

August 22, 2024

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

RE: Emergency Rule Making for Proposed Amendments to N.D. Admin. Code Chapter 33-11-01.2, North Dakota Ground Ambulance Services

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 Wayne Salter, Commissioner of the North Dakota Department of Health and Human Services, dated August 8, 2024, with respect to the declaration of the proposed amendments to N.D. Admin. Code Chapter 33-11-01.2;
3. Interim final rules effective August 22, 2024; and
4. The August 15, 2024, letter from Governor Burgum approving the request for emergency rulemaking.

Commissioner Salter has declared that the proposed amendments require emergency rulemaking. Accordingly, Commissioner Salter has declared these proposed amendments to be interim final rules effective August 22, 2024.

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 office, to each regional human service center, 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.

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

Sincerely,



Jonathan Alm
Legal Division

Cc: Christopher Price, Emergency Medical Systems
Tim Wiedrich, Health Response and Licensure
Dirk Wilke, Executive Director of Public Health Division

LEGAL

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 33-11-01.2
NORTH DAKOTA GROUND AMBULANCE SERVICES

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 33-11-01.2 at 12:00 p.m. on Monday, September 30, 2024, 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 August 22, 2024, as interim final rules under North Dakota Century Code Section 28-32-03(2)(a); an imminent peril threatens public health, which would be abated by emergency effectiveness.

The proposed amendments to N.D. Admin. Code chapter 33-11-01.2, North Dakota Ground Ambulance Services, are necessary to continue to allow licensed ambulance services to transport trauma patients to Indian Health Services facilities so long as the facilities have entered into an agreement with the Department and certify they meet all the requirements of a designated trauma center at the specified designation level as said facilities are not under the Department's jurisdiction, which includes licensure and trauma level designation.

The proposed changes are as follows:

Section 33-11-01.2-14 is amended to allow trauma patients to be transported to an Indian Health Service facility which has entered into a memorandum of understanding with the Department to certify it meets the requirements of a designated trauma center.

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 zones offices and at human service centers. Copies of the proposed rules, the regulatory analysis relating to these rules, and the telephone call number for public access to real time streaming of the public hearing may be requested by 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 Thursday, October 10, 2024.

LEGAL

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 22nd day of August, 2024.

August 8, 2024

The Honorable Doug Burgum
Governor of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0001

Dear Governor Burgum:

The Public Health Division of the ND Department of Health and Human Services (“Department”) respectfully requests your consideration of emergency administrative rules relating to the trauma center designation of Indian Health Services (“IHS”) facilities. The Board requests emergency administrative rules which would allow a licensed ambulance service to transport trauma patients to IHS facilities if said facility has entered into a memorandum of understanding with the department to certify that it meets the requirements of a designated trauma center pursuant to N.D. Admin. Code art. 33-38. IHS facilities are federal facilities, which are not subject to the Department’s jurisdiction, which includes licensure and trauma center designation. Previously, the IHS facilities in North Dakota voluntarily consented to the Department’s jurisdiction, however, on approximately April 1 of this year, the Department was notified by U.S. Department of Health and Human Services that the North Dakota IHS facilities would no longer be consenting to jurisdiction of the Department, including licensure and trauma center designation. Section 33-11-01.2-14, N.D. Admin. Code, requires that trauma patients be transported by licensed ambulance services to a designated trauma center. Because IHS facilities would no longer be designated trauma centers, licensed ambulance services would be prohibited from transporting trauma patients to the facilities and the patients would have to be transported to designated trauma centers, sometimes farther away. The emergency administrative rule would maintain the status quo and continue to allow licensed ambulance services to transport trauma patients to IHS facilities, so long as those facilities have entered into an agreement with the Department where the facilities certifies that they meet all the requirements of a designated trauma center at the specified designation level, as indicated in the drafted rule below.

OFFICE OF THE COMMISSIONER

GOVERNOR
Doug Burgum

COMMISSIONER
Wayne Salter

33-11-01.2-14. Transporting of patients.

Ambulance services shall transport patients to the nearest appropriate licensed health care facility according to their hospital transport plan except for:

1. Interfacility transports must be made in accordance with the referring physician's orders.
2. In the following specific instances transport must be made to a licensed health care facility with specific capabilities or designations. This may result in bypassing a closer licensed health care facility for another located farther away. An ambulance service may deviate from these rules contained in this section on a case-by-case basis if online medical control is consulted and concurs.
 - a. Trauma patients must be transported to a designated trauma center as per article 33-38 or to an Indian health service facility which has entered into a memorandum of understanding with the department to certify that it meets the requirements of a designated trauma center pursuant to article 33-38.
 - b. A patient suffering acute chest pain that is believed to be cardiac in nature or an acute myocardial infarction determined by a twelve-lead electrocardiograph must be transported to a licensed health care facility capable of performing primary percutaneous coronary intervention or fibrinolytic therapy pursuant to the North Dakota cardiac system ST-elevation myocardial infarction, non-ST elevation myocardial infarction, and acute coronary syndrome guide.
 - c. A patient suffering a suspected stroke must be transported to a designated acute stroke ready hospital, primary stroke center, or a comprehensive stroke center pursuant to the North Dakota acute stroke treatment guidelines.
 - d. In cities with multiple hospitals an ambulance service may bypass one hospital to go to another hospital with equal or greater services if the additional transport time does not exceed ten minutes.

