



NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D. ADMIN. CODE CHAPTER 75-02-04.1  
CHILD SUPPORT GUIDELINES

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 75-02-04.1 at 11:00 a.m. on Wednesday, March 1, 2023, 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 75-02-04.1, Child Support Guidelines, are necessary to comply with federal law (42 U.S.C. § 667), federal regulations (45 C.F.R. § 302.56), and state law (N.D.C.C. §14-09-09.7), which require that the guidelines be reviewed at least once every four years to ensure that their application results in the determination of appropriate child support amounts.

The proposed changes are as follows:

**Section 75-02-04.1-01** is amended to create a new exclusion from gross income for early withdrawals from retirement accounts. The section is amended to increase the deduction for determining net income for lodging expenses for employment-related travel from \$93 to \$96 per night and for non-commuting mileage from \$0.56 to \$0.58.5 per mile. The section also revises the definition for "self-employment."

**Section 75-02-04.1-02** is amended to limit the time period for which documentation must be provided to determine fluctuating income to a period not to exceed five years. The section moves language requiring that an order for extended parenting time specify the number of parenting time overnights from the general instructions to section 75-02-04.1-08.1.

**Section 75-02-04.1-07** is amended to provide that an obligor is presumed to be underemployed if their gross income is less than the greater of a monthly amount equal to 167 times the federal hourly minimum wage, or six-tenths of the statewide average earnings for persons with similar work history and occupational qualifications. The section revises the timeframe for the lookback period when imputing income based on the obligor's historical earnings from the "two previous years before commencement of the proceeding before the court" to "the two

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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](http://www.nd.gov/dhs)

previous calendar years". The section is amended to preclude imputing monthly gross income if the obligor has average monthly gross earnings equal to or greater than 167 times the hourly federal minimum wage and those earnings are similar to or greater than the statewide average earnings for persons with similar work history and qualifications. The section also precludes imputing income if the obligor receives disability compensation paid by the veteran's benefits administration based on an overall disability rating of 80%.

**Section 75-02-04.1-08.1** is amended to add language that was removed from section 75-02-04.1-02.

**Section 75-02-04.1-09** is amended to provide new criteria to rebut the presumption that the amount of child support provided is correct. Factors to be considered include: the reduced ability of an obligor who is responsible for educational costs for the supported children that are incurred at private schools; the reduced ability of an obligor who is responsible for child care costs for the supported children; the reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor; and the reduced needs of the child to support from the obligor in situations where the child is residing outside the family home at government expense and the obligation is not assigned to a government agency.

**Section 75-02-04.1-11** is amended to correct a Century Code citation regarding guardianship orders, and to provide that if the parents of a child in foster care or guardianship reside together, and neither parent has a duty to support any child who is not also a child of the other parent, the income of the parents, including imputed income of each parent, if applicable, must be combined and treated as the income of the obligor.

The fiscal impact of the proposed amendments cannot be precisely calculated, but may 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 -

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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, March 13, 2023.

**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 29th day of July, 2022.