



NORTH DAKOTA HUMAN RESOURCE MANAGEMENT SERVICES

A Division of the Office of Management & Budget

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MEMORANDUM

TO: Administrative Rules Committee

FROM: Laurie Sterioti Hammeren, SPHR, Director

SUBJ: ND Administrative Code Title 4 Regarding OMB-Human Resource Management Services
(pages 1-22 of your manual)

DATE: June 11, 2008

The procedures followed by the Office of Management and Budget, Human Resource Management Services Division in adopting the rules published in the July 1, 2008 supplement to the North Dakota Administrative Code are:

1. Query: Whether the rules resulted from statutory changes made by the Legislative Assembly.

Response: Yes, Chapter 4-07-34.1 is a new chapter to implement two new sections to chapter 54-44.3 of the North Dakota Century Code: 1) Political subdivision may request to be exempted from state merit system and 2) Political subdivision merit system compliance. Chapter 4-07-36, Training and Tuition Reimbursement, was written at the direction of the ND Legislature's Employee Benefits Program Committee. Other administrative rule changes were made to provide uniformity and consistency in the classified service.

2. Query: Whether the rules are related to any federal statute or regulation.

Response: Yes, Chapter 4-07-34.1 Local County Social Service Merit Systems relates to the Federal Standards for a Merit System of Personnel Administration (5 CFR Sections 900.601-605).

Agencies covered by the North Dakota merit system have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis because of the funding for certain programs: Food Stamps; Temporary Assistance for Needy Families (TANF); Employment Security (Unemployment Insurance and Employment Services); Medical Assistance (Medicaid); Aging; Foster Care and Adoption Assistance Programs. **If North Dakota is found to be out of compliance with this federal regulation, the federal funds noted above may be at risk.**

Currently, County Social Service agencies are part of the ND State Merit System. SB 2321 was enacted which allows counties to opt out of the ND State Merit system by establishing (and receiving approval from HRMS and DHS) their own merit system within the county (54-44.3-31 and 54-44.3-32). These Rules provide the procedures for a local County Social Service agency to establish their own Merit System consistent with the Federal Merit Principles.

3. Query: A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Response: The Human Resource Management Services Division of the Office of Management and Budget organized taskforces to review the Division's administrative rules. The original taskforce was established prior to the legislation being implemented and was comprised of Human Resource representatives from State agencies, the Association of Counties, County Social Service Directors, Cass County Commissioners, Department of Human Services, and ND Public Employees Association. The taskforce provided recommendations regarding proposed rules changes and assisted in the development of the merit system opt-out rules. When the Draft Rules regarding Chapter 4-07-34.1 were completed for the first attempt at legislation, they were presented to the East District County Commissioners, the ND County Social Service Director's Association, the SE and SC Social Service Boards, and the NE Devils Lake Regional Social Service Boards. The draft of Chapter 4-07-34.1 was ultimately finalized virtually unchanged from the original taskforce recommendations. It was that final draft that was brought forward to this rule making process.

In addition, another taskforce comprised of HR contacts from state agencies provided input to the other proposed Administrative Rules Changes. Once the Draft of the proposed Administrative Rules was finalized, a notice of intent to adopt and amend administrative rules and conduct a public hearing was filed with the Legislative Council on January 17, 2008. Notifications on the public hearing and availability of proposed rules were publicized in each official county newspaper in the state between January 26, 2008, and February 1, 2008, and mailed to agency HR contacts, agency directors, State Personnel Board, HRMS staff, COSE, NDPEA, APT Inc., County Directors Association Personnel Committee, Association of Counties, Employee Benefits Committee, Cass County Social Services, Dept. of Human Services, sponsors of SB 2321, OMB Director, and the Governor's Office. HRMS also placed notice of intent, copy of the rules, and summary of changes on the HRMS website January 17, 2008. The Legislative Council mailed the notice of intent to persons on their distribution list.

Copies of the proposed rules were available at the public hearing. The proposed rules were provided to the public on request, and could be reviewed on and downloaded from ND Human Resource Management Services' internet web site at www.nd.gov/hrms.

Human Resource Management Services conducted a public hearing in Bismarck at the Capitol February 27, 2008. Four people were in attendance; no one testified regarding the rules. Written comments were received through March 10, 2008.

