

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

N.D. Admin. Code Chapter 75-02-01.3, Child Care Assistance (Pages 223-229)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> September 13, 2016
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For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code chapter 75-02-01.3 are not related to statutory changes made by the Legislative Assembly.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services 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 June 20, 2016. The record was held open until 5:00 p.m. on June 30, 2016, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No 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 \$2,261.10.
6. The proposed rules amend chapter 75-02-01.3. The following specific changes are made:
 - Section 75-02-01.3-02. Section 75-02-01.3-02 is amended to clarify an applicant or recipient's right to appeal an agency decision without first requiring a request to reconsider that decision.
 - Section 75-02-01.3-03. Section 75-02-01.3-03 is amended to clarify the conditions that would lead to closure of a case.

Section 75-02-01.3-04. Section 75-02-01.3-04 is amended to remove redundant language as subsection 1 is currently addressed in state law.

Section 75-02-01.3-05. Section 75-02-01.3-05 is amended to clarify approved relative provider background check language, to update statutory offenses, and to clarify a relative provider applicant and approved relative provider's right to appeal without first requiring a request to reconsider a denial or termination decision.

Section 75-02-01.3-06. Section 75-02-01.3-06 is amended to clarify language regarding payments to providers and to remove the provision regarding the denial or closure of assistance for failure to pay a provider.

Section 75-02-01.3-08. Section 75-02-01.3-08 is amended to clarify types of incomes exempt from the determination of child care assistance.

Section 75-02-01.3-12. Section 75-02-01.3-12 is amended to increase the duration of the penalties for intentional program violations to align with other economic assistance programs.

Section 75-02-01.3-13. Section 75-02-01.3-13 is amended to clarify an applicant, recipient, relative provider applicant, or approved relative provider's right to appeal an agency decision without first requiring a request to reconsider that decision.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.
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
September 9, 2016



Legal Advisory Unit

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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE**

The North Dakota Department of Human Services held a public hearing on June 20, 2016, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-01.3, Child Care Assistance.

Written comments on these proposed amendments could be offered through 5:00 p.m. on June 30, 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

July 13, 2016

Cc: Michele Gee, Economic Assistance
Carol Cartledge, Economic Assistance

MEMO

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Carol Cartledge, Director of Public Assistance

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-01.3, Child Care Assistance Program

DATE: December 24, 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 chapter 75-02-01.3. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. The proposed amendments are to provide updates and clarifications to the rule since last update (April 2014). Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

No anticipated impact on families that receive services under the Child Care Assistance Program (CCAP) or providers.

Probable Impact

No anticipate impact on the regulated community.

Probable Cost of Implementation

The projected costs for DHS associated with the proposed amendments would be newspaper advertisements (\$2500) to inform the community of the N.D.A.C 75-02-01.3 amendment process.

Consideration of Alternative Methods

No alternative methods were considered.

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Carol Cartledge, Director of Economic Assistance

DATE: December 24, 2015

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-01.3.

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. Federal law does not mandate the proposed rules.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The proposed amendments will not alter in any material way any required compliance or reporting requirements of County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements 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 or providers. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

The proposed amendments will not alter in any material way any required compliance or reporting requirements of County Social Service Boards or providers. For this reason, the establishment of less stringent schedules or

deadlines for compliance or reporting requirements for these small entities was not considered.

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

The 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 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 will have no impact on families receiving Child Care Assistance benefits. For this reason, exemption of small entities was not considered.

M E M O R A N D U M

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Carol Cartledge, Director of Economic Assistance

DATE: December 24, 2015

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-01.3.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-01.3. The proposed changes have no anticipated adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

No anticipated adverse economic impact to county social service offices or providers subject to the proposed amended rules.

2. Costs For Compliance

No administrative or other costs are required by the small entities for compliance with the proposed rules.

3. Costs and Benefits

No probable cost or anticipated benefits to private persons or consumers for the proposed rules.

4. Probable Effect on State Revenue

No effects on state revenue expected because of the proposed rules.

5. Alternative Methods

Because small entities will not experience administrative costs or other costs and no probable effect on State Revenue, exploring alternative methods was not necessary.

FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

TAKINGS ASSESSMENT

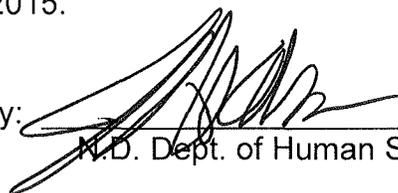
concerning proposed amendment to N.D. Admin. Code chapter 75-02-01.3.

