to identify requirements for service delivery to the child and to the family by the facility and community providers, and to add a requirement for a facility that engages in electronic data entry and case filing to develop a policy to manage that process.

Section 75-03-16-19. Section 75-03-16-19 is amended to create consistency in terms used throughout the chapter.

Section 75-03-16-20. Section 75-03-16-20 is amended to create consistency in terms used throughout the chapter.

Section 75-03-16-21. Section 75-03-16-21 is amended to require a facility to include in its files a court order establishing the facility's authority to accept and care for any child welfare placement and services the family is receiving,

to clarify language, to create consistency in terms used throughout the chapter, and to update outdated language.

Section 75-03-16-24. Section 75-03-16-24 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-16-25. Section 75-03-16-25 is amended to require a facility to advise the custodian, parent, or guardian for children in placement of the facility's day-to-day and search rules, to add language regarding room assignments, to clarify language, and to create consistency in terms used throughout the chapter.

Section 75-03-16-26. Section 75-03-16-26 is amended to clarify requirements regarding the use of separation, to add language regarding the prohibition of isolating a child in a locked area, to create consistency in terms used throughout the chapter, and to update outdated language. (This section was further amended in response to a comment received.)

Section 75-03-16-26.1. Section 75-03-16-26.1 is amended to clarify language, to create consistency in terms used throughout the chapter, and to update outdated language.

Section 75-03-16-26.2. Section 75-03-16-26.2 is amended to clarify language and to create consistency in terms used throughout the chapter.

Section 75-03-16-27. Section 75-03-16-27 is amended to clarify language and to create consistency in terms used throughout the chapter.

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 anticipated fiscal impact resulting from the implementation of the proposed amendments is immaterial.
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
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North Dakota Department of Human Services
June 11, 2014

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Jack Dalrymple, Governor
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SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED AMENDMENTS TO N.D. ADMIN. CODE CHAPTERS 75-03-15 AND 75-03-16 RATESETTING FOR PROVIDERS OF SERVICES TO FOSTER CHILDREN-GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES AND LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

The North Dakota Department of Human Services (the Department) held a public hearing on April 3, 2014, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-03-15 and 75-03-16, Ratesetting for Providers of Services to Foster Children-Group Homes and Residential Child Care Facilities and Licensing of Group Homes and Residential Child Care Facilities.

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

Eight individuals attended the public hearing. Two written comments were received within the comment period. The commentors were:

1. Jane Brown, PO Box 5007 Minot ND 58702
2. Jay Johnson, 16353 I 94 Sentinel Butte, ND 58654
3. Gayle Klopp, PO Box 1995 Bismarck ND 58502
4. Diane Szudera, 16351 I 94 Sentinel Butte, ND 58654
5. Craig Poitra, PO Box 176 Fort Yates ND 58538
6. Pamela Mack, 400 East Broadway Suite 409 Bismarck ND 58501

SUMMARY OF COMMENTS

Comment: Really – we don't have any major oppositions!

In the language now, I see frequently where it says "shall," but when we were going through the PRTF language, all the "shalls" were changed to "must". Ok; I struggled with the PRTF admin rule that children 'must' sleep!!

Response: After the hearing, Department staff further explained the use of "shall" vs. "must" to this commenter. The Department makes every effort to follow the Legislative Council's administrative rules drafting guidelines, including the use of "must" and "shall". No change is made based on this comment.

Comment: The first thing I want to talk about is the Allowable Costs for Maintenance and Administration on page 12. We are appreciative that cellular telephones for the use of direc. care employees will be an allowable expense. For clarification, we feel this rule should also include the monthly service costs for these phones. We would propose that the end of the --

at the end of this added sentence read as follows: Transportation, and supervision while left on shift, and associated service fees are allowable telephone costs.

Response: The Department appreciates all of the input and comments received. Relative to section 75-03-15-07(1)(i), the intent was to include the monthly service fee and charges. To clarify this rule, the Department has added "and associated monthly service fees" to this proposed rule which will read as follows:

i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. ~~Vehicular telephone costs are not allowable~~ Cellular telephones or electronic communication systems including associated monthly service fees which are less than the capitalization threshold, and are purchased by the facility for use by direct care employees to communicate for the purpose of child safety, programming, transportation, and supervision while on shift are allowable telephone costs.

Comment: The next rule, 75-03-16-12.2, Employee and Non-Employee Background Checks, on page 37, we're appreciative for the allowance to conditionally hire and begin training employees prior to receiving criminal background checks. This rule will help -- change helps us to ensure that we do not lose a good hire while waiting for a background check to clear.

Response: The Department appreciates the feedback. No change is made based on this comment.

Comment: And lastly, on rule 75-03-16-26, Discipline, separation from the general facility population means that a child is removed from peers or programming and placed in time-out or an identified location to regroup when their behavior is escalated. We would like clarification on separation from the general facility population. In particular, we need clarification whether a child, once de-escalated and compliant, can be assigned to stay in their room, which we call room restriction. The proposed rule states: When a child behavior has de-escalated but the child needs additional separation. As an emergency treatment plan modification for behaviors such as AWOL, violence towards others, and possession or knowledge of contraband, we currently use room restrictions to transition the child back into the general population. The use of room restrictions is done in the same manner as a parent might ground their child. In this way, we're using discipline that is similar and available to what parents use in the home setting. They are not removed from programming while on room restrictions, they still attend individual and group sessions, school, church, and other assigned activities.

In addition, while the child is in the room, he or she is checked by staff minimally every 15 minutes and has interaction with their roommates. In order to clarify that separation allows for

the use of room restriction, we request that the following sentence be added to the end of 6(a): A facility shall follow written procedures whenever a de-escalated child who needs additional separation is taken out of the general facility population for more than 15 minutes.

Response: The Department is removing the term "isolation" as that term has caused confusion in the past. In addition, "isolation" is not a supported behavior management technique; research has shown that when youth are left alone for periods of time without supervision increased incidents of self-harm occur. The Department has replaced "isolation" with "separation from the general facility population". Room restrictions are not specifically addressed in NDAC 75-03-16-26, however the rule requires this form of discipline to be "brief and appropriate". The request to add language to rule stating that facilities should follow policy and procedures was not added as section 75-03-16-26 currently requires facilities to adopt written policies for discipline and behavior management. The Department, to allow some flexibility to the proposed rule has made changes so the rule will read as follows:

6. ~~Isolation~~ Separation from the general facility population means that a child is removed from peers or programming to re-group when the child's behavior is escalated.

   a. Separation from the general facility population, when used as discipline, must be brief and appropriate. The child must be ~~within hearing of an adult~~ in a safe, lighted, well-ventilated room~~. A child who is isolated from peers for disciplinary reasons must~~ and be observed continuously by ~~the staff~~ an employee. When a child's behavior has deescalated, but the child needs additional separation, an employee shall observe the child and document the observation at least every fifteen minutes until the child is ready to return to the general facility population.

   b. The isolation of a child in a locked area for the purpose of modifying behavior is not permitted at any time.

This change also includes clarification that staff need to document the observation of children who have been separated from the general facility population.

Comment: We support -- I actually had in my written testimony here some of the same things, so I'll just say that we support the three things just talked about.

Additionally, for 75-03-16-12, Employment Policies, number 4, on page 36, we appreciate the Department's revision of this section to promote zero tolerance of sexual abuse and sexual harassment between facility staff and children in placement. However, the revised language states: By employees to others in the facility. This language could be construed as the Department regulating internal employee relations within the facility and may be opening a door to unintentional Department liability. We would propose number 4 to read as follows:

Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees to children in placement in the facility.

Other than that, the other three are ones that we support. Thank you.

Response: The Department is updating section 75-03-16-12 (4), to ensure the safety and wellbeing of children in placement. The changes to this subsection are not intended to regulate employees' personal relationships; but to identify appropriate employee conduct. No change is made based on this comment.

Comment: On rule 75-03-15-04, number 3, Final Rate, and it's found on page 5. 3(b) was deleted as we no longer receive a rehabilitation rate. But with this strikeout was the wording that set the date when our rate would be effective. There was a time when there could be a small or large deviation from year-to-year or from facility-to-facility when the new care rate took effect, which is why a timeline was added, you know, several years ago. And I say it was so long ago that I may be the only one in the room that remembers that. But anyway, we would like to propose then that the new number 3(b) wording be changed to read: The final rate for maintenance will be effective beginning the first day of the seventh month following the facility's fiscal year end. And then strike out the: In which notification of the rate is given to the facility. So we still can maintain that seven-month period that our rate would be established.

