

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

<b>N.D. Admin. Code Chapter</b>	)	<b><u>REPORT OF THE</u></b>
<b>75-03-21, Licensing of Family</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>Foster Homes for Adults</b>	)	<b>September 13, 2012</b>
<b>(Pages 207-229)</b>	)	

.....

For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapter 75-03-21 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 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 March 26, 2012. The record was held open until 5:00 p.m. on April 5, 2012, to allow written comments to be submitted. Comments were received. The "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 \$1,887.34.
  6. The proposed rules amend chapter 75-03-21 to address changes recommended by a group that reviewed the rules, to address changes in practice, and to address obsolete language. The following specific changes were made:
    - Section 75-03-21-01. Section 75-03-21-01 is amended to update definitions for the chapter.
    - Section 75-03-21-02. Section 75-03-21-02 is amended to increase an application fee and to add a relicensing fee which would be used for education and assistance for foster care licensing; and to require a meal plan as a part of licensing documentation.
    - Section 75-03-21-03. Section 75-03-21-03 is amended to identify the limitations of a license and to clarify language.
    - Section 75-03-21-04. Section 75-03-21-04 is amended to prohibit the use of video and audio surveillance equipment in the resident's bedroom and bathroom.

Section 75-03-21-05. Section 75-03-21-05 is amended to update language.

Section 75-03-21-06. Section 75-03-21-06 is amended to update language.

Section 75-03-21-07. Section 75-03-21-07 is amended to clarify required insurance coverage.

Section 75-03-21-08. Section 75-03-21-08 is amended to update language.

Section 75-03-21-08.1. Section 75-03-21-08.1 is amended to update language.

Section 75-03-21-09. Section 75-03-21-09 is amended to prohibit providers from purchasing items from residents without assuring the purchase was at fair market value and to prohibit providers from soliciting property or possessions from the resident or the resident's family. Additional amendments address the designation of a provider as holder of a resident's power of attorney and the accounting required in that situation, as well as specifies the resident cannot be left alone and updates language.

Section 75-03-21-09.1. Section 75-03-21-09.1 is amended to create consistency across programs relative to criminal convictions which have an effect on licensure and operation of a family foster care home for adults.

Section 75-03-21-10. Section 75-03-21-10 is amended to clarify who is a "resident of the facility" and to update language.

Section 75-03-21-11. Section 75-03-21-11 is amended to update language.

Section 75-03-21-12. Section 75-03-21-12 is amended to clarify that proper information about the admission rules to the foster care home be provided to new residents, their families, or both.

Section 75-03-21-13. Section 75-03-21-13 is amended to require foster care providers to inform the county agency of the provider's intent to terminate care of a resident, and to assist the county in transferring a resident to a more appropriate setting.

Section 75-03-21-15. Section 75-03-21-15 is amended to update language.

Section 75-03-21-16. Section 75-03-21-16 is amended to update language.

Section 75-03-21-17. Section 75-03-21-17 is amended to update language.

Section 75-03-21-19. Section 75-03-21-19 is amended to update language.

Section 75-03-21-21. Section 75-03-21-21 is amended to update language.

Section 75-03-21-22. Section 75-03-21-22 is amended to require a provider who assists a resident with the resident's personal finances, to keep a written accounting of transactions.

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 are not expected to 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:

Julie Leer  
Legal Advisory Unit  
North Dakota Department of Human Services  
September 13, 2012

**SUMMARY OF COMMENTS RECEIVED  
REGARDING PROPOSED AMENDMENTS TO  
N.D. ADMIN. CODE CHAPTER 75-03-21  
ADULT FAMILY FOSTER CARE**

The North Dakota Department of Human Services (the Department) held a public hearing on March 26, 2012, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapter 75-03-21, Adult Family Foster Care.

Written comments on these proposed amendments could be offered through 5:00 p.m. on April 5, 2012.

