

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

N.D. Admin. Code Chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and the Children's Health Insurance Program (Pages 461-528)))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> December 15, 2010
--	--	---

.....

For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapters 75-02-02.1 and 75-02-02.2 are not related to statutory changes made by the Legislative Assembly.
2. These rules are related to changes in a federal statute or regulation; specifically P.L. No. 111-118 (the Defense Appropriations bill for FY 2010) and the American Recovery and Reinvestment Act of 2009.
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 changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on September 29, 2010. The record was held open until 5:00 p.m. on October 11, 2010, to allow written comments to be submitted. No comments 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 \$2072.72.
6. The proposed rules amend chapter 75-02-01.2. The following specific changes were made:

Section 75-02-02.1-01 is amended to correct a typographical error and to replace obsolete language.

Section 75-02-02.1-04 is amended to clarify the requirements for screening recipients of certain services.

Section 75-02-02.1-17 is amended to clarify the requirements for application for other benefits.

Section 75-02-02.1-18 is amended to eliminate the eight-month time limit for Medicaid coverage for Iraqi and Afghan immigrants as required by P.L. No. 111-118, which was signed December 19, 2009.

Section 75-02-02.1-24 is amended to reflect that transfers between spouses are not limited.

Section 75-02-02.1-24.2 is amended to no longer require an enrollment fee or premiums for Indians who are exempt from cost-sharing under federal law as required by the American Recovery and Reinvestment Act of 2009.

Section 75-02-02.1-24.3 is amended to no longer require an enrollment fee or premiums for Indians who are exempt from cost-sharing under federal law as required by the American Recovery and Reinvestment Act of 2009.

Section 75-02-02.1-28 is amended to clarify the good faith effort to sell requirement for mobile homes and, as required by the American Recovery and Reinvestment Act of 2009, to no longer count certain property and income as assets or income when determining Medicaid eligibility for Indians.

Section 75-02-02.1-31.1 is amended to replace obsolete language.

Section 75-02-02.1-32 is amended to identify the process used to determine the value of mineral interests and to clarify language.

Section 75-02-02.1-33.2 is amended to reflect that transfers between spouses are not limited.

Section 75-02-02.1-37 is amended to no longer count certain property and income as assets or income when determining Medicaid eligibility for Indians as required by the American Recovery and Reinvestment Act of 2009.

Section 75-02-02.1-38.1 is amended to replace obsolete language.

Section 75-02-02.1-38.2 is amended to replace obsolete language, to correct a reference to federal law, and to no longer count certain property and income as assets or income when determining Medicaid eligibility for Indians as required

by the American Recovery and Reinvestment Act of 2009.

Section 75-02-02.1-39 is amended to replace obsolete language.

Section 75-02-02.1-40 is amended to replace obsolete language.

Section 75-02-02.1-41 is amended to replace obsolete language.

Section 75-02-02.2-01 is amended to replace obsolete language.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed 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 not adopted as emergency (interim final) rules.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
December 15, 2010



Legal Advisory Unit

Fax (701) 328-2173
Legal (701) 328-2311
Appeals (701) 328-2311
ND Relay TTY (800) 366-6888

in Hoeven, Governor
rol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-02-02.1 AND 75-02-02.2
ELIGIBILITY FOR MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM**

The North Dakota Department of Human Services (the Department) held a public hearing on Wednesday, September 29, 2010, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and Children's Health Insurance Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, October 11, 2010.

No one attending the public hearing provided comments. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

There will be no change to the proposed amendments as no comments were received.

Prepared by:

A handwritten signature in black ink that reads "Julie Leer". The signature is written in a cursive, flowing style.

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


October 12, 2010

Cc: Curtis Volesky, Medical Services

July 23, 2010

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility Policy 

SUBJECT: Regulatory Analysis for N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

.....

To fulfill the requirements of N.D.C.C. § 28-32-08, the following regulatory analysis of proposed N.D. Administrative Code chapters 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program, are provided. The impacts of the proposed amendments are expected to exceed \$50,000.

Purpose:

The proposed rules remove the coverage time limit for Iraqi and Afghan immigrants so they will remain eligible longer.

The proposed rules allowing unlimited transfers between spouses in spousal impoverishment cases will allow applicants to shelter more assets than the current rules allow, so individuals will qualify for Medicaid earlier, and remain eligible longer.

The disregard of certain assets and income owned by Indians will allow applicants to become eligible earlier without spending down those assets first; they will remain eligible when those assets are received while on assistance; and because certain income is disregarded, that income cannot be applied toward the individual's cost of care.

The proposed rule to eliminate the enrollment fees and premiums for certain Indians who qualify for the Workers with Disabilities and Children with Disabilities coverages will reduce collections from certain recipients so those collections will no longer offset the cost of care.

The proposed rules modified language in the 'Definitions,' 'Screening of recipients of certain services,' 'Application of other benefits,' 'Trusts established by applicants, recipients, or their spouses after August 10, 1993,' 'Valuation of assets,' 'Contractual rights to receive money payments,' 'Post-eligibility treatment of income,' 'Income deductions,' and 'Income levels' sections

to eliminate ambiguity and provide clarification. The changes are made to coincide with regulations and per requests during appeals. These changes are not expected to allow additional individuals, or prevent individuals, from becoming eligible for Medicaid.


