

July 27, 2021

Jill Grossman, Counsel
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code chapter 75-02-06
Ratesetting for Nursing Home Care

Dear Ms. Grossman:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to amend 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 Friday, September 10, 2021, beginning at 9:30 a.m. and continuing until 11:00 a.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: Caprice Knapp, Medical Services
LeeAnn Thiel, Medical Services

Enclosures

LEGAL ADVISORY UNIT

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

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NOTICE OF INTENT TO AMEND AND CREATE
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-02-06 at 9:30 a.m. on Friday, September 10, 2021, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-02-06, regarding Ratesetting for Nursing Home Care, are being made to comply with 2021 House Bill No. 1090.

The proposed changes are as follows:

Section 75-02-06-01 is amended to create definitions for “cost rate”, “margin cap”, “peer group”, and “price”, and to amend the definition of “adjustment factor”.

Section 75-02-06-16 is amended to clarify that this section, regarding rate determinations for cost, is applicable for establishing a rate for direct care, other direct care, and indirect care for the June 30, 2021 report year and update citations. New language provides that a facility shall receive an operating margin of 4.4% until December 31, 2021, and 4.4% effective January 1, 2022 through December 21, 2023. This section establishes the report year ending June 30, 2021 as the base year. The section is amended to raise the limit rate for each cost category. New language provides that the cost rate for the January 1, 2023 rate year must be the previous rate year’s cost rate increased by the adjustment factor. The adjustment factor for the January 1, 2023 rates must be reduced by one-half percent. The section also amends the process for setting rates for a facility changing ownership during the rate period, and also amends the rate establishing process for new facilities.

Section 75-02-06-16.2 is amended to change a section number being referenced due to changes made in Section 75-02-06-16.

Section 75-02-06-16.3 is created to establish a process for calculating rates using the price methodology established by 2021 House Bill No. 1090. The section provides limitations and incentives that may be established on the basis

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of cost of comparable facilities, and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The section places facilities into peer groups based on licensed bed capacity, to help establish a price for the indirect care cost category for that peer group. The section establishes a process for determining the actual rate for indirect care costs and property costs. The section establishes a process for determining the desk audit rate, final rate, and pending decision rates for private-pay residents. The section establishes a general process for determining rate payments, including a statement that no payments may be solicited or received from the resident to supplement the rate as established. The section establishes a process for determining rates for a facility changing ownership during the rate period, as well as for a new facility. The section also establishes that the department may provide for an adjustment in rates to meet certification standards and to account for unforeseeable expenses. The section provides that a facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and use of margin cap. The section provides for adjustments for disaster recovery costs when evacuation of residents occurs, as well as for adjustments for a significant reduction in census.

Section 75-02-06-24 is amended to provide that the direct care rate for a unit within a facility which exclusively provides geropsychiatric services and for a facility that exclusively provides residential services for nongeriatric individuals with physical disabilities must be established using the allowable historical operating costs and adjustment factors under subsection 3 of section 75-02-06-16.3. The margin cap for direct care must be included in the facility's direct care rate.

Section 75-02-06-25 is amended to change the date on which the department shall notify each facility of the desk audit rate. New language provides that the department shall notify each facility of the cost rate and price rate for the 2022 and 2023 rate years, and also specifies by what dates facilities shall notify the department if they accept the cost rates as the established rates for the 2022 and 2023 rate years.

The proposed amendments are 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 and the regulatory analysis relating to these rules 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 Monday, September 20, 2021.

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 27th day of July, 2021.

July 27, 2021

RE: Proposed amendments to N.D. Admin. Code chapter 75-02-06
Ratesetting for Nursing Home Care

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-02-06, Ratesetting for Nursing Home Care. 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 Monday, September 20, 2021.

The department has scheduled an oral hearing for Friday, September 10, 2021. 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: Jill Grossman, Legislative Council
Caprice Knapp, Medical Services
LeeAnn Thiel, Medical Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones