

October 25, 2019

Vonette Richter, Legal Division Director
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Creation of N.D. Admin. Code chapter 75-03-42
Authorized Electronic Monitoring

Dear Ms. Richter:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to create 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 10, 2019, beginning at 9:00 a.m. and continuing until 10:30 a.m. or until no further testimony is offered, whichever occurs first.

If you have any questions or concerns, please contact me at 328-3311. Thank you.

Sincerely,



Jonathan Alm
Legal Advisory Unit

JA/rs

cc: Karla Backman, Aging Services
Nancy Nikolas-Maier, Aging Services

Enclosures

LEGAL ADVISORY UNIT

600 E Boulevard Ave Dept 325 | Bismarck ND 58505-0250

701.328.2311 | Fax 701.328.2173 | 800.472.2622 | 711 (TTY) | www.nd.gov/dhs

NOTICE OF INTENT TO CREATE
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-03-42
AUTHORIZED ELECTRONIC MONITORING

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed creation of N.D. Admin. Code chapter 75-03-42 at 9:00 a.m. on Tuesday, December 10, 2019, in Bismarck, N.D. in AV Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed creation of N.D. Admin. Code chapter 75-03-42, Authorized Electronic Monitoring, is necessary to comply with 2019 Senate Bill No. 2113.

The proposed changes are as follows:

Section 75-03-42-01 is created to clarify that definitions used in this chapter are the same as the definitions contained in North Dakota Century Code section 50-10.2-01. The section also defines “roommate”.

Section 75-03-42-02 is created to establish the process to determine whether a resident of a long-term care facility has the capacity to consent to authorized electronic monitoring in their room. The section also permits the resident’s representative to consent to authorized electronic monitoring if the resident does not have capacity.

Section 75-03-42-03 is created to identify the documentation that must be submitted in order to permit authorized electronic monitoring in a resident’s room. Required documentation includes: written notice to the facility of the intent to place an authorized electronic monitoring device; a statement that the facility is not civilly or criminally liable for a violation of any resident’s right to privacy; written consent for placement from the resident’s roommate, if applicable; and an authorization signed by the resident’s roommate that complies with title 45, Code of Federal Regulations, parts 160 and 164 (HIPAA).

Section 75-03-42-04 is created to require a facility to post signage to ensure that residents, staff, and visitors are aware that authorized electronic monitoring is being conducted within the facility.

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Section 75-03-42-05 is created to establish encryption requirements for authorized electronic monitoring devices placed in a resident's room. The section establishes procedures for access to the internet to operate an authorized electronic monitoring device. The section also establishes that no recordings from an authorized electronic monitoring device may be shared or posted on social media.

The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. 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 Friday, December 20, 2019.

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 25th day of October, 2019.

NORTH
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Authorized Electronic Monitoring

TO WHOM IT MAY CONCERN:

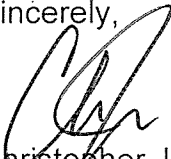
The Department of Human Services is proposing the creation of N.D. Admin. Code chapter 75-03-42, Authorized Electronic Monitoring. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

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 20, 2019.

The department has scheduled an oral hearing for December 10, 2019. 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,



Christopher Jones,
Executive Director

CDJ/rs

Enclosures

cc: Vonette Richter, Legislative Council
Karla Backman, Aging Services
Nancy Nikolas-Maier, Aging Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones