

**June 11, 2009**  
**Medical Records Services**  
**NDAC 33-07-01.1-20**

Chairman Fischer and members of the committee, my name is Bridget Weidner, Hospital Program Manager for the Division of Health Facilities, North Dakota Department of Health.

I am here to provide information and to describe the procedures followed by the State Department of Health in regard to adoption of the revised rule to North Dakota Administrative Code section 33-07-01.1-20, Medical Records Services, specifically related to the time frames in which telephone and verbal orders need to be signed by a responsible practitioner. You will find these changes on page 62, number (2).

I would like to respond to the specific questions the department was requested to address before the committee:

1. These rules did not result from statutory changes made by the Legislative Assembly.
2. The rule change was related to a change in the federal regulations which resulted in the state requirements being more stringent than the federal. The hospital industry requested the revision to the State requirements to provide more flexibility in implementing the federal regulation.
3. A public notice of intent to amend administrative rules was placed in newspapers throughout the state and a public hearing was held on February 26, 2009. Public comments were accepted until March 13, 2009. The Attorney General approved the proposed rules as to their legality and the State Health Council adopted the rules May 12, 2009.
4. No comments were received opposing the changes. Written comments were received from 4 entities. Several of the comments related to authentication within 30 days after discharge. The department worked closely with the hospital industry and the medical association to address the comments.
5. The cost of the rule-making process is approximately \$1525.
6. Federal regulation requires all verbal orders to be authenticated based upon Federal and State law. If there is no State law that designates a specific timeframe for the authentication of verbal orders, verbal orders must be authenticated within 48 hours. The State requirements did not include a timeframe. These changes to the State requirements now include a time frame for when telephone and verbal orders must be authenticated.
7. A regulatory analysis was prepared and is attached for your review.

8. A regulatory analysis and economic impact statement of impact on small entities was prepared and is attached for your review.
9. At constitutional takings assessment was prepared and is attached for your review.
10. There rules were not adopted as emergency rules.

Thank you for this opportunity to appear before this committee to provide information and to describe the procedures followed by the State Department of Health in regard to adoption of the revised rule to North Dakota Administrative Code section 33-07-01.1-20, Medical Records Services.

I would be happy to address any questions you may have at this time.

Thank you.

## **Small Entity Regulatory Analysis and Economic Impact Statement**

The Department of Health has prepared the following assessment of the small entity regulatory consistent with NDCC Section 28-32-08 and economic impact statement consistent with NDCC Section 28-32-08.1 of the revision to North Dakota Administrative Code Section 33-07-01.1-20, Medical Records Services.

### **SMALL ENTITY REGULATORY ANALYSIS**

**1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?**

The amendments which were proposed by the department were at the request of the hospital industry. The amendment clarifies language related to the timeframe in which verbal and telephone orders must be dated, timed, and signed or initialed by a licensed health care practitioner. There was a change in the federal requirements which resulted in the state requirements being more stringent than the federal requirements. This revision provides hospitals more flexibility in implementing the requirements.

**2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?**

The amendment clarifies language related to the timeframe in which verbal and telephone orders must be dated, timed, and signed or initialed by a licensed health care practitioner. This revision provides hospitals more flexibility in implementing the requirements. No reporting is required to the department related to this regulation.

**3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?**

The process for compliance has been simplified to the extent deemed possible. As indicated in #2 above, there is no reporting required.

**4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?**

The department is revising the requirements at the request of the hospital industry. The amendments benefit the hospitals by providing additional options and flexibility that would not be available to them without these amendments.



**5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?**

The department is revising the requirements at the request of the hospital industry in order to provide hospitals additional options and flexibility that would not be available to them without these amendments. No exemptions are available to licensed hospitals related to this requirement.

**SMALL ENTITY ECONOMIC IMPACT STATEMENT**

**1. Which small entities are subject to the proposed rule?**

Facilities licensed as hospitals in North Dakota are subject to this rule.

**2. What are the administrative and other costs required for compliance with the proposed rule?**

The department is revising the requirements at the request of the hospital industry in order to provide hospitals additional options and flexibility. The department has not identified any administrative and other costs required for compliance.

**3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?**

Facilities licensed as hospitals in North Dakota are subject to this rule. Private persons and consumers are not subject to the proposed rule. Private persons and consumers who are patients at hospitals will be affected by the amendment in the fact that licensed healthcare practitioners in hospitals will need to date, time, and sign or initial all telephone or verbal orders within a prescribed time frame.

**4. What is the probable effect of the proposed rule on state revenues?**

There is no probable effect of the proposed rule on state revenues.

**5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?**

The department is revising the requirements at the request of the hospital industry in order to provide hospitals additional options and flexibility that would not be available to them without these amendments. The proposed rule is neither intrusive nor costly.

## CONSTITUTIONAL TAKINGS ASSESSMENT

The Department of Health has prepared the following constitutional takings assessment as required by NDCC Section 28-32-03 of the implications of the revisions to North Dakota Administrative Code Section 33-07-01.1-20, Medical Records Services.

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

This rule revision does not deny an owner economically viable use of the owner's land and there is no likelihood this revision will result in a taking or a regulatory taking.

- b. Clearly and specifically identify the purpose of the proposed rule.

The purpose of this rule revision is to clarify language related to the timeframe in which verbal and telephone orders must be dated, timed, and signed or initialed by a licensed health care practitioner.

- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goal while reducing the impact on private property owners.

There was a change in the federal requirements which resulted in the state requirements being more stringent than the federal. The industry requested the revision to the regulation to provide them with more flexibility in implementing the requirement.

- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

Not applicable.

- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

Not applicable.

- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Not applicable.