

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

N.D. Admin. Code Chapter 75-02-09, Ratesetting for Psychiatric Residential Treatment Facilities (Pages 66-92))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> September 12, 2011
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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 75-02-09 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 board directors, 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 rulemaking. 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 16, 2011. The record was held open until 5:00 p.m. on June 27, 2011, 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 \$2,018.40.
 6. The proposed rules amend chapter 75-02-09. The following specific changes were made:
 - Section 75-02-09-01. Section 75-02-09-01 is amended to revise the definition of "adjustment factor", to add definitions for "desk rate", "facility", "fair market value", "in-house day", "leave day", and "private pay resident" and to correct references to psychiatric residential treatment facilities.
 - Section 75-02-09-02. Section 75-02-09-02 is amended to correct references to psychiatric residential treatment facilities and to identify impact of failure to file required cost report information.
 - Section 75-02-09-03. Section 75-02-09-03 is amended to correct references to psychiatric residential treatment facilities.
 - Section 75-02-09-04. Section 75-02-09-04 is amended to correct references to psychiatric residential treatment facilities, to identify the effective date of the desk rate and the final rate, to remove a cost report submitted under chapter 75-03-20 as a basis for establishing a rate for certain facilities, to address aggregate

payments, and to address the use of an adjustment factor.

Section 75-02-09-05. Section 75-02-09-05 is amended to correct references to psychiatric residential treatment facilities, and to clarify resident days and leave days.

Section 75-02-09-06. Section 75-02-09-06 is amended to correct references to psychiatric residential treatment facilities, to clarify administration costs, and to correct a typo.

Section 75-02-09-07. Section 75-02-09-07 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-08. Section 75-02-09-08 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-09. Section 75-02-09-09 is amended to correct references to psychiatric residential treatment facilities and clarify language relating to bona fide purchases.

Section 75-02-09-10. Section 75-02-09-10 is amended to correct references to psychiatric residential treatment facilities and to address treatment of interest expense associated with the original borrowing.

Section 75-02-09-11. Section 75-02-09-11 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-12. Section 75-02-09-12 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-13. Section 75-02-09-13 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-14. Section 75-02-09-14 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-15. Section 75-02-09-15 is amended to correct references to psychiatric residential treatment facilities.

Section 75-02-09-16. Section 75-02-09-16 is amended to correct references to psychiatric residential treatment facilities and to address income that may be offset.

Section 75-02-09-17. Section 75-02-09-17 is amended to correct references to psychiatric residential treatment facilities and to clarify language in the rule.

Section 75-02-09-18. Section 75-02-09-18 is amended to correct references to psychiatric residential treatment facilities and to clarify what must be included in a request for reconsideration by a facility of their final rate and provide a deadline for a facility to submit additional documentation if requested by the department.

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. These rules do not have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
September 12, 2011



Legal Advisory Unit

Fax (701) 328-2173
Legal (701) 328-2311
Appeals (701) 328-2311
ND Relay TTY (800) 366-6888

Jack Dalrymple, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-09
RATESETTING FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES**

The North Dakota Department of Human Services held a public hearing on Thursday, June 16, 2011, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapter 75-02-09, Ratesetting for Psychiatric Residential Treatment Facilities.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, June 27, 2011.

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 12, 2011

Cc: LeeAnn Thiel, Medical Services

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 75-02-09

DATE: October 5, 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 75-02-09. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The amendments clarify language concerning references to and accreditation of psychiatric residential treatment facilities. The amendments also clarify what must be included in a request for reconsideration by a facility of their final rate and provide a deadline for a facility to submit additional documentation if requested by the department.

Classes of Persons Who Will be Affected

These sections are only applicable to applicants or recipients of Medicaid.

Probable Impact

The estimated impact of the change is zero.

Probable Cost of Implementation

The amendments clarify language of 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 amendments clarify existing administrative code language.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

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

DATE: October 5, 2010

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-09

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 75-02-09. 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 rule's impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by the proposed amendments are accredited psychiatric residential treatment facilities that are either non-profit organizations or have gross revenues of less than \$2.5 million annually. The proposed amendments 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 amendments 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 amendments 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 amendments do 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 amendments are applicable to all psychiatric residential treatment facilities that choose to participate in Medicaid. Entities choosing not to participate in Medicaid would not be impacted by the proposed amendments.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

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

DATE: October 5, 2010

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-09

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 75-02-09. The proposed rules are not mandated by federal law. The proposed rules are 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 rules are psychiatric residential treatment facilities that are either non-profit organizations or have gross revenues of less than \$2.5 million annually 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 rules are expected to be zero.

3. Costs and Benefits

The probable cost to private persons and consumers is zero as these sections are only applicable to applicants or recipients of medicaid.

4. Probable Effect on State Revenue

The probable effect of the proposed rules on state revenues is expected to be none as they only clarify 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 rules. The amendments clarify existing administrative code language.

Jack Dalrymple, Governor
Carol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-02-09.

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 October, 2010.

by: 
N.D. Dept. of Human Services