BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

N.D. Admin. Code Chapters	)	**REPORT OF THE**
75-02-02.1 and 75-02-02.2,	)	**DEPT. OF HUMAN SERVICES**
Eligibility for Medicaid and	)	**June 14, 2016**
Children's Health Insurance	)	
Program (Pages 177-188)	)	

. . . . . .

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 not related to statutory changes made by the Legislative Assembly.
2. These rules are related to changes in a federal statute or regulation, specifically the Affordable Care Act, in conjunction with the implementation of the new integrated eligibility Medicaid system.
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 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 April 8, 2016. The record was held open until 5:00 p.m. on April 18, 2016, to allow written comments to be submitted. No comments were received. A summary of the 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 $2,476.68.

6. The proposed rules amend chapters 75-02-02.1 and 75-02-02.2. The following specific changes are made:

   Section 75-02-02.1-13 is amended to clarify when a newborn child's social security number must be furnished.

   Section 75-02-02.1-19 is amended to allow the North Dakota Department of Human Services to receive federal financial participation for Medicaid-covered services provided to a Medicaid-eligible inmate of the state penitentiary or county jail who is admitted as an inpatient in a medical institution.

Section 75-02-02.1-24.4 is created to allow hospitals to complete and process hospital presumptive eligibility applications; to establish a hospital presumptive eligibility application process and eligibility requirements; and to establish training requirements, performance standards, and a process if hospitals do not meet performance standards.

Section 75-02-02.1-34.2 is created to add income conversion for individuals subject to a MAGI-based methodology as a monthly amount must be calculated to determine eligibility except during the three month period prior to the month of application as actual income received in those months is counted when determining eligibility.

Section 75-02-02.1-34.3 is created to require the utilization of reasonable compatibility of income to determine initial and ongoing eligibility except for self-employment income.

Subsection 3 of section 75-02-02.2-02 is amended to add language clarifying when the twelve-month eligibility period for a child who is determined eligible for Medicaid ends.

Subsection 8 of section 75-02-02.2-10 is amended to clarify when a newborn child's social security number must be furnished.

Section 75-02-02.2-13.3 is created to require the utilization of reasonable compatibility of income to determine initial and ongoing eligibility except for self-employment income.

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. There is an expected fiscal impact on the Medicaid program that would result from the implementation of 75-02-02.1-24.4, hospital presumptive eligibility; however, any amount is currently unknown as there is no data to indicate the number of individuals that will apply, when they will apply, or what amount of medical costs they will incur. The remaining proposed rules are not expected to have an additional fiscal impact on state revenues and expenditures.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were adopted as emergency (interim final) rules in accordance with subdivision d of subsection 2 of section 28-32-03 of the North Dakota Century Code. Emergency rules were necessary to meet a mandate of federal law, Affordable Care Act, in conjunction with the implementation of the new integrated eligibility Medicaid system. The rules took effect on March 4, 2016.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
June 10, 2016

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED AMENDMENTS TO N.D. ADMIN. CODE CHAPTERS 75-02-02.1 & 75-02-02.2 ELIGIBILITY FOR MEDICAID & CHILDREN'S HEALTH INSURANCE PROGRAM

The North Dakota Department of Human Services held a public hearing on April 8, 2016, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapters 75-02-02.1 & 75-02-02.2, Eligibility for Medicaid & Children's Health Insurance Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on April 18, 2016.

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

SUMMARY OF COMMENTS

No comments were received.

There will be no change to the proposed amendment as no comments were received.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

April 20, 2016

Cc: Brenda Peterson, Medicaid

MEMO

TO: Beth Steffan, Legal Advisory Unit

FROM: Brenda A. Peterson, Medicaid Eligibility Policy Director

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-02.1 Eligibility for Medicaid and 75-02-02.2 Children's Health Insurance Program

DATE: January 25, 2016

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 chapters 75-02-02.1 and 75-02-02.2. These amendments are expected to have a fiscal impact on the Medicaid program.

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 chapters 75-02-02.1 and 75-02-02.2. Federal law mandates the proposed rules.

Classes of Persons Who Will be Affected

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

- All individuals whose eligibility is determined utilizing the Affordable Care Act provisions.
- Inmates who meet all of non-financial and financial eligibility criteria except for being an inmate, who need medical services as inpatients in a hospital, nursing facility, juvenile psychiatric facility (PRTF) and intermediate care facility for the intellectually disabled (ICF/IID's).
- Children whose eligibility is determined for the Healthy Steps (CHIP) program.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Eligibility for applicants and recipients can be made without requiring further verifications, which will result in more timely determinations.

- Implementing the provision of the Affordable Care Act to allow hospitals to complete and process Hospital Presumptive Eligibility applications with the implementation of SPACES will ensure North Dakota is in incompliance with Federal regulations. In addition, this will provide immediate access to health care coverage.

- The implementation of coverage for prisoners who are inpatients in a hospital, nursing facility, psychiatric residential treatment facility or an intermediate care facility for the intellectually disabled will allow North Dakota to receive Federal Financial Participation (FFP) for these costs, which will reduce the amount paid out by the Prison System for medical expenditures in these situations. This will greatly reduce the amount paid out of the General Fund.

Probable Cost of Implementation

There is an expected fiscal impact on the Medicaid program that would result from the implementation of 75-02-02.1-24.4, hospital presumptive eligibly; however, any amount is currently unknown as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur. The remaining proposed rules are not expected to have an additional fiscal impact on state revenues and expenditures.

Consideration of Alternative Methods

A review of federal regulations, state laws and current Medicaid and Children's Health Insurance Program rules and policy was completed. In addition, the Centers for Medicare and Medicaid Services (CMS) have been insistent that we ensure these provisions are implemented.

The requirement to implement these provisions to coincide with the implementation of the new eligibility system, SPACES, provided the least amount of impact on applicants/recipients as well as county social service offices and employees.

The only alternative method to implement these provisions was to implement a cumbersome, manual process which would have had a large, negative financial and laborious impact to all those affected.

MEMORANDUM

TO: Beth Steffan, Legal Advisory Unit

FROM: Brenda A. Peterson, Medicaid Eligibility Policy Director

DATE: January 25, 2016

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapters 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 chapters 75-02-02.1 and 75-02-02.2. Federal law mandates the proposed rules. The proposed rules are necessary to implement the new integrated Eligibility System known as SPACES, which was approved by CMS, the Legislature and Governor, and to implement the provision that allows the North Dakota Department of Human Services to receive Federal Financial Participation (FFP) for Medicaid-covered services provided to an inmate of the state penitentiary or county jail who is admitted as an inpatient in a medical institution..

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 political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance and health care coverage programs. The County Social Service Boards 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 County Social Service Boards. 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 County Social Service Boards. 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 County Social Service Boards 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 County Social Service Boards. 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 are imposed individuals who apply for health cover coverage under the rules of the Affordable Care Act. For this reason, the proposed rules do not exempt County Social Service Boards of counties with populations with less than five thousand from all or any part of the requirements contained in the proposed rule.

MEMORANDUM

TO: Beth Steffan, Legal Advisory Unit

FROM: Brenda A. Peterson, Medicaid Eligibility Policy Director

DATE: January 25, 2016

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. Admin. Code chapters 75-02-02.1 and 75-02-02.2. The proposed rules are mandated by federal law 42 CFR, Part 435; and are required due to the implementation of the new integrated Eligibility System known as SPACES, which was approved by CMS, the Legislature, and the Governor, and to implement the provision that allows the North Dakota Department of Human Services to receive Federal Financial Participation (FFP) for Medicaid-covered services provided to an inmate of the state penitentiary or county jail who is admitted as an inpatient in a medical institution. The proposed rules are not expected 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 county social services.

