

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

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| N.D. Admin. Code Chapter 75-02-02.1, Level of Care Screening (Page 139) |)))) | <u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> <u>September 14, 2010</u> |
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapter 75-02-02.1 are not related to statutory changes made by the Legislative Assembly.
2. These rules are not related to changes in a 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 June 8, 2010. The record was held open until 5:00 p.m. on June 18, 2010, to allow written comments to be submitted. No comments were received. A summary of the 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 \$2,052.08.
6. The proposed rule amends chapter 75-02-02.1. The following specific changes are made:
 - Section 75-02-02.1-04. Section 75-02-02.1-04 is amended to clarify the screening process to demonstrate medical necessity for nursing care services in nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded.
7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed 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 not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
September 14, 2010



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John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE SECTION 75-02-02.1-04
LEVEL OF CARE DETERMINATION**

The North Dakota Department of Human Services (the Department) held a public hearing on June 8, 2010, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Section 75-02-02.1-04, Level of Care Determination.

Written comments on these proposed amendments could be offered through 5:00 p.m. on June 18, 2010.

No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

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

Prepared by:

A handwritten signature in cursive script that reads "Julie Leer".

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

July 13, 2010

Cc: LeeAnn Thiel, Medical Services

John Hoeven, Governor
Carol K. Olson, Executive Director

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Medical Services

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-02.1

DATE: March 9, 2010

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to a proposed amendment to North Dakota Administrative Code Article 75-02-02.1. This amendment is not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The amendment provides clarifying language concerning the screening process to demonstrate a medical necessity for nursing care services in nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded.

Classes of Persons Who Will be Affected

This section is only applicable to applicants or recipients of medicaid.

Probable Impact

The estimated impact of the change is zero.

Probable Cost of Implementation

The amendment provides clarifying language to existing rules so no cost of implementation is expected.

Consideration of 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 rule. The amendment provides clarifying language as to the department's role in the medical necessity screening process.

John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Medical Services *LT*

DATE: March 9, 2010

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendment to N.D. Admin. Code chapter 75-02-02.1

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 a proposed amendment to N.D. Admin. Code chapter 75-02-02.1. The proposed rule is 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 rule's impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by the proposed amendment are licensed nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded that have gross revenues of less than \$2.5 million annually. The proposed amendment will not alter any required schedules or deadlines for reporting requirements and therefore establishment of less stringent schedules or deadlines for 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 any required schedules or deadlines for the reporting requirements and therefore 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 any reporting requirements, therefore, consolidation or simplification of compliance or reporting requirements for these small entities was not considered.

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

The proposed amendment does not affect any design or operational standards in existence for these small entities, therefore, establishment of new performance standards were not considered.

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

The requirements of the proposed amendment are applicable to all nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded that choose to participate in Medicaid. Entities choosing not to participate in Medicaid would not be impacted by the proposed amendments.



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John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Medical Services

DATE: March 9, 2010

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendment to N.D. Admin. Code chapter 75-02-02.1

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 chapter 75-02-02.1. The proposed rule is not mandated by federal law. The proposed rule is 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 rule are nursing facilities, swing-bed facilities, institutions for mental disease, and intermediate care facilities for the mentally retarded that have gross annual revenue less than \$2.5 million and who participate in the Medicaid program.

There are no other small entities subject to the proposed amendments.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be zero.

3. Costs and Benefits

The probable cost to private persons and consumers is zero as this section is only applicable to applicants or recipients of medicaid.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be none as it only clarifies existing language.

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 rule. The amendment clarifies existing administrative code language.

John Hoeven, Governor
Carol K. Olson, Executive Director


TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code section 75-02-02.1-04.

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 5th day of May, 2010.

by: 
N.D. Dept. of Human Services