

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

N.D. Admin. Code Chapter 75-02-02.2, Children's Health Insurance Program (Pages 186 – 188)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> December 10, 2009
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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 75-02-02.2 are not the result of statutory changes made by the Legislative Assembly.
2. The proposed amendments to N.D. Admin. Code chapter 75-02-02.2 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 September 24, 2009. The record was held open until 5:00 p.m. on October 5, 2009 to allow written comments to be submitted. Written comments were received during the comment period. 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 \$1,906.16.
6. The rules address eligibility for Children's Health Insurance Program. The following specific changes were made:
 - Section 75-02-02.2-02. This section is amended to clarify that coverage under the children's health insurance program ends at the end of the month prior to the first full month in which the child has other creditable health insurance coverage.
 - Section 75-02-02.2-02. This section is amended to clarify that the Medicaid test used to determine eligibility for coverage under the children's health insurance program applies to months in which eligibility is being determined or re-determined.
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 not adopted as emergency (interim final) rules.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
December 10, 2009



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CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

SECTION 1. Section 75-02-02.2-02 is amended as follows:

75-02-02.2-02. Application, redetermination, and eligibility periods.

1. Application.

- a. Any individual who wishes to make application on behalf of a child for coverage must have the opportunity to do so without delay.
- b. An application is a written request for plan coverage to a county agency, the department, a disproportionate share hospital, as defined in section 1923(a)(1)(A) of the Social Security Act [42U.S.C. 1396r-4(a)(1)(A)], or a federally qualified health center, as described in section 1905(l)(2)(B) of the Social Security Act [42 U.S.C. 1396d(l)(2)(B)].
- c. A prescribed application form must be signed by the applicant or appropriate individual on behalf of the child applying for plan coverage.
- d. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who request it.
- e. The date of the application is the date a signed application is received by the department, a county agency, a disproportionate share hospital, or a federally qualified health center. The department, county agency, disproportionate share hospital, or federally qualified health center must document the date an application is received.

2. Redetermination.

- a. The department or county agency must redetermine a recipient's eligibility at least annually.
- b. A recipient or anyone acting on a recipient's behalf has the same responsibility to furnish information during a redetermination of eligibility for coverage as an applicant has during the initial application.
- c. Plan coverage terminates on the last day of the last month of the annual period if a recipient fails to provide sufficient information to redetermine eligibility.

3. Eligibility periods.

- a. Eligibility for the children's health insurance program begins on the first day of the month following the month in which the eligibility determination is made.
- b. The coverage period ends at the earliest of:
 - (1) The end of the twelve-month eligibility period;
 - (2) The end of the month in which the recipient turns age nineteen;

- (3) The end of the month ~~is~~ prior to the first full month for which the recipient has obtained other creditable health insurance coverage;
- (4) The end of the month in which the recipient leaves the household;
- (5) The end of the month in which the recipient loses residency in the state; or
- (6) When the recipient's whereabouts are unknown and mail directed to the recipient is returned by the post office indicating no known forwarding address.

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2010.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

SECTION 2. Section 75-02-02.2-10 is amended as follows:

75-02-02.2-10. Eligibility criteria.

1. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for children who are eighteen years of age will continue through the last day of the month in which the child turns nineteen years of age.
2. A child who has current creditable health insurance coverage or has coverage which is available at no cost, as defined in section 2701(c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.
3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within six months of the date of application unless:
 - a. The health insurance coverage was terminated due to the involuntary loss of employment;
 - b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; or
 - c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area.
4. Except as provided in subsection 6, the public institution provisions of section 75-02-02.1-19 apply to healthy steps applicants and recipients.
5. A child who meets current medicaid eligibility criteria in the month for which plan coverage is determined, is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.
6. A child who resides in an institution for mental disease at the time an eligibility determination is made is not eligible for plan coverage. A child who enters an institution for mental disease while receiving plan coverage may remain eligible for coverage.

7. If the department estimates that available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

8. A social security number must be furnished as a condition of eligibility for each child for whom benefits are sought except for:

- a. A newborn child beginning on the date of birth and for the remaining days of the current eligibility period; and
- b. Children who have applied for, but not yet received, social security numbers.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.