No one attended the public hearing. Three written comments were received within the comment period. The commentors were:

1. Margaret Schadler, Evergreen Manor, 6758 Apple Creek Dr, Bismarck, ND 58504
2. Tiffany and Mark Bauman, PO Box 33, Lidgerwood, ND 58053
3. Gloria Fornes, 5208 7<sup>th</sup> St S, Horace, ND 58047
4. Diana Bales, 615 N 21<sup>st</sup> St, Bismarck, ND 58501

**SUMMARY OF COMMENTS**

**Comment:** Adult foster care homes are not paid the same amount a nursing facility is paid claiming they do not give the same amount of care dollar wise but yet you want them to be called facilities. If you feel adult foster care homes are facilities then they should be on the same pay scale as all other facilities. "Adult foster care homes are a private family home with family values and a family atmosphere that's what attracts families to us not **FACILITIES.**" An e-mail that was received from Senator Tim Mathern agreed the name should have home in it. Why was the name facilities chosen?"

**Response:** North Dakota Century Code section 50-11-00.1(4) defines "facility" to include a family foster home for adults. The current rule uses the terms "home, facility, and family foster home for adults" interchangeably. This change has been made to ensure consistency between the Century Code and the Administrative Code and within the Administrative Code. Providers of adult family foster care are able to select a name for their facilities that may reflect the atmosphere they want to convey. No change is made to the proposed rules based on this comment.

**Comment:** "The issue about changing Adult Family Foster Care Homes to 'Facilities' How impersonal!!! These families love the concept of living in a home instead of a 'Facility'; That would be the advantage of being classified as a 'Facility'?"

**Response:** North Dakota Century Code section 50-11-00.1(4) defines "facility" to include a family foster home for adults. The current rule uses the terms "home, facility, and family foster home for adults" interchangeably. This change has been made to ensure consistency

between the Century Code and the Administrative Code and within the Administrative Code. Providers of adult family foster care are able to select a name for their facilities that may reflect the atmosphere they want to convey. No change is made to the proposed rules based on this comment.

**Comment:** "How is changing AFFC Home to a "facility" going to affect us? For what reason are you making that change? How does that affect our elderly?"

**Response:** The change in terms will have no effect on the elderly. North Dakota Century Code section 50-11-00.1(4) defines "facility" to include a family foster home for adults. The current rule uses the terms "home, facility, and family foster home for adults" interchangeably. This change has been made to ensure consistency between the Century Code and the Administrative Code and within the Administrative Code. Providers of adult family foster care are able to select a name for their facilities that may reflect the atmosphere they want to convey. No change is made to the proposed rules based on this comment.

**Comment:** "We are aware that the adult family foster care name might be changed to 'facility' which we feel does not sound inviting to either our clients or their families and it does not sound like a warm, family environment which we are."

**Response:** North Dakota Century Code section 50-11-00.1(4) defines "facility" to include a family foster home for adults. The current rule uses the terms "home, facility, and family foster home for adults" interchangeably. This change has been made to ensure consistency between the Century Code and the Administrative Code and within the Administrative Code. Providers of adult family foster care are able to select a name for their facilities that may reflect the atmosphere they want to convey. No change is made to the proposed rules based on this comment.

**Comment:** "You want to call us a facility, what does that encompass and what are the ramifications of these changes to us? Who benefits from these changes?"

**Response:** North Dakota Century Code section 50-11-00.1(4) defines "facility" to include a family foster home for adults. The current rule uses the terms "home, facility, and family foster home for adults" interchangeably. This change has been made to ensure consistency between the Century Code and the Administrative Code and within the Administrative Code. Consistency in terminology helps to avoid ambiguities in the rules which makes the application and interpretation of the rules easier and more efficient for all who operate under the rules. Providers of adult family foster care are able to select a name for their facilities that may reflect the atmosphere they want to convey. No change is made to the proposed rules based on this comment.

**Comment:** "We would like to see the points system for public pay clients increased and restructured so we are able to have the resources to keep our adult foster care open and so that other people can open more adult family foster cares in N.D."



**Response:** The points system is used to determine the rates that may be charged. It would require a legislative appropriation to increase the points system. No change is made to the proposed rules based on this comment.

**Comment:** "We would like to see a structured framework of operational procedures for all Regional human service centers to follow so as to encourage their support of adult foster care and that is conducive to building a positive and mutually beneficial relationship between the social workers, clients, and adult family foster care operators."