The Office of Attorney General examined and approved the final version of adopted rules as to their legality. Human Resource Management Services submitted the rules to the State Personnel Board for approval May 12, 2008, and filed the rules with the Legislative Council May 12, 2008.

4. Query: Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.

Response: Six written comments were received regarding the proposed Administrative Rules. These comments are summarized in the attached document labeled "Attachment A."

5. Query: The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

Response: The approximate cost is:

Publishing notices of public hearings	\$1347.96
Printing proposed rules	101.42
Total	\$1449.38

Note: The total amount excludes the cost of staff time applied in drafting, typing, proofreading, and critiquing the proposed rules; participating in the taskforces; participating in the public hearing; and summarizing the comments.

6. Query: An explanation of the subject matter of the rules and the reasons for adopting the rules.

Response: The purpose of the rules is to implement procedures for a local County Social Service agency to establish their own Merit System consistent with the Federal Merit Principles, to make housekeeping changes to clarify language in rules as it pertains to reductions-in-force and time frames for waivers in grievances and appeals, to promote recruitment through reinstatement of leave tenure, to promote retention through service awards, to provide uniformity and consistency in the ND Merit System and Classified service regarding assumption of leave and leave schedules, and to provide rules regarding Training and Tuition Reimbursement as directed by the ND Legislature's Employee Benefits Program Committee.

7. Query: Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether a regulatory analysis was issued.

Response: No regulatory analysis is required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

8. Query: Whether an economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.

Response: No economic impact statement was required for HRMS because none of the proposed HRMS rules will have an adverse economic impact on small entities.

9. Query: Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

Response: No takings assessment for HRMS was required because the HRMS rules do not limit the use of private real property.

10. Query: Whether the rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03.

Response: No.

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**Public Comments Through March 10, 2008, on Proposed Rules Relating to
ND Human Resource Management Services, Article 4-07**

1. Notifications on the public hearing and availability of proposed rules were publicized in 52 official ND newspapers, beginning 1/27/08 and ending 2/1/08, and mailed to agency HR contacts, State Personnel Board members, HRMS staff, OMB Director, and the Governor's Office.
2. The proposed rules were provided to the public on request and made available on ND Human Resource Management Services' website at www.nd.gov/hrms.
3. The public hearing was conducted on February 27, 2008, at the Capitol with four people in attendance. No one testified. Copies of proposed rules were available.

Written Comments:

Attachment 1 – Letter from County Social Service Directors Association signed by President L. J. Bernhardt dated 9-11-07

Attachment 2 – E-mail from Lynn D. Helms, ND Industrial Commission, dated 1-30-08

Attachment 3 – E-mails from Terry O. Traynor, Association of Counties, dated 1-25-08

Attachment 4 – E-mail from Debra A. McDermott, ND Department of Human Services, dated 3-7-08

Attachment 5 – E-mail from Robert P. Evans, HR Director, Department of Transportation, dated 1-17-08

Attachment 6 – Letter from Cass County Board of County Commissioners, dated 2-15-08, signed by Ken Pawluk, Chairman

Legend to Status – Considerations by Human Resource Management Services:

- A – The public comment was considered and the proposed rule was revised or a recommended new rule was adopted in 'acceptance' of the comment or recommendation.
- P – The public comment was considered and the proposed rule was 'partially' revised or a recommended new rule was 'partially' adopted to reflect the comment or recommendation.
- N – The public comment was considered, but the proposed rule was 'not' revised or a recommended new rule was 'not' adopted to reflect the comment or recommendation.

NA – The public comment, such as a question or remark, was not expressed to change a proposed rule or the comment is 'not applicable' due to other action taken on that rule or another rule.

Note: Some public comments have been clarified or paraphrased.

