

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapter 75-02-06, Ratesetting for Nursing Home Care (Pages 227-231)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> March 12, 2008
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code Chapter 75-02-06 arose out of 2007 Senate Bill No. 2012, which required the Department to establish a per bed property cost limitation considering single and double occupancy construction.
2. These rules are not related to any changes in federal statutes or regulations.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of

over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rulemaking. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any change occasioned by the comments.

4. A public hearing on the proposed change was held in Bismarck on October 22, 2007. The record was held open until November 5, 2007, to allow written comments to be submitted. None were received. A summary of comments is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$1946.96.
6. The rules were amended to comply with 2007 Senate Bill No. 2012, relating to the property cost payment mechanism for setting nursing home rates. The following specific change was made:

Section 75-02-06-03(7). Subsection 7 of section 75-02-06-03 is amended to change the per bed property cost limitation used for nursing facility ratesetting. Additionally, a new subdivision has

been added to subsection 7 clarifying that the provisions of subsection 7 may not be applied retroactively to any rate year before January 1, 2008.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were adopted as emergency (interim final) rules under N.D.C.C. section 28-32-03. The statutory ground for declaring the rules to be an emergency is that they are reasonably necessary to avoid a delay in implementing an appropriations measure. A copy of the Governor's approval of the emergency status of the rules is attached.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
March 12, 2008

**SUMMARY OF COMMENTS RECEIVED IN REGARD TO PROPOSED
AMENDMENTS TO N.D. ADMIN. CODE CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE**

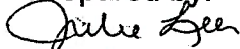
The North Dakota Department of Human Services (the Department) held a public hearing on October 22, 2007, in Bismarck, ND, concerning proposed amendments to N.D. Administrative Code Chapter 75-02-06, Ratesetting for Nursing Home Care. The Department also allowed time for interested persons to submit written comments on these proposed rules. No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

CHAPTER 75-02-06 – RATESETTING FOR NURSING HOME CARE

No comments were received.

Prepared by:

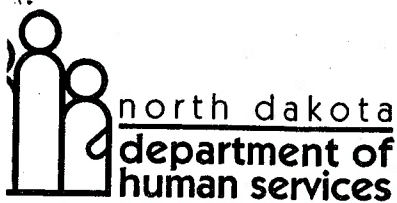


Julie Leer, Director

Legal Advisory Unit

N.D. Dept. of Human Services

November 19, 2007



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n Hoeven, Governor
ol K. Olson, Executive Director

July 25, 2007

To: Julie Leer, Acting Director, Legal Advisory Unit

From: Laura Olson, Administrator, Medicaid Payment and Reimbursement Services *LO*

Subject: Regulatory Analysis to Proposed Amendments to N.D.A.C. 75-02-06, Rate Setting
for Nursing Home Care

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. 28-32-02.1. This analysis pertains to proposed amendments to N.D.A.C. 75-02-06, which are anticipated to have a fiscal impact in excess of \$50,000 for the next year.

Purpose

The amendments establish a per bed property cost limitation considering single and double occupancy construction. For rate years beginning after December 31, 2007, these limitations do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006.

Classes of Persons Who may be Affected

Nursing facility operators and nursing facility residents will be affected by the proposed rule changes since the changes will be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling. These costs are recognized when establishing rates for nursing facilities. The changes will affect the rates paid by each resident in the facility.

Economic Impact

The estimated annual impact of the changes for establishing a per bed property cost limitation is \$619,166 of which \$347,167 will effect private pay individuals and \$271,999 will be borne by the Medicaid program with \$173,399 from federal financial participation.

Probable Cost of Implementation

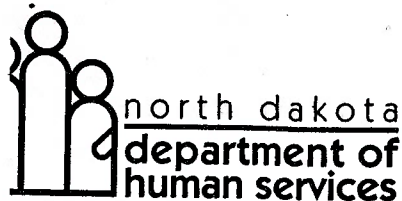
The amendments become part of existing rules on ratesetting and there are no additional costs associated with implementing the rule changes. It is estimated there will be no effect on state revenues.

Consideration of Alternative Methods

No consideration of alternatives was made as the changes are necessary to implement legislation passed by the 60th legislative assembly.

Conclusion

The proposed amendments to the ratesetting principles for nursing facilities will change the establishment of the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling. It will also establish a per bed property cost limitation considering single and double occupancy construction in accordance with legislative intent.