**Response:** This comment is not related to the changes being proposed. This comment may be considered for a later rulemaking project. No change is made to the proposed rules based on this comment.

**Comment:** "We have been in business for 2 ½ years and have only received 2 referrals from our county social services and we feel this is unfair."

**Response:** As families and the consumer work with county agencies they are all provided with a list of available options to consider. The consumer and his or her family make the final decision on choice of residence. Individuals, families or the general public who inquire about services through the toll-free number are also given information on all available resources based on their individual inquiries and expressed needs. No change is made to the proposed rules based on this comment.

**Comment:** "It appears that you and your focus group have been working on these rules changes since December 2009 (2 years and 3 months) unbeknown to us, and you are giving us Adult Family Foster Care providers 3 days to respond...Why is this? In checking with a couple other AFFC Homes, they did not even receive the letter. They are licensed also, so why would they not be on your list?"

**Response:** The notice of public hearing and proposed changes were placed on the Legislative Council website on March 26 and were published in each county newspaper one time between February 28 and March 5. Upon hearing that providers were concerned about the lack of response time, the Department extended the response time by 30 days to allow providers ample opportunity to provide input on the proposed rules. Letters were sent to further notify providers of proposed changes and to make them aware of the extended response time. No change is made to the proposed rules based on this comment.

**Comment:** "It's puzzling to me that people on a focus group can go ahead and make changes when we have been told they have to be presented to our Legislators. I have asked our Legislators for consideration for a new assessment sheet and for consideration to an increase in our pay scale. I have also asked our Human Resources division in Bismarck for these items. Please tell me what the proper procedure is!"



**Response:** Some changes require action by the Legislative Assembly, some changes agencies are allowed to make through the rulemaking process. Even changes that are made by an agency adopting or amending rules are subject to review by members of the Legislative Assembly. The Administrative Rules Committee will review the proposed changes for this set of rules at its meeting in September.

**Comment:** "Why were we not given ample time to respond to the licensing document. According to the letter I received March 30, 2012 a focus group convened in December 2009, January 2010, February 2010 and March 2010 to review the existing rules, address changes in practice and revise obsolete language. It is now 2012. Why did it take two years before we received a letter of changes and then giving us only 5 days to respond to that letter?"

**Response:** The notice of public hearing and proposed changes were placed on the Legislative Council website on March 26 and were published in each county newspaper one time between February 28 and March 5. Upon hearing that providers were concerned about the lack of response time, the Department extended the response time by 30 days to allow providers ample opportunity to provide input on the proposed rules. Letters were sent to further notify providers of proposed changes and to make them aware of the extended response time. No change is made to the proposed rules based on this comment.

**Comment:** "We were unaware that there was a focus group working on the rule changes since December 2009 and we would like to be able to be a part of these focus groups because we would like our concerns and suggestions to be brought to your attention."

**Response:** We will be reviewing the membership of the group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rulemaking process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "Why would you have a focus group working on AFFC Home issues without having someone from an AFFC home represented?? These are rules and issues that affect us."

**Response:** There was no intention to exclude anyone from participation in the focus group. We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rule making process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "Why wasn't someone from our Adult Family Foster Care Homes on the focus group? Wouldn't we be representing Elder rights?"

**Response:** We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rule making process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "Who is the advocate for Adult Family Foster Care Homes?"

**Response:** It is uncertain what this commenter means by "advocate". Even with this uncertainty, the identification of an "advocate" is not included in these rules. As a result, no change is made to the proposed rules based on this comment.

**Comment:** "Why were we the foster families included in these changes since they directly affect us?"

**Response:** We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rule making process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "Why weren't we included in the focus group?"

**Response:** We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rule making process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "Why has it taken 2 years for us to hear about this? Were we left out for a reason, if so, what was that reason?"

**Response:** There was no intention to exclude anyone from participation in the rulemaking process. We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rulemaking process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "If these changes go into effect are we going to have to abide by the same rules as a group home with rotating staff? The same fire code? The same inspection standards? The same compensation as a group home?"

**Response:** Administrative Code chapter 75-03-21 identifies the rules each adult family foster care facility will follow. Administrative Code chapter 75-04-01 identifies the rules governing licensing of services and programs provided to individuals with developmental disabilities. It does not appear any changes are being suggested or requested by this comment; no change is made to the proposed rules based on this comment.