Section	Change	Oral and/or Written Comments	Status/Disposition
Chapter 4-07-05 RECRUITMENT AND SELECTION			
4-07-05-08 Vacancy announcement contents.	<ul style="list-style-type: none"> Adds "Status" categories (full-time or part-time; regular or temporary) to be included on all job announcements. 		
Chapter 4-07-11 REDUCTION-IN-FORCE			
4-07-11-07 Reemployment following a reduction-in-force.	<ul style="list-style-type: none"> Amended to state that "all" conditions must be present if offering a RIF'd employee reemployment. 	<ul style="list-style-type: none"> Attachment 6: Cass County personnel policies include a reduction in force policy drafted by our county and approved through our legal review process. Our policy does not mandate the strict re-employment option that is designated in the proposed amended policy. 	<ul style="list-style-type: none"> N - Attachment 6: Not all Cass County employees are part of the State Merit System. Only the Cass County Social Service employees are required to be part of the State's Merit System because of federal funding of the programs they administer. Cass county could opt-out of the State Merit system and establish their own merit system in accordance with the proposed rules 4-07-34.1. Regardless, this rule change is a housekeeping change to clarify that "all " of the conditions must be present if offering a RIF'd employee reemployment. Cass County

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			<p>social service employees were subject to this provision. The rule has always been interpreted to be "all," but because of occasional questions the rule was written to include the word "all" for clarification purposes. RIF should occur for reasons of lack of work, curtailment of work or lack of funding. Performance issues should have been dealt with prior to a RIF taking place. Therefore, if an agency undergoes a RIF and then within the year reestablishes that position, the RIF'd employee should be reemployed if all of the provisions are met.</p>
<p align="center">Chapter 4-07-12 ANNUAL LEAVE</p>			
<p>4-07-12-04 Annual leave accrual schedule.</p>	<ul style="list-style-type: none"> Changes the existing annual leave earnings schedule from "recommended" to "required." County social service boards would be allowed to submit a different schedule. 	<ul style="list-style-type: none"> Attachment 6: Note that Cass County objected to requiring county social service agencies to follow the annual leave accrual schedule, but the draft they reviewed was not final and was an error. 	<ul style="list-style-type: none"> N - Attachment 6: The proposed rule does not eliminate a local government agency subject to the ND merit system from adopting a different accrual schedule as long as they file a copy of that schedule with HRMS. To date, HRMS has not received any different accrual schedule from

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			any state agency or local government agency. This proposed rule change applies only to state agencies subject to the administrative rules. This rule was proposed to provide uniformity and consistency in the State classified service.
4-07-12-12 Annual leave and reemployment	<ul style="list-style-type: none"> Changes the length of a break in service from "one year" to "three years" in which a former employee may be credited with their previous years of continuous service for the purpose of determining their annual leave accrual rate. 	<ul style="list-style-type: none"> Attachment 1: We, the N.D. County Social Service Directors Association, would ask that you include "counties" in the verbiage of those changes so that whatever process will apply to state agencies will also apply for counties in these sections. Sections: 4-07-12-12, 4-07-12-13, and 4-07-13-12 Attachment 2: The change to 3 years is good. Attachment 5: I am disappointed about your modification of the earlier draft to require employees to be re-employed within 3 years in order to have their service credit restored for annual leave accrual. One of our primary recruitment opportunities for experienced 	<ul style="list-style-type: none"> N - Attachments 1 & 2: This change is being proposed to assist with recruitment efforts to return experienced workers. HR contacts wanted to remove the length of service requirement entirely and simply let returning employees begin where they left for purposes of tenure for leave. County Directors agreed. N - Attachment 5: HRMS believes that allowing three years rather than one is a compromise and does give agencies more of an opportunity to recruit workers and offer another incentive for them to return to government employment. Three years allows more flexibility than one year and yet is not entirely open as some had suggested.

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		<p>employees is with prior employees who left state government for a period of time. It would be great if we could assure them they can come back with the same accrual rate they left with regardless of the time they were gone. I know you would agree that employees' attitudes and expectations have changed and we need to change accordingly. We have been working very hard with you and the Department of Commerce to make ourselves as attractive as possible to former residents who desire to return. This would be one way to sweeten the pie. The cost is minimal. It would not be controversial to existing or future staff. I would hope there is a way to restore your original proposed language.</p> <ul style="list-style-type: none"> • Attachment 6: The following policy on annual leave and re-employment, without the proposed changes, mirrors the policy of Cass County. With the proposed change from one year to three years of 	<p>Recruitment in many agencies is at a critical point. HRMS believes flexibility for agencies is essential.</p> <ul style="list-style-type: none"> • N - Attachment 6: County Social Service Directors requested to have the same flexibility as State Merit Agencies because they also are experiencing recruitment difficulties. Cass County Social Service employees are now subject to different rules than the rest of Cass County employees because it is only the Cass County Social Service employees who are under the State's Merit System Rules. If Cass County chooses to opt-out of the State's Merit System and establish their own as allowed through 4-07-34.1, Cass County could provide uniform benefits to their employees.

