

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

N.D. Admin. Code Chapter)	
75-03-23, Provision of Home and)	
Community Based Services Under)	
the Service Payments for Elderly)	<u>REPORT OF THE</u>
and Disabled Program and the)	<u>DEPT. OF HUMAN SERVICES</u>
Medicaid Waiver for the Aged and)	March 12, 2008
Disabled Program)	
(Pages 264-265))	

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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 75-03-23 arose out of 2007 Senate Bill No. 2012, providing for changes in the reimbursement rate for qualified service providers for individuals receiving Service Payment for the Elderly and Disabled (SPED) funds.
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 rule-making. 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. Comments were received at the public hearing held in Bismarck on November 8, 2007. The record was held open until November 21, 2007, to allow written comments to be submitted. 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 which provided funding for increased reimbursement to qualified service providers for individuals receiving Service Payment for the Elderly and Disabled (SPED) or Medicaid waiver funds. When the Department increased the program and service maximum dollar

amounts payable for individuals receiving SPED or Medicaid waiver funds, some individuals whose service unit requirements (one unit of service equals fifteen minutes) were set before the new rates took effect ended up receiving the monthly program maximum in dollars before they received the maximum hours of needed services. Increasing monthly program maximums to cover these few outlying individuals would require the Department to set those monthly program maximums at artificially high levels. The following specific changes were made:

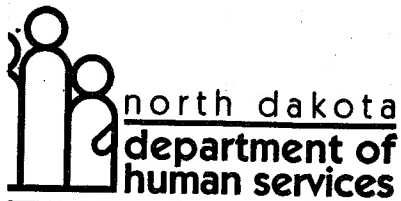
Section 75-03-23-09. This section is amended to allow the Department to allow an individual to exceed the monthly program maximums only to the extent the individual had a higher service maximum prior to the rate change.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not 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



n Hoeven, Governor
ol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED IN REGARD TO PROPOSED
AMENDMENTS TO N.D. ADMIN. CODE CHAPTER 75-03-23
PROVISION OF HOME AND COMMUNITY BASED SERVICES**

The North Dakota Department of Human Services (the Department) held a public hearing on November 8, 2007, in Bismarck, ND, concerning proposed amendments to N.D. Administrative Code Chapter 75-03-23, Provision of Home and Community Based Services. The Department also allowed time for interested persons to submit written comments on these proposed rules. One person attended and provided comments at the public hearing. No written comments were received within the comment period. Commentators were:

1. Kari Kramer, Easter Seals Goodwill, 211 Collins Avenue, Mandan, ND 58554;

SUMMARY OF COMMENTS

CHAPTER 75-03-23, Provision of Home and Community Based Services

Miscellaneous questions:

Question:

What is the length of the appeal process if a customer wants to appeal the number of hours?

Response:

No change made based on this question. The length of the appeal process is not part of the rules being considered and the question was directed to be answered off the record at the conclusion of the hearing.

Question:

If hours have already been extended for three months will the client get an additional three months extension?

Response:

No change made based on this question. The rule change being proposed will allow the clients described to continue to receive their identified service maximums.

N.D. Admin. Code Chapters 75-03-23
Summary of Comments

Question:

Will those customers with decreased hours would get an increase under these changes?

Response:

No change was made based on this comment. The question was deferred to another staff member who indicated that it depended on the reason for the decrease.

Prepared by:



Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

January 28, 2008

c: Kari Kramer, Easter Seals Goodwill

MEMO

TO: Julie Leer, Director, Legal Advisory Unit
FROM: ^{KT} Karen Tescher, Medical Services Division
RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-23 Provision of Home and Community Based Services Under the Service Payments for the Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program
DATE: September 21, 2007

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to a proposed amendment to North Dakota Administrative Code Article 75-03-23. This amendment is not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of the proposed rule is to prevent an adverse impact on individuals who were receiving Service Payments for the Elderly and Disabled (SPED) funds and /or Medicaid Waiver funds prior to July 1, 2007 and whose service units now exceed the program caps as a result of the Qualified Service Provider rate increase. The proposed rule requests approval to exceed the monthly program cap or service maximums past the 3 month limit that is a requirement of North Dakota Administrative Code Article 75-03-23-09 - Payments under the SPED program and Medicaid Waiver program.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

1. SPED and Medicaid Waiver recipients that were receiving services prior to July 1, 2007 and whose service units exceed monthly program caps and / or service maximums because of the Qualified Service Provider rate increase.
2. Qualified Service Providers providing services to the above individuals.

SPED and Medicaid Waiver recipients receiving services prior to July 1, 2007 whose service units exceed the monthly program and / or service maximums and their Qualified Service Providers would benefit from this rule.

Probable Impact

The proposed rule will allow SPED and Medicaid Waiver recipients to continue to receive the same amount of service units as they were receiving prior to the July 1, 2007 Qualified Service Provider rate increase. The proposed rule will allow Qualified Service Providers to continue to provide the same amount of service to SPED and Medicaid Waiver recipients as they were authorized to provide before the July 1, 2007 rate increase.

The economic impact of the proposed rule is \$14,155 for the first year, which includes a mix of Federal, State and County funds. This amount covers the cost of increasing the monthly program cap and /or service caps for 18 recipients.

Probable Cost of Implementation

The estimated increased cost to the SPED and Medicaid waiver programs is \$14,155 for the first year. This amount was based on the need to increase the service cap for five Medicaid Waiver recipients and 13 SPED recipients.

The economic impact of enforcing the proposed rules on the entities that administer the SPED and Medicaid Waiver programs would be minimal, because the individuals who would be affected are already enrolled and receiving SPED and /or Medicaid Waiver services.

Consideration of Alternative Methods

An alternative method that was considered was to require case managers to decrease the number of service units for all SPED and Medicaid Waiver recipients who would have exceeded the cap making them compliant with the current monthly program maximum and / or service maximums.

This method was not implemented because it would have decreased the amount of service that was available to program recipients, thus causing an adverse impact on clients and their Qualified Service Providers.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Karen Tescher, Assistant Director Medical Services

DATE: September 21, 2007

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

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 [new/amendments to] N.D. Admin. Code chapter 75-03-23. 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

Small entities affected by this proposed amendment include small political subdivisions consisting of County Social Service Boards of counties with populations of less than five thousand, small businesses and small organizations enrolled as Qualified Service Providers. The establishment of less stringent compliance or reporting requirements were not considered because all Qualified Service Providers are required to comply with the same service standards set forth in N.D.A.C. 75-03-23-07. Qualified Service Provider standards are applied uniformly to all providers. The proposed rule will not alter in any material way any required compliance or reporting regiment for these small entities.

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

Qualified Service Provider standards are applied uniformly to all providers. The proposed rule will not alter in any material way any schedule or deadline for compliance or reporting requirements for these small entities. For this reason, less stringent schedules or deadlines for compliance or reporting requirements for these small entities were not considered.

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

Qualified Service Provider standards are applied uniformly to all providers. The proposed rule will not alter in any material way any schedule or deadline for compliance or reporting requirements for these small entities. For this reason, neither consolidation nor simplification of compliance or reporting requirements for these small entities was considered.

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

The proposed rule does not impose any design standards or impose any additional operating standards, and will not alter in any material way any required performance standards or operational standards for these small entities. For this reason, establishing new performance standards to replace operational standards was 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 imposed on small entities enrolled as Qualified Service Providers. The proposed rule will not alter in any material way any required compliance or reporting requirement for these small entities. Therefore, an exemption of small entities from all or part of the requirements in the proposed rule was not considered.

M E M O R A N D U M

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Karen Tescher, ^{KT} Assistant Director Medical Services

DATE: September 21, 2007

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-03-23

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 75-03-23. The proposed rules are not mandated by federal law. The proposed rules could have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the [new/proposed amended] rules are:

Small entities affected by this proposed amendment include small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand, small businesses and small organizations enrolled as Qualified Service Providers.

The following small entities may also be subject to the rule: None

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No additional administrative costs will be incurred by County Social Service Boards or small business and organizations enrolled as Qualified Service Providers because of the proposed amendment.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: Because the reimbursement rate has increased the amount that some consumers are required to pay toward the cost of their care may increase.

The probable benefit to private persons and consumers who are affected by the proposed rule: Consumers will benefit from the proposed amendment as it will allow them to continue to receive the same amount of service that they were receiving prior to the July 1, 2007 Qualified Service Provider rate increase.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: The estimated cost of the proposed amendment is expected to cost approximately \$14,155 in the first year which includes a mix of Federal, State and County funds.

5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Those alternatives included: One alternative method that was considered was to require case managers to decrease the number of service units for all SPED and Medicaid Waiver recipients who would have exceeded the cap making them compliant with the current monthly program maximum and / or service maximums.

The alternatives were not selected because: This method was not implemented because it would have decreased the amount of service that was available to program recipients, thus causing an adverse impact on clients and their Qualified Service Providers.

in Hoeven, Governor
rol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-03-23.

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.

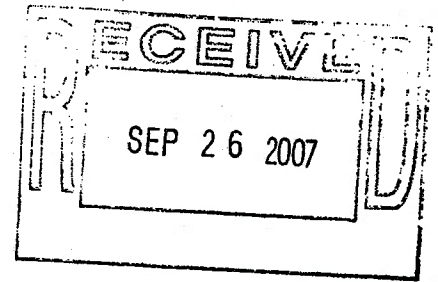
1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does 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 21st day of September, 2007.

by: 
N.D. Dept. of Human Services



— State of —
North Dakota
Office of the Governor
John Hoeven
Governor



September 25, 2007

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

Dear Carol,

On September 24, 2007, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code chapter 75-03-23 relating to the Service Payments for the Elderly and Disabled program.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03(2) and find that emergency rulemaking is necessary to avoid delay in implementing an appropriation measure.

Parties seeking comment on the rules will be able to present their written and oral comments before the rules become final. The rules shall have the status of interim rules and be effective for no longer than one hundred eighty days unless adopted as a final rule.

Sincerely,

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

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