

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

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-02-02, Medical Services)	<u>DEPT. OF HUMAN SERVICES</u>
)	March 4, 2020
(Pages 153-182))	

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

1. The proposed amendments to N.D. Admin Code Chapter 75-02-02 are necessary to comply with 2019 House Bill No. 1515 and 2019 Senate Bill No. 2243.
2. These rules are necessary to remain accurate and consistent with federal Medicaid regulations.
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 (formerly known as 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. No comments were received at the public hearing held in Bismarck on December 9, 2019. The record was held open until December 19, 2019, to allow written comments to be submitted. One written comment was received during 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 \$2451.80.
6. The rules were amended to ensure the rules remain accurate and consistent with federal Medicaid regulations and the State Plan and to comply with 2019 House Bill No. 1515 and 2019 Senate Bill No. 2243. The following specific changes were made:

Section 75-02-02-02 is amended to include North Dakota Century Code Chapter 50-29 as a source of authority for promulgating these rules; to include title XXI of the Social Security Act as a source of federal funds that are sought using the rules under this chapter; and to clarify that these regulations are subject to the Medicaid and children's health insurance program state plan.

Section 75-02-02-03 is amended to clarify that the department is the single state agency for administering the Medicaid and children's health insurance program state plan and program.

Section 75-02-02-03.2 is amended to update the definition of behavioral health services to address changes to social work titles that are included within that definition; to remove definitions of "county agency" and "Section 1931 group"; and to update the definition of "recipient" to include a reference to the children's health insurance program.

Section 75-02-02-08 is amended to change multiple references to "medical assistance" to "Medicaid program and children's health insurance program"; to provide a correct citation to North Dakota Century Code Section 50-24.1-15; and to add a reference to "qualified residential treatment program"

Section 75-02-02-09 is amended to change multiple references to "medical assistance" to "Medicaid program and children's health insurance program", and to update level of care criteria for an individual with a traumatic brain injury to provide that a nursing level of care is medically necessary if the individual requires direct supervision at least four hours a day for five days a week.

Section 75-02-02-09.1 is being repealed.

Section 75-02-02-10 is amended to replace a reference to "medical assistance" with "Medicaid".

Section 75-02-02-10.2 is amended to be consistent with language in the Medicaid State Plan and reorganizing the section. This includes revising definitions for "American Society of Addiction Medicine I", "American Society of Addition Medicine

II.1”, and “American Society of Addition Medicine II.5”, and includes adding definitions for “American Society of Addition Medicine III.1” and “American Society of Addition Medicine III.5”. The section is also amended to remove language stating that no payment for services for treatment of addiction will be made unless the provider requests authorization from the department within five business days of providing such services and the department approves the request. The section also changes the amount of days per calendar year per recipient for which payment can be made under ASAM. Language is added stating that payment may not be made for ASAM III.1 services, unless the recipient is concurrently receiving ASAM II.1 or II.5 services. Language is added to clarify who qualifies as a “licensed addiction counselor”. Language is added to state that licensed addiction programs operating in a border state must provide documentation to the department of their state’s approval for the operation of the addiction program.

Section 75-02-02-10.3 is amended to reorganize the definitions and remove language stating that no payment for partial hospitalization services may be made unless the provider requests authorization from the department within five business days and department approves the request. The section is also amended to state that department may authorize additional days per calendar year per recipient if determined to be medically necessary.

Section 75-02-02-11 is amended to change a reference from “county agency” to “human service zone”, and to change multiple

references from "medical assistance" to "Medicaid program and children's health insurance program".

Section 75-02-02-13 is amended to change a reference from "medical assistance" to "Medicaid program and children's health insurance program".

Section 75-02-02-13.1 is amended to change multiple references from "county agency" to "human service zone", and to change multiple references from "medical assistance" to "Medicaid program and children's health insurance program" or "Medicaid".

Section 75-02-02-13.2 is amended to remove "group homes serving children in foster care" from among a list of service providers that may not be compensated as a "transportation service provider". The section also replaces a reference to "residential childcare facilities" with "qualified residential treatment programs".

Section 75-02-02-14 is repealed as N.D.C.C. §§ 50-01.1-02(7) and 50-01.1-05(12) set forth the applicant's or eligible beneficiary's right to access human services at a human service zone, and this rule is no longer needed.

Section 75-02-02-27 is amended to change multiple references from "medical assistance" to "Medicaid program and children's health insurance program". New language is also added to comply with 2019 Senate Bill Number 2243 regarding prior authorization of a prescribed stimulate medication used in the treatment of attention deficit disorder and attention deficit hyperactivity disorder by an individual who prescribes this

medication at a rate a certain percentage higher than other prescribers.

Section 75-02-02-28 is amended to replace a reference to "medical assistance" with "Medicaid program and children's health insurance program".

Section 75-02-02-29 is amended to place a reference to "medical assistance" with "Medicaid". The section is also amended to increase the eligibility for federal poverty level for a pregnant woman; a pregnant woman who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under 75-02-02.1-41.1; and a child, not including a child in foster care, less than 19 years of age. The section also adds new language stating that a physician, nurse practitioner, or physician assistant practicing in Adult Health may be selected as a primary care provider.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The impact of 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. The anticipated fiscal impact resulting from implementation of the proposed amendments is nominal.
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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