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		service, we are now creating further inequities for Cass County employees.	
<p>4-07-12-13 Assumption of accrued annual leave</p>	<ul style="list-style-type: none"> • <u>Requires</u> a state agency that employs an individual from another state agency to accept all or a part of the accrued annual leave hours the employee requests to transfer. • Also <u>requires</u> a state agency covered by the ND merit system that employs an individual from a county social service employee who occupies a position classified by human resource management services, to accept all or a part of the accrued annual leave hours the employee requests to transfer. (Merit system agencies include Human Services, Health, Job Service, Emergency Management, Protection and Advocacy, Human Resource Management Services, and OMB Purchasing Division.) • Also adds <u>permissive language</u> to allow county social service boards to 	<ul style="list-style-type: none"> • Attachment 1: We, the N.D. County Social Service Directors Association, would ask that you include "counties" in the verbiage of those changes so that whatever process will apply to state agencies will also apply for counties in these sections. Sections 4-07-12-12, 4-07-12-13, and 4-07-13-12 • Attachment 2: "Shall accept all or only a part of" seems contradictory because shall usually means no flexibility or discretionary judgment. • Attachment 3: Can you tell me if 4-07-12-13 would require a county social service agency (state system) to accept the accrued leave of a State employee, or does it only apply to the transfer of an HRMS classified employee from another county? • Attachment 3: A county commissioner called and asked me if the "leave rules" (4-07-12 and 4-07-13) would 	<ul style="list-style-type: none"> • N - Attachments 1 & 3: While HRMS would like to be able to provide more uniformity among the classified service as it pertains to county social service employees, HRMS does not have the authority in this instance to require counties to accept leave. Language as it pertains to County Social Service agencies is permissive. This Rule applies to State Merit Agencies and provides uniformity and consistency in the State classified service. HRMS believes that this is a good recruitment tool. If a county social service agency opts to leave the State Merit System as provided in 4-07-34.1, they would establish their own leave policies, and State Administrative Rules other than 4-07-34.1 would not apply to them. • N - Attachment 2: It is typical to accept some annual leave of an employee who is transferring to another state

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	accept all or a part of the accrued annual leave hours the employee from another county social service board or a state agency requests to transfer.	apply to a county that chose to create their own merit system. The question was particularly about the 'transfer in' requirements, but I suspect it would extend to all of the details (specific working hours, leave accrual schedules, etc.) that are not specified in 4-07-34.1 I assumed that they would no longer apply (as it appears to me that -34.1 only requires that the local plan address these issues-not adopt the state standards, but I want to be sure.	agency. County Social Service employees are part of the State Merit System and are therefore classified employees. They have been subject to the same rules regarding leave as other classified workers. HRMS believes this is a good recruitment tool. This Rule provides uniformity and consistency in the State Classified service.
Chapter 4-07-13 SICK LEAVE			
4-07-13-04 Sick leave accrual rate.	<ul style="list-style-type: none"> Changes the existing sick leave earnings schedule from "recommended" to "required" for State agencies subject to the Administrative Rules to provide consistency and uniformity in the classified service. There are no other schedules currently followed by any agency in the classified service. 		
4-07-13-10 Temporary employment.	<ul style="list-style-type: none"> For payroll purposes, "emergency" and 		

