

July 31, 2020

Vonette Richter, Legal Division Director
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Creation of N.D. Admin. Code chapter 75-02-02.4
Home and Community-Based Services Informed Choice Referrals

Dear Ms. Richter:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to create Administrative Rules concerning the above proposed rules as required by N.D.C.C. section 28-32-10. Also enclosed is a copy of the proposed rules.

We have requested publication of an abbreviated newspaper publication notice once in each official county newspaper which will notify the public that an oral hearing on these rules will be held on Tuesday, September 8, 2020, beginning at 11:30 a.m. and continuing until 1:00 p.m. or until no further testimony is offered, whichever occurs first.

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

Sincerely,



Jonathan Alm
Legal Advisory Unit

JA/rv

cc: Nancy Nikolas-Maier, Aging Services
Jessica Thomasson, Aging Services

Enclosures

LEGAL ADVISORY UNIT

600 E Boulevard Ave Dept 325 | Bismarck ND 58505-0250

701.328.2311 | Fax 701.328.2173 | 800.472.2622 | 711 (TTY) | www.nd.gov/dhs

NOTICE OF INTENT TO CREATE
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-02-02.4
HOME AND COMMUNITY-BASED SERVICES INFORMED CHOICE REFERRALS

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed creation of N.D. Admin. Code chapter 75-02-02.4 at 11:30 a.m. on Tuesday, September 8, 2020, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed creation of N.D. Admin. Code chapter 75-02-02.4, Home and Community-Based Services Informed Choice Referrals, are 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.

The proposed changes are as follows:

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 members”.

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

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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 consent 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 consent 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.

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 (formerly known as county social services) 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 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 Friday, September 18, 2020.

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 Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 30th day of July, 2020.

July 31, 2020

RE: Proposed creation of N.D. Admin. Code chapter 75-02-02.4
Home and Community-Based Services Informed Choice Referrals

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing the creation of N.D. Admin. Code chapter 75-02-02.4, Home and Community-Based Services Informed Choice Referrals. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on Friday, September 18, 2020.

The department has scheduled an oral hearing for Tuesday, September 8, 2020. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,



Christopher Jones,
Executive Director

CDJ/rv

Enclosures

cc: Vonette Richter, Legislative Council
Nancy Nikolas-Maier, Aging Services
Jessica Thomasson, Aging Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones