

October 25, 2019

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

RE: Proposed Amendments to N.D. Admin. Code chapters 75-04-01, 75-04-05, and 75-04-06 Licensing of Programs and Services for Individuals with Intellectual Disabilities - Developmental Disabilities, Payment for Provider Agencies of Services to Individuals with Intellectual Disabilities - Developmental Disabilities, and Eligibility for Intellectual Disabilities - Developmental Disabilities Program Management Services

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 Thursday, December 12, 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 328-2311. Thank you.

Sincerely,



Jonathan Alm
Legal Advisory Unit

cc: Tina Bay, Developmental Disabilities

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 AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTERS 75-04-01, 75-04-05, AND 75-04-06
LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH
INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES, PAYMENT FOR
PROVIDER AGENCIES OF SERVICES TO INDIVIDUALS WITH INTELLECTUAL
DISABILITIES - DEVELOPMENTAL DISABILITIES, AND ELIGIBILITY FOR
INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES PROGRAM
MANAGEMENT SERVICES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapters 75-04-01, 75-04-05, and 75-04-06 at 9:00 a.m. on Thursday, December 12, 2019, in Bismarck, N.D. in AV Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapters 75-04-01, 75-04-05 and 75-04-06 - Licensing of Programs and Services for Individuals with Intellectual Disabilities -Developmental Disabilities, Payment for Provider Agencies of Services to Individuals with Intellectual Disabilities - Developmental Disabilities, and Eligibility for Intellectual Disabilities - Developmental Disability Program Management Services, are necessary to comply with guidance issued by Centers for Medicare and Medicaid Services.

The proposed changes are as follows:

Section 75-04-01-01 is amended to remove the definition of “independent habilitation”, and to change the definition of “residential habilitation” to “residential services”, which will now include both independent habilitation and residential habilitation.

Sections 75-04-01-17 is amended to reflect that the definition of “residential habilitation” has been changed to “residential services”, which now may include both independent habilitation and residential habilitation.

Subsection 2 of Section 75-04-01-23 is amended to replace language referring to “residential service facilities” with “group home facilities”.

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Section 75-04-05-01 is amended to remove definitions for “absence factor”, “independent habilitation”, and “residential services”. The definition of “hospital leave day” and “in-house day” were changed to replace a reference to “intermediate care facility or residential habilitation setting” with “intermediate care facility for individuals with intellectual disabilities setting”. A definition is added for “personal assistance retainer”. The definition for “residential habilitation” was renamed “residential services”, and reflects that residential services include independent habilitation and residential habilitation. Changes were made within the definition of “units of service” to change references to “residential services” to “residential habilitation and intermediate care facility for individuals with intellectual disabilities”. The definition of “vacancy factor” was amended to provide that it now means a cost component of the residential habilitation and intermediate care facility for individuals with intellectual disabilities rate intended to cover costs when a client is no longer in the setting, with no intent to return.

Subsection 2 of Section 75-04-05-08 is amended to include “personal assistance retainer” within an identification of type of day that must be included within daily census records. New language is added to provide that a maximum of thirty personal assistance retainer days per client per calendar year may be allowed for payment, and that personal assistance retainer days over that amount are not billable to the medical assistance program.

Section 75-04-05-09 is amended to state that the direct care hourly rate for intermediate care facilities for individuals with disabilities, as well as for residential habilitation, must now include vacancy factor. The section removes language stating that the direct care hourly rate for in home supports and parenting supports must include direct care wage, employment related expenses, program support, and administrative costs. Language is added to permit an intermediate care facility for individuals with intellectual disabilities to use an existing process to determine the maximum authorized assessment score hours for a client. The section removes language which had contained a process for determining a vacancy rate add-on. The section changes references to “residential facilities” with “group homes”. The section changes references to “residential services” to “residential habilitation and intermediate care facility for individuals with intellectual disabilities”.

Section 75-04-05-11 is amended to remove a reference to “residential settings”.

Section 75-04-06-08 is created to outline caseload requirements and other work responsibilities of developmental disabilities program managers.

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 Monday, December 23, 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.

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TO WHOM IT MAY CONCERN:

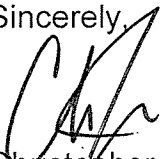
The Department of Human Services is proposing amendments to N.D. Admin. Code chapters 75-04-01, 75-04-05, and 75-04-06. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

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 Monday, December 23, 2019.

The department has scheduled an oral hearing for Thursday, December 12, 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

Enclosures

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

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones