

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 chapter 75-02-02
Medical 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 December 9, 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: Caprice Knapp, Medical Services
LeeAnn Thiel, Medical 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 AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-02-02
MEDICAL 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 chapter 75-02-02 at 9:00 a.m. on Monday, December 9, 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 75-02-02, Medical Services, are necessary to ensure the rules remain accurate and consistent with federal Medicaid regulations and the State Plan and to comply with 2019 House Bill No. 1515 and 2019 Senate Bill No. 2243.

The proposed changes are as follows:

Section 75-02-02-02 is amended to include North Dakota Century Code Chapter 50-29 as a source of authority for promulgating these rules; to include title XXI of the Social Security Act as a source of federal funds that are sought using the rules under this chapter; and to clarify that these regulations are subject to the Medicaid and children's health insurance program state plan.

Subsection 1 of 75-02-02-03 is amended to clarify that the department is the single state agency for administering the Medicaid and children's health insurance program state plan and program.

Section 75-02-02-03.2 is amended to update the definition of behavioral health services to address changes to social work titles that are included within that definition; to remove definitions of "county agency" and "Section 1931 group"; and to update the definition of "recipient" to include a reference to the children's health insurance program.

Section 75-02-02-08 is amended to change multiple references to "medical assistance" to "Medicaid program and children's health insurance program"; to provide a correct citation to North Dakota Century Code Section 50-24.1-15; and to add a reference to "qualified residential treatment program".

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Section 75-02-02-09 is amended to change multiple references to “medical assistance” to “Medicaid program and children’s health insurance program”, and to update level of care criteria for an individual with a traumatic brain injury to provide that a nursing level of care is medically necessary if the individual requires direct supervision at least four hours a day for five days a week.

Section 75-02-02-09.1 is being repealed.

Subsection 2 of section 75-02-02-10 is amended to replace a reference to “medical assistance” with “Medicaid”.

Section 75-02-02-10.2 is amended to be consistent with language in the Medicaid State Plan and reorganizing the section. This includes revising definitions for “American Society of Addiction Medicine I”, “American Society of Addition Medicine II.1”, and “American Society of Addition Medicine II.5”, and includes adding definitions for “American Society of Addition Medicine III.1” and “American Society of Addition Medicine III.5”. The section is also amended to remove language stating that no payment for services for treatment of addiction will be made unless the provider requests authorization from the department within five business days of providing such services and the department approves the request. The section also changes the amount of days per calendar year per recipient for which payment can be made under ASAM. Language is added stating that payment may not be made for ASAM III.1 services, unless the recipient is concurrently receiving ASAM II.1 or II.5 services. Language is added to clarify who qualifies as a “licensed addiction counselor”. Language is added to state that licensed addiction programs operating in a border state must provide documentation to the department of their state’s approval for the operation of the addiction program.

Section 75-02-02-10.2 is amended to reorganize the definitions and remove language stating that no payment for partial hospitalization services may be made unless the provider requests authorization from the department within five business days and department approves the request. The section is also amended to state that department may authorize additional days per calendar year per recipient if determined to be medically necessary.

Section 75-02-02-11 is amended to change a reference from “county agency” to “human service zone”, and to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program”.

Section 75-02-02-13 is amended to change a reference from “medical assistance” to “Medicaid program and children’s health insurance program”.

Section 75-02-02-13.1 is amended to change multiple references from “county agency” to “human service zone”, and to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program” or “Medicaid”.

Section 75-02-02-13.2 is amended to remove “group homes serving children in foster care” from among a list of service providers that may not be compensated as a “transportation service provider”. The section also replaces a reference to “residential childcare facilities” with “qualified residential treatment programs”.

Section 75-02-02-14 is amended to change multiple references from “county” to “human service zone”; to replace a reference from “medical assistance” to “Medicaid”; and to provide new language that the human service zone where the Medicaid Unit is physically present is responsible to assist and applicant applying for or receiving Medicaid or children’s special health program benefits, and that the human service zone where the Medicaid Unit physically resides is responsible for the administration of the program with respect to that unit.

Section 75-02-02-27 is amended to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program”. New language is also added to comply with 2019 Senate Bill Number 2243 regarding prior authorization of a prescribed stimulate medication used in the treatment of attention deficit disorder and attention deficit hyperactivity disorder by an individual who prescribes this medication at a rate a certain percentage higher than other prescribers.

Subsection 2 of Section 75-02-02-28 is amended to replace a reference to “medical assistance” with “Medicaid program and children’s health insurance program”.

Section 75-02-02-29 is amended to place a reference to “medical assistance” with “Medicaid”. The section is also amended to increase the eligibility for federal poverty level for a pregnant woman; a pregnant woman who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under 75-02-02.1-41.1; and a child, not including a child in foster care, less than 19 years of age. The section also adds new language stating that a physician, nurse practitioner, or physician assistant practicing in Adult Health may be selected as a primary care provider.

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 Thursday, December 19, 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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October 25, 2019

RE: Proposed amendments to N.D. Admin. Code chapter 75-02-02
Medical Services

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-02-02, Medical Services. 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 19, 2019.

The department has scheduled an oral hearing for December 9, 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
Caprice Knapp, Medical Services
LeeAnn Thiel, Medical Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones