

July 28, 2021

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

RE: Proposed Amendments to N.D. Admin. Code chapters 75-03-23 and 75-03-24
Provision of Home and Community-Based Services under the Service Payments
for Elderly and Disabled Program and the Medicaid Waiver for the Aged and
Disabled Program and Expanded Service Payments for Elderly and Disabled

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 2:30 p.m. and continuing
until 4:00 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: Jessica Thomasson, Executive Policy Director
Nancy Nikolas-Maier, 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 AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTERS 75-03-23 AND 75-03-24
PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE
SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE
MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM AND EXPANDED
SERVICE PAYMENTS FOR ELDERLY AND DISABLED

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapters 75-03-23 and 75-03-24 at 2:30 p.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 chapters 75-03-23 and 75-03-24, regarding Provision of Home and Community-Based Services under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program and Expanded Service Payments for Elderly and Disabled, are necessary to comply with 2021 Senate Bill No. 2083 and the federal Fair Labor Standards Act In-Home Care final rule.

The proposed changes are as follows:

Section 75-03-23-01 is amended to create a definition for “natural supports”.

Section 75-03-23-02 is amended to provide that an applicant is eligible to receive covered services even if the applicant has natural supports.

Section 75-03-23-03 is amended to increase the amount of time an eligible individual can stay on the service payments for elderly and disabled program after discharge from a facility or disruption in services from sixty to ninety days to be consistent with other home and community-based services programs.

Section 75-03-23-05 is amended to provide that the department may provide environmental modification to a client who rents a home, provided that the property owner must approve the modification; to remove language stating that the department may provide environmental modification only when no alternative community resource is available; to allow live in relatives to be reimbursed for homemaker tasks if the actively exclusively benefits the eligible individual in response to the federal Fair Labor Standards Act In-Home Care final rule; to allow homemaker services to be used for individuals who only need shopping assistance; to remove the requirement that no other community resource must be available from the eligibility criteria; and to add “responsible” in front of adult for clarification purposes.

LEGAL ADVISORY UNIT

Section 75-03-23-06 is amended to provide that the department may provide environmental modification to a client who rents a home, provided that the property owner must approve the modification; to remove language stating that the department may provide environmental modification only when no alternative community resource is available; to expand the definition of the type of relative that can provide family personal care; to allow the family provider to be paid for homemaking task if the activity exclusively benefits the eligible individual in response to the federal Fair Labor Standards Act In-Home Care final rule; to allow homemaker services to be used for individuals who only need shopping assistance; to allow live in relatives to be reimbursed for homemaker tasks if the activity exclusively benefits the eligible individual; to remove the requirement that no other community resource must be available from the eligibility criteria; and to remove the live alone requirement for eligible individuals receiving supervision, residential habilitation, or community supports.

Section 75-03-23-07 is amended to change “services required decision” to “confirmed decision” in response to 2021 Senate Bill No. 2083. This section is also amended to add language that agency providers who employ non-family members must have a department approved quality improvement management program that includes a process to identify, address, and mitigate harm to the clients they serve.

Subsection 14 of Section 75-03-23-08 is amended to change “services required decision” to “confirmed decision” in response to 2021 Senate Bill No. 2083.

Subdivision m of Subsection 4 of Section 75-03-23-08.1 is amended to change “services required decision” to “confirmed decision” in response to 2021 Senate Bill No. 2083.

Section 75-03-24-03 is amended to provide that an applicant is eligible to receive covered services even if the applicant has natural supports.

Section 75-03-24-07 is amended to provide that the department may provide environmental modification to a client who rents a home, provided that the property owner must approve the modification; to remove language stating that the department may provide environmental modification only when no alternative community resource is available; to allow live in relatives to be reimbursed for homemaker tasks if the activity exclusively benefits the eligible individuals in response to the federal Fair Labor Standards Act In-Home Care final rule; to allow homemaker services to be used for individuals who only need shopping assistance; to remove the requirement that no other community resource must be available from the eligibility criteria; to add language regarding the

homemaker service cap funding applies to a household and may not be exceeded; and to add “responsible” in front of adult for clarification purposes.

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 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 28th day of July, 2021.

July 28, 2021

RE: Proposed amendments to N.D. Admin. Code chapters 75-03-23 and 75-03-24
Provision of Home and Community-Based Services under the Service Payments
for Elderly and Disabled Program and the Medicaid Waiver for the Aged and
Disabled Program and Expanded Service Payments for Elderly and Disabled

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapters 75-03-23 and 75-03-24, Provision of Home and Community-Based Services under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program and Expanded Service Payments for Elderly and Disabled. 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
Jessica Thomasson, Executive Policy Director
Nancy Nikolas-Maier, Aging Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones