

June 29, 2026

Liz Fordahl, Counsel
North Dakota Legislative Council
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Emergency Rule Making for Proposed Amendments to N.D. Admin. Code
Chapter 75-02-13, Family Paid Caregiver Program

Dear Ms. Fordahl:

Attached for filing in the office of the Legislative Council are the following:

1. Notice of Intent to Amend Administrative Rules concerning the above proposed rules as required by N.D.C.C. § 28-32-02;
2. Finding and Statement of Reason of Emily O'Brien, Deputy Commissioner of the North Dakota Department of Health and Human Services (Department), with respect to the declaration of the proposed amendments to N.D.A.C. Chapter 75-02-13;
3. Interim final rules effective June 29, 2026; and
4. The June 29, 2026, letter from Governor Armstrong approving the request for emergency rulemaking.

Ms. O'Brien has declared that the proposed amendments require emergency rulemaking. Accordingly, Ms. O'Brien has declared these proposed amendments to be interim final rules effective June 29, 2026.

The Department has determined that appropriate measures to make the proposed interim final rules known to every person who may be affected by them consist of mailing a copy of the proposed rules to each human service zone, to each state-operated behavioral health clinic, and to persons or entities who have expressed an interest in receiving notice of such rulemaking; furnishing this notice to the Legislative Council; and publishing notice of the proposed rulemaking once in each county newspaper of general circulation published in the state of North Dakota.

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If you have any questions or concerns, please contact me at 328-2311. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Alm', with a stylized, flowing script.

Jonathan Alm
Legal Division

JA/rv

Cc: Tina Bay, Developmental Disabilities

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-02-13
FAMILY PAID CAREGIVER PROGRAM

TAKE NOTICE that the North Dakota Department of Health and Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-02-13 at 10:30 a.m. on Wednesday, August 12, 2026, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol. The proposed changes are effective June 29, 2026, as interim final rules under North Dakota Century Code § 28-32-03(2)(c); to avoid a delay in implementing an appropriations measure (section 2 of 2025 Senate Bill No. 2305).

The proposed amendments to N.D. Admin. Code chapter 75-02-13, Family Paid Caregiver Program, are necessary to promulgate additional eligibility criteria for the Family Paid Caregiver Program as an administrative rule to comply with the opinion and order of the Supreme Court for the State of North Dakota in *Ferderer v. North Dakota Department of Health and Human Services*, 2026 ND 81, 34 N.W.3d 168 (N.D. 2026).

The proposed changes are as follows:

Section 75-02-13-01 is amended to create a definition for “assessment” and to amend the definition of “extraordinary care.”

Section 75-02-13-02 is amended to update the eligibility criteria to provide the method by which the assessment will be scored to determine whether an applicant meets the extraordinary care criteria.

Section 75-02-13-03 is amended to update how the department shall administer the Family Paid Caregiver Program regarding scoring the responses provided on the assessment and to clarify that an assessment is part of a completed application.

The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at human service zone offices and at the state-operated behavioral health clinics. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by

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telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Health and Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Monday, August 24, 2026.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Health and Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 29th day of June, 2026.

**FINDING AND STATEMENT OF REASON
NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
REGARDING PROPOSED AMENDMENTS TO
NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 75-02-13
FAMILY PAID CAREGIVER PROGRAM**

FINDING

I find that emergency rulemaking to amend N.D. Admin. Code chapter 75-02-13, Family Paid Caregiver Program, is necessary to avoid a delay in implementing an appropriations measure as set forth in section 2 of 2025 Senate Bill No. 2305.

STATEMENT OF REASON

Emergency rulemaking is necessary for the Department of Health and Human Services to promulgate additional eligibility criteria for the Family Paid Caregiver Program as an administrative rule to comply with the opinion and order of the Supreme Court for the State of North Dakota in *Ferderer v. North Dakota Department of Health and Human Services*, 2026 ND 81, 34 N.W.3d 168 (N.D. 2026). This emergency rulemaking is permitted under North Dakota Century Code § 23-32-03(2)(c), because it is reasonably necessary to avoid a delay in implementing an appropriations measure by allowing the Department to implement section 2 of 2025 North Dakota Senate Bill No. 2305.

Dated this 29th day of June, 2026.



Emily O'Brien
Deputy Commissioner

OFFICE OF THE COMMISSIONER

GOVERNOR
Kelly Armstrong

INTERIM COMMISSIONER
Pat Traynor



June 29, 2026

Emily O'Brien
Deputy Commissioner
Department of Health and Human Services
600 East Boulevard Avenue, Dept. 325
Bismarck, ND 58505

Dear Deputy Commissioner O'Brien:

On June 29, 2026, your request for approval of emergency rulemaking was received. The request seeks to amend North Dakota Administrative Code chapter 75-02-13 relating to the Family Paid Caregiver Program to promulgate additional eligibility criteria in response to the opinion and order of the Supreme Court for the State of North Dakota in *Ferderer v. North Dakota Department of Health and Human Services*, 2026 ND 81, 34 N.W.3d 168 (N.D. 2006).

After reviewing the request under N.D.C.C. § 28-32-02, it is evident that emergency rulemaking is reasonably necessary to avoid a delay in implementing an appropriations measure as set forth in section 2 of 2025 Senate Bill No. 2305.

Adoption of the proposed rule as interim final rule is hereby approved.

Regards,


Kelly Armstrong
Governor