

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

N.D. Admin. Code Chapter 75-03-36, Licensed Child-Placing Agencies (Pages 92-99)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> December 15, 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 75-03-36 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 September 9, 2011. The record was held open until 5:00 p.m. on September 19, 2011, to allow written comments to be submitted. A summary of the comments received 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 \$2,038.86.
6. The proposed rules amend chapter 75-03-36 to correct errors and omissions noticed in the chapter after it was originally enacted in April, 2010. The following specific changes were made:

Section 75-03-36-07. Section 75-03-36-07 is amended to clarify the policies and procedures to be maintained by a licensed child-placing agency administrator.

Section 75-03-36-10. Section 75-03-36-10 is amended to allow flexibility in staff qualifications for a licensed child-placing agency.

Section 75-03-36-13. Section 75-03-36-13 is amended to correct an incorrect word in the caption.

Section 75-03-36-16.1. Section 75-03-36-16.1 is created to provide guidance when an adoptive placement may be made into a home where the subject of a services required finding resides.

Section 75-03-36-22. Section 75-03-36-22 is amended to allow flexibility in the procedure to be followed for a child-

placing agency to cease operations.

Section 75-03-36-25. Section 75-03-36-25 is amended to correct a typographical error.

Section 75-03-36-36. Section 75-03-36-36 is amended to correct a typographical error, to change the requirements from a dental examination twice a year to an annual dental examination, to clarify terms, and to remove the requirement for a case service plan.

Section 75-03-36-37. Section 75-03-36-37 is amended to clarify how often child and family team meetings occur and requiring dental care to be part of a licensed child-placing agency's written plan of care for each child and family.

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:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
December 15, 2011

CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES

Section

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SECTION 1. Section 75-03-36-07 is amended as follows:

75-03-36-07. Responsibilities of the child-placing agency administrator.

1. The administrator shall:
 - a. Plan and coordinate with the governing body the development of policies and procedures governing the child-placing agency's services.
 - b. Ensure that the governing body is kept informed of matters affecting the child-placing agency's finances, operation, and provision of services.
 - c. Ensure employment of qualified staff and the administration of the child-placing agency's personnel policies.
 - d. Ensure that the child-placing agency and its services are made known to the community.
 - e. Maintain the ~~child-placing agency's~~ policies and procedures required by this chapter in written form.
 - f. Maintain a current organizational chart showing the child-placing agency's lines of accountability and authority.
 - g. Maintain a records retention policy that ensures adoption files are maintained permanently and foster care files are retained according to applicable foster care regulations.
2. The child-placing agency, under the administrator's direction, shall maintain a record for each client. A client's record must be kept current from the point of intake to termination of service and must contain information relevant to the provision of services.
3. The administrator who delegates responsibility for program development shall delegate those responsibilities to qualified staff members.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 2. Section 75-03-36-10 is amended as follows:

75-03-36-10. Staff functions and qualifications.

1. The child-placing agency shall employ or contract with staff with sufficient qualifications to enable them to perform the agency's fiscal, clerical, and maintenance functions.
2. The child-placing agency shall employ or contract with staff to perform the agency's administrative, supervisory, and placement services. These staff

and their qualifications, unless otherwise approved by the department, are as follows:

- a. The administrator shall provide for the general management and administration of the child-placing agency in accordance with the licensing requirements and policies of the child-placing agency's governing body. The administrator must have a bachelor's degree and a minimum of four years of professional experience in human services, at least two of which have been in administration including financial management, or must be an individual otherwise qualified and serving the child-placing agency as an administrator prior to April 1, 2010.
 - b. The placement supervisor shall supervise, evaluate, and monitor the work progress of the placement staff. The placement supervisor must be a licensed certified social worker and have a minimum of two years of experience in supervision of child placement workers or in child placement, or must have a master's degree in a human service-related field from an accredited school, and a minimum of two years of experience in supervision of child placement workers or in child placement, or must be an individual otherwise qualified and serving the child-placing agency as a placement supervisor prior to April 1, 2010.
 - c. The child placement worker shall perform intake services; provide casework or group work services, or both, for children and families; recruit and assess foster and adoptive homes; and plan and coordinate resources affecting children and families. The child placement worker must be a licensed certified social worker or a licensed social worker.
3. If the child-placing agency has no placement supervisor, the child placement worker must meet the education and experience requirements of the placement supervisor.
 4. Staff serving as child placement workers or child placement supervisors must meet the above-stated education and experience requirements or be excused from those requirements found in North Dakota Century Code chapter 43-41 on the licensing of social workers.
 5. Placement worker caseload must be limited to ensure the placement worker is able to make all the required contacts with the biological, foster, and adoptive families; adopted adults; and collateral parties.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 3. Section 75-03-36-13 is amended as follows:

75-03-36-13. Criminal ~~connection~~ conviction - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home, or a child-placing agency owner or employee, must not have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults, threats, coercion, and harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the North Dakota statutes identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted

and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 4. Section 75-03-36-16.1 is created as follows:

75-03-36-16.1. Adoptive Family Child Abuse and Neglect. A child-placing agency shall not place a child in an adoptive home if a person residing in the adoptive home, except a child placed for adoption, has been the subject of a child abuse or neglect assessment where a services-required decision was made unless the agency director or supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the adoptive parents, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the adoptive assessment; and

1. The adoptive home's resident can demonstrate the successful completion of an appropriate therapy; or
2. The adoptive home's resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

History: Effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 5. Section 75-03-36-22 is amended as follows:

75-03-36-22. Child-placing agency closure. A Unless otherwise approved by the department, a child-placing agency licensed under this chapter may not cease operations before:

1. Notifying the department in writing of the child-placing agency's intent to close and the proposed date of closure, with details regarding how the child-placing agency plans to meet the requirements of this subsection. This notification must be received by the department not less than ninety days prior to the proposed date of closure;
2. All pending adoptive placements are finalized;
3. All families awaiting adoptive placement have been referred to other agencies or have closed their cases;
4. Custodians of children referred for services have been informed of the child-placing agency's closure and arrangements for transfer of the cases have been made;
5. The child-placing agency makes a reasonable attempt, which may require publication of a notice of closure, to notify former clients of the child-placing agency's closure;

6. Arrangements have been made with another resident licensed child-placing agency to retain all permanent adoption records and provide post-finalization services;
7. Arrangements have been made to transfer any other records which must be retained for a specific time period to the department; and
8. Temporarily retained records must be:
 - a. Boxed in banker-style boxes;
 - b. Clearly labeled; and
 - c. Indexed with the child-placing agency providing the index to the department in writing and electronically as specified by the department.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 6. Section 75-03-36-25 is amended as follows:

75-03-36-25. Provision of services to the child - Adoption.

1. The child-placing agency shall make every effort to place siblings together in an adoptive home. If it is not possible to place siblings together, the child-placing agency shall add written documentation in the child's file identifying the reasons the siblings could not be placed together and the plans formulated to keep the siblings in contact with one another after the adoption.
2. The child-placing agency shall provide a life book to the child, if the child does not already have one, and shall give the child an opportunity to explore the child's birth history in preparation for the child's adoptive placement.
3. When appropriate to the child's developmental needs, the child-placing agency shall provide ~~preplacement~~ pre-placement counseling to the child to assist the child in adjusting to adoption.
4. The child-placing agency shall begin recruitment efforts immediately upon referral for a child referred to the child-placing agency without an identified family. Diligent recruitment will include listing the child with local, regional, and national child-specific recruitment resources as directed by the child's child and family team.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 7. Section 75-03-36-36 is amended as follows:

75-03-36-36. Child-placing agencies' file and documentation requirements for foster care placements.