3. An officer, employee, or agent of any emergency medical services operation may refuse to transport an individual to a licensed health care facility for which transport is not medically necessary and may recommend an alternative course of action to that individual, including transportation to an alternative destination such as an urgent care center, clinic, physician's office, or other appropriate destination identified by the emergency medical services operation's medical director, if the emergency medical service operation has developed protocols to refuse transport of an individual and recommend an alternative course of action.

History: Effective January 1, 2008; amended effective July 1, 2010; April 1, 2024; _____.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

The imminent threat to public health which would be abated by this emergency rule is that large geographic areas of rural North Dakota which are currently serviced by these IHS facilities will now be much farther from trauma care, resulting in longer time to critical medical care. Currently, the Department has a request from the Secretary of the Department of Health and Human Services (Federal) to enter into a Memorandum of Understanding regarding the Quentin N. Burdick Memorial Health Care Facility ("QNBMHCF") and the Fort Yates Hospital ("Fort Yates") to allow IHS to certify those facilities meet the standards enumerated by the Department for a Level IV trauma center such that those facilities may continue to receive trauma patients from ambulance services. In the year 2023, QNBMHCF received approximately three hundred (300) trauma patients from ambulance services from areas of Belcourt, Rolla, Rolette, and Dunseith (Rolette County). If QNBMHCF is unable to receive trauma patients, those patients would be rerouted to hospitals in Bottineau, Rugby, and Rolla. In the year 2023, Fort Yates received approximately 135 trauma patients from ambulance services from areas of Standing Rock and Flasher. If Fort Yates is unable to receive trauma patients, those patients would be rerouted to hospitals in Bismarck or Mobridge, South Dakota. This may add unnecessary time and distance during the transport of trauma patients to receive necessary care.

The goal of the emergency rule is to maintain the current level of care to all the service areas of North Dakota, while ensuring that the quality of care remains the same. By requiring that the IHS facilities enter into an agreement with the Department

certifying that they meet the requirements of the requisite level of designated trauma center sought, the Department can continue to ensure continuous, high-level care for the residents of all areas of North Dakota.

The Department feels that the diversion of trauma patients from IHS facilities which previously served as designated trauma centers is an emergency such that "imminent peril" threatens public health, safety, and welfare of the general public serviced by those ambulance services.

Currently, the administrative rules prohibit licensed ambulance services from transporting trauma patients to any facilities which are not designated trauma centers by the Department, however, this would be corrected by the emergency administrative rule.

To be clear, the Board is not waiving any requirements or standards of care for the IHS facilities, however, instead of requiring the federal facilities submit to state jurisdiction, the Department is collaboratively resolving the issue by ensuring the standards of care are met by certification and contractual agreement instead.

The Department is requesting approval from the Governor that the proposed rule meets the requirements of North Dakota Century Code § 28-32-03, and that emergency rulemaking is necessary such that the Department may declare the proposed rule to be an interim final rule effective as authorized by law. Pursuant to N.D.C.C. § 28-32-03(6), the interim final rule is effective for up to one hundred eighty (180) days after its declared effective date, during which time the Department intends to immediately begin the process under N.D.C.C. ch. 28-32 to promulgate a final rule.

Respectfully,



Wayne Salter
Commissioner

C: Nathan Svihovec, general counsel, Governor's Office
Maria Neset, senior policy advisor, Governor's Office
Dirk Wilke, executive director, Public Health



August 15, 2024

Wayne Salter
Commissioner
North Dakota Department of Health and Human Services
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Commissioner Salter,

On August 8, 2024, the Governor's Office received your request on behalf of the Public Health Division of the North Dakota Department of Health and Human Services ("Department") for approval of emergency rulemaking to amend N.D. Admin. Code. § 33-11-01.2-14(2)(a) regarding transportation of trauma patients to Indian Health Service ("IHS") facilities, which have entered into a memorandum of understanding ("MOU") with the department that the MOU meets the requirements of a designated trauma center pursuant to N.D. Admin. Code Article 33-38.

Critical health care access in our state is fundamentally important to all North Dakota residents, and it is important to maintain access to appropriate health care facilities while continuing to ensure that the quality of health care remains high. Affected IHS facilities treated more than 400 trauma patients in 2023, according to data submitted by the Department, and this rule will allow the access to health care received by North Dakotans to remain the same in all portions of our state. You have declared and we concur that, absent this emergency rulemaking procedure, there exists an imminent threat to public health for large geographic areas of rural North Dakota.

My administration has reviewed the request pursuant to North Dakota Century Code § 28-32-03, received and reviewed data from the Department, and agrees that emergency rulemaking is reasonably necessary to protect public health, safety and welfare. Therefore, your request is granted. This emergency rule serves to maintain health care at the same accessibility and quality while allowing the Department time to adopt the final rule.

Regards,

A handwritten signature in blue ink that reads "Doug Burgum".

Doug Burgum
Governor