

AUG 06 2019

August 6, 2019

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

RE: Proposed Amendments to N.D. Admin. Code chapter 75-03-23  
Provision of Home and Community-Based Services Under the Service Payments  
for Elderly and Disabled Program and the Medicaid Waiver for the Aged and  
Disabled Program

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 Wednesday, September 11, 2019, beginning at 10:30 a.m. and continuing until 12:00 p.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

JA/jgl

cc: Melanie Phillips, Medical Services  
Krista Fremming, Medical Services  
Nancy Nikolas-Maier, Aging Service

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](http://www.nd.gov/dhs)

NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D.A.C. CHAPTER 75-03-23  
PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE  
SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE  
MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-03-23 at 10:30 a.m. on Wednesday, September 11, 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 chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program, are necessary to comply with an appropriations measure passed during the 2019 legislative session, as directed by 2019 Senate Bill No. 2012, and the requirements of 2019 House Bill No. 1099.

The proposed changes are as follows:

**Section 75-03-23-01** is amended to add a definition for "Sanction".

**Section 75-03-23-05** is amended to clarify, with regard to services covered under the SPED program, that adult foster care is expanded to include a client who would benefit from a shared living environment.

**Section 75-03-23-06** is amended to clarify, with regard to services covered under the Medicaid waiver program, that adult foster care is expanded to include a client who would benefit from a shared living environment. New language provides that the Department may provide residential habilitation and community support services for up to twenty-four hours per day to a client who lives alone or with an adult who is unable to provide care and needs formalized training; and that residential habilitation and community support services may be provided in an agency foster home for adults facility or in a private residence. This section also provides that the Department may provide companionship services up to ten hours per month to clients who live alone and could benefit from services to help reduce social isolation. These changes are based on 2019 House Bill No. 1099 and 2019 Senate Bill No. 2012.

**Section 75-03-23-07** is amended to update direct bearing criminal offenses regarding criminal convictions; clarify sufficient evidence of rehabilitation; permit the Department to consider an offense to be non-

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direct bearing on an individual's ability to become a qualified service provider; and to require qualified service providers of community support services and residential habilitation to provide evidence of competency in generally accepted procedures for certain grooming, feeding, cleaning, and assistance techniques.

**Section 75-03-23-08** is amended to remove the qualified service provider termination provisions. The qualified service provider termination provisions are now located in section 75-03-23-08.1 to help clarify the difference between denials and terminations.

**Section 75-03-23-08.1** is created to provide for sanctions of qualified service providers. Previously existing termination language from section 75-03-23-08 has been placed within this section and new language allowing for sanctions of qualified service providers has been added.

**Section 75-03-23-12** is being amended to reflect that a provider's right to request a review of denial of payment is in accordance with North Dakota Century Code section 50-24.1-24.

**Section 75-03-23-16** is amended to clarify when a qualified service provider or applicant whose qualified service provider status has been terminated or denied may or may not reapply.

The proposed amendments are 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, September 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 6th day of August, 2019.

August 6, 2019

RE: Proposed amendments to N.D. Admin. Code chapter 75-03-23  
Provision of Home and Community-Based Services Under the Service Payments  
for Elderly and Disabled Program and the Medicaid Waiver for the Aged and  
Disabled Program

TO WHOM IT MAY CONCERN:

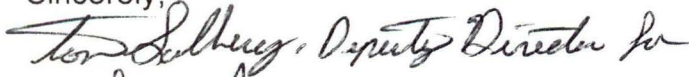
The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-03-23, Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program. The department has adopted procedures to 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, September 23, 2019.

The department has scheduled an oral hearing for Wednesday, September 11, 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/jgl

Enclosures

cc: **Vonette Richter**, Legislative Council  
Melanie Phillips, Medical Services  
Krista Fremming, Medical Services  
Nancy Nikolas-Maier, Aging Services

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