1. The child-placing agency shall adopt a written file and documentation policy requiring that, within thirty days after placement, the child-placing agency establish and thereafter maintain a file for each child. This file must include:
 - a. The child's full name, birth date, age, and gender;
 - b. Name and contact information, including that of the custodian, parents, and other pertinent individuals;
 - c. A signed care agreement, contract, or current court order establishing the child-placing agency's authority to accept and care for the child;
 - d. An explanation of custody and legal responsibility for consent to any medical or surgical care;
 - e. An explanation of responsibility for payment for care and services;
 - f. A current care plan;
 - g. A copy of the appropriate interstate compact forms;
 - h. Copies of periodic, at least quarterly, written reports to the child's parent, guardian, or legal custodian;
 - i. Medical records, including annual health tracks screenings, and evidence of appropriate medical ~~followthrough~~ follow through, immunization records, and height and weight records;
 - j. Records of annual dental examinations ~~at intervals not to exceed six months. Provide for including necessary~~ dental treatments, ~~including necessary such as~~ prophylaxis, repairs, and extractions;
 - k. School records, including individual education plans, if applicable; and
 - l. Records of eye examinations at intervals not to exceed two years. Children who are in need of glasses shall be supplied with glasses as required.
2. The child-placing agency shall adopt a written file and documentation policy ensuring that the child-placing agency shall maintain a current and systematically filed case record on each ~~client~~ foster family served. Permanent case records shall be kept in locked, fire-resistant filing cabinets. There shall be a master file or card catalog on all case records of the child-placing agency. The case records shall include at least the following:
 - a. A face sheet with current ~~addresses of~~ contact information for foster parents of child clients or and other significant persons;
 - b. Application documents;
 - c. Agency assessments and supporting documentation, including criminal history and child protection services registry check results;
 - d. Medical records with significant family health history and signed statements authorizing necessary medical or surgical treatment;
 - e. Correspondence;
 - f. Legal Licensing documents; and
 - g. Child-placing agency agreements or contracts; and
 - h. ~~A case service plan.~~

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05, 50-12-07

Law Implemented: NDCC 50-12

SECTION 8. Section 75-03-36-37 is amended as follows:

75-03-36-37. Child and family plan of care for foster children. The child-placing agency shall adopt a written policy that ensures the child-placing agency will develop a written plan of care for each child and family. The policy must require:

1. The child-placing agency develop the care plan in conjunction with the child and family team;
2. The child's care plan be developed or reviewed within thirty days of placement with the child-placing agency;
3. The child's care plan be developed or reviewed with the appropriate participation and informed consent of the child or, when appropriate, the child's guardian or custodian;
4. Documentation that the child and ~~a~~the child-placing agency representative have participated in child and family team meetings on a ~~regular~~quarterly basis, and that input has been obtained from the custodian, child, family, foster family, and other pertinent team members;
5. Documentation that the child-placing agency has collaborated and communicated at regular intervals with other agencies that are working with the child to ensure coordination of services and to carry out the child's plan;
6. Documentation of services provided by other agencies, including arrangements that are made in obtaining them;
7. Documentation of the arrangements by which the child's special needs, including prescribed medication, diets, or special medical procedures, are met;
8. The child-placing agency to provide for annual dental examinations including necessary dental treatments such as prophylaxis, repairs, and extractions;
- ~~8-9.~~ The child-placing agency make reasonable efforts to gather information from the custodian, parents, foster parents, courts, schools, and any other appropriate individuals or agencies;
- ~~9-10.~~ Completion of a strengths and needs assessment of the child, biological family, and foster family;
- ~~10-11.~~ Identification of measurable goals, including timeframes for completion;
- ~~11-12.~~ Identification of the measures that will be taken or tasks that will be performed to assist the child and family with meeting the goals;
- ~~12-13.~~ Identification of the individual or entity responsible for providing the service or completing the task;
- ~~13-14.~~ A discharge plan, including a projected discharge date with special attention to discharge planning efforts for a child who is aging out of the foster care system; and

44.15. The child-placing agency to document in a child's service plan evidence of individualized treatment progress, to review the plan at least every thirty days, or more often if necessary, to determine if services are adequate and still necessary or whether other services are needed.

History: Effective April 1, 2010; amended effective January 1, 2012.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

Jack Dalrymple, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-03-36
LICENSED CHILD-PLACING AGENCIES**

The North Dakota Department of Human Services (the Department) held a public hearing on Friday, September 9, 2011, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code chapter 75-03-36, Licensed Child-Placing Agencies.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, September 19, 2011.