2. Costs For Compliance

There is an expected fiscal impact on the Medicaid program that would result from the implementation of 75-02-02.1-24.4, hospital presumptive eligibly; however, any amount is currently unknown as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur. The remaining proposed rules are not expected to have an additional fiscal impact on state revenues and expenditures.

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:

- Allows the North Dakota Department of Human Services to receive Federal Financial Participation (FFP) for Medicaid-covered services provided to an inmate of the state penitentiary or count jail who is admitted as an inpatient in a medical institution.
- Allows hospitals to complete and process Hospital Presumptive Eligibility (HPE) applications with the implementation of SPACES.
- Allows the North Dakota Department of Human Services to streamline eligibility rules and policies for Medicaid and the Children's Health Insurance Program.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be:

Medicaid

- Reduced need of state revenues to pay for inpatient care in a medical institution for inmates of the state penitentiary or count jail as the department will receive Federal Financial Participation (FFP) for Medicaid-covered services provided to an inmate. Prior to this, general funds were utilized to pay these expenses.

Children's Health Insurance Program

- There is no probably effect on state revenues

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 negative effect on State Revenue, exploring alternative methods was not necessary.

FISCAL IMPACT

There is an expected fiscal impact on the Medicaid program that would result from the implementation of 75-02-02.1-24.4, hospital presumptive eligibility; however, any amount is currently unknown as there is no data to indicate the number of individuals that will apply, when they will apply, or what amount of medical costs they will incur. The remaining proposed rules are not expected to have an additional fiscal impact on state revenues and expenditures.

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

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 25th day of January, 2016.

by: _____
N.D. Dept. of Human Services

State of
North Dakota
Office of the Governor

Jack Dalrymple
Governor

March 1, 2016

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

Dear Maggie,

On March 1, 2016, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code Chapters 75-02-02.1 and 75-02-02.2 relating to Eligibility for Medicaid and 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, Affordable Care Act, due to the implementation of the new integrated eligibility Medicaid system. I therefore approve adoption of your proposed rules as interim final rules.

Sincerely,

Jack Dalrymple

Jack Dalrymple
Governor

37:81:77

600 E Boulevard Ave. • Bismarck, ND 58505-0001 • Phone: 701.328.2200 • Fax: 701.328.2205 • www.governor.nd.gov

BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

N.D. Admin. Code Chapters	)	**REPORT OF THE**
75-02-06 and 75-02-07.1,	)	**DEPT. OF HUMAN SERVICES**
Ratesetting for Nursing Home Care	)	**June 14, 2016**
And Ratesetting for Basic Care	)	
Facilities (Pages 189-217)	)	

. . . . . .

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

1. The proposed amendments to N.D. Admin. Code chapters 75-02-06 and 75-02-07.1 are necessary to comply with requirements found in 2015 House Bills No. 1234, 1277, and 1353. The Department previously requested an extension to adopt these rules until July 1, 2016.

   The Department, to comply with the budget allotment process, has removed the proposed created section 75-02-07.1-31 along with the amendments initially proposed to sections 75-02-07.1-01, 75-02-07.1-05, 75-02-07.1-08.1, 75-02-07.1-10, and 75-02-07.1-22, as described in the full Notice of Intent to Amend Administrative Rules dated November 4, 2015, and amended the "Summary of Comments" accordingly.

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 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 December 10, 2015. The record was held open until 5:00 p.m. on December 21, 2015, to allow written comments to be submitted. One individual attended the public hearing and provided comment. Three written comments were received within the comment period. The "Summary of Comments" and "Addendum to Summary of Comments" are 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 $2,615.41.

6. The proposed rules amend chapters 75-02-06 and 75-02-07.1. The following specific changes are made:

Section 75-02-06-01 is being amended to remove basic care facilities from the definitions of "institutional leave day" and "therapeutic leave day" as used for nursing facility ratesetting.

Section 75-02-06-02.1 is being amended to correct an outdated reference and identify the ratesetting manual as a source of ratesetting procedures for nursing facilities.

Section 75-02-06-03 is being amended to update the nursing facility per bed cost limitation on single and double occupancy for the rate year beginning July 1, 2015, as required under 2015 House Bill No. 1234.

Section 75-02-06-10 is being amended to reflect the collection fee may not exceed industry standards for collection agencies and the amount of bad debt.

Section 75-02-06-12 is being amended to restructure subsections 1 and 2, to identify certain sales tax revenue as an offset to cost for nursing facilities as required by 2015 House Bill No. 1277, and to update language.

Section 75-02-06-12.1 is being amended to reflect the changes in section 75-02-06-12 dealing with certain sales tax revenue of a nursing facility as required by 2015 House Bill No. 1277, and to address the changes made to allowable educational costs set forth in 2015 House Bill No. 1353.

Section 75-02-06-16 is being amended to restructure subdivision a of subsection 7 addressing rates for a nursing facility changing ownership.

Section 75-02-06-26 is being amended to remove language that is duplicative of language that exists in the North Dakota Century Code.

Section 75-02-07.1-11 is being amended to restructure subsections 1 and 2, to identify certain patronage dividends credited to a basic care facility as an offset to costs, and to update language.

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 through June 30, 2017, is $371,280, of which $46,234 is general fund and $139,405 is health care trust fund.
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:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
June 10, 2016

north dakota
department of
human services

Legal Advisory Unit

Fax (701) 328-2173
Legal (701) 328-2311
Appeals (701) 328-2311
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED AMENDMENTS TO N.D. ADMIN. CODE CHAPTERS 75-02-06 AND 75-02-07.1 RATESETTING FOR NURSING HOME CARE AND RATESETTING FOR BASIC CARE FACILITIES

The North Dakota Department of Human Services (the Department) held a public hearing on December 10, 2015, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-02-06 and 75-02-07.1, Ratesetting for Nursing Home Care and Ratesetting for Basic Care Facilities.

Written comments on these proposed amendments could be offered through 5:00 p.m. on December 21, 2015.

One individual attended the public hearing and provided comment. Three written comments were received within the comment period. The commentors were:

1. Richard Regner - Napoleon Care Center PO Box 90 Napoleon ND 58561
2. Shelly Peterson – North Dakota Long Term Care Association 1900 N 11th St Bismarck ND 58501

SUMMARY OF COMMENTS

Comment: 75-02-06-10(1)(c). Who determines what is reasonable? I feel there needs to be better clarification on the word "reasonable." What is considered reasonable for one facility may not be reasonable for another facility.

Response: The Department has revised this provision and 75-02-07.1-31(1)(c) to state, "The collection fee may not exceed industry standards for collection agencies and the amount of the bad debt."

Comment: 75-02-06-10(1)(c). In the definition section of the current rule, you have a definition for reasonable resident-related cost and this states, "The cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident related cost takes into account that the provider seek to minimize costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service." We suggest that the department provide more specific guidance regarding the amount a collection fee should or should not be. Not having specific guidance allows DHS great latitude in what may not be reasonable and possibly subject to individual interpretation by DHS. We request a more specific definition of what amount (dollar or percentage) DHS deems reasonable.

Response: The Department has revised this provision and 75-02-07.1-31(1)(c) to state, "The collection fee may not exceed industry standards for collection agencies and the amount of the bad debt."

Comment: 75-02-06-10(1)(b). DHS is requested to define what is a reasonable collection effort. Some facilities have been utilizing collection agencies, who in turn have clear standards of practice about what method and process will be used to collect debts. In the past the expertise of the agency has always been accepted as reasonable and prudent. Today it seems, more often than not debt is being disallowed. Disallowed because all methods of collection were not utilized. We are not sure of "all methods" of collection entails. We request that DHS outline specifically what collection standards are required.

Response: The Department appreciates the comment. Reasonable collection efforts are not addressed in this rulemaking project. No change is made in response to this comment.

Comment: 75-02-06(1)(b). The last issue related to bad debt is the issue that in order to have bad debt allowed, there must be no likelihood of future recovery. Currently DHS-Provider Audit is interpreting that this means the person must be deceased before the debt can be recognized. Neither statute nor rules state that a person must die before it is determined that there is no likelihood of future recovery. To require death is unreasonable and exceeds the intent of the law and rules. CMS allows bad debt without regard to death, and the hospitals in North Dakota received money for bad debt expenses and they did not have to prove the person was deceased. We request this section of the rules to be amended to clarify death does not need to occur for the debt to be recognized.

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing these administrative code changes. A resident does not have to be dead in order for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Comment: 75-02-06-26. We understand this language is currently in statute, so it is perceived to be duplicated and unnecessary. We agree it is duplicated but believe it has served a useful purpose. The reconsideration process remains in the rules and then in expectation is the provider will go to the NDCC to determine how the appeal process works. Most often when a provider isn't successful at the reconsideration stage, they proceed to the appeal process. Not having the appeal section in this area might lead the provider to believe they do not have any appeal rights. We believe this could lead to providers losing or not fully understanding their appeal rights. We recommend the appeal section remain in the rules or at least make a notation of where in the century code the appeal section can be found. Splitting these two related issues between Century Code and Administrator Code will cause confusion.

Response: The provider's right to appeal and the applicable state law are identified in the reconsideration letter sent to a provider. No changes made.

Comment: 75-02-06-26. The current rule state, "The department's medical services division shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation." This section should include another statement regarding what is the "FINAL" step in the reconsideration process if DHS doesn't respond within 45 days. Either the provider should prevail in the reconsideration or they should be allowed to proceed to the appeal stage. At this point the provider is not allowed to proceed to the appeal stage until the official notice on reconsideration is received and sometimes that is beyond the 45 days.

Response: The appeal stage cannot start until the reconsideration stage has been completed. If the request for reconsideration is approved the appeal stage is not necessary. No changes made.

Comment: The first comment relates to bad debts, chapter 75-02-07.1-31 and just under letter a just a comment on that, it says the bad debt must result from non-payment of the payment rate or part of the payment rate, it is our understanding that the bad debt would be, most often be the full payment rate however we do recognize if there are possibly a disqualify transfer in any portion of something that was disqualified that maybe the department would limit it for some reason, but we wanted to just put forward that our understanding would be is the bad debt would be based on the non-payment of the full rate rather than a combination there of.

Response: 75-02-07.1-31(1)(a) identifies that only the payment rate will be allowable as bad debt expense. Services provided outside the rate, such as a private room charge, are not allowable as bad debt expense. No changes made.

Comment: 75-02-07.1-31(1)(a). "Generally nonpayment is a result of the nonpayment of the full rate, it is our understanding the full rate would be recoverable as a bad debt unless the resident had paid some portion of the rate. The full rate should be allowed as a bad debt unless a portion has been recovered."

Response: 75-02-07.1-31(1)(a) identifies that only the payment rate will be allowable as bad debt expense. Services provided outside the rate, such as a private room charge, are not allowable as bad debt expense. No changes made.

Comment: The other comment and probably our most significant one and one that we wish

to be made part of the record is related to item number b and that is the facility shall document that reasonable collection efforts have been made, the debt was uncollectable, and there is no likelihood of future recovery. As we review the bad debt rules and the issue on recovery and the issue on what is reasonable, we want to note in the record that it does not say that a resident must be dead in order for the bad debt to be recognized. We haven't found any place in statue or in rule that requires that a resident be dead, but our experience has been with the nursing facility bad debt portion through interpretation of by provider audit rather than statue or regulation there seems to be that interpretation that the comment on there is no likelihood of future recover, recovery seems to indicate that a person has to be dead. So we just want to be on the record stating that that was not in, that is not in the statue, that is not in the rules and that is not our understanding of the rules before us and really urge the department to look at that because it's not stated in here and that not be a part. Our position would be is, it says reasonable collection efforts and generally what a facility will do is go to a collection agency who has the best standards of practice because the only way they get paid is by security those funds and they have a very prescribed process on the collection process which generally is the accepted practice.

The other two items that we would like to submit as evidence of what is reasonable are the Medicare requirements and Medicare does not require a person be dead in order to claim bad debt. And then other issue is hospitals when hospitals received in the last legislative session, recovery for bad debt that they too it was not required that you had to prove that someone had died, in fact the vast majority of all the people that they're collecting on under bad debt are not dead. And so we just ask for the same consistency among all providers and wish to encourage the department to look at this issue because many of the, the vast majority of all bad debts people are still alive, they simply don't have the funds they don't have the money for a variety of reasons and that facilities are employing all current standards of practice in the collection of that debt which we feel is reasonable and good which is outlined in the rules, so that's our comment related to the issue on no likelihood of future recovery.

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing these administrative code changes. A resident does not have to be dead in order for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Comment: 75-02-07.1-31(1)(b). "This section of the proposed rule is very important and we would like to note that it does not state a "person must be dead" before their debt is determined to be uncollectible. We are making this point because this language is very similar to Nursing Facility rules, probably even the exact language, and through DHS practice by Provider Audit, they appear to be making an independent decision, regardless of statute or rules that a person must die before it is determined that there is no likelihood of future recovery. We are currently in discussion with DHS to resolve this issue regarding Nursing Facilities bad debt rules." "CMS allows bad debt without regard to death, and the hospitals in ND received money for bad debt expenses and they did not have to prove the person was

deceased. Our expectations of this section is that reasonable collection efforts, including pursuing all legal avenues will be used however, that does not mean death must first occur to collect under this provision."

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing these administrative code changes. A resident does not have to be dead in order for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Comment: Just the other item and it's more a question because I didn't understand it and what we did in preparation for the review of the rules is we had a conference call inviting all basic care members, and this morning and one of the questions that came up was the last sentence in the proposed rules and I simply couldn't respond to it so we just ask the Department for clarification of what is meant by it so people can understand the rules and that's just finance charges are allowable on bad debt expense allowable under subsections 1 and 2 only if the finance charges have been offset as interest income as required under section 75-02-07.1-11. I just wasn't sure what that meant, so if we could just have clarification on that, that would be great.

Response: 75-02-07.1-31(3) identifies that interest income received must be offset according to 75-02-07.1(11). No changes made.

Comment: 75-02-07.1-31(3). "This section is confusing, please clarify so this section can be better understood by those regulated by it."

Response: 75-02-07.1-31(3) identifies that interest income received must be offset according to 75-02-07.1(11). No changes made.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

In Consultation with: LeeAnn Thiel, Medical Services

January 15, 2016

cc: LeeAnn Thiel, Medical Services

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

ADDENDUM
TO
SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-02-06 AND 75-02-07.1
RATESETTING FOR NURSING HOME CARE AND RATESETTING FOR BASIC CARE FACILITIES

The North Dakota Department of Human Services (the Department) held a public hearing on December 10, 2015, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-02-06 and 75-02-07.1, Ratesetting for Nursing Home Care and Ratesetting for Basic Care Facilities.

Written comments on these proposed amendments could be offered through 5:00 p.m. on December 21, 2015.

The Department, to comply with the budget allotment process, has removed the proposed created section 75-02-07.1-31 along with the amendments initially proposed to sections 75-02-07.1-01, 75-02-07.1-05, 75-02-07.1-08.1, 75-02-07.1-10, and 75-02-07.1-22, as described in the full Notice of Intent to Amend Administrative Rules dated November 4, 2015.

As a result, the responses to the Comments Received are modified accordingly:

SUMMARY OF COMMENTS

Comment: 75-02-06-10(1)(c). Who determines what is reasonable? I feel there needs to be better clarification on the word "reasonable." What is considered reasonable for one facility may not be reasonable for another facility.

Response: The Department has revised this provision and 75-02-07.1-31(1)(c) to state, "The collection fee may not exceed industry standards for collection agencies and the amount of the bad debt."

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. The only change being made in response to this comment is to 75-02-06-10(1)(c) as identified in the Response above.

Comment: 75-02-06-10(1)(c). In the definition section of the current rule, you have a definition for reasonable resident-related cost and this states, "The cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident related cost takes into account that the provider seek to minimize costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or

service." We suggest that the department provide more specific guidance regarding the amount a collection fee should or should not be. Not having specific guidance allows DHS great latitude in what may not be reasonable and possibly subject to individual interpretation by DHS. We request a more specific definition of what amount (dollar or percentage) DHS deems reasonable.

Response: The Department has revised this provision and 75-02-07.1-31(1)(c) to state, "The collection fee may not exceed industry standards for collection agencies and the amount of the bad debt."

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. The only change being made in response to this comment is to 75-02-06-10(1)(c) as identified in the Response above.

Comment: 75-02-06-10(1)(b). DHS is requested to define what is a reasonable collection effort. Some facilities have been utilizing collection agencies, who in turn have clear standards of practice about what method and process will be used to collect debts. In the past the expertise of the agency has always been accepted as reasonable and prudent. Today it seems, more often than not debt is being disallowed. Disallowed because all methods of collection were not utilized. We are not sure of "all methods" of collection entails. We request that DHS outline specifically what collection standards are required.

Response: The Department appreciates the comment. Reasonable collection efforts are not addressed in this rulemaking project. No change is made in response to this comment.

Comment: 75-02-06(1)(b). The last issue related to bad debt is the issue that in order to have bad debt allowed, there must be no likelihood of future recovery. Currently DHS-Provider Audit is interpreting that this means the person must be deceased before the debt can be recognized. Neither statute nor rules state that a person must die before it is determined that there is no likelihood of future recovery. To require death is unreasonable and exceeds the intent of the law and rules. CMS allows bad debt without regard to death, and the hospitals in North Dakota received money for bad debt expenses and they did not have to prove the person was deceased. We request this section of the rules to be amended to clarify death does not need to occur for the debt to be recognized.

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing on these administrative code changes. A resident does not have to be dead for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Comment: 75-02-06-26. We understand this language is currently in statute, so it is perceived to be duplicated and unnecessary. We agree it is duplicated but believe it has served a useful purpose. The reconsideration process remains in the rules and then in expectation is the provider will go to the NDCC to determine how the appeal process works. Most often when a provider isn't successful at the reconsideration stage, they proceed to the appeal process. Not having the appeal section in this area might lead the provider to believe they do not have any appeal rights. We believe this could lead to providers losing or not fully understanding their appeal rights. We recommend the appeal section remain in the rules or at least make a notation of where in the century code the appeal section can be found. Splitting these two related issues between Century Code and Administrator Code will cause confusion.

Response: The provider's right to appeal and the applicable state law are identified in the reconsideration letter sent to a provider. No changes made.

Comment: 75-02-06-26. The current rule states, "The department's medical services division shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation." This section should include another statement regarding what is the "FINAL" step in the reconsideration process if DHS doesn't respond within 45 days. Either the provider should prevail in the reconsideration or they should be allowed to proceed to the appeal stage. At this point the provider is not allowed to proceed to the appeal stage until the official notice on reconsideration is received and sometimes that is beyond the 45 days.

Response: The appeal stage cannot start until the reconsideration stage has been completed. If the request for reconsideration is approved the appeal stage is not necessary. No changes made.

Comment: The first comment relates to bad debts, chapter 75-02-07.1-31 and just under letter a just a comment on that, it says the bad debt must result from non-payment of the payment rate or part of the payment rate, it is our understanding that the bad debt would be, most often be the full payment rate however we do recognize if there are possibly a disqualify transfer in any portion of something that was disqualified that maybe the department would limit it for some reason, but we wanted to just put forward that our understanding would be is the bad debt would be based on the non-payment of the full rate rather than a combination there of.

Response: 75-02-07.1-31(1)(a) identifies that only the payment rate will be allowable as bad debt expense. Services provided outside the rate, such as a private room charge, are not allowable as bad debt expense. No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the changes suggested by the commenter are unnecessary.

Comment: 75-02-07.1-31(1)(a). "Generally nonpayment is a result of the nonpayment of the full rate, it is our understanding the full rate would be recoverable as a bad debt unless the resident had paid some portion of the rate. The full rate should be allowed as a bad debt unless a portion has been recovered."

Response: 75-02-07.1-31(1)(a) identifies that only the payment rate will be allowable as bad debt expense. Services provided outside the rate, such as a private room charge, are not allowable as bad debt expense. No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the changes suggested by the commenter are unnecessary.

Comment: The other comment and probably our most significant one and one that we wish to be made part of the record is related to item number b and that is the facility shall document that reasonable collection efforts have been made, the debt was uncollectable, and there is no likelihood of future recovery. As we review the bad debt rules and the issue on recovery and the issue on what is reasonable, we want to note in the record that it does not say that a resident must be dead in order for the bad debt to be recognized. We haven't found any place in statue or in rule that requires that a resident be dead, but our experience has been with the nursing facility bad debt portion through interpretation of by provider audit rather than statue or regulation there seems to be that interpretation that the comment on there is no likelihood of future recover, recovery seems to indicate that a person has to be dead. So we just want to be on the record stating that that was not in, that is not in the statue, that is not in the rules and that is not our understanding of the rules before us and really urge the department to look at that because it's not stated in here and that not be a part. Our position would be is, it says reasonable collection efforts and generally what a facility will do is go to a collection agency who has the best standards of practice because the only way they get paid is by security those funds and they have a very prescribed process on the collection process which generally is the accepted practice.

The other two items that we would like to submit as evidence of what is reasonable are the Medicare requirements and Medicare does not require a person be dead in order to claim bad debt. And then other issue is hospitals when hospitals received in the last legislative session, recovery for bad debt that they too it was not required that you had to prove that someone had died, in fact the vast majority of all the people that they're collecting on under

bad debt are not dead. And so we just ask for the same consistency among all providers and wish to encourage the department to look at this issue because many of the, the vast majority of all bad debts people are still alive, they simply don't have the funds they don't have the money for a variety of reasons and that facilities are employing all current standards of practice in the collection of that debt which we feel is reasonable and good which is outlined in the rules, so that's our comment related to the issue on no likelihood of future recovery.

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing these administrative code changes. A resident does not have to be dead for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the change suggested by the commenter are unnecessary.

Comment: 75-02-07.1-31(1)(b). "This section of the proposed rule is very important and we would like to note that it does not state a "person must be dead" before their debt is determined to be uncollectible. We are making this point because this language is very similar to Nursing Facility rules, probably even the exact language, and through DHS practice by Provider Audit, they appear to be making an independent decision, regardless of statute or rules that a person must die before it is determined that there is no likelihood of future recovery. We are currently in discussion with DHS to resolve this issue regarding Nursing Facilities bad debt rules." "CMS allows bad debt without regard to death, and the hospitals in ND received money for bad debt expenses and they did not have to prove the person was deceased. Our expectations of this section is that reasonable collection efforts, including pursuing all legal avenues will be used however, that does not mean death must first occur to collect under this provision."

Response: Any recovery for bad debt that hospitals received in the last legislative session was not part of their established rate and has no bearing these administrative code changes. A resident does not have to be dead in order for bad debt to be allowable but reasonable collection efforts must be made. No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the changes suggested by the commenter are unnecessary.

Comment: Just the other item and it's more a question because I didn't understand it and what we did in preparation for the review of the rules is we had a conference call inviting all

basic care members, and this morning and one of the questions that came up was the last sentence in the proposed rules and I simply couldn't respond to it so we just ask the Department for clarification of what is meant by it so people can understand the rules and that's just finance charges are allowable on bad debt expense allowable under subsections 1 and 2 only if the finance charges have been offset as interest income as required under section 75-02-07.1-11. I just wasn't sure what that meant, so if we could just have clarification on that, that would be great.

Response: 75-02-07.1-31(3) identifies that interest income received must be offset according to 75-02-07.1(11). No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the changes suggested by the commenter are unnecessary.

Comment: 75-02-07.1-31(3). "This section is confusing, please clarify so this section can be better understood by those regulated by it."

Response: 75-02-07.1-31(3) identifies that interest income received must be offset according to 75-02-07.1(11). No changes made.

Revised Response: To comply with the budget allotment process as stated in the Addendum, the Department has removed the proposed created section 75-02-07.1-31. As the draft section that was the subject of the comment is no longer being considered by the Department at this time, the change suggested by the commenter are unnecessary.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

In Consultation with: LeeAnn Thiel, Medical Services

April 27, 2016

cc: LeeAnn Thiel, Medical Services

MEMO

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator
Medicaid Payment and Reimbursement Services, Medical Services

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-06 and 75-02-07.1

DATE: September 10, 2015

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 75-02-06 and 75-02-07.1. These amendments are anticipated to have a fiscal impact on the regulated community in excess of $50,000.

Purpose

The amendments to 75-02-06 update the per bed occupancy limitation amounts pursuant to HB 1234. The amendments identify sales tax revenue received from a political subdivision or local taxing authority for a facility located in a community with a population of less than twelve thousand five hundred people to not be offset to cost pursuant to HB 1277. The amendments update the allowable education expense pursuant to HB 1353. The amendments identify ongoing program updates and clarifications.

The amendments to 75-02-07.1 identify bad debt expense as an allowable cost, increase in the number of allowable medical leave days and changes to the yearly calculation of the direct and indirect care limits pursuant to HB 1359.

Classes of Persons Who Will be Affected

Nursing facility operators and nursing facility residents will be affected by the proposed rule changes to 75-02-06 since the changes affect the allowable costs and offset to costs used to establish nursing facility rates.

Basic care facility operators and basic care facility residents will be affected by the proposed rule changes to 75-02-07.1 since some of the changes affect components of the ratesetting process for basic care facilities.

Probable Impact

The calendar year 2016 estimated impact of the change to 75-02-06 to the increase in the per bed occupancy limitation is estimated to be $184,838.

The calendar year 2016 estimated impact of the change to 75-02-06 excluding sales tax revenue received from a political subdivision or local taxing authority for a facility located in a community with a population of less than twelve thousand five hundred people is expected to be $21,748.

The calendar year 2016 estimated impact of the change to 75-02-06 in the allowable education expense is expected to be $32,621.

The calendar year 2016 estimated impact of the 75-02-06 changes for the ongoing program updates and clarifications is expected to be zero.

The probable cost to private persons and consumers who are affected by the proposed rules to 75-02-06 is an estimated additional $115,000 for calendar year 2016. Private pay residents are subject to rate equalization in nursing facilities participating in Medicaid per NDCC 50-24.4-19, therefore, the increase in rates due to the proposed amendments must also apply to private pay individuals.

The SFY 2017 estimated impact of the 75-02-07.1 changes to North Dakota Medical Services is expected to be $876,479.

The probable cost to private persons and consumers who are affected by the proposed rules to 75-02-07.1 cannot be determined. The proposed amendments affect the rates established for basic care facilities participating in Medicaid and the Basic Care Assistance program. The rate established may only be paid if the rate charged to private pay residents is equal to or exceeds the rate established. The basic care facility may determine the rate charged to private pay individuals which may be changed by the proposed amendments.

Probable Cost of Implementation

The amendments become part of existing rules on ratesetting and there are no additional costs associated with implementing the rule changes. It is estimated there will be no effect on state revenues.

Consideration of Alternative Methods

The Department did not consider whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator
Medicaid Payment and Reimbursement Services, Medical Services

DATE: September 10, 2015

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-06 and 75-02-07.1

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 75-02-06 and 75-02-7.1. The proposed rules are not 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 only small entities affected by the proposed amendments are licensed nursing facilities and licensed basic care facilities that have gross revenues of less than $2.5 million annually. The proposed amendments affect components of the ratesetting processes for nursing facilities and basic care facilities that are applied to costs reported by the entities. Because all costs must be considered when establishing limits used in the rate setting process, facilities, including facilities that are considered to be small entities, must file a uniform annual cost report. 42 CFR 447.253(f) requires that the Medicaid agency provide for the filing of uniform cost reports by each participating provider. The proposed amendments do not alter the uniform cost reporting requirements necessary to establish the rates for all nursing facilities and basic care facilities in the state that choose to participate in Medicaid and therefore 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 any required schedules or deadlines for the uniform cost reporting requirements and therefore 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 any uniform cost reporting requirements, therefore, consolidation or simplification of 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 affect any design or operational standards in existence for these small entities, therefore, establishment of new performance standards were 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 are applicable to all nursing facilities and basic care facilities that choose to participate in Medicaid and have a rate established for payment of services. Entities choosing not to participate in Medicaid would not be impacted by the proposed amendments.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator
Medicaid Payment and Reimbursement Services, Medical Services

DATE: September 10, 2015

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-06 and 75-02-07.1

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 chapters 75-02-06 and 75-02-07.1. 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 nursing facilities and licensed basic care facilities participating in the Medicaid program that have gross annual revenue less than $2.5 million.

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

2. Costs For Compliance

Administrative and other costs required of nursing facilities and licensed basic care facilities for compliance with the proposed amendments are expected to be zero. The proposed amendments affect the rate calculation used to establish the rates payable by individuals in nursing facilities and licensed basic care facilities.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rules to 75-02-06 is an estimated additional $115,000 for calendar year 2016. Private pay residents are subject to rate equalization in nursing facilities

participating in Medicaid per NDCC 50-24.4-19, therefore, the increase in rates due to the proposed amendments must also apply to private pay individuals.

We did not determine any probable benefit to private persons and consumers who are affected by the proposed rules to 75-02-06 because they are subject to rate equalization.

The probable cost to private persons and consumers who are affected by the proposed rules to 75-02-07.1 cannot be determined. The proposed amendments affect the rates established for basic care facilities participating in Medicaid and the Basic Care Assistance program. The rate established may only be paid if the rate charged to private pay residents is equal to or exceeds the rate established. The basic care facility may determine the rate charged to private pay individuals which may be changed by the proposed amendments.

Since the proposed amendments to 75-02-07.1 do not apply to private persons and consumers there is no estimated probable benefit.

4. Probable Effect on State Revenue

The probable effect of the proposed rules on state revenues is expected to be none as the proposed amendments affect state expenditures.

5. Alternative Methods

The Department did not consider whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules.

15.0729.05000

FISCAL NOTE
Requested by Legislative Council
04/21/2015

Amendment to: HB 1234

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$139,408		$277,868
Expenditures			$139,405	$139,408	$277,868	$277,868
Appropriations			$139,405	$139,408	$277,868	$277,868

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB1234 increases the per bed property limit of a double occupancy room to $156,783 and the single occupancy to $235,176.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 increases the per bed property limit of a double occupancy room to $156,783 and the single occupancy to $235,176 effective after June 30, 2015. The information for future construction projects was provided by the Long Term Care Association.