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	<p>"temporary" are the same. This is a housekeeping change.</p>		
<p>4-07-13-12 Assumption of accrued sick leave.</p>	<ul style="list-style-type: none"> • <u>Requires</u> a state agency that employs an individual from another state agency to accept all of the accrued sick leave hours. • Also <u>requires</u> a state agency covered by the ND merit system that employs an individual from a county social service employee who occupies a position classified by human resource management services, to accept all the accrued sick leave hours. (Merit system agencies include Human Services, Health, Job Service, Emergency Management, Protection and Advocacy, Human Resource Management Services, and OMB Purchasing Division.) • Also adds <u>permissive language</u> to allow county social service boards to accept all the accrued sick leave hours the employee from another county social service board or a state 	<ul style="list-style-type: none"> • Attachment 1: We, the N.D. County Social Service Directors Association, would ask that you include "counties" in the verbiage of those changes so that whatever process will apply to state agencies will also apply for counties in these sections. Sections:4-07-12-12; 4-07-12-13; and 4-07-13-12 	<ul style="list-style-type: none"> • N - Attachment 1: While HRMS would like to be able to provide more uniformity among the classified service as it pertains to county social service employees, HRMS does not have the authority in this instance to require counties to accept transferred sick leave. Therefore, language as it pertains to County Social Service agencies is permissive. This Rule applies to State Merit Agencies and provides uniformity and consistency in the State classified service. HRMS believes that this is a good recruitment tool. If a county social service agency opts to leave the State Merit System as provided in 4-07-34.1, they would establish their own leave policies, and State Administrative Rules other than 4-07-34.1 would not apply to them. County Social Service employees are part of the State Merit System and are therefore classified

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	agency requests to transfer.		employees. They have been subject to the same rules regarding leave as other classified workers.
Chapter 4-07-18 SERVICE AWARD PROGRAMS			
4-07-18-04 Length of service required to receive award	<ul style="list-style-type: none"> Adds a <u>three-year</u> increment at a value of \$25 as the first award in the program and adds provisions for awards at every five-year increment beyond 50 years. Changes the amounts assigned to the following five-year increments: 5 years-\$50, 10 years-\$100, 15 years-\$150; 25 years-\$250, 30 years-\$300, 35 years-\$350, 40 years-\$400, 45 years-\$450, and 50 years and every five-year increment thereafter-\$500. This is binding on state agencies, not county social service boards. 	<ul style="list-style-type: none"> Attachment 5-DOT suggested an addition of a service recognition award after three years. Key agency HR contacts supported this change. 	<ul style="list-style-type: none"> A - HRMS wrote this rule to respond to DOT's request and because there was consensus among the key agency HR contacts to establish a three year service award to recognize and retain newer workers.
4-07-18-05 Service award types.		<ul style="list-style-type: none"> Attachment 5-DOT suggested the change in service awards to reflect a minimal change in award amounts. Key agency HR contacts supported the change. Attachment 5: I am very pleased that you have included provision to allow for enhanced service award results. 	<ul style="list-style-type: none"> A - DOT suggested change and Attachment 5: HRMS wrote this rule at the request of key agency HR contacts as an effort to strengthen the retention capability of agencies.
Chapter 4-07-20 GRIEVANCE PROCEDURES			
4-07-20-02.1 Waiver of agency grievance procedure.	<ul style="list-style-type: none"> Adds a statement that an additional fifteen working days is not available if an employee's requested waiver is denied. 	<ul style="list-style-type: none"> Attachment 6: The proposed amendments also contain several changes dealing with grievance procedures, appeal processes, and employment 	<ul style="list-style-type: none"> N - Attachment 6: This language was added to clarify the time frames for a grievance in cases of a requested waiver.

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		discrimination. Cass County personnel policies cover the same subject matter with different language. We believe that we fully comply with state and federal law with regard to these policies.	
Chapter 4-07-20.1 APPEALS OF EMPLOYER ACTIONS			
4-07-20.1-05 Waiver of agency grievance procedure.	<ul style="list-style-type: none"> Adds a statement in both sections that an additional fifteen working days is not available if an employee's requested waiver is denied. 	<ul style="list-style-type: none"> Attachment 6: The proposed amendments also contain several changes dealing with grievance procedures, appeal processes, and employment discrimination. Cass County personnel policies cover the same subject matter with different language. We believe that we fully comply with state and federal law with regard to these policies. 	<ul style="list-style-type: none"> N - Attachment 6: This language was added to clarify the time frames for an appeal in cases of a requested waiver.
4-07-20.1-08 Procedure for appeal to human resource management services.			<ul style="list-style-type: none"> N - Attachment 6: This language was added to clarify the time frames for an appeal to HRMS in cases of a requested waiver.
Chapter 4-07-20.2 APPEALS OF DISCRIMINATION			
4-07-20.2-04-1 Procedure for applicant appeals of discrimination in employment to agency appointing authority.	<ul style="list-style-type: none"> This is a <u>new section</u> to clarify an oversight when the rules were originally written. It defines the procedures for an 	<ul style="list-style-type: none"> Attachment 6: The proposed amendments also contain several changes dealing with grievance procedures, appeal 	<ul style="list-style-type: none"> N - Attachment 6: This language was added to establish a procedure for an applicant appeal of

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	applicant to appeal discrimination in employment and requires the applicant to appeal to the agency appointing authority, prior to appealing to HRMS.	processes, and employment discrimination. Cass County personnel policies cover the same subject matter with different language. We believe that we fully comply with state and federal law with regard to these policies.	discrimination to agency appointing authorities. Without this procedure an applicant had to go directly to HRMS without the agency having had an opportunity to review the allegation and to correct any issues. HRMS believes this is a fair, equitable, and cost effective way to handle an initial appeal from an applicant.
4-07-20.2-07 Procedure for appeal to human resource management services.	<ul style="list-style-type: none"> • Adds a statement that an additional fifteen working days is not available if an employee's requested waiver is denied. • Adds specific procedures for applicant appeals of discrimination listed in 4-04-20.2-04.1. 		
Chapter 4-07-28 MERIT SYSTEM EMPLOYMENT STATUS			
4-07-28-02 Definitions.	<ul style="list-style-type: none"> • Regarding probationary status, deleted the 6-month limitation on initial probationary period because some agencies have an initial period of up to one year. • Regarding regular status, clarifies that a probationary period may be six months or 	<ul style="list-style-type: none"> • Attachment 2: Would make more sense if six month were stuck in both parts and the addition to part 5 left out so it would read "...completed a probationary period." • Attachment 6: The regulations seek to define "probationary status" and "regular status." 	<ul style="list-style-type: none"> • N - Attachment 2: HRMS believes that it is important to clarify that the initial probationary period can be longer than six months. Highway patrol, for example, uses a one year probationary period. HRMS and DHS believe that it is important to

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	longer.	We find this contrary to our current system of operation and contrary to legal advice given to our county.	clarify these issues in a location in the Rules that would readily be available to a Merit System employee or manager who is seeking that information. <ul style="list-style-type: none"> • N - Attachment 6: Cass County's comment refers to their "at-Will" status of the county employees who are not subject to the State's merit system. Cass County Social Service employees are not "at-will" but rather are subject to the State's Merit System which requires a "for cause" standard and does require a probationary period.
<p style="text-align: center;">Chapter 4-07-34.1 LOCAL COUNTY SOCIAL SERVICE MERIT SYSTEMS</p>			
4-07-34.1-01 Scope of chapter.	<ul style="list-style-type: none"> • This is a new chapter that implements the provisions of Senate Bill 2321, which allows a county social service board or group of boards to opt-out of the ND merit system, and provides that the Dept. of Human Services and HRMS must approve opt-out plans and audit those counties that choose to opt-out. 		
4-07-34.1-02 Procedures for establishing a local county social service agency merit system.			
4-07-34.1-03 Plan approval.			
4-07-34.1-04 Merit principle requirements.		<ul style="list-style-type: none"> • Attachment 4: Ms. Mc. Dermott, DHS fiscal office, reminds us that "The Food 	<ul style="list-style-type: none"> • N – Attachments 4 & 6: The requirement to have a Merit System of Personnel Administration comes from the
4-07-34.1-05 Oversight and audit procedures.			