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

1. Ann R. Dahl, LSW, LPC, Administrator, Christian Family Life Services, 203 S 8th St, Fargo, ND 58103
2. Sharon Maier, LSW, Pregnancy Parenting and Adoption Services Director, Catholic Charities North Dakota, 5201 Bishops Blvd, Ste B, Fargo, ND 58104
3. Susan R. Grundysen, MSW, LCSW, Director/The Adoption Option, Lutheran Social Services of ND and The Village Family Service Center, 1201 25th St S, Fargo, ND 58106

SUMMARY OF COMMENTS

Comment: "In view of the changes being made to Admin Rule Chapter 75-03-36, we wondered if the Department might also review the requirement of the required monthly post placement visits for infant adoption.

With North Dakota being a rural state we have found this requirement to be very costly to the agency, in both time and money. We have always tried to do as many appointments as possible in one area on the same day, however we find that this does not always work and so we are making a 2-3 hour trip one way to do one post placement visit. This means that even if the visit is only one hour long we are spending a minimum of 5 hours to do one visit. It is rare to have the ideal set up of a family living right in Fargo or Bismarck etc. When you consider the staff time and the mileage (especially with current gas prices) these are very costly visits. As we all know winter travel in North Dakota can be hazardous and since the majority of the visits are to be in the home, we are asking staff to travel in often less than save conditions to meet this requirement.

Aside from this being costly to the agency, it is costly to families – they have to take time off of work on a monthly basis, and are having to pay for more post placement visits, as well as travel for a couple of the visits. With us doing monthly visits it has almost diminished the

purpose of validity of the visit. There is only so much change that takes place in a new born from month to month and most families are really still in the "over the moon" stage at having a baby. If we have a family where they may be having adjustment difficulties they we would of course see them monthly or even lengthen the post placement time, but for the "normal" newborn placements, monthly seems excessive."

Response: The Administrative Code Section that contains this requirement is section 75-03-36-30. Section 75-03-36-30 is not being amended in the proposed amendments. Additionally, while the Department understands there may be additional financial obligations regarding monthly face-to-face visits, monthly face-to-face visits are best practice allowing the agency to best meet the needs of the family and child. This is consistent with federal regulations which govern face-to-face visits with children in public agency care.

Comment: "Monthly visits may be and likely are beneficial for older children in out-of-home care, but we believe them to be excessive and unnecessary for domestic infant adoptions.

The hardship on the agencies in terms of staff time and travel expenses make our work more difficult to do and takes a toll on the adoption workers and the agency as a whole. A much higher percentage of our working hours are taken up with travel and these extra visits, leaving less time to do work that is more important.

This would be acceptable if there were actually a benefit to the family, the child, or the adoption process. However, we believe there is **no greater benefit** to the adoptive families that could justify this requirement. The visits feel excessive to the point of being almost comical. A few well-spaced visits would be more meaningful and more valuable. An agency always has the option of conducting extra visits or extending the post placement period in cases where there are concerns that come up. But if we have done our job well in terms of screening, educating, and home studying families, concerns like this seldom do come up in infant adoptions.

The monthly visits are also a hardship on adoptive families, who also have to travel for some of the visits. They have to take time off work, pay for gas, meals, and sometimes motel, and sometimes travel in extreme weather with an infant.

Adoption fees have had to be raised, another hardship for the adoptive parents.

These requirements for post placement supervision be readjusted for domestic infant adoptions."

Response: The Administrative Code Section that contains this requirement is section 75-03-36-30. Section 75-03-36-30 is not being amended in the proposed amendments. Additionally, while the Department understands there may be additional financial obligations regarding monthly face-to-face visits, monthly face-to-face visits are best practice allowing the agency to best meet the needs of the family and child. This is consistent with federal regulations which govern face-to-face visits with children in public agency care.

Comment: "We recognize NDCC 50-12-07 point 3 sites a LCPA must visit the 'foster or adoptive home at frequent intervals and make all necessary inquiries and investigations as may be necessary to determine whether the child will be properly adjusted in the home.' Lutheran Social Services of ND and the Village Family Service Center support the importance of the post placement period, yet we also recognize the need for flexibility.

In the previous hearing related to developing ND Admin Code, testimony by the Department indicates this Code is not related to federal law, rather to get into compliance with 50-12. Yet when we previously requested information as to why this change to monthly visitation was made it was understood that this would bring the state into compliance with Federal regulations for all adoption. We request once again this requirement be reviewed, as when a privacy agency takes custody of a child, we do so under the license granted by the state, and in following NDCC, but not at the requirement of federal laws relating to children in the custody of the state. We are also two agencies accredited by the Council on Accreditation, where monthly post placement visits in adoption is not a part of the accreditation standards.

Our agencies see first-hand how monthly post placement visitation has continued to cause difficulties for adoptive families and private LCPA staff:

- Hampers the new family's sense of entitlement with their social worker making such frequent visits. Prior, when necessary, we would increase visits to support children and families as they needed.
- Time off from work for families and travel to families create difficult scheduling. With parental leaves exhausted following the placement of a child, the last few months of post placement visiting are difficult to schedule, plus if the social worker is traveling, travel time puts restrictions on available time for a meeting.
- Monthly visits until finalization mean not just six (6) monthly visits, rather, if the adoption is not finalized in a timely manner, visits continue on for seven, eight, nine and ten months. Usually this is a result of the difficulty with the family getting into court in a timely manner.
- High gas and mileage related costs due to the state-wide nature of adoption services. These increased costs related to the monthly post placement visits are getting passed on to the adoptive families, raising the cost of adoption services.
- Weather, illness, and other unforeseen obstacles. Sometimes the best of planning is disrupted by things out of our control.

Through our practice we see a clear difference between the needs of a newborn infant and a child placed from foster care. The dynamics and systems are different, therefore requiring a different approach to the post placement support services. If a family or child needed monthly or bi-monthly visits, we would be there. This is, however, not the need we see on a regular basis. We recommend the Department re-consider adjusting requirements for post placement supervision, giving adoptive families and the LCPA some flexibility to address actual needs."

Response: The Administrative Code Section that contains this requirement is section 75-03-36-30. Section 75-03-36-30 is not being amended in the proposed amendments. Additionally, while the Department understands there may be additional financial obligations regarding monthly face-to-face visits, monthly face-to-face visits are best practice allowing the agency to best meet the needs of the family and child. This is consistent with federal regulations which govern face-to-face visits with children in public agency care.

In response to this part of the comment: "In the previous hearing related to developing ND Admin Code, testimony by the Department indicates this Code is not related to federal law, rather to get into compliance with 50-12.", the question that was being answered by the Department was whether the rules were being adopted because of changes in a federal statute or regulation. The answer was that they were not. The federal requirements under which the Department operates were part of the guidelines used by the Department prior to the enactment of North Dakota Administrative Code chapter 75-03-36 in 2010. The guidelines were adopted as rules in 2010 pursuant to legislation passed by the Legislative Assembly in 2009 requiring the Department to adopt rules. The rules were not adopted because of changes in a federal statute or regulation. When North Dakota Administrative Code chapter 75-03-36 was adopted in April 2010, requirements regarding face-to-face visits were implemented to bring consistency to the supervision requirements for all children in adoptive placements, i.e., those in the custody of the private agency as well as those in public care.

There will be no change to the proposed amendments as the comments received were not related to a section being amended in these proposed changes.

Prepared by:



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

In Consultation with: Kelsey Bless, Children and Family Services

October 17, 2011

Cc: Kelsey Bless, Children and Family Services

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, Independent Living & Licensing Administrator, Children and Family Services.

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-36.

DATE: July 5, 2011

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed to North Dakota Administrative Code Article 75-09.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of ND Admin Code chapter 75-03-36 is to provide directions of compliance to Licensed Child Placing Agencies (LCPAs) placing children in foster or adoptive homes across the state of ND. The proposed amendments are to provide clarity to agencies and correct errors and omissions made upon rule origination in April 2010.

