

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

N.D. Admin. Code Section 75-02-10-05, Eligibility Criteria for Aid to Vulnerable Aged, Blind and Disabled Individuals (Pages 380 – 381))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> June 10, 2010
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendment to N.D. Admin. Code chapter 75-02-10 is the result of 2009 House Bill 1012 which included an appropriation for the personal needs allowance for individuals residing in a basic care facility, effective January 1, 2010.
2. The proposed amendments to N.D. Admin. Code chapter 75-02-10 are not related to any federal statute or regulation.
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 February 11, 2010. The record was held open until 5:00 p.m. on February 22, 2010, to allow written comments to be submitted. A summary of the comment received 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 \$1908.00.
6. The rule change is necessary to comply with an appropriations measure passed in 2009 House Bill 1012. The following specific change was made:
Section 75-02-10-05. This section is amended to reflect the increase in the personal needs allowance for individuals in basic care facilities from sixty dollars to eighty-five dollars.
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
June 10, 2010



John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENT TO
N.D. ADMIN. CODE SECTION 75-02-10-05
ELIGIBILITY CRITERIA FOR AID TO VULNERABLE AGED,
BLIND, AND DISABLED INDIVIDUALS**

The North Dakota Department of Human Services (the Department) held a public hearing on February 11, 2010, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code section 75-02-10-05, Eligibility Criteria for Aid to Vulnerable Aged, Blind, and Disabled Individuals.

Written comments on these proposed amendments could be offered through 5:00 p.m. on February 22, 2010.

No one attended or provided comments at the public hearing. One written comment was received within the comment period. The commentor was:

1. Shelly E. Peterson, President, North Dakota Long Term Care Association, 1900 North 11th Street, Bismarck, ND 58501

SUMMARY OF COMMENTS

Comment: This proposed rule recognizes the increase in the personal needs allowance for basic care residents. The increase was effective January 1, 2010 and was based upon the legislative appropriation of \$85.00 per month. We support this rule change as written.

Response: No response required.

There will be no change to the proposed amendment.

Prepared by:

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

February 25, 2010

Cc: Carol Cartledge, Public Assistance

MEMO

TO: Julie Leer, Director, Legal Advisory Unit
FROM: Carol Cartledge, Director of Public Assistance
RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-10.
DATE: December 24, 2009

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed to North Dakota Administrative Code Article 75-09.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of these rules is to amend the Chapter 75-02-10 to be in compliance with 2009 Legislation that changed personal needs allowance for individuals residing in a basic care facility from \$60 a month to \$85 a month with an effective date of January 1, 2010.

Classes of Persons Who Will be Affected

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

1. Individuals residing in basic care facilities and receiving assistance under the Basic Care Assistance Program.

Individuals residing in basic care facilities receiving assistance under the Basic Care Assistance program will be allowed to retain \$85 each month to meet their personal needs with the remainder of their income going towards room and board.

Probable Impact

The rules will not impact the regulated community.

Probable Cost of Implementation

Costs will not be incurred for enforcement of the proposed rules because funding for this change was included in the Departments 2009-2011 biennial budget.

Consideration of Alternative Methods

No other methods of achieving the purpose of the rule that were considered because this is a Legislative mandate.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Carol Cartledge, Director of Public Assistance, Basic Care Assistance Program

DATE: December 24, 2009

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed [New/ Amendments to] N.D. Admin. Code chapter 75-02-10.

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 75-02-10. 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

It is anticipated that small entities will not be affected by the rule change.

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

It is anticipated that small entities will not be affected by the rule change.

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

It is anticipated that small entities will not be affected by the rule change.

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

It is anticipated that small entities will not be affected by the rule change.

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

It is anticipated that small entities will not be affected by the rule change.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Carol Cartledge, Director of Public Assistance, Basic Care Assistance Program

DATE: December 24, 2009

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-10

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 75-02-10. The proposed rules are not mandated by federal law. The proposed rules will not have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities are not subject to the proposed amended rules.

2. Costs For Compliance

Since small entities will not be affected by the amended rule change, there will be no administrative and other costs required for compliance with the proposed rule.

3. Costs and Benefits

NA

4. Probable Effect on State Revenue

NA

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 because the rules will not affect small entities.



John Hoeven, Governor
Carol K. Olson, Executive Director

Legal Advisory Unit

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ND Relay TTY (800) 366-6888

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code section 75-02-10-05.

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.

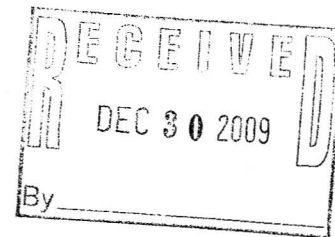
Dated this 28th day of December, 2009.

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



— State of —
North Dakota
Office of the Governor

John Hoeven
Governor



December 29, 2009


Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Ave
Bismarck, ND 58505-0250

Dear Carol,

On December 29, 2009, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code chapter 75-02-10-05 relating to the eligibility criteria for individuals in basic care facilities.

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.

Sincerely,


John Hoeven
Governor

38:34:58

CHAPTER 75-02-10
AID TO VULNERABLE AGED, BLIND, AND DISABLED INDIVIDUALS

75-02-10-05. Eligibility criteria. An individual may receive necessary benefits under this chapter if the individual:

1. Is a resident of this state;
2. Is:
 - a. Sixty-five years of age or older; or
 - b. Eighteen years of age or older and disabled or blind;
3. Has applied for and been found eligible for medicaid benefits;
4. Has countable income which, when reduced by the cost of necessary benefits provided under:
 - a. Subsection 1 or 2 of section 75-02-10-02, does not exceed ~~sixty dollars~~ the personal needs allowance established pursuant to legislative appropriation; or
 - b. Section 75-02-10-02, except subsection 1 or 2, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.], which the individual would receive if the individual had no income or assets;
5. Has not made an assignment or transfer of property for the purpose of rendering the individual eligible for assistance under this chapter; and
6. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and

- a. Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility; or
- b. Is impaired in three of the following four instrumental activities of daily living:
 - (1) Preparing meals;
 - (2) Doing housework;
 - (3) Taking medicine; and
 - (4) Doing laundry.

History: Effective May 1, 1995; amended effective June 1, 2002; January 1, 2010.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5