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4-07-34.1-06 Non-compliance.		Stamp, Temporary Assistance for Needy Families (TANF), Medical Assistance, Aging, foster Care and Adoption Assistance Programs have a federal statutory requirement for the establishment and maintenance of personnel standards on a merit basis. If North Dakota is found to be out of compliance with this federal regulation the federal funds noted above may be at risk.	Federal government and follows the Federal funds for the programs identified by Ms. Mc. Dermott. While the Merit System Standards have been revised and shortened, the Merit Principles continue to exist. HRMS has had conversation with Mr. Tag Anderson, Assistant Attorney General, regarding these Merit Principles, including the requirement for a "for cause" standard. For practical purposes, without a for cause limitation, HRMS and DHS would not have a real oversight mechanism to assure fairness and impartiality - so without that there would be no oversight. To assure hiring practices, promotions etc. are fair and equitable, unless there is a "for cause" limitation on discipline or dismissal, HRMS and DHS would not be able to monitor or assure a compliance with basic merit principles. The State does need the "for cause" standard to use as a mechanism for oversight. HRMS believes that we could
4-07-34.1-07 Opt-back-in procedures.		<ul style="list-style-type: none"> Attachment 6: Cass County has undertaken a thorough review of the amendments and is very disappointed by the proposed strategies in attempting to create a uniform personnel system in local government. ..Cass County operates under the doctrine of "at will employment" ...Social Service employees became a part of the state merit system under early provisions of the Code of Federal Regulations...there was a specific requirement that provided that permanent employees will not be subject 	

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		<p>to separation except for cause or such reasons as curtailment of work or lack of funds." ...the section now reads "Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected." Based on this change Cass County wishes to challenge the proposed rules and their processes as outlined.</p>	<p>not fulfill our oversight responsibilities without it to assure that the Federal funding for programs is not jeopardized. It has been explained to Cass County that they can opt-out of the State's Merit System, establish their own Merit System, and exempt a "reasonable number," of positions as identified in the Federal Regulations. SB 2321 provided a solution for local government to establish uniformity in their employment practices via the opt-out provision. It was not the intent of the legislation to take away basic protections for government workers. Admin. Rule 4-07-34.1 was developed through the help of a task force which included a Cass County Commissioner, the Cass County Social Service Director, an employee of the Association of Counties, an HR Officer who has served as the State's Merit System Operations manager for many years, and others.</p>

Section	Change	Oral and/or Written Comments	Status/Disposition
Chapter 4-07-36 TRAINING AND TUITION REIMBURSEMENT			
4-07-36-01 Scope of chapter.	<ul style="list-style-type: none"> This is a new chapter that the Employee Benefits Committee requested be added to HRMS' rules. The chapter authorizes state agencies to have policies regarding payment of an employee's training and tuition fees that are job-related. 		
4-07-36-02 Payment of training and tuition.		<ul style="list-style-type: none"> Attachment 2: Would like to see books added to the phrase "including tuition and fees." 	N - Attachment 2: Books were not added to this provision because books are typically kept as property of the student/employee. A partnership and sharing of the cost is sometimes an incentive for the employee to do well. Further discussion about this suggestion with OMB also cautioned about the added cost to the State.

OPT-OUT PROVISIONS

If a County Social Service Board chooses to opt out of the State's Merit System:

- They will not be subject to any of HRMS Administrative Rules except the new chapter 4-07-34.1
- They can establish their own salary ranges
- They can provide uniform benefits
- They can provide uniform policies as long as they comply with the Federal Merit System Standards
- They can exempt a reasonable number of positions from their local merit system-in other words they can determine to exempt their County Director position from the local merit system by including that provision in their opt-out plan if they choose.

The County that opts out would however be required to:

- Write a plan and have it approved by the Department of Human Services and Human Resource Management Services to assure that it complies with the Federal Standards for a Merit System of Personnel Administration so as not to jeopardize the States' federal funding for certain programs.
- All employees could not be "at will"- only a reasonable number of positions may be exempted in accordance with 5 CFR Part 900.603 of the Federal Standards.

Summary of Proposed Amendments to Article 4-07 of the ND Administrative Code

The following is a brief summary by Chapter of the major changes to the rules proposed by Human Resource Management Services (HRMS):

4-07-05-08- provides uniformity in vacancy announcement contents. This rule adds "Status" categories (full- time or part- time and regular or temporary) to be included on all job announcements so applicants know immediately and there is not confusion about the status of the job for which they applied.

4-07-11-07 - is a housekeeping change only which clarifies that **all of** the conditions listed must be present when offering reemployment to an individual who had been reduced in force.