Response: This subsection was omitted because it was specific to establishing the rehabilitation rate. Rehabilitation rates were removed from rule. The process for setting the effective date identified in the comment is not impacted by this change. No change is made based on this comment.

Comment: I would like to, one, commend the Department of the changes. We really can support most of the changes. We just have two that we would like you to consider revisiting, along with the ones already stated. And we agree with those changes. The one goes back to the allowable costs in section 75-03-15-07, and that is where it states, on (a), page 11: Salary and fringe benefits for direct care employees which must be limited to -- is that if we could add: Salaries, mandated training, and fringe benefits for direct care employees which are limited to those that would become an allowable cost.

Response: The Department understands the desire to be reimbursed for the cost of training staff per the 20 hour professional development requirement set forth in section 75-03-16-14. However, the cost of training is classified as an administrative cost by Code of Federal Regulations (CFR) 45 and in Title IV-E of the Social Security Act. At this time, the federal government does not allow states to reimburse for training as an allowable maintenance cost. The Department is willing to continue to explore options and opportunities to partner with state facilities to engage in training that will reduce facility costs incurred, but the Department is unable to change section 75-03-15-07 to include training as an allowable maintenance cost. No change is made based on this comment.

Comment: The second piece that we would like to speak to would be on section 75-03-16-09. Our facility, with the supervision of social service employees, it now has been changed to be an individual one hour of supervision per week, that instead, that we would look at the program director or assigned social supervision would be able to, one, keep it as it is written now, or less to put in a combination of individual and group supervision. As far as our case managers, we facilitate peer review of our other case managers, and so we would like to be able to continue doing that within the supervision.

Response: The Department currently requires a minimum of one hour of individual supervision each week for Social Service Coordinators; not all locations understood the requirement as being for individual supervision, so this change is to clarify that. As used in 75-03-16-09, social service employee means a child in placement's case manager and does not include other program service staff such as occupational therapists, physical therapists, or mental health consultants. No change is made based on this comment.

Comment: We didn't submit any written form, but we'll reserve that for -- up to the deadline anyway. But I just want to concur that we support the written testimony from the three facilities as well, so we just wanted to make note of that.

Response: No change is made based on this comment.

Comment: Please accept these comments to the proposed rules NDAC Chapters 75-03-15 and 75-03-16.

75-03-16-16(1) & (3) – These two sections now address what was previously covered in 75-03-16-03(1)(e); however, the new section does not include non-discrimination as previously identified. The new language identifies that no child may be denied admission on the basis of race, color, creed, religion, or national origin. This change does not include discrimination based upon disability. We would suggest adding disability to the protected list identified in this section to ensure that all admissions and discharges are done in accordance with non-discriminatory practices.

Response: Nondiscrimination was not intended to be omitted without being addressed elsewhere in chapter 75-03-16. Thank you for noticing this. To correct the error, the Department is reinstating the term "nondiscrimination" in subsection 4 of section 75-03-16-03:

4. The governing body shall:

    a. Adopt a written statement of the purpose and philosophy of the facility.

    b. Adopt written policies for the facility regarding administration, personnel, nondiscrimination, ~~admission and discharge, discipline~~ buildings and grounds, and program services ~~and smoking~~.

Comment: 75-03-16-26 – This section identifies the various forms of discipline and behavioral supports that can be provided, which is very appropriate. We recommend that edits to this section be made to create consistency with the current requirements of facilities serving individuals with intellectual disabilities. For safety reasons, P&A would strongly encourage DHS to prohibit the use of prone restraints and seclusion/isolation in all facilities/programs that it licenses. Studies have shown that this can be an especially dangerous technique to use with children.

Thank you for your consideration of these comments.

Response: The Department appreciates the emphasis on limiting restraints and prohibiting isolation. Changes are being made to this section to minimize opportunities of isolation of children in placement. To ensure child safety, section 75-03-16-14 requires facilities to be properly trained to engage in physical restraint if needed when verbal de-escalation techniques are not effective. No change is made in response to this comment.

Prepared by:

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

In Consultation with: Kelsey Bless, Children and Family Services and Dean Sturn, Children and Family Services

April 22, 2014

Cc: Kelsey Bless, CFS

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, RCCF/LCPA Licensing Administrator, Children and Family Services.

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter (N.D.A.C.) 75-03-15 and N.D.A.C 75-03-16.