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MEMORANDUM

TO: Julie Leer, Acting Director, Legal Advisory Unit

FROM: Laura Olson, Administrator, Medicaid Payment and Reimbursement Services 

DATE: July 25, 2007

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-06

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapter 75-02-06. The proposed rules are not mandated by federal law.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities effected by the proposed amendments are licensed nursing facilities that are either non-profit organizations or have gross revenues of less than \$2.5 million annually. The proposed amendments effect components of the ratesetting processes for nursing facilities that are applied to costs reported by the entities. Because all costs must be considered when establishing limits used in the rate setting process, nursing facilities, including nursing facilities that are considered to be small entities, must file a uniform annual cost report. 42 CFR 447.253(f) requires that the Medicaid agency provide for the filing of uniform cost reports by each participating provider. The proposed amendments do not alter the uniform cost reporting requirements necessary to establish the rates for all nursing facilities in the state that choose to participate in Medicaid and therefore establishment of less stringent compliance or reporting requirements for these small entities was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter any required schedules or deadlines for the uniform cost reporting requirements and therefore establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter any uniform cost reporting requirements, therefore, consolidation or simplification of compliance or reporting requirements for these small entities was not considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The proposed amendments do not effect any design or operational standards in existence for these small entities, therefore, establishment of new performance standards were not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

The requirements of the proposed amendments are applicable to all nursing facilities that choose to participate in Medicaid and have a rate established for payment of services. Entities choosing not to participate in Medicaid would not be impacted by the proposed amendments.

MEMORANDUM

TO: Julie Leer, Acting Director, Legal Advisory Unit

FROM: Laura Olson, Administrator, Medicaid Payment and Reimbursement Services *LO*

DATE: July 25, 2007

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-06

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-06. The proposed rules are not mandated by federal law. The proposed rules are not anticipated to have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are nursing facilities that have gross annual revenue less than \$2.5 million or are non-profit organizations. 74 of 80 nursing facilities are non-profit organizations and 26 (25 are non-profit) of 80 nursing facilities have estimated annual gross revenues of less than \$2.5 million.

There are no other small entities subject to the proposed amendments.

2. Costs For Compliance

Administrative and other costs required of nursing facilities for compliance with the proposed amendments are expected to be zero. The proposed amendments effect only the rate calculation used to establish the rates payable by individuals in nursing facilities and do not effect compliance requirements.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule is an estimated additional \$347,167. Private pay residents are

subject to rate equalization in nursing facilities participating in Medicaid per NDCC 50-24.4-19, therefore, the increase in rates due to the proposed amendments must also apply to private pay individuals.

We did not determine any probable benefit to private persons and consumers who are affected by the proposed rule because they are subject to rate equalization and the amendments were a direct result of the department's appropriation for nursing facility rates paid by Medicaid. The benefit of the proposed amendments to the small entity nursing facilities is estimated at \$510,000.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be none as the proposed amendments effect state expenditures.

5. Alternative Methods

The Department did not consider whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. The proposed amendments are necessary to implement SB 2012 requiring an establishment of a per bed property cost limitation considering single and double occupancy construction, therefore, the Department does not have the authority to consider any other alternatives.

TAKINGS ASSESSMENT

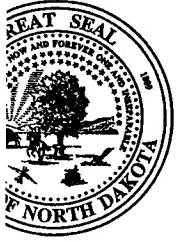
concerning proposed amendments to N.D. Admin. Code chapter 75-02-06.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 25th day of July, 2007.

by: Julie Lee
N.D. Dept. of Human Services



— State of —
North Dakota

Office of the Governor

John Hoeven
Governor

RECEIVED
SEP 6 2007

EXECUTIVE DIRECTOR
ND DEPT. OF HUMAN SERVICES

September 4, 2007

Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

Dear Carol,

On August 30, 2007, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code chapter 75-02-06-03 relating to nursing facility rates for residents.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03 and find that emergency rulemaking is reasonably necessary to avoid a delay in implementing an appropriations measure.

Parties seeking comment on the rules will still be able to present their written and oral comments to the North Dakota Department of Human Services before the rules become final. Furthermore, the interim final rules shall not be effective longer than one hundred eighty days before final rules are adopted.

Sincerely,

A handwritten signature of John Hoeven in black ink.
John Hoeven
Governor