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 24th day of December, 2015.

by:



N.D. Dept. of Human Services

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-03-21, Licensing of Foster)	<u>DEPT. OF HUMAN SERVICES</u>
Homes for Adults)	
(Pages 230-241))	September 13, 2016
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For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code chapter 75-03-21 are not related to statutory changes made by the Legislative Assembly.
2. These rules are necessary to comply with the requirements of the Patient Protection and Affordable Care Act of 2010 and "Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers" final rule.
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 June 16, 2016. The record was held open until 5:00 p.m. on June 27, 2016, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No 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 \$2,187.33.
6. The proposed rules amend chapter 75-03-21. The following specific changes are made:

Section 75-03-21-01. Section 75-03-21-01 is amended to add a definition for "home- and community-based setting experience interview"; to add additional monitoring requirements to the definition of "monitoring"; to add a

definition of “person-centered service plan”; and to add N.D.C.C. chapter 12.1-41 to the definition of “sexual abuse”.

Section 75-03-21-02. Section 75-03-21-02 is amended to correct a citation.

Section 75-03-21-04. Section 75-03-21-04 is amended to ensure the facility is physically accessible for the resident; to ensure privacy in shared bedrooms; to allow the resident a choice of roommate; and to require lockable bedroom and bathroom doors with keys provided to resident and staff with any restrictions to be documented and justified in the person-centered service plan or the service and rental agreement.

Section 75-03-21-05. Section 75-03-21-05 is amended to update the citation to the plumbing code.

Section 75-03-21-09. Section 75-03-21-09 is amended to clarify language and indicate notification should be provided to the county agency, not the department; to add a subsection to assure residents or the resident’s legal representatives the right to manage the resident’s finances; to require notification to the county agency in writing if a provider is requested to serve as the representative payee; to amend the twenty-four hour care requirement to allow for less than twenty-four hour care; and to allow choice of respite care provider by resident or resident’s legal representative.

Section 75-03-21-09.1. Section 75-03-21-09.1 is amended to update the citations for North Dakota Century

Code chapter 12.1-41, uniform act on prevention of and remedies for human trafficking; North Dakota Century Code sections 14-09-22, abuse of child; and 14-09-22.1, neglect of child.

Section 75-03-21-10. Section 75-03-21-10 is amended to clarify language to reflect that substitute caregiver and respite care provider provides resident care on behalf of a facility and that a respite care provider's reimbursement is limited to the funding cap established by the department for each qualifying resident.

Section 75-03-21-11. Section 75-03-21-11 is amended to add a subsection to address residents' rights to access food at any time and meal choices unless otherwise documented and justified in the person-centered service plan or the service and rental agreement.

Section 75-03-21-12. Section 75-03-21-12 is amended to change the title of the section; to clarify language; to include landlord tenant eviction and appeals process requirements, to include resident's right to telephone access, right to furnish and decorate their bedroom, and to address the resident's right to control their own schedules, activities, and right to have visitors; to clarify language regarding resident expectations to include the identification of whether or not a resident requires twenty-four hour supervision; to include resident's right to be free from coercion and restraint; to add a subsection that states any changes to the agreement must be supported by specific assessed need and documented and justified in

the person-centered service plan or the service and rental agreement; and to add subsections that states all agreement modifications must be in writing and signed, furnished to the resident or the resident's legal representative, and kept in the resident's records.

Section 75-03-21-13. Section 75-03-21-13 is amended to clarify language regarding the resident's legal representative; to require the provider to comply with the provider's service and rental agreement and landlord tenant eviction laws; and to reflect the department staff responsible for licensing must be contacted by the county agency prior to the department making the decision to waive the thirty-day requirement.

Section 75-03-21-19. Section 75-03-21-19 is amended to clarify language.

Section 75-03-21-21. Section 75-03-21-21 is amended to correct citations and to reflect additional subsection violations subject to penalties.

Section 75-03-21-23. Section 75-03-21-23 is created to add monitoring requirements.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.

9. The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.
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
September 9, 2016



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Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-03-21
LICENSING OF FOSTER HOMES FOR ADULTS**

The North Dakota Department of Human Services held a public hearing on June 16, 2016, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-03-21, Licensing of Foster Homes for Adults.