Section 1 changes the room limits effective July 1, 2015. The Department estimates expenditures under the Medicaid grants line item for the 15-17 biennium would increase $278,813 of which, $139,405 is general fund and $139,408 are federal funds.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue increase represents the additional amount of federal Medicaid funding the Department will be able to access due to the change in calculating nursing facility property costs. The revenue increase is estimated at $139,408 for the 15-17 biennium and $277,868 for the 17-19 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The estimated expenditures under the Medical Assistance grants line item for the 15-17 biennium would increase $278,813 of which, $139,405 is general fund and $139,408 are federal funds. In the 17-19 biennium, estimated expenditures would increase $555,736 of which, $277,868 is general fund and $277,868 are federal funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Department's appropriation will need to be increased for the 15-17 biennium by $278,813 of which, $139,405 is general fund and $139,408 are federal funds. The Department estimates an appropriation increase for the 17-19 biennium of $555,736 of which, $277,868 is general fund and $277,868 are federal funds.

Name: Deb McDermott

Agency: Department of Human Services

Telephone: 701 328-3695

Date Prepared: 04/23/2015

15.0751.02000

FISCAL NOTE
Requested by Legislative Council
01/22/2015

Amendment to: HB 1277

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$13,744		$11,331
Expenditures			$13,740	$13,744	$11,343	$11,331
Appropriations			$13,740	$13,744	$11,343	$11,331

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1277 requires the Department to exclude sales tax revenue received from a political subdivision or local taxing authority as an offset to cost for facilities located in communities with a population below twelve thousand five hundred people.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 8 requires the Department to exclude sales tax revenue received from a political subdivision or local taxing authority as an offset to cost. This will increase the costs reported for nursing facility care and thus increase expenditures for the 15-17 biennium by $27,484 of which $13,740 are General Fund and $13,744 are Federal Funds. In the 17-19 biennium, estimated expenditures would be $22,674 of which, $11,343 is General Fund and $11,331 is Federal Funds.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase in Revenue represents the Federal Funds the Department will be able to access due to the increased costs reported for Nursing Facility care as a result of not being able to offset sales tax revenue received from a political subdivision or local taxing authority against reportable costs. Increasing revenue for the 15-17 biennium by $13,744 in Federal Funds. In the 17-19 biennium, estimated revenue would increase $11,331 in Federal Funds.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

With rates effective January 1, 2016, estimated expenditures under the Medicaid grants line item for the 15-17 biennium would increase $27,484 of which, $13,740 is General Fund and $13,744 is Federal Funds. In the 17-19 biennium, estimated expenditures would increase $22,674 of which, $11,343 is General Fund and $11,331 is Federal Funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Department will need an appropriation increase for the 15-17 biennium of $27,484 of which, $13,740 is General Fund and $13,744 is Federal Funds. The Department will need an appropriation increase for the 17-19 biennium of $22,674 of which, $11,343 is General Fund and $11,331 is Federal Funds.

Name: Debra McDermott

Agency: Deparment of Human Services

Telephone: 701 328-3695

Date Prepared: 01/23/2015

15.0695.03000

FISCAL NOTE
Requested by Legislative Council
03/06/2015

Amendment to: HB 1353

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$32,489		$34,768
Expenditures			$32,494	$32,489	$34,786	$34,768
Appropriations			$32,494	$32,489	$34,786	$34,768

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1353 relates to non-allowable costs in determining nursing home rates, specifically removing facility annual educational assistance cost cap of $3,750 and increasing the corresponding work requirement commitment for the individual who receive the maximum of $15,000 to 6,656 hours of employment.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 relates to non-allowable costs in determining nursing home rates, specifically removing facility annual educational assistance cost cap of $3,750 and increasing the corresponding work requirement commitment for the individuals who receive the maximum of $15,000 to 6,656 hours or approximately 3.2 years. It was assumed that removal of the annual $3,750 limit will result in nursing facilities incurring educational assistance expenditures sooner than previously experienced. Thus, increasing expenditures under the Medicaid grants line item for the 15-17 biennium by $64,983 of which, $32,494 is General Fund and $32,489 is Federal Funds.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase in Revenue represents the Federal Funds the Department will be able to access due to the increased costs reported as a result of removing the annual education cap of $3,750. Increasing revenue for the 15-17 biennium by $32,489 in Federal Funds. In the 17-19 biennium, estimated revenue would increase $34,768 in Federal Funds.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The required changes would impact rates effective January 1, 2016. Estimated expenditures under the Medicaid grants line item for the 15-17 biennium would total $64,983 of which, $32,494 is General Fund and $32,489 is Federal Funds. In the 17-19 biennium, estimated expenditures would be $69,554 of which, $34,786 is General Fund and $34,768 is Federal Funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Department will need an appropriation increase for the 15-17 biennium of $64,983, of which, $32,494 is General Fund and $32,489 is Federal Funds. The Department will need an appropriation increase for the 17-19 biennium of $69,554, of which, $34,786 is General Fund and $34,768 is Federal Funds.

Name: Debra McDermott

Agency: Department of Human Serivces

Telephone: 701 328-3695

Date Prepared: 03/09/2015

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

TAKINGS ASSESSMENT
concerning proposed amendment to N.D. Admin. Code chapters
75-02-06 and 75-02-07.1.

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 10th day of September, 2015.

by: _____
N.D. Dept. of Human Services

BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

N.D. Admin. Code Chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System (Pages 218-225)	)))))	**REPORT OF THE DEPT. OF HUMAN SERVICES June 14, 2016**

. . . . . .

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

1. The proposed creation of N.D. Admin. Code chapter 75-09.1-11 is necessary to comply with Section 4 of 2015 Senate Bill No. 2048. The Department previously requested an extension to adopt these rules until July 1, 2016.
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 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 December 21, 2015. The record was held open until 5:00 p.m. on December 31, 2015, to allow written comments to be submitted. Three individuals attended the public hearing and one comment was provided. Five written comments were received within the comment period. 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 $2,279.84.

6. The proposed rules create chapter 75-09.1-11 as follows:

   Section 75-09.1-11-01 is created to add definitions.

   Section 75-09.1-11-02 is created to establish application requirements for a licensed program to participate in the substance use disorder treatment voucher system.

   Section 75-09.1-11-03 is created to establish when a program's right to participate in the substance use disorder treatment voucher system and payment can be denied or revoked.

Section 75-09.1-11-04 is created to establish a review process if a program's application to participate in or payment through the substance use disorder treatment voucher system is denied or revoked.

Section 75-09.1-11-05 is created to require the department to enter into an agreement with an eligible program.

Section 75-09.1-11-06 is created to establish what services qualify for reimbursement.

Section 75-09.1-11-07 is created to establish eligibility requirements for a substance use disorder treatment voucher.

Section 75-09.1-11-08 is created to establish the approval process of an individual's application and voucher.

Section 75-09.1-11-09 is created to establish the denial process of a substance use disorder treatment voucher.

Section 75-09.1-11-10 is created to establish an individual's right to appeal a denial of eligibility for substance use disorder treatment voucher.

Section 75-09.1-11-11 is created to allow the Department to grant exceptions to the eligibility criteria.

Section 75-09.1-11-12 is created to require a program receiving voucher system payments to collect and report process measures and outcomes measures data to the Department.

Section 75-09.1-11-13 is created to establish the reimbursement process for voucher system payments.

Section 75-09.1-11-14 is created to require the Department to provide training and technical assistance to all programs that apply to participate in the substance use disorder voucher system.

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

Governor or by any agency. The proposed rules 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 expected fiscal impact resulting from the implementation of chapter 75-09.1-11 is $375,000 in general fund dollars. The funding was as appropriated in Section 4 of Senate Bill No. 2048 for the 2015-2017 biennium. The appropriation was $750,000 in general fund dollars; however, was reduced as part of the Department's budget allotment.
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:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
June 10, 2016

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED CREATION OF N.D. ADMIN. CODE CHAPTER 75-09.1-11 SUBSTANCE USE DISORDER TREATMENT VOUCHER SYSTEM

The North Dakota Department of Human Services (the Department) held a public hearing on December 21, 2015, in Bismarck, ND, concerning the proposed creation of N.D. Administrative Code chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System.