John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM**

The North Dakota Department of Human Services (the Department) held a public hearing on September 24, 2009, in Bismarck, ND, concerning a proposed amendment to N.D. Administrative Code Chapter 75-02-02.2, Children's Health Insurance Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on October 5, 2009.

One individual attended the public hearing. No written comments were received within the comment period. The commentor was:

1. Jean Lengowski, Legal Services of North Dakota, 1025 N 3rd Street, #12, Bismarck, ND 58504.

SUMMARY OF COMMENTS

Comment: Jean Lengowski asked a question unrelated to the proposed amendments.

Response: No response required.

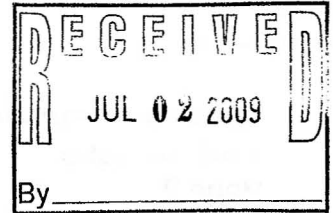
There will be no change to the proposed amendment as no comments were received.

Prepared by:

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

October 7, 2009

Cc: Curtis Volesky, Medical Services



MEMORANDUM

TO: Julie Leer, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility *C.V.*

DATE: June 30, 2009

SUBJECT: Regulatory Analysis for N.D. Admin. Code ch. 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 chapter 75-02-02.2, Children's Health Insurance Program, is provided. The impact of the proposed amendment is not expected to exceed \$50,000.

Purpose:

The proposed rule clarifies that coverage under the State Children's Health Insurance Program (SCHIP), also known as Healthy Steps, ends prior to any month in which the child has other creditable health insurance coverage for the entire month. The previous rule language addressed situations in which creditable health insurance coverage began during the month, but did not clearly address situations in which creditable coverage began at the beginning of the month.

Additionally, the rule currently states that a child cannot be eligible for SCHIP if the child would otherwise be eligible for Medicaid. A child who becomes eligible for SCHIP normally remains eligible for twelve months. The rule language, however, implied that a child would become ineligible in any month in which family income decreased to within the Medicaid levels. A change is being made to clarify that the Medicaid test only applies during months in which SCHIP eligibility is being determined, or re-determined, and does not apply to any month between such determinations.

Classes of persons affected:

- Children under age 19.

Probable Impact:

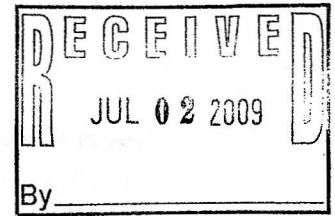
The changes are being made for clarification purposes and to ensure the rule is in compliance with the state plan. No impact is anticipated.

Probable costs:

There are no anticipated fiscal impacts due to these rule changes.

Alternative methods:

There are no applicable alternative methods.



MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility *CV*

DATE: June 30, 2009

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendment to N.D. Admin. Code ch. 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. 75-02-02.2.

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 these proposed amendments 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 SCHIP. 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 amendments 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 SCHIP 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

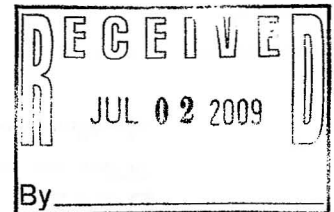
The proposed amendments will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For this reason, and because SCHIP policy must be uniformly applied throughout the state, neither consolidation nor simplification of compliance or reporting requirements 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 SCHIP 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 SCHIP policy must be uniformly applied throughout the state, the proposed rule does 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 rules.



MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility *CV*

DATE: June 30, 2009

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendment to N.D. Admin. Code ch. 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. 75-02-02.2. The proposed rules are not anticipated to have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rule

The small entities subject to the proposed amended rules 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 SCHIP. N.D.C.C. § 50-01.2-03.2(1)(a). SCHIP policies and practices must be uniformly applied throughout the state.

The following small entities may also be subject to the rule: None.

2. Costs For Compliance

Expected administrative and other costs required for compliance with the proposed rules: No additional administrative or other costs will be incurred by County Social Service Boards due to these 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 rule: Children in families will not lose SCHIP eligibility or due to misapplication of the rule. No children are known to have lost benefits due to the language in the rule, but these clarifications remove the potential.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues: None.

5. Alternative Methods

There are no applicable alternative methods.



John Hoeven, Governor
Carol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 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 30th day of June, 2009.

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

