

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

N.D. Admin. Code Chapter) 75-04-05, Reimbursement) for Providers of Services to) Individuals with Developmental) Disabilities) (Pages 294-306))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> 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 chapter 75-04-05 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 July 17, 2012. The record was held open until 5:00 p.m. on July 27, 2012, to allow written comments to be submitted. One 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 \$2,106.08.
6. The proposed rules amend chapter 75-04-05. The following specific changes were made:
 - Section 75-04-05-01. Section 75-04-05-01 is amended to reflect the definition of "movable equipment" is moved from another section and placed in the definitions section.
 - Section 75-04-05-09. Section 75-04-05-09 is amended to include timelines for the Department to respond to a request for reconsideration; to increase the time within which a provider may request reconsideration; to clarify days are calendar days; and to clarify existing language.
 - Section 75-04-05-15. Section 75-04-05-15 is amended to increase historical cost of a depreciable asset from \$1,000 to \$5,000 per depreciable asset and to clarify existing language.
 - Section 75-04-05-24. Section 75-04-05-24 is amended to reflect the changes to section 75-04-05-01.

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. These rules are expected to have a fiscal impact for SFY 2013 of \$613,173, of which \$290,491 is state general fund. Currently, costs are depreciated over a several-year period. This rule change allows costs to be claimed entirely in the first year. As a result, year one shows a fiscal impact, but there are no additional costs over the original several-year depreciation period.
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
December 12, 2012

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-04-05
REIMBURSEMENT FOR PROVIDERS OF SERVICES TO
INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES**

The North Dakota Department of Human Services (the Department) held a public hearing on July 17, 2012, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapter 75-04-05, Reimbursement for Providers of Services to Individuals with Developmental Disabilities.

Written comments on these proposed amendments could be offered through 5:00 p.m. on July 27, 2012.

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

1. Jamie Wilke, Developmental Disabilities

SUMMARY OF COMMENTS

Comment: After further review of NDAC 75-04-05, there is one additional change that needs to be made in regards the depreciation dollar change. This will not have a negative impact on the provider. The change that should be made is as follows:

NDAC 75-04-05-16(4)(f), "Existing funding depreciation accounts must be used for all capital outlays in excess of ~~one~~ five thousand dollars..."

Response: The Department will make the proposed change to NDAC 75-04-05-16(4)(f) as follows:

- f. Existing funded depreciation accounts must be used for all capital outlays in excess of ~~one~~ five thousand dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.



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

In Consultation with: Tina Bay, Developmental Disabilities

September 5, 2012

Cc: Tina Bay, Developmental Disabilities

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Tina Bay, Director of Developmental Disabilities

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-04-05, Reimbursement for Providers of Services to Individuals with Developmental Disabilities.

DATE: April 30, 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 to North Dakota Administrative Code Article 75-04-05. These amendments are 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 75-04-05. Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

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

- Community DD Providers
- Developmental Center

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Increased turnaround time on submitted requests for reconsideration.
- Increased and clarified timeframe for submitting requests for reconsideration.
- Increased ability to appropriately expense items which exceed the current historical cost limit.

Probable Cost of Implementation

- Changes to the request for reconsideration timelines have no financial impact.

- Changes to the depreciation limit will have an estimated impact of \$385,000 per year, as observed from historical data collected from the DD community providers.

Consideration of Alternative Methods

A review of administrative rules and Centers for Medicare and Medicaid guide to states lead to the proposed amendments was undertaken to determine the best approach to proposed changes. The review included a discussion of current policy, possible alternatives, and recommendations to the Department. The amendments provide the least impact to the developmental disability clients.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Tina Bay, Director of Developmental Disabilities

DATE: April 30, 2012

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-04-05.

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 75-02-01.2. 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 private DD community providers. Like all other DD Community providers the NDCC, NDAC, policy, Federal law, and waiver guidelines must be adhered to. The DD community providers must meet, or assist the North Dakota Department of Human Services to meet, compliance and reporting requirements imposed by federal and state law. For these reasons, establishment of less stringent compliance or reporting requirements for these small entities was not considered.

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 DD Community Providers. 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 of DD Community 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 DD Community Providers are responsible to meet performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards or operational standards for DD Community Providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

The requirements of the proposed amendments does not exempt any entity from the requirements contained in the proposed administrative rules.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit
FROM: Tina Bay, Director of Developmental Disabilities
DATE: April 30, 2012
SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-04-05.

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. Admin. Code chapter 75-04-05. The proposed rules are a combined effort from the DD Division and community providers. The proposed rules could 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 community providers and the State Developmental Center.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule 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: There will not be probable cost to private persons or consumers for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule: No anticipated benefits to private persons or consumers by the proposed rules.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: No effects on state revenue expected because of the proposed rules.

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 and no probable effect on State Revenue, exploring alternative methods was not necessary.

TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 75-04-05.

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 30th day of April, 2012.

by: 
N.D. Dept. of Human Services