

NOV 02 2017

**Legal Advisory Unit**



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

Doug Burgum, Governor  
Christopher Jones, Executive Director

November 2, 2017

Vonette Richter, Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code Article 75-04  
Developmental Disabilities

Dear Ms. Richter:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to Amend Administrative Rules concerning the above proposed rules as required by N.D.C.C. section 28-32-10. Also enclosed is a copy of the proposed rules.

We have requested publication of an abbreviated newspaper publication notice once in each official county newspaper which will notify the public that an oral hearing on these rules will be held on December 8, 2017, beginning at 10:00 a.m. and continuing until 11:30 a.m. or until no further testimony is offered, whichever occurs first.

If you have any questions or concerns, please contact me at 328-2311. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Alm", is written over a horizontal line.

Jonathan Alm  
Legal Advisory Unit

JA/jgl

cc: Tina Bay, Developmental Disabilities

Enclosures



Doug Burgum, Governor  
Christopher Jones, Executive Director

November 2, 2017

RE: Proposed Amendments to N.D. Admin. Code Article 75-04  
Developmental Disabilities

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code article 75-04, Developmental Disabilities. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on December 18, 2017.

The department has scheduled an oral hearing for December 8, 2017. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jones", is written over the word "Sincerely,".

Christopher Jones,  
Executive Director

CDJ/jgl

Enclosures

cc: Vonette Richter, Legislative Council  
Tina Bay, Developmental Disabilities

NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D.A.C. ARTICLE 75-04,  
DEVELOPMENTAL DISABILITIES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code article 75-04 at 10:00 a.m. on Friday, December 8, 2017, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code article 75-04, are necessary to implement the new payment methodology for developmental disabilities service providers, incorporate necessary language as a result of the 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 and remove the reference of mental retardation to align with national changes.

The proposed changes are as follows:

**Chapter 75-04-01** is amended as a result of the new payment system and the home and community based services rules. The amendments update definitions; update and clarify language and legal citations; update license requirements; change service descriptions; clarify department's ability to deny or revoke a license; remove the department's ability to suspend a license; add language to expand on the disclosure of criminal record; update and clarify language regarding direct bearing offenses to align with other department rules; add language in the area of provisional license; remove the option of a special provisional license; create a provider agreement requirement; update the recording and reporting abuse, neglect, and use of restraint; add language to the applicant guarantees and assurances; update the department's right to enter and inspect; update group home bedroom requirements; and create documentation and data reporting requirements.

**Chapter 75-04-02** is being repealed as necessary language from this chapter was added to 75-04-01 and 75-04-05.

**Chapter 75-04-03** is being repealed as the loan program is no longer available.

**Chapter 75-04-04** is being repealed as the family subsidy program is no longer available.

**Chapter 75-04-05** is amended as a result of the new payment system. The amendments update and created definitions; update and clarify language and legal citations; add language to clarify and establish what each component of the new rate structure includes; update a provider agency's eligibility for payment; update financial reporting requirements and changes to the cost centers section, cost report, and statement of cost requirements; change service descriptions; update and modify audit requirements, including changes to the cost and cost limitations section; update the nonallowable cost section; create an assessment process; update adjustments and provider review procedures; change staff-to-client ratios to remove all services except of intermediate care facility; remove the methodology for determining staff hours; remove profit-motivated entities – return on investment language; update and clarify depreciation; update and clarify interest expense; update and clarify related organization costs, loan information, and rental expense paid to related organization; update personal incidental funds section; update language regarding the transfer, discharge, and expulsion of clients; update the application of this chapter section; and create an indemnification section.

**Chapter 75-04-06** is amended to replace “case” management with “program” management and “mental retardation” with “intellectual disability” and to add a section that describes client appeals rights.

**Chapter 75-04-07** is being repealed as the service will no longer exist under the new payment methodology and all remaining necessary language was added to 75-04-01 and 75-04-05.

The proposed amendments overall are not anticipated to have an impact on the regulated community in excess of \$50,000. The Department was required to create a budget neutral payment system. Some providers may see an increase in financial reimbursement while others may see a reduction in financial reimbursement. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on December 18, 2017.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 2nd day of November, 2017.