4-07-12-04 – provides that the leave schedule listed is required rather than recommended for use by each state agency in the classified service. Local government agencies subject to the merit system can adopt or use a different schedule by filing that schedule with HRMS. This rule provides uniformity and consistency in the state classified service.

4-07-12-12- Annual leave and reemployment- Changes the length of a break in service from one year to three years in which a former employee may be credited with their previous years of continuous service for the purpose of determining their annual leave accrual rate. (Previously this rule stated one year. The reason for the change was to provide flexibility to recruit workers in a tight labor market) This really was a compromise as some employing units wanted no time limit, others wanted a 5 year limit and one county wanted no change) I surveyed counties and learned that only Ward county had reemployed a person in the last biennium for whom this rule would have applied had it been in place. The Director there told me he wished that the rule had been in place because he views it as a means to help recruit in a time when they are finding it very difficult to recruit.

4-07-12-13 -Assumption of Accrued annual leave provides that State Agencies shall accept all or a part of the AL accrued hours the employee requests to transfer. State agencies covered by the Merit system shall accept all or a part of AL hours of a county social service employee in a position classified by HRMS.

(Merit agencies include DHS, Health, Job Service, Emergency Management, Protection and Advocacy and OMB purchasing and HRMS Divisions .This rule provides uniformity and consistency in the classified and merit system services.)

4-07-13-04- provides that the Sick leave accrual rate of 8 hours per month is required for the state classified service and that local government agencies subject to the ND merit system adopting or using a different accrual schedule must file it with HRMS.

4-07-13-10-Temporary or emergency employment is a housekeeping change as emergency status is now recognized as temporary.

4-07-13-12- Assumption of Accrued sick leave is similar to the annual leave rule- this rule requires state agencies employing individuals from another state agency to accept the employees accrued sick leave, and State Agencies covered by the ND merit system to accept accrued sick leave hours of a county social service employee classified by HRMS. This is also very good recruitment tool.

4-07-18-04-Length of service required to receive award. This rule recognizes employees after three years rather than waiting until 5 years and provides for awards at every five year increment beyond 50 years of service. It also changes the amounts assigned to the five year increments. It is an effort to retain employees that typically turn over rapidly in the first few years. (24% in the first year: 15.9% in the second year and 16.7% in the third year—2006 data)

4-07-20- Waiver of agency grievance procedure-(Grievance Procedures.)

4-07-20.1-05- Waiver of agency grievance procedure-(Appeals of employer actions)

4-07-20-.1-08- Appeal procedure to HRMS

In all three sections the rule provides that an additional fifteen working days is not available if the requested waiver is denied. –This rule clears up any confusion for persons grieving or appealing under those sections.

4-07-20.2-04.1- Is a new section to clarify an oversight when the rules were originally written. It provides a procedure for an applicant to appeal discrimination in employment to the agency first rather than having to take it directly to an appeal body. This change makes the procedures for appeals of discrimination consistent with other appeals of employer actions, and allows the possibility of an earlier resolution of appeals.

4-07-20.2-07- again provides that in instances of appeals of discrimination to HRMS an additional fifteen working days is not available if the requested waiver is denied.

4-07-28-02- Definitions clarifies that a probationary status may be for longer than six months. Currently we do have some agencies like the Highway Patrol that have a one year probationary period.

4-07-34.1- Local county Social Service merit Systems- This is a new chapter that implements the provisions of Senate Bill 2321, which allows a county social service board or group of boards to opt-out of the ND merit system, and provides that the Department of Human services and HRMS must approve opt-out plans and audit those counties that choose to opt-out.

Currently county social service agencies are part of the ND State merit System. Agencies covered by the ND merit system have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis because of the funding for certain programs: Food Stamps; Temporary Assistance for needy Families (TANF); Employment Security (unemployment Insurance and Employment Services); Medical Assistance (Medicaid); Aging; foster Care and Adoption Assistance Programs. If North Dakota is found to be out of compliance with this federal regulation, the federal funds noted above may be at risk.

4-07-36 -Training and Tuition reimbursement- This is a new chapter that the Employee Benefits Committee requested that HRMS add to the rules. It provides that an agency may adopt policies to provide training and educational opportunities to its employees.