Written comments on this proposed amendment could be offered through 5:00 p.m. on December 31, 2015.

Three individuals attended the public hearing and one provided comment. Five written comments were received within the comment period. The commentors were:

1. Candis Mock, North Central Human Service Center, 1015 South Broadway, Suite 18, Minot ND 58701
2. DHS – Behavioral Health Division, 600 East Boulevard Ave, Bismarck ND 58505
3. John Wieglenda, LAC, Heart River Alcohol & Drug Abuse Program, 7 First Ave West, Suite 101, Dickinson ND 58601
4. Lisa Simon, Simon CD Services, 1330 Page Drive Ste 301A, Fargo ND 58103
5. Perry Smith, ADAPT, Inc., 1720 Burnt Boat Drive Suite 108, Bismarck ND 58503
6. Susan Wagner, Heartview Foundation, 101 E. Broadway Ave, Bismarck ND 58501

SUMMARY OF COMMENTS

Comment: Does this mean those with vouchers would only be able to access private entities and not come to a human service center for services? That takes those of us who work at the human service centers out of the picture, which will again create a bottleneck for privates to accommodate and provide needed services, which would create underserved for several addicts out there struggling.

Response: The Department will make no change at this time. The overall goal of the Substance Use Disorder Treatment Voucher System is to help people recover by improving access to quality care and allowing for individual choice of providers when barriers are present. Consistent with the language in Senate Bill 2048, the substance use disorder treatment voucher system will allow approved individuals to seek services at private substance use disorder treatment programs. Individuals will continue to have the ability to utilize the sliding fee scale at human service centers.

Comment: Remove the definition of "Behavioral health professional".

Response: Department has made this change. The department has eliminated the definition of behavioral health professional and addressed the use of this term throughout the rules by substituting "licensed professional practicing within their scope of service."

Comment: 75-09.1-11-01(7). The definition of "Evidence based practice" needs to be revised to ensure that it is not limiting.

Response: The Department recommended this change. It was decided that the definition of evidence based practice be eliminated and other sections of the proposed rule have been changed accordingly.

Comment: 75-09.1-11-01(12). Remove the definition of "Public substance use disorder treatment program" and amend any other section affected by this change.

Response: The Department has made this change.

Comment: 75-09.1-11-01(13). Definition of "Underserved" should be amended to state "means an individual who resides in this state who has a barrier to accessing substance use disorder related services~~, has an annual income no greater than two hundred percent of federal poverty guidelines, and lives in a community in which a public substance use disorder treatment program or the appropriate level of care is not available~~."

Response: The Department has determined the definition of "underserved" is no longer needed. The Department is proposing deleting this definition and has addressed issues within section 75-09.1-11-07 regarding individual eligibility for the voucher.

Comment: Section 75-09.1-11-02 should be amended to state "A substance use disorder treatment program operated by a State agency is not eligible to apply for participation in the substance use disorder treatment voucher system. The department shall approve or deny an application within twenty working days of receipt of a complete application. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of the department's notification to the applicant that the application is incomplete. A complete application includes:"

Response: The Department has made this change. The Department agrees with identifying that a program does not include a program operated by a State agency and has amended the definition of "Program" to state, ""Program" means a human being, partnership, association, corporation, or limited liability company that establishes, conducts, or maintains a substance abuse treatment program license in compliance with chapter 75-09.1-01 for the care of individuals with a substance use disorder. "Program" does not include a DUI seminar which is

governed by chapter 75-09.1-09 or a substance abuse treatment program operated by a State agency."

Comment: Where DSM is used should it specify DSM 5 to avoid confusion as it uses substance use disorder vs abuse or dependence in DSM 4?

Response: The Department appreciates this comment. The Department is deleting the definition of DSM from the proposed rules and referencing North Dakota Administrative Code Article 75-09.1.

Comment: Also in keeping coordinated with insurance company and 3rd party requests, ICD 10 code usage might also be added as they provide easy specifiers.

Response: The Department agrees the ICD 10 code provides an easy specifier. In response the Department is deleting the definition of DSM from the proposed rule and referencing North Dakota Administrative Code Article 75-09.1. This comment will be a consideration in the planned update of North Dakota Administrative Code Article 75-09.1.

Comment: The use of "under served" seems negative. Perhaps "expanded or enhanced availability of services" would be more positive.

Response: The Department appreciates the comment and has eliminated this definition as the section defining eligibility more appropriately addresses any concerns regarding the definition of individuals who would qualify for the voucher.

Comment: "What is "underserved" and who determines that a client meets that definition? We are reluctant to be part of this voucher program when we provide the service, process the paperwork and then may not get reimbursed due to the client not meeting the criteria. We support the language that State Agencies are not eligible for the voucher program, but do not support the belief that private agencies that receive state funds are eligible for the voucher program. This program should be for Private for Profit or Non-Profit agencies that do not receive state funds to subsidize their addiction program(s)."

Response: The Department has proposed eliminating the definition of underserved as a response to the first issue identified in this comment by amending 75-09.1-11-07 to state,

"6. The individual does not have resources to cover any care for treatment and the:

a. Individual's third party payment resources will not cover all costs for treatment;

b. Individual has a pending application for medical assistance which presents a barrier to timely access to treatment; or

c. Individual does not qualify for medical assistance and has no alternative third party payment resources.

7. The individual has an annual income no greater than two hundred percent of federal poverty guidelines."

In response to the second part of the comment the enabling legislation has identified "private substance abuse treatment programs" are eligible to participate in the voucher program.

Comment: Has an application been developed for this and if so, where might we find it?

Response: The Department will provide training and information to providers at a later date as the rules have not taken effect.

Comment: 75-09.1-11-12. I have a specific question about something in the administrative rule about the reporting requirements and just wondering if those have been established yet and if so if, there's if there would be the possibility of getting some information about that prior to the finalization of the rules.

Response: 2015 Senate Bill No. 2048 requires providers who are participating in the voucher system to provide reports on process and outcome measures and for the Department to provide training and technical assistance. The Department is currently working on a manual.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

In Consultation with: James Jacobson, Behavioral Health Division

January 15, 2016

cc: Pamela Sagness, Behavioral Health Division

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Pamela Sagness, Director, Behavioral Health Division, Department of Human Services

RE: Regulatory Analysis of Chapter 75-09.1-11, titled "Substance Use Disorder Treatment Voucher System"

DATE: **November 10**, 2015

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 Chapter 75-09.1-11 Substance Use Disorder Treatment Voucher System. These new rules are anticipated to have a fiscal impact on the regulated community in excess of $50,000.

Purpose

The purpose of NDAC 75-09.1-11 is to fulfill the expectations of the Department of Human Services by the passage of Senate Bill No. 2048 during the 64th Legislative Assembly. The passage of this legislation created a mandate for the Department of Human Services to "establish and administer a voucher system to address underserved areas and gaps in the State's substance abuse treatment system and to assist in the payment of addiction treatment services provided by private licensed substance abuse treatment programs." The legislation also appropriated $750,000.00 from the general fund for the period beginning July 1, 2016 and ending June 30, 2017.

Classes of Persons Who Will be Affected

Individuals eighteen years of age and older who may need substance use disorder treatment will be the primary beneficiaries of the implementation of the proposed rules. There will be two sets of defining criteria within this population that will determine more specifically the beneficiaries of implementing the voucher system. First, criteria will establish financial eligibility for substance use disorder treatment. Second, the department will establish defining criteria regarding; underserved areas, underserved programs, and gaps in the State's substance use disorder treatment services.