**Comment:** "Why is there not a CEO from an adult foster care home setting on this licensing rules committee when it effects adult foster care homes in such a big way?"

**Response:** There was no intention to exclude anyone from participation in the rulemaking process. The membership of the group that reviewed the rules included county case managers, county social services staff who work with facilities, and regional representatives from across the state. We will be reviewing the membership of the focus group prior to convening to discuss future revisions. It is the goal of the Department to have rules that are reasonable and practical for our providers. The administrative rule making process allows providers to submit comments on the proposed rules. The Department reviews and considers each timely comment it receives. No change is made to the proposed rules based on this comment.

**Comment:** "I am referring to: charging \$25.00 licensing renewal fee. That has always been done. That is NOT new. If you are going to use the money to train the County Agency Licensing Staff, I am all in favor of that. I have also asked for training, and been told that I am a private contractor and need to read my manual. I have had several issues I am not able to locate in the manual and think it would be wonderful to have a department that we could work with. I think that would be a win-win for the elderly and everyone else."

**Response:** The fee for an initial license will be increased to \$50.00. There has not been an increase in this fee since 1994. The \$25.00 fee is not a change, but it is now required to be submitted with the renewal application before the application will be processed. The suggestion regarding the manual may be taken into consideration. No change is made to the proposed rules based on this comment.

**Comment:** "#4.3 begins with 'Applicant' Where is that sentence going? What is the end of it???"

**Response:** This section of the rule change referenced in this comment reads as follows: "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide foster care for adults.

The changes being made to the definition are in acknowledgement of an existing definition of care that means "foster care for adults...".

**Comment:** "My suggestion and goal is 'WORKING TOGETHER'. If we would, and show respect for AFFC Homes, it would be a win win for our elderly. At this time the elderly and

their families ARE NOT GIVEN THE CHOICE of choosing an AFFC Home. I have been in business for 4 going on 5 years and have only received 2 referrals from my county agency. I know their placement is more than that."

**Response:** As families and the consumer work with county agencies they are all provided with a list of available options to consider. The consumer and his or her family make the final decision on choice of residence. Individuals, families or the general public who inquire about services through the toll-free number are also given information on all available resources based on their individual inquiries and expressed needs. No change is made to the proposed rules based on this comment.

**Comment:** "Until all of these questions are answered and all foster families are notified of the possible changes and ramifications this proposed section 75-03-21-01 should be tabled, until all parties have been heard from and had input."

**Response:** The notice of public hearing and proposed changes were placed on the Legislative Council website on March 26 and were published in each county newspaper one time between February 28 and March 5. Upon hearing that providers were concerned about the lack of response time, the Department extended the response time by 30 days to allow providers ample opportunity to provide input on the proposed rules. Letters were sent to further notify providers of proposed changes and to make them aware of the extended response time. All parties have had an opportunity to provide input. No change is made to the proposed rules based on this comment.

There will be no changes to the proposed amendments based on the comments received.

Prepared by:



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

In Consultation with: Michelle Gayette, Aging Services  
Jan Engan, Aging Services

Cc: Michelle Gayette, Aging Services  
Jan Engan, Aging Services



## Aging Services Division

1237 West Divide Avenue Ste 6, Bismarck, ND 58501

(701) 328-4601

Fax (701) 328-8744


ND Aging and Disability Resource-LINK Toll Free 1-855-462-5465

TTY (701) 328-8968

Jack Dalrymple, Governor  
Carol K. Olson, Executive Director

### MEMO

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Michelle Gayette, Aging Services Division, Program Administrator, Adult Family Foster Care licensing 

**RE:** Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-21

**DATE:** February 17, 2012

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08 and is in reference to North Dakota Administrative Code Article 75-03.21. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

#### Purpose

The purpose of these rules are to:

- 1) 75-03-21-02.(Sections 3 & 5).
  - Increase the application fee to \$50 and add a \$25 relicensing fee. There has not been a change in licensing fees since 1994. The amount of time required by the HCBS case managers has increased in assisting providers with initial application documentation and relicensing documentation. The case managers are not paid to provide this assistance. The fee would be used to defray costs for assistance with foster care licensing.
  - A sample menu plan is now required for licensing and relicensing as nutrition for the residents is an important component of care. Requiring the meal plan as a part of licensing documentation reinforces that belief.
- 2) 75-03-21-04 (Section 10).
  - Current administrative rule does not address the specific need to protect the privacy of the resident in their bedrooms. The right to privacy for the resident must be protected. Use of video surveillance equipment is considered a violation of a resident's right to privacy and should be prohibited in the resident's bedroom and bathroom.
- 3) 75-03-21-09 (Add sections 17-24).
  - In an effort to avoid the possibility of resident exploitation, administrative rule changes would prohibit providers from purchasing items from residents

without assuring the purchase was at fair market value, the provider is not allowed to solicit property or possessions from the resident or family, and any exchange of property or possessions cannot be used in trade for providing care.

- Allowing a resident to designate the provider as their power of attorney is an area of concern; however, it was determined there may be times when this could be useful.
- Other than the initial definition of AFFC it is not specified the resident cannot be left alone. This section provides clarification on the need for twenty-four-hour care and supervision seven days per week.

4) 75-03-21-10 (Section 1).

- There is confusion about the stipulation a “resident of the facility” cannot be a substitute caregiver or respite care provider. This rule change would clarify the language.

5) 75-03-21-12.

- Although foster care providers are independent contractors, it was determined that proper information about the admission rules to the foster care home are not being provided to new residents and/or their families. The focus group identified areas where there have been problems between providers and their residents and/or families which resulted from rules/policies not being identified prior to moving into the foster care home. This rule change would clarify the language.

6) 75-03-21-13.

- Providers are required to inform the county case managers of their intent to terminate care of a resident by this rule. Once a termination has been filed, the provider will be encouraged to include county case managers in seeking alternative care and placement for residents. This will clarify the language.

7) 75-03-21-22.

- For those providers who assist residents with their personal finances, a written accounting needs to be kept by the provider to avoid potential exploitation. An accounting of any property or purchased item received by the provider or family is also required. A signed copy of the Provider Agreement needs to be kept in the file in the event of disagreements about house rules or provider practices.

### **Classes of Persons Who Will be Affected**

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

I. Adult Family Foster Care providers:

- The cost of the initial license will increase to \$50.00 (the last increase was in 1994). The relicensing fee of \$25.00 is a new addition as there has been no relicensing fee in the past.
- Providers will be required to submit a sample menu upon initial licensing and upon relicensing.



- The rule change outlines the manner in which providers can receive or purchase property or possessions from their residents and stipulates these goods cannot be used as trade for foster care services.
- Providers will be required to review and make changes to their current house rules to meet rule changes, create a "Preadmission Packet" for their residents, and have the resident and/or family sign receipt of packet.
- Providers will not be able to utilize video surveillance thereby protecting the privacy of the residents.

## 2. Residents:

- The resident's privacy will be assured.
- The rule change will protect the resident's property and assets.
- The changes to the preadmission packet will allow the resident to make an informed decision when selecting a foster care home.

### **Probable Impact**

- Increase in cost for providers to apply and renew applications for adult family foster care and for printing of preadmission packets including menus.
- Ensures the privacy of residents.

### **Probable Cost of Implementation**

Probable cost of implementation will include printing updates of the amended section and technical assistance and training to inform the field by the division office staff.

### **Consideration of Alternative Methods**

The proposed rule changes are the result of a focus group comprised of AFFC regional representatives, HCBS case managers and DD case managers. The determination was made that the rule changes are vital to the safety and well being of the resident. Alternative methods were considered and current proposed changes are the consensus of the focus group.





## Aging Services Division

1237 West Divide Avenue Ste 6, Bismarck, ND 58501

(701) 328-4601

Fax (701) 328-8744


ND Aging and Disability Resource-LINK Toll Free 1-855-462-5465

TTY (701) 328-8968

Jack Dalrymple, Governor  
Carol K. Olson, Executive Director

### MEMORANDUM

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Michelle Gayette, Program Administrator, Aging Services   
Licensing for Adult Family Foster Care Homes

**DATE:** February 17, 2012

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D.  
Admin. Code chapter 75-03-21

---

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 75-03-21.

