

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

N.D. Admin. Code Chapter 75-02-01.2, Temporary Assistance for Needy Families (Pages 405-460)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> December 15, 2010
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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 75-02-01.2 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 September 21, 2010. The record was held open until 5:00 p.m. on October 1, 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 \$1987.68.
6. The proposed rules amend chapter 75-02-01.2. The following specific changes were made:

Section 75-02-01.2-01 is amended to clarify the language of several definitions and to define child only case, earned right benefit, financially-responsible person, housing costs, and special item of need. Obsolete definitions are being removed.

Section 75-02-01.2-02.1 is amended to remove the word "assistance"; to remove the requirement for participation in the pathways to work program while receiving diversion; and to clarify the rate at which benefits will continue during an appeal of adverse action.

Section 75-02-01.2-02.2 is amended to add a reference to the rules used for background checks and other investigations for TANF kinship care.

Section 75-02-01.2-02.3 is amended to remove the specific titles of each special item of need.

Section 75-02-01.2-10 is amended to remove redundancy within the rules.

Section 75-02-01.2-13 is amended to clarify that a resident of the state at the time of application is an individual living in the state who is not receiving TANF assistance from another state.

Section 75-02-01.2-15 is amended to clarify the exceptions within the section.

Section 75-02-01.2-24 is amended to clarify treatment of recurring unearned income lump sum payments.

Section 75-02-01.2-27 is amended to clarify when a social security number must be provided.

Section 75-02-01.2-28 is amended to reflect federal law requirements on treatment of an alien's sponsor's income and assets in determining eligibility.

Section 75-02-01.2-28.1 is amended to reflect federal law requirements on when qualified aliens may be eligible for benefits and when an alien's sponsor's spouse's income may be considered in determining eligibility.

Section 75-02-01.2-30 is amended to remove an obsolete requirement.

Section 75-02-01.2-31 is amended to clarify that any amount for a special item of need cannot be added to the standard of need, to remove criteria no longer appropriate to use as good cause reasons for a minor parent to not reside with his or her parent.

Section 75-02-01.2-32 is amended to reflect that stepparents must be included in the TANF household.

Section 75-02-01.2-33 is amended to clarify that children in receipt of supplemental security income are not TANF eligible and thus are not referred to child support for TANF purposes.

Section 75-02-01.2-35 is amended to identify the housing allowance as a special item of need.

Section 75-02-01.2-37 is amended to clarify that the parent and spouse of the parent must be included in the TANF household; that a stepparent can receive TANF for a stepchild, when the stepchild's natural or adoptive parent does not reside in the home; and that individuals disqualified from TANF must be considered a member of the household.

Section 75-02-01.2-40 is amended to clarify that assets or income owned jointly with a recipient of supplemental security income are disregarded when determining eligibility for TANF.

Section 75-02-01.2-41 is amended to clarify how an individual remains a resident of North Dakota when the individual is absent from the state for brief periods and to clarify that an individual living out of state must be doing so temporarily.

Section 75-02-01.2-44 is amended to reflect the inclusion of all earned rights benefits, to change the name of programs as changed in federal law, and to clarify when sponsor's income and assets are considered.

Section 75-02-01.2-47 is amended to reflect that nonexcluded income that equals or exceeds the standard of need will result in ineligibility for TANF.

Section 75-02-01.2-51 is amended to reflect the correct period for receipt of the employment incentive disregards after an individual who was employed, loses employment and becomes reemployed; and to delete a penalty for a job quit or refusal of employment without good cause.

Section 75-02-01.2-52 is amended to reflect the penalty for an individual who quits a job or refuses a bona fide offer of employment is a sanction.

Section 75-02-01.2-53 is amended to reflect that individuals who incur child care costs while attending school

or training should have the cost of that care paid through the child care assistance program and to clarify when a deduction for child care may not be made.

Section 75-02-01.2-62 is amended to clarify benefits for which a child who comes home from boarding school for a weekend visit is eligible.

Section 75-02-01.2-63 is amended to clarify that drug and alcohol facilities referenced in this section are treatment facilities.

Section 75-02-01.2-64 is amended to allow essential services to be paid for the special need or condition of a member of the household who is in receipt of supplemental security income and to identify essential services as special items of need.

Section 75-02-01.2-65 is amended to identify catastrophic events and unforeseen circumstances as special items of need.

Section 75-02-01.2-66 is amended to identify a medical insurance premium as a special item of need.

Section 75-02-01.2-67 is amended to identify a child restraint system as a special items of need.

Section 75-02-01.2-68 is amended to identify high school graduate or GED incentive payments as special items of need.

Section 75-02-01.2-68.1 is created to identify the housing allowance as a special item of need.

Section 75-02-01.2-71 is amended to not allow overpayments to be suspended where an individual committed an intentional program violation.

Section 75-02-01.2-72 is amended to reflect changes in federal law relative to the requirement that, to be disqualified for 10 years, an individual must be convicted in federal or state court for fraudulently misrepresenting their residence to receive TANF, Medicaid, supplemental nutrition assistance or

supplemental security income benefits in two or more states simultaneously.

Section 75-02-01.2-73 is amended to identify health tracks reimbursement payments as special items of need.

Section 75-02-01.2-74 is repealed.

Section 75-02-01.2-75 is amended to remove the requirement to complete a social contract.

Section 75-02-01.2-76 is repealed.

Section 75-02-01.2-77 is repealed.

Section 75-02-01.2-79 is amended to add the imposition of a JOBS sanction due to job quit or refusal of an offer of employment and to remove the requirement to impose a sanction for reasons related to the social contract.