Classes of Persons Who Will be Affected

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

1. Licensed Child Placing Agencies (LCPAs)
2. Clients: Children, Foster Families, Adoptive Families

LCPAs will be affected positively by the proposed amendments. It is likely that LCPAs will receive the clarity needed as well as be assisted financially. The proposal requests consistency with ND Medicaid reimbursement requirements for dental examinations. Currently, the rules state that children must receive a dental examination every six months, however ND Medicaid now only covers reimbursement expenses for one annual dental examination.

Majority of clients served by LCPAs will not be affected by the proposed amendment. However, some children who were going to the dentist two times per year would be provided one less dental examination per year. This decrease in dental examinations would meet minimum standards and be in compliance with ND Medicaid requirements.

Probable Impact

The impact of providing clarity to agencies and correcting errors and omissions made upon rule origination in April 2010 will positively impact our LCPA partners across the state. Clarity to rule will assist LCPAs in delivering appropriate service to children and families statewide.

Probable Cost of Implementation

There are no expected costs to LCPA's, rather a cost savings if amendment is accepted as agencies are currently providing two dental examination per year to children (one exam covered by ND Medicaid and one absorbed by agency budget). The only projected cost associated with these amendments would be newspaper advertisements (\$2500) to inform the community of the Administrative Code chapter 75-03-36 amendment process.

Consideration of Alternative Methods

The Department could consider no amendment and continue to license child placing agencies with the existing rule; however the omissions noted for amendment as they are today would not benefit LCPAs.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, Independent Living & Licensing Administrator,
Children and Family Services.

DATE: July 5, 2011

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed
Amendments to N.D. Admin. Code chapter 75-03-36

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 75-03-36. 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 minimum standard of compliance has been established to ensure appropriate programming by Licensed Child Placing Agencies (LCPAs). Less stringent standards have been considered; in an effort to be consistent with other Admin Rule Chapters (ie 75-03-16), providing LCPA's the option to request approval from the department for appropriate adjustment in two areas (staff functions and office closure) is proposed. In addition, it is proposed that 75-03-36 align with ND Medicaid minimum standards for reimbursement and adjust child dental examination requirements from every six months to annually.

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

The Department does not issue provisional licenses to LCPA's who fail to meet compliance in all areas. No less stringent schedules have been considered.

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

Simplification of compliance reporting methods has been considered. The proposed amendments will provide clarity and simplify the understanding of what is required for LCPAs to remain in compliance.

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

The proposed amendments reflect a minimum standard of compliance for LCPAs licensed by Children and Family Services.

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

Exemptions or minor adjustments to some requirements (staff functions and office closure) were considered by offering LCPAs the option to request approval from the department. However, it is expected that all LCPAs will need to meet a minimum standard of compliance set forth in N.D. Admin. Code chapters 75-03-36 to ensure health and safety of any child cared for or placed by the agency.

M E M O R A N D U M

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Kelsey Bless, Independent Living & Licensing Administrator,
Children and Family Services

DATE: July 5, 2011

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed
Amendments to N.D. Admin. Code chapter 75-03-36.

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 75-03-36. 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 amended rules are: Licensed Child Placing Agencies (LCPA).

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

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No costs. LCPA's would receive a cost savings if the amendment is accepted as agencies are currently providing two dental examination per year to children (one exam covered by ND Medicaid and one absorbed by agency budget).

3. Costs and Benefits

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

The probable benefit to private persons and consumers who are affected by the proposed rule: Aligning 75-03-36 to ND Medicaid requirements will accommodate expenses and LCPA budgets. In addition, amendments will provide overall clarity to the rules for LCPA's.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: None, there will be no impact on state revenues. Costs for printing and dissemination of amended rules will be provided by the foster care administrative budget.

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. Those alternatives included: continuing to license existing child placing agencies with existing rule. The alternatives were not selected because clarity to rules is necessary to correct errors and omissions noticed after N.D Admin. Code chapter 75-03-36 was promulgated April 1, 2010.

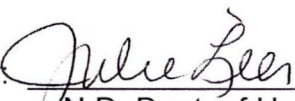
TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 75-03-36.

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 July, 2011.

by: 
N.D. Dept. of Human Services