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 small entities affected by the proposed amendments are independent contractors who provide adult family foster care.*
- *Proposal will add two additional criterions to the licensing and relicensing process. The first will be a cost to the provider of \$50 for an initial license and \$25 for license renewal (occurs every 24 months). There has not been a change in licensing fees since 1994. Secondly, the providers will be required to submit a sample menu plan to reinforce the belief nutrition is an important part of resident care.*
- *The proposal provides clarification as to the manner in which foster care providers will be allowed to purchase property or possessions or accept personal property or purchased items from their residents.*
- *These proposed amendments will not alter the overall manner in which services are currently being provided, therefore, less stringent compliance or reporting requirements were not considered.*

- *Changes were made in the rule to reflect current language and definitions no longer in the chapter were removed.*

## 2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

- *These proposed amendments will not affect the overall (day to day) operations of the adult family foster care homes or respite care providers. The impact will be upon initial licensing and a form has been created to help with the compliance of the proposed amendments. For this reason, establishment of less stringent schedules or deadlines for compliance was not considered.*

## 3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

- *No response.*

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

- *The proposed rule outlines the manner in which providers would be able to purchase property or possessions or accept personal property or purchased item from residents. The rule also states if a provide does purchase property from a resident, it must be documented at a fair market value and cannot be used in trade for providing foster care services. The intent is for the protection of the resident from potential exploitation.*
- *The proposed rule amendment will add stronger language as to the provision of privacy of the resident.*
- *The proposed rule amendment for adult family foster care providers will require the provider to change their preadmission information to provide more information on the operation of the foster home as well as a sample menu.*
- *The rule change will clarify the need for twenty-four-hour care and supervision of AFFC residents seven days per week.*

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

- *This proposed amendment would be applicable to all providers of adult family foster care and adult family foster care respite services. There would be no exceptions to the proposed amendments.*



## Aging Services Division

1237 West Divide Avenue Ste 6, Bismarck, ND 58501

(701) 328-4601

Fax (701) 328-8744


ND Aging and Disability Resource-LINK Toll Free 1-855-462-5465

TTY (701) 328-8968

Jack Dalrymple, Governor  
Carol K. Olson, Executive Director

### MEMORANDUM

**TO:** Julie Leer, Director, Legal Advisory Unit

**FROM:** Michelle Gayette, Program Administrator, Adult Family Foster Care 

**DATE:** February 17, 2012

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed [New/ Amendments to] N.D. Admin. Code chapter 75-03-21

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 [new/amendments to] N.D. Admin. Code chapter 75-03-21. The proposed rules are not mandated by federal law. The proposed rules could have an adverse economic impact on small entities.

#### 1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the [new/proposed amended] rules are:

- This proposed amendment would be applicable to all providers of adult family foster care and adult family foster care respite services.

The following small entities may also be subject to the rule:

- None

#### 2. Costs For Compliance

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

- The exact impact is difficult to measure, as it is based on the individual administrative costs of each County Social Service Board, and is likely to be minimal. On average, statewide, less than five new Adult Family Foster Care licenses are issued each year.

### 3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule:

- Proposal will add one additional criterion to the licensing process which will be a cost to the provider of \$50 for an initial license and \$25 for license renewal (occurs every 24 months). There has not been a change in licensing fees since 1994.

The probable benefit to private persons and consumers who are affected by the proposed rule:

- The proposed amendments will clarify the guidelines and documentation needed to provide Adult Family Foster Care in North Dakota. The proposed amendments will help to ensure quality of care and a safe living environment for residents of Adult Family Foster Care homes.
- The proposal provides clarification as to the manner in which foster care providers will be allowed to purchase property or possessions or accept personal property or purchased items from their residents.

### 4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be:

- None

### 5. Alternative Methods

- No alternative methods were identified.

Jack Dalrymple, Governor  
Carol K. Olson, Executive Director

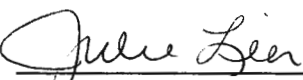
## TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-03-21.

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 17<sup>th</sup> day of February, 2012.

by:   
N.D. Dept. of Human Services