Section 75-02-01.2-80 is repealed.

Section 75.02-01.2-81 is repealed.

Section 75-02-01.2-82 is amended to clarify the definition of employment contractor.

Section 75-02-01.2-87 is amended to change the period of exemption from participation in the JOBS Program after the birth of a baby.

Section 75-02-01.2-88 is amended to change the time within which program orientation, initial assessment, and employability planning must be completed.

Section 75-02-01.2-90 is amended to reflect the name change of the supportive services available to individuals after their TANF cases close, and to clarify that assistance with expenses must be necessary for individuals to engage in employment or participate in employment interviews.

Section 75-02-01.2-103 is amended to update the amount

child care must exceed the maximums allowed for good cause to be determined.

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:

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



Legal Advisory Unit

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John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

The North Dakota Department of Human Services (the Department) held a public hearing on September 21, 2010, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-01.2, Temporary Assistance for Needy Families.

Written comments on these proposed amendments could be offered through 5:00 p.m. on October 1, 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 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

October 13, 2010

Cc: Brenda Peterson, Economic Assistance



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John Hoeven, Governor
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MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

RE: Regulatory Analysis of Proposed North Dakota Administrative Code Chapter 75-02-01.2.

DATE: June 4, 2010

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Article 75-09.1. These amendments are anticipated to have no fiscal impact on the regulated community.

Purpose

The purpose of this regulatory analysis 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. 75-02-01.2. Federal law does not mandate the proposed rules.

Classes of Persons Who Will be Affected

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

- Families that receive services under the Temporary Assistance for Needy Families (TANF) program may be affected by some of the rule changes.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- A small number of additional aliens may be eligible and a small number of aliens may be ineligible for TANF benefits due to clarification in Federal Law for aliens who arrived on or after August 22, 1996.
- Many of our TANF families will only have to complete the comprehensive assessment through the JOBS Program and must comply with the requirements of their Employability Plan. They will no longer be required to complete a second assessment with the Eligibility Worker.

- TANF Families will be assessed a different penalty when an individual quits a job or refuses employment. The new penalty is equal to the old penalty. This results in simplification of policy.
- The Benefit amount all TANF Families will be based on a single Standard of Need by changing the Housing Allowance from the Standard of Need to a Special Item of Need. This results in simplification of policy.
- TANF caretakers who have a baby will be required to participate in the JOBS program sooner after the birth of a baby.
- TANF Families will have a better understanding of supportive services available to them after their TANF case closes due to the name change to Post-TANF Supportive Services. This has often been confused with Transition. This results in simplification of policy.
- Many minor wording changes for clarification purposes.

Probable Cost of Implementation

- The number of newly eligible aliens and the number of aliens who will become ineligible should offset any savings and expenditures. Therefore, no costs are anticipated..
- No anticipated costs for implementing the change to no longer require the completion of the assessment and social contract.
- No anticipated costs for implementing the change to the penalty for a job quit or refusal of employment.
- No anticipated increase or decrease in costs for changing the Housing Allowance to a Special Item of Need. The amount of the payment the household will receive will not change.
- No anticipated increase or decrease in costs for reducing the exempt period from four (4) months to two (2) months from participation in the JOBS program for mothers of newborns.
- No anticipated costs due to the minor wording changes for clarification purposes.

Consideration of Alternative Methods

A review of TANF final rules, state laws, and TANF policy, which led to the proposed amendments, was undertaken to determine the best approach to required changes which would result in the North Dakota TANF Program to meet the Federal Work Participate Rate. The review included a discussion of current policy, possible alternatives, and recommendations to the Department. The amendments provide the least impact to TANF families, county social services and fiscally.

n Hoeven, Governor
ol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

DATE: June 4, 2010

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed [New/ Amendments to] N.D. Admin. Code Chapter 75-02-01.2.

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 75-02-01.2. 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

The only small entities affected by these proposed amendments are small political subdivisions consisting of the County Social Service Boards. County Social Service Boards are responsible for locally administering economic assistance programs, including Temporary Assistance for Needy Families. The County Social Service Boards must meet, or assist the North Dakota Department of Human Services to meet, compliance and reporting requirements imposed by federal and state law. 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 any required schedules or deadlines for compliance or reporting requirements of County Social Service Boards. 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

The proposed amendments will not alter any required schedules or deadlines for compliance or reporting requirements of County Social Service Boards. 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

The County Social Service Boards are responsible to meet 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 for County Social Service Boards.

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

The requirements of the proposed amendments are imposed on families receiving Temporary Assistance for Needy Families Benefits. For this reason, the proposed rules do not exempt County Social Service Boards from all or any part of the requirements contained in the proposed rule. It is anticipated that small entities will not be affected by the rule change.

John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Brenda A. Peterson, Lead TANF/JOBS Policy Analyst

DATE: June 4, 2010

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code, Chapter 75-02-01.2 - Temporary Assistance for Needy Families.

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 75-02-01.2 - Temporary Assistance for Needy Families. The proposed rules would not 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 County Social Service Boards.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No administrative or other costs are required by the small entities for compliance with the proposed rules.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: There will not be probable cost to private persons or consumers for the proposed rules.

The probable benefit to private persons and consumers who are affected by the proposed rule: Private persons who are eligible to receive Temporary Assistance for Needy Families will no longer have to complete two (2) assessments upon application.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: No effects on state revenue expected because of the proposed rules.

5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Because small entities will not experience administrative costs or other costs and no probable effect on State Revenue, exploring alternative methods was not necessary.



in Hoeven, Governor
ol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 75-02-01.2.

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 13th day of August, 2010.

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