Probable Impact

Promulgation of the proposed rules will establish a new funding mechanism for substance use disorder treatment in North Dakota. This will allow for individuals who require treatment but could not previously access that treatment to receive treatment. The most objective impact will be the increase in access to substance abuse treatment for individuals in the State.

National statistics have established that: the economic burden of addiction in the United States is twice that of any other disease affecting the brain, including Alzheimer's; individuals with addiction have higher rates of other chronic physical illness, mental health problems and infectious disease; almost half of all emergency room visits for trauma and/or injury are alcohol related; and individuals with addiction problems use four times as many hospital days as non-drinkers.

Although difficult to measure these statistics would indicate significant positive fiscal and social impact would be realized by increasing the ability of individuals in North Dakota to access necessary substance abuse treatment.

A secondary benefit would be the ability of North Dakota's private substance abuse treatment programs to access funding to provide necessary services.

Probable Cost of Implementation

The legislative appropriation for the establishment and administration of the voucher system is $750,000.00 dollars. Successful implementation of this program would result in the expenditure of $750,000.00 during the second year of the 2015 through 2017 biennium.

Consideration of Alternative Methods

The enabling legislation requires that the department establish rules for a voucher system to assist in the payment of substance abuse treatment provided by private licensed substance abuse treatment programs. Therefore, there is no alternative method.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Pamela Sagness, Director, Behavioral Health Division, Department of Human Services

DATE: **November** 10, 2015

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

---

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 new N.D. Admin. Code chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System. 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 small entities that are potentially impacted by the proposed new chapter to the ND Administrative Code are the Private Licensed Substance Abuse Treatment Programs. There will be no change in the reporting requirements of any currently licensed program relative to that program's status as a program with a current provisional or unrestricted license. There will be additional reporting requirements for any program that wishes to participate in the voucher system and, therefore, create an additional funding source for the services that program provides. The details of any required reports will be addressed in the application process identified in the proposed rules. Participation is voluntary and there will be no impact on any program that does not chose to participate.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

There are no schedule changes or changes in deadlines for compliance relative to continuing to be a private licensed substance abuse treatment provider. Schedule and deadline requirements to participate in the voucher system are

defined in the proposed rules. Specific schedules and the relationship between required reports and the schedule for submitting those reports will be detailed in the agreement.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

All licensed programs choosing to participate in the voucher system will be able to integrate much of the current reporting and documentation completed as a licensed substance abuse treatment program into the documentation that will be required for participation in the voucher system. There are reporting procedures specified in the enabling legislation that will be required. This will include reporting on process measures and outcome measures. Since the participation in the voucher system is optional and maintaining licensure is not contingent on participation these additional reporting requirements will be agreed to by any program as part of the voluntary application to participate in the voucher system.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The proposed rules are only defining and operationalizing the standards that are mandated in the enabling legislation. There is no absolute mandate to comply with any standards reflected in the proposed rules as participation in the voucher system and therefore compliance with any identified standards is voluntary.

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

There are no exceptions to requirements identified in the proposed rules but the participation in the voucher system is voluntary so there is no mandate that any licensed program comply with any requirements identified in the proposed rules.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Pamela Sagness, Director, Behavioral Health Division, Department of Human Services

DATE: November 10, 2015

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System.

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 rules that would constitute a new chapter in the North Dakota Administrative Code. The new Chapter proposed is North Dakota Administrative Code, Chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System. The proposed rules are necessary for the North Dakota Department of Human Services to comply with a directive from the North Dakota Legislature to draft rules to establish and implement a voucher system to assist in the payment of substance abuse treatment. It is not likely that the proposed rules will have a detrimental impact on small entities as the implementation of a voucher system will actually result in a new funding stream for services provided by private licensed substance abuse treatment programs in North Dakota.

1. Small Entities Subject to the Proposed Rules

The small entities that will likely be impacted, but not necessarily subject to the proposed rules will be the private licensed substance abuse treatment programs in the State. The proposed rules will not require any action to be taken by the private licensed substance abuse treatment programs regarding current licensure or licensure status. The participation in this program will require actions on the part of the treatment programs as additional training and documentation requirements will have to be complied with. It will be a voluntary program and no licensed program will be impacted if that program does not choose to be a participating program in the voucher system.

2. Costs For Compliance

For programs that chose to become participating private licensed substance abuse treatment programs there will be costs associated with the additional training of staff. A majority of the training will be provided by the Behavioral

Health Division and will relate to the reporting requirements of participating in the voucher system. There may also be minor administrative costs with regard to the process of billing, similar to the costs incurred by a program to successfully bill any third party payer.

3. Costs and Benefits

There will be potential benefit to individuals that require substance use disorder treatment as the voucher system will provide a source of paying for that treatment that did not exist before. There will be no costs to individuals requiring treatment.

There will be minimal costs, as identified in number 2, for licensed treatment programs to participate in the voucher system but the benefits will outweigh any costs as participation will result in the licensed treatment program to access a new funding source for the services that they are currently providing.

4. Probable Effect on State Revenue

The legislation that was passed and resulted in the requirement that the proposed rules be adopted also appropriated $750,000.00 from the general fund. The successful implementation of the voucher system will result in a potential cost to the State of $750,000.00.

5. Alternative Methods

Based on the requirements of the enabling legislation there is no alternative to the rulemaking process to achieve the directives the department is fulfilling by this action.

15.0277.06000

FISCAL NOTE
Requested by Legislative Council
04/22/2015

Amendment to: SB 2048

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$916,092		$1,666,092	
Appropriations			$16,092		$1,666,092	

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Reengrossed SB 2048 creates a new section of ND Century Code for teacher licensure requirements and mental health training and provides for improving behavioral health and substance abuse treatment services. It also provides for legislative reporting and studies, as well as an effective date.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Reengrossed SB 2048 provides for an appropriation to the Department of Human Services in the amount of $900,000, all of which is general fund, for Sections 3-4 of the reengrossed bill, which includes partial funding for a behavioral health activities facilitator and for establishing and administering a voucher system. Sections 1 and 2 of the reengrossed bill create new sections of North Dakota Century Code relating to teacher licensure requirement in youth mental health competency and youth mental health training to teachers, administrators, and ancillary staff. Section 5 of the reengrossed bill calls for the Department of Public Instruction to report to Legislative Management on mental health training provided by school districts. Section 6 of the reengrossed bill calls for a study for mental health resources for youth and adults. Section 7 of the reengrossed bill calls for a study of behavioral health needs of youth and adults and access, availability, and delivery of services. Section 8 sets an effective date for Section 1 of this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

For the 2015-2017 biennium, the Department of Human Services will need $166,092 for a behavioral health activities facilitator, of which $150,000 in general fund is appropriated in the bill and $750,000 for establishing and administering a voucher system that will address under-served areas and gaps in the state's substance abuse treatment system.

For the 2017-2019 biennium the Department of Human Services will need $166,092 to continue the funding for the behavioral health activities facilitator and $1,500,000 to continue the voucher system for both years of the biennium.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

For the 2015-2017 biennium, the Department of Human Services would need an appropriation increase of $16,092 all of which is general fund, to fully fund the behavioral health activities facilitator.

For the 2017-2019 biennium, the Department of Human Services will need an appropriation increase of $1,666,092, all of
which is general fund, for the continuation of the behavioral health activities facilitator and the voucher system.

Name: Debra A McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 04/23/2015

north dakota
department of
human services

Legal Advisory Unit

(701) 328-2311
Fax (701) 328-2173
Toll Free (800) 472-2622
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

TAKINGS ASSESSMENT

concerning proposed creation of N.D. Admin. Code chapter 75-09.1-11.

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 10 day of November, 2015.

by: _____
N.D. Dept. of Human Services