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

July 13, 2016

Cc: Michelle Gayette, Aging Services

MEMO

TO: Jon Alm, Director, Legal Advisory Unit
Storm Olson, Legal Advisory Unit

FROM: Michelle Gayette, Aging Services

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-21

DATE: April 28, 2016

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08 and is in reference to North Dakota Administrative Code Article 75-03.21. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of these rules are to:

- 1) 75-03-21-01
 - Adds definition of home and community based setting experience interview.
 - Adds definition of person-centered service plan.
 - Adds wording to definition of monitoring regarding resident rights related to home and community based settings.
 - Adds new century code reference to sexual abuse definition.
- 2) 75-03-21-02
 - Updates a subsection reference.
- 3) 75-03-21-04
 - Current rule does not address need for residents' rights and choice. Clarifies need for privacy in shared rooms and right to choose roommate as well as decorate and furnish.
 - Privacy in bathroom facilities must be assured by having a lockable door.
 - Current rule does not address need for facility to be physically accessible for resident.
 - Adds wording requiring lockable bedroom doors unless otherwise specified in person-centered service plan or service and rental agreement.

- 4) 75-03-21-05
 - Changed citations from chapter 62-03-16 to 62-03.1-03 private sewage disposal systems and from article 62-03 to 62-03.1.
- 5) 75-03-21-09
 - Current rule does not fully address the resident or resident's legal representative's right to manage their own finances. Changes clarify this as well as asking provider to notify county agency in writing if they are to serve as a representative payee for a resident.
 - Clarifies need for twenty-four hour care and if resident can be allowed to be alone, this must be justified in the person-centered service plan or service and rental agreement.
 - Clarifies that resident must have the right to choose their respite care provider.
 - Clarifies use of respite care providers and resident choice of respite care provider.
- 6) 75-03-21-09.1
 - Updates the citations for North Dakota Century Code chapter 12.1-41, uniform act on prevention of and remedies for human trafficking; or North Dakota Century Code sections 14-09-22, abuse of child; and 14-09-22.1 neglect of child.
- 7) 75-03-21-10
 - Changes wording to provides resident care on behalf of a facility and clarifies the funding cap limitation.
- 8) 75-03-21-11
 - Residents are to be allowed access to food at any time and choice of meal. Any restriction must be documented in the person-centered service plan or service and rental agreement.
- 9) 75-03-21-12
 - Changed title to service and rental agreement.
 - Current rule does not include the need for a service and rental agreement meeting landlord tenant law.
 - Current rule does not document resident rights and discuss any restrictions of these rights. Any restriction of resident rights must be documents in the person-centered service plan or rental agreement.
 - Adds wording on need for twenty-four care or appropriate length of time the resident may be safely left alone.
 - Adds need for signatures and copies of the agreement to be sent if agreement is modified after initial signatures.
- 10) 75-03-21-13

- Providers must have a service and rental agreement signed by resident or resident's legal representative. This must meet landlord tenant eviction laws.
 - Changes wording to reflect department staff responsible for licensing must be contacted by the county agency prior to the department making the decision to waive the thirty-day requirement.
- 11) 75-03-21-19
- Changes wording from regional director of the human service center, or the director's to the department or its designee.
- 12) 75-03-21-21
- Changes subsection numbers to reflect changes made in the proposed rules and add subsections.
- 13) 75-03-21-23
- Current rule does not include monitoring requirements.

Classes of Persons Who Will be Affected

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

1. Adult Foster Care providers:
 - The provider will be required to have a service and rental agreement signed by each resident or legal guardian at time of admission.
 - Providers will be required to address any resident restrictions in a person-centered service plan or service agreement.
 - The rule change outlines the manner in which resident funds are handled and requires providers to submit in writing if they are serving as representative payee.
 - Providers will be required to review and make changes to their current house rules to meet rule changes, create a service and rental agreement for their residents, and have the resident and/or resident's legal representative sign.

2. Residents:
 - The resident's privacy will be assured.
 - The resident's right to choice and access to food will be assured. No restrictions can be put in place unless documented in a person-centered service plan or service and rental agreement.
 - The changes will allow resident to feel as if this is their home and they have choices.
 - Facilities will be physically accessible to the resident.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- The resident's rights will be upheld.
- Provider will need to update "house rules" to meet new requirements.
- County workers or developmental disability case managers will be required to complete a monitoring visit including a home and community based setting interview with the resident.

Probable Cost of Implementation

- Probable cost of implementation for DHS is approximately \$2,500 and will include newspaper advertisements and printing updates of the amended section and technical assistance and training to inform the field by the division office staff.
- There are minimal expected costs to providers.

Consideration of Alternative Methods

- The proposed rule changes are the result of new federal regulations for resident's served by state funding. All homes will be required to comply to assure resident rights and choice. The determination was made that the rule changes are vital to the safety and well-being of the resident. Alternative methods were considered and current proposed changes are the consensus of Aging Services, Medical Services and Developmental Disabilities Division representatives.

MEMORANDUM

TO: Jon Alm, Director, Legal Advisory Unit
Storm Olson, Legal Advisory Unit

FROM: Michelle Gayette, Elder Rights Program Administrator

DATE: April 28, 2016

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-03-21.

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 N.D. Admin. Code chapter 75-03-21. The proposed rule does include changes mandated by federal law. N.D.A.C 75-03-21 has language incorporated to meet the requirements of the Patient Protection and Affordable Care Act of 2010 and Medicaid Program and the State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers final rule.

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 affected by the proposed amendments are independent contractors who provide adult foster care.*
- *Proposal will implement new federal requirements for a service and rental agreement that follows landlord tenant law.*
- *Proposal provides clarification on what rights are provided to residents of the facility and how restrictions must be documented.*
- *Proposal will include new language on monitoring of adult foster care.*
- *Proposal clarifies handling of residents' finances.*
- *These proposed amendments will not alter the overall manner in which services are currently being provided, therefore, less stringent compliance or reporting requirements were not considered.*
- *Changes were made in the rule to reflect current language and new definitions were added.*

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

- *These proposed amendments will not affect the overall (day to day) operations of the adult foster care homes or respite care providers. The impact will be upon resident admission and need for rental agreement and resident rights. For this reason, establishment of less stringent schedules or deadlines for compliance was not considered.*

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

- *The proposed amendments will not alter in any material way any required compliance or reporting requirements. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.*

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

- *The proposed rule outlines resident rights and the need for a service and rental agreement meeting landlord tenant laws.*
- *The proposed rule amendment will add stronger language as to the need for resident rights and choice and handling of resident's funds.*
- *The proposed rule amendment for adult foster care providers will require the provider to change their preadmission information to include a rental and service agreement that includes clarification on any restrictions.*
- *The proposed rule will add language for the required monitoring of facilities and resident rights.*

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

- *This proposed amendment would be applicable to all providers of adult foster care and adult foster care respite services. There would be no exceptions to the proposed amendments.*

MEMORANDUM

TO: Jon Alm, Director, Legal Advisory Unit
Storm Olson, Legal Advisory Unit

FROM: Michelle Gayette, Aging Services

DATE: April 28, 2016

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-03-21.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-03-21. The proposed rule does include changes mandated by federal law. N.D.A.C 75-03-21 has language incorporated to meet the requirements of the Patient Protection and Affordable Care Act of 2010 and Medicaid Program and the State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers final rule. The proposed rules should not have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are:

- This proposed amendment would be applicable to all providers of adult foster care and adult foster care respite services.

The following small entities may also be subject to the rule:

- None

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No administrative or other costs are required by the small entities for compliance with the proposed rules.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule:

- There will not be probable cost to private persons or consumers for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule:

- The proposed amendments will clarify the guidelines and documentation needed to provide Adult Foster Care in North Dakota. The proposed amendments will help to ensure quality of care and resident rights of Adult Foster Care homes.
- The proposal provides clarification as to the need for a rental agreement/lease and updated service care planning that outlines residents' rights and need for choice. Provides clarification as to how any restrictions are to be documented.
- The proposal provides language regarding monitoring of facilities and resident rights.

4. Probable Effect on State Revenue

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

- None

5. Alternative Methods

- No alternative methods were identified.

FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

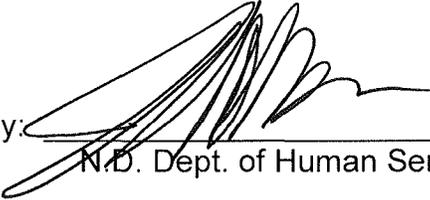
TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-03-21.

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 28th day of April, 2016.

by: 
N.D. Dept. of Human Services