DATE: February 27, 2014

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 N.D.A.C 75-03-15 is to provide rate setting and reimbursement standards for Licensing Group Homes and Residential Child Care Facilities across the state of North Dakota. The proposed amendments are to provide updates and clarification to the rule since the last update (June 2004).

N.D.A.C. 75-03-16 is to provide directions of compliance for Licensing Group Homes and Residential Child Care Facilities across the state of North Dakota. The proposed amendments are to provide updates and clarification to the rule since the last update (April 2004).

Classes of Persons Who Will be Affected

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

1. Group Homes and Residential Child Care Facilities

Group homes and residential child care facilities will be affected by the proposed amendments. It is intended that these placement providers will receive the clarification needed to provide quality and consistent service across the state.

Facilities will be benefitted by the further clarification; it is not intended that facilities be negatively affected by the proposed amendments. However, facilities will need to revise policy and may have to adjust their way of training employees, how they document and update their employee, nonemployee, and child files, and how often they complete a fire drill with staff and children in placement.

Probable Impact

Providing updates and clarification will positively impact group home and residential child care facilities across the state. Necessary updates and clarification to rule will assist providers in delivering safe, consistent, and quality service to children and families.

Probable Cost of Implementation

There are minimal expected costs to group home and residential child care facilities as some may not have included part-time employees or temporary staff in the professional development and training requirement of 20 hours annually.

The projected costs for DHS associated with the proposed amendments would be newspaper advertisements ($2500) to inform the community of the N.D.A.C 75-03-15 and N.D.A.C 75-03-16 amendment process as well as a mailing to inform County Social Services, Division of Juvenile Services, Tribal Social Services, and ten ND Group Home and Residential Child Care Facilities of the process ($100).

Consideration of Alternative Methods

The Department could consider no amendment and continue to license group homes and residential child care facilities with the existing rule; however rule would remain outdated and uncertain to providers in areas listed as proposed rule amendments.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, LCPA/RCCF Licensing Administrator, Children and Family Services.

DATE: February 27, 2014

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D.A.C 75-03-15 and N.D.A.C 75-03-16

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.A.C 75-03-15 and N.D.A.C 75-03-16. The proposed rule do not include changes 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 group homes and residential child care facilities. Less stringent standards have been considered and established in writing initial rule in 1987 and amended in 1999 as a variance. The Department does not want to remove this option for facilities as older facility buildings and diverse programming allows for the Department to grant a variance. Currently, there are two facilities that use this option and Children and Family Services does support this accommodation (ex: buildings and grounds for bathroom or bedroom floor plans in older facility structures).

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 minimum standards of compliance for group homes and residential child care facilities all who partner with Children and Family Services and the Department. North Dakota requires that all group homes and residential child care facilities are visited annually for an onsite review to ensure the facility structure and grounds is meeting minimum standards to care for children in placement.

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

It is expected that all group homes and residential child care facilities will meet the minimum standard of compliance set forth in N.D. Admin. Code chapters 75-03-16 to ensure health and safety of any child cared for or placed by a custodial agency or private provider. Children and Family Services would recommend that the option of variance continues as it does assist older facility buildings in meeting the needs of children. Current variances are building and grounds accommodations of bathroom establishments and the bedroom structure (PLC). These granted variances do not offer concern to Children and Family Services for the safety and wellbeing of the children when residing in the facility. The facilities have created appropriate accommodations and adjustments to meet the needs of residents.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, RCCF/LCPA Licensing Administrator, Children and Family Services

DATE: February 27, 2014

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D.A.C. 75-03-15 and N.D.A.C 75-03-16.

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.A.C. 75-03-15 and N.D.A.C 75-03-16. The proposed rule adjustments does include changes mandated by federal law; one rule change is to incorporate language regarding medical records. 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:

- *Group Homes and Residential Child Care Facilities*

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: *Little cost increase to group homes or residential child care facilities for training of all staff could incur some costs for facilities, but most facilities have internal trainers that would not require bringing staff into the facility at a charge to train employees.*

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 of the amendments is that the changed to N.D.A.C. 75-03-15 and N.D.A.C 75-03-16 will provide clear expectation to group homes and residential child care facilities ensuring safety and wellbeing of children in placement.*

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 existing group homes and residential child care facilities with existing rule. The alternatives were not selected because updates and clarification to rules are necessary as it has been eight years since rule was promulgated (April 2004 and June 2004).*

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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapters 75-03-15 and 75-03-16.

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 27th day of February, 2014.

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