

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

**N.D. Admin. Code Sections )  
75-03-09-09 and 75-03-10-08, )  
Early Childhood Services )  
(Pages 231-233 and 245-248) )**

**REPORT OF THE  
DEPT. OF HUMAN SERVICES  
December 12, 2012**

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

1. The proposed amendments to N.D. Admin. Code sections 75-03-09-09 and 75-03-10-08 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 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 August 8, 2012. The record was held open until 5:00 p.m. on August 20, 2012, to allow written comments to be submitted. Two 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 \$2,098.40.
6. The proposed rules amend sections 75-03-09-09 and 75-03-10-08. The following specific changes were made:  
Section 75-03-09-09. Section 75-03-09-09 is amended to allow a licensed group child care provider flexibility in the allowable children to staff ratios and to allow the provider to apply for a waiver of the children to staff ratios.  
Section 75-03-10-08. Section 75-03-10-08 is amended to allow a licensed child care center to apply for a waiver to increase the allowable ratio of children to staff.
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. These rules do not have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were adopted as emergency (interim final) rules. These rules took effect on July 1, 2012.

Prepared by:

Julie Leer  
Legal Advisory Unit  
North Dakota Department of Human Services  
December 12, 2012

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

The North Dakota Department of Human Services (the Department) held a public hearing on Wednesday, August 8, 2012, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code chapters 75-03-09-09 and 75-03-10-08, Early Childhood Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, August 20, 2012.

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

1. Stacey Piechowski, 4793 Woodhaven Street South, Fargo, ND 58104
2. Rebekah Wilkie, 940 38 1/2 Ave W, West Fargo, ND 58078

**SUMMARY OF COMMENTS**

**Comment:** The idea of allowing Group child care operators to follow allowable numbers set for Family child care providers or by calculating ratio is an excellent decision and long overdue.

Removing the maximum group requirements for Group operators makes it much easier and simpler to figure total overall ratios and decimal points.

Concerning the waiver of ratio up to .25 points for Group providers, I feel there should be more requirements or qualifications to meet. A Group childcare provider should not only have to be a licensed group for two years, but also they should have at least five years overall experience with children ages 0 to 5 years. There should be more training hours required in all of the ND Core Competency Areas. I also think a waiver should be granted for X amount of points for up to a year at a time, rather than on an individual child or family basis.

**Response:** The department appreciates the comment regarding five years of overall experience. The proposed rule sets out the minimum number of years an applicant must be licensed before applying for a waiver. The proposed rule does not prohibit the department from reviewing the entire early childhood services history of a waiver applicant. The department will give further consideration to the training of providers who are granted waivers and to granting a waiver without specificity to a child or family, but no rule change is necessary. The proposed rule explains all areas the department must consider, but does not place limitations on considerations.

**Comment:** I am writing in favor of the waiver option available to day care providers that wish to apply for a waiver of the required ratio and maximum group size. Because of the conditions put in place so that not every provider may receive a waiver, such as licensing history of the provider, safety and age of the children, etc. this can help families find affordable care that may not be available without the waiver option.

I am a part time working mother of two small children. We have had great difficulty finding affordable, part time child are in the Fargo area. I work part time because my daughter has special needs, she was born deaf. She wears cochlear implants which has required daily therapy appointments along with out of state medical appointments. Because I only work PT our family income is not a lot and paying for FT childcare is no longer an option for us. Our current provider will not offer PT care and we can no longer struggle to make FT daycare payments any longer. I have made numerous contacts to Child Care Resource and Referral in an attempt to gather lists of providers willing to do part time care. Many of those providers that say they will work with part time families do so while continuing to charge full time rates for care. This simply is not an option for our family.

There are many reasons a waiver may be necessary for providers and families across the state, it could help our family tremendously. It can be utilized not only for families in certain areas of the state who are having difficulty finding care but for families who may have a unique situation such as ours. We found a home daycare willing to provide care to my children on a part time basis. It is an amazing home with so much to offer. It is also close by to my daughter's preschool that she will begin in a few weeks. If there was not a waiver option available I would be forced to quit my job because we cannot find an affordable daycare for our children. Thank you for your consideration.

**Response:** The department appreciates the comment and agrees that no change is necessary.

Prepared by:



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

In Consultation with: Jennifer Barry, CFS

October 2, 2012

Cc: Jennifer Barry, CFS

## 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 75-03-09 and 75-03-10.

**DATE:** May 8, 2012

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 Article 75-03-09 and 75-03-10. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

### Purpose

The amendments are in response to increased demand and decreased capacity for licensed child care. The amendments are expected to increase the capacity of licensed child care statewide.

### Classes of Persons Who Will be Affected

Group child care and child care center operators will be affected by the proposed rule changes, because the proposed rules would allow these operators to apply for a waiver to increase the allowable child to staff ratio.

### Probable Impact

It is expected that the proposed revisions would increase the capacity of licensed child care statewide. It is also expected that the proposed revisions would result in increased operating revenue for qualifying child care programs.

### Probable Cost of Implementation

There are no expected costs associated with implementing the rule changes.

### Consideration of Alternative Methods

The Department has carefully considered the increased demand for child care and has proposed amendments which balance the need to increase capacity with the need to ensure the health and safety of children in child care. The Department suggests no alternative methods at this time.

## M E M O R A N D U M

**TO:** Julie Leer, Director, Legal Advisory Unit

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

**DATE:** May 21, 2012

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-03-09 and 75-03-10.

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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 75-03-09 and 75-03-10. 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 proposed amendments do not have an effect on reporting requirements, and would allow the department to establish a waiver which would create less stringent compliance requirements for programs which qualify.

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

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

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

The proposed amendments create more options for the providers who are eligible. Providers are not required to participate in these options, so there are no exemptions contained in the proposed rules.

## **M E M O R A N D U M**

**TO:** Julie Leer, Director, Legal Advisory Unit

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

**DATE:** May 8, 2012

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed Amendment to N.D. Admin. Code chapters 75-03-09 and 75-03-10.

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 75-03-09 and 75-03-10. 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 licensed group child care programs and child care centers.

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

### 2. Costs For Compliance

Administrative and other costs required of group child care programs and child care centers 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.

The proposed amendments would allow operators of group child care programs and child care centers to apply for a waiver to increase the allowable ratio of children to staff. These proposed amendments are expected to increase the operating revenue for child care programs which qualify for the waiver. The

proposed amendments are also expected to increase the capacity of licensed child care statewide.

#### 4. Probable Effect on State Revenue

The probable effect on state revenue is zero.

#### 5. Alternative Methods

The Department has carefully considered the increased demand for child care and has proposed amendments which balance the need to increase capacity with the need to ensure the health and safety of children in child care. The Department suggests no alternative methods at this time.

ack Dalrymple, Governor  
Carol K. Olson, Executive Director

### TAKINGS ASSESSMENT

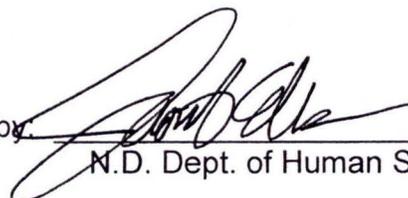
concerning proposed amendments to N.D. Admin. Code sections 75-03-09-09 and 75-03-10-08.

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 8th day of May, 2012.

by



N.D. Dept. of Human Services