

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-02-02.4 Home and Community-)	<u>DEPT. OF HUMAN SERVICES</u>
Based Services Informed Choice)	
Referrals)	December 1, 2020
(Pages 59-63))	

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

1. The proposed creation of N.D. Admin. Code Chapter 75-02-02.4, relating to Home and Community-Based Services Informed Choice Referrals, is necessary to comply with an appropriations measure passed during the 2019 legislative session, as directed by section 44 of Senate Bill No. 2012 and to ensure compliance with the American Disabilities Act.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department 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 human service zone 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 and the Attorney General's review.

4. A public hearing on the proposed rules was held in Bismarck on September 8, 2020. The record was held open until 5:00 PM on, September 18, 2020, to allow written comments to be submitted. No one attended or provided oral comments at the public hearing. Two written comments were received within the comment period. A summary of comments is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,511.89.
6. The proposed rules create chapter 75-02-02.4. The following language was implemented:

Section 75-02-02.4-01 is created to provide definitions regarding home and community-based services informed choice referrals. Definitions created include "case manager", "community provider", "department", "home and community-based services", "informed choice", "most integrated setting", "nursing facility level of care", "person-centered planning", "physical disability", "public and private entities", and "target population member".

Section 75-02-02.4-02 is created to outline that the department will

work with public or private entities to inform target population members about home and community-based options; public and private entities do not need permission or a release of information to make a referral; target population members may refuse to participate in the informed choice process; and establishes who is considered the target population.

Section 75-02-02.4-03 is created to outline the powers and duties of the department regarding the informed choice process; including not impeding a decision to receive services in a nursing facility if that is the option chosen by the target population member.

Section 75-02-02.4-04 is created to outline the powers and duties of public and private entities regarding informed choice referrals, including assisting the department in identifying target population members and informing them about home and community-based service options; making referrals to the department; to provide department access to target population members; and to not prevent or impede the informed choice process.

Section 75-02-02.4-05 is created to establish that the availability of appropriate services are based on legislative appropriations and resources and that eligibility for informed choice service does not create an entitlement to services other than information about home and community-based service options if resources are not available.

Section 75-02-02.4-06 is created to establish that public and private entities may disclose target population members individually identifiable health information to the department or its contractors for referral purposes and the disclosure is a disclosure for treatment, including the provision, coordination, and management of health care.

7. No written requests for regulatory analysis have been filed by the

Governor or by any agency. The rule 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. The Department's 2019-2021 budget approved by the 2019 Legislative Assembly included appropriation of \$1,449,730 (total funds) and \$769,186 (general funds). \$825,000 was designated to hire five staff to manage referrals and \$624,730 was designated for operating costs to implement system changes necessary to implement the informed choice process, create a centralized intake system for home and community-based services, and create awareness about the program.
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:

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November 25, 2020