

Testimony**Administrative Rules Committee****Wednesday, December 12, 2007****North Dakota Department of Health**

Good morning, Mr. Chairman and members of the Administrative Rules Committee. My name is Kirby Kruger, and I am the state epidemiologist and director of the Division of Disease Control for the North Dakota Department of Health. I am here to provide testimony on the revision of North Dakota Administrative Code 33-06-04-11 related to vaccine administration fees and 33-06-05 related to school and child-care immunization requirements.

1. NDAC 33-06-05 changes resulted from changes to the North Dakota Century Code made by the 2007 legislative session in House Bill 1136 amending NDCC 23-07-17.1. Changes to NDCA 33-06-04 did not result from statutory changes.
2. Neither of these rules is related to a federal statute or regulation.
3. On June 12, 2007, the State Health Council reviewed and approved the proposed changes and granted permission to hold a public hearing. Notice of the hearing was sent to the legislative council and published in North Dakota newspapers during June and July of 2007. The hearing was held on August 1, 2007, in Bismarck. Written comments were accepted until September 2, 2007. The Attorney General's Office approved the rules as to their legality on October 19, 2007. The state Health Council adopted these rules on September 19, 2007.
4. No one presented oral comments at the public hearing. The North Dakota Medical Association provided written comments on NDAC 33-06-05 before the meeting. Many of the comments were incorporated to add clarity. None of the comments changed the intent of the rules.
5. The approximate cost of developing the rules, publishing the public notice, and holding the hearing was about \$1,800.
6. The proposed changes to NDAC 33-06-04 allow for increasing the vaccine administration fee for vaccines obtained at no cost from the Department of Health

to the federal regional fee caps set in 59 Federal Register 50235. The fee cap for vaccines purchased from the North Dakota Department of Health was set at \$17.

The proposed changes to NDAC 33-06-05 add vaccination against pneumococcal disease, hepatitis A and rotovirus to the list of required immunization for child-care attendance. Vaccination against meningococcal disease, tetanus, diphtheria and pertussis (Tdap) and second dose varicella vaccine was added to the list of required immunization for school attendance. Other changes made to NDAC 33-06-05 were to reorganize the rule and provide a clear history of immunization requirements.

7. A written request for a regulatory analysis was not filed by the Governor or by a member of the legislative assembly. The rules are not expected to have an impact on the regulated community in excess of \$50,000.
8. A small entities regulatory analysis was prepared and is attached. A small entity economic impact statement was not prepared since there is no anticipated economic impact to small businesses.
9. A constitutional takings assessment was not prepared.
10. These rules were not adopted as emergency rules under NDCC 28-32-03.

Finally, since initiating the rule-making process in June, some of the language in NDAC 33-06-04-11 has become obsolete. We are asking the committee to make changes, which would be allowed under NDCC 28-32-18.1.

We are proposing a change starting with the word "Administrative" on the sixth line of the code. Initially, we proposed adding the language "Administrative charges by physicians, private or public clinics and hospitals for the administration of any vaccine and biologicals purchased through the state department of health are limited to no more than \$17.00." We propose deleting this last sentence, starting with "Administrative" and ending with "\$17.00."

The reason for this change is that the Department of Health originally was planning to purchase vaccines at the federal contract rate and become a clearinghouse for vaccines in the state. The plan would have reduced the cost of vaccines for providers and ultimately

the cost for insurance companies paying for vaccinations. In September, after receiving vendor bids, it was determined that the Department of Health was not able to purchase vaccines at any lower cost than what private and public health-care providers were able. There was no cost-saving associated with Department purchasing the vaccine. As a result, health-care providers in the state will not be purchasing vaccines from the department, making this language obsolete.