Classes of persons affected:

- Iraqi and Afghan immigrants
- Married individuals that need nursing care services
- Indians with certain Tribal related income and assets
- Disabled Indians who qualify for the Workers with Disabilities or Children with Disabilities coverages

Probable Impact:

- This rule change will allow Iraqi and Afghan immigrants to remain eligible longer. Iraqi and Afghan immigrants were previously allowed 8 months of eligibility. Federal law change, however, required that they be allowed the same coverage as other refugees which have no time limit. There is an expected fiscal impact on the Medicaid program; however, any amount is currently unknown as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur.
- The unlimited transfers between spouses in spousal impoverishment cases will allow applicants to qualify for Medicaid earlier, and remain eligible longer, so is expected to have a fiscal impact. Previous policy limited the allowed amount to be up to the community spouse asset allowance. The interpretation the state received from the Centers for Medicare and Medicaid Services is that no limit should be applied. The fiscal impact is not known as it will depend on the number of couples that apply, when they apply, and the amount of additional assets they transfer.
- The disregard of certain assets and income owned by Indians will allow applicants to become eligible earlier, remain eligible longer, and pay less toward the cost of their care. Certain assets and income owned by Indians was previously counted in determining eligibility. Federal law changes now exclude the assets and income. A fiscal impact is expected, but the amount is not known as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur.
- The elimination of enrollment fees and premiums for certain Indians who qualify for the Workers with Disabilities and Children with Disabilities coverages is expected to have a fiscal impact of approximately \$35,000 in this biennium. This change is also required by a change in federal statute.
- The remaining rule changes are for clarification and are not expected to have any fiscal impact.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit
FROM: Curtis Volesky, Director, Medicaid Eligibility 
DATE: July 23, 2010
SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance 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 amendments to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to implement federal law, federal interpretations of the law, and department policies.

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 rule's impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations of fewer than five thousand people. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations of fewer than five thousand people are responsible for locally administered economic assistance programs, including Medicaid and Healthy Steps. N.D.C.C. § 50-01.2-03.2(1)(a). The County Social Service Boards must meet, or assist the North Dakota Department of Human Services in meeting, compliance and reporting requirements imposed by federal and state laws. Those requirements must be uniformly applied throughout the state. The proposed amendments will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For these reasons, 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 amendment will not alter in any material way any required schedules or deadlines for compliance or reporting requirement of County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, the 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 amendment will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, 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 Rule


The County Social Service Boards are responsible for meeting performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards, and will not alter in any material way any required performance standards or operational standards for County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, establishment of new performance standards to replace operational standards were not considered.

5. Exemption of Small Entities from All or Any Part of the Requirements Contained in the Proposed Rule

Because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, the proposed rules do not exempt County Social Service Boards of counties with populations of fewer than five thousand people from all or any part of the requirements contained in the proposed rule.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility 

DATE: July 23, 2010

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

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 a proposed amendment to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to implement federal law changes, federal interpretations, and department policies. 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: The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance programs, including Medicaid. N.D.C.C. § 50-01.2-03.2(1)(a). Medicaid and Healthy Steps policies and practices must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them."

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: The rule changes will slightly change the processing methods, but no additional administrative or other costs will be incurred by County Social Service Boards due to the proposed amendments.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: None.

The probable benefit to private persons and consumers who are affected by the proposed rules: The proposed rules will allow individuals to become eligible earlier because some assets will not be counted or will be transferrable to a spouse; the time limit for coverage of certain immigrants has been removed so they will stay eligible longer; and will lower costs to others as certain income will no longer be counted and enrollment fees and premiums will no longer apply to certain Indians.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be:

One rule change will allow Iraqi and Afghan immigrants to remain eligible longer which is expected to have a fiscal impact on the Medicaid and Healthy Steps programs; however, the fiscal impact is unknown as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur.

The unlimited transfers between spouses in spousal impoverishment cases will allow applicants to qualify for Medicaid earlier, and remain eligible longer, so is expected to have a fiscal impact. The fiscal impact is not known as it will depend on the number of couples that apply, when they apply, and the amount of additional assets they transfer.

The disregard of certain assets and income owned by Indians will allow applicants to become eligible earlier, remain eligible longer, and pay less toward the cost of their care. A fiscal impact is expected, but the amount is not known as there is no data to indicate the number of individuals that will apply, when they'll apply, or what amount of medical costs they will incur.

The elimination of enrollment fees and premiums for certain Indians who qualify for the Workers with Disabilities and Children with Disabilities coverages is expected to have a fiscal impact of approximately \$35,000 in this biennium.

The remaining rule changes are not expected to have any fiscal impact.

5. Alternative Methods

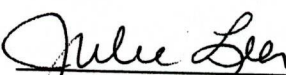
The major changes being made are required by federal law. For all other rule changes where state flexibility was permitted, options were considered and choices made to provide for the most effective policy while being the least intrusive or costly to small entities.

TAKINGS ASSESSMENT
concerning proposed amendment to N.D. Admin. Code
chapters 75-02-02.1 and 75-02-02.2.

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 24th day of August, 2010.

by: 
N.D. Dept. of Human Services