CHAPTER 75-02-07.1
RATESETTING FOR BASIC CARE FACILITIES

75-02-07.1-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.

2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.

3. "Adjustment factor" means the inflation rate for basic care services used to develop the legislative appropriation for the department for the applicable rate year.

4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.

5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.

6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.

7. "Alzheimer's and related dementia facility" means a licensed basic care facility which primarily provides services specifically for individuals with Alzheimer's disease or related dementia.

8. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:

   a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 4 of section 75-02-07.1-13;

   b. A sale and leaseback to the same licensee;

   c. A transfer of an interest to a trust;

   d. Gifts or other transfer for nominal or no consideration;

   e. A change in the legal form of doing business;

   f. The addition or deletion of a partner, owner, or shareholder; or

   g. A sale, merger, reorganization, or any other transfer of interest between related organizations.

9. "Building" means the physical plant, including building components and building services equipment, licensed as a facility and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings if used directly for resident care.

10. "Capital assets" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.

11. "Chain organization" means a group of two or more basic care or health care facilities owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to basic care or health care.

12. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.

13. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.

14. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.

15. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.

16. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.

17. "Department" means the department of human services.

18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.

19. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.

20. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2018 edition.

21. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.

22. "Direct care costs" means the cost category for allowable resident care, activities, social services, and laundry costs.

23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.

24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.

25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.

26. "Employment benefits" means fringe benefits and other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.

27. "Facility" means a provider licensed as a basic care facility, not owned or administered by state government, which does not meet the definition of an Alzheimer's and related dementia facility, traumatic brain injury facility, or institution for mental disease, which is enrolled with the department as a basic care assistance program provider.

28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.

29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.

30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

31. "Food and plant costs" means the cost category for allowable food, utilities, and maintenance and repair costs.

32. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.

33. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.

34. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.

35. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.

36. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

37. "In-house resident day" for basic care, swing bed, and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.

38. "Institution for mental disease" means a facility with a licensed capacity of seventeen or more beds which provides treatment or services primarily to individuals with a primary diagnosis of mental disease.

39. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.

40. "Limit rate" means the rate established as the maximum allowable rate for direct care and indirect care.

41. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.

42. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.

43. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.

44. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.

45. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

46. "Personal care rate" means a per diem rate that is the sum of the rates established for direct personal care costs, indirect personal care costs, and the operating margin for personal care.

47. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.

48. "Private room" means a room equipped for use by only one resident.

49. "Property costs" means the cost category for allowable real property costs and passthrough costs.

50. "Provider" means the organization or individual who has executed a provider agreement with the department.

51. "Rate year" means the year from July first through June thirtieth.

52. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into

account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.

53. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.

54. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.

55. "Resident" means a person who has been admitted to the facility but not discharged.

56. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought. The amount of remuneration has no bearing on whether a day should be counted as a resident day. "Resident day" for assisted living or any other residential services provided means a day for which payment is sought by the provider regardless of remuneration.

57. "Room and board rate" means a per diem rate that is the sum of the rates established for property costs, direct room and board costs, indirect room and board costs, the operating margin for room and board and food and plant costs.

58. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.

59. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.

60. "Specialized facility for individuals with mental disease" means a licensed basic care facility with a licensed capacity of less than seventeen which provides treatment or services primarily to individuals with mental disease.

61. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.

62. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.

63. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.

64. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014; April 1, 2018; October 1, 2022.
General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-02. Financial reporting requirements.

1. Records.

   a. The facility shall maintain on the premises the required census records and financial information in a manner sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.

   b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with applicable sections in this chapter.

   c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by such cost report in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the department.

   d. Except for motor vehicles used exclusively for resident-related activities, the provider shall maintain a mileage log for all motor vehicles that identifies mileage and purpose of each trip. Vehicle mileage for nonresident-related activities must be documented.

2. Accounting and reporting requirements.

   a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported. Ratesetting procedures must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.

   b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost category and readily traceable to the cost report.

   c. No later than December first of each year, each facility shall provide to the department:

      (1) A cost report on forms prescribed by the department.

      (2) A copy of the facility's financial statement. For provider organizations that operate more than one facility, a consolidated financial report can be provided. The information must be reconciled to each facility's cost report.

      (3) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.

         (a) If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose

compensation or portion of compensation is claimed in the facility's cost report must be identified regardless of the proportion of ownership interest.

(b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.

(4) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection.

(5) Supplemental information reconciling the costs on the financial statements with costs on the cost report.

(6) The following information, upon request by the department:

(a) Access to certified public accountant's workpapers that support audited, reviewed, or compiled financial statements.

(b) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.

(c) Separate financial statements for any organization, excluding individual facilities of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.

(d) Separate financial statements for any organization with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconcile costs on the financial statements to costs for the report year.

d. If a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the facility's most recently established rate. Reinstatement of the current payment rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.

e. A facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may reduce the current payment rate to eighty percent of its most recently established rate until the information is completely and accurately filed.

f. Costs reported must include total costs and be adjusted to allowable costs. Adjustments made by the department, to attain allowable cost, may, if repeated on future cost filings, be considered as possible fraud and abuse. The department may forward all such items identified to the appropriate investigative group.

g. The department may grant an extension of the reporting deadline to a facility for good cause. To receive an extension, a facility shall submit a written request to the department. The deadline for filing may not be extended past April fifteenth of the year following the report year.

3. In order to properly validate the accuracy and reasonableness of cost information reported by the facility, the department may provide for an onsite audit.

4. Penalties for false reports.

   a. A false report is one where a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:

      (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;

      (2) Terminate the department's agreement with the provider;

      (3) Prosecute under applicable state or federal law; or

      (4) Use any combination of the foregoing actions.

   b. The department may determine a report is a false report if a provider claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The provider may indicate that the costs are under appeal and not claimed under protest to perfect a claim if the appeal is successful.

History: Effective July 1, 1996; amended effective October 1, 2011; October 1, 2022.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-03. General cost principles.

1. For ratesetting purposes, a cost must:

   a. Be ordinary, necessary, and related to resident care;

   b. Be what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction; and

   c. Be for goods or services actually provided in the facility.

2. The cost effects of transactions which circumvent these rules are not allowable under the principle that the substance of the transaction prevails over form.

3. Costs incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the basic care industry are not allowable.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-04. Participation requirement.

A facility may not receive aid to vulnerable aged, blind, and disabled persons assistance payments unless it complies with all provisions of this section.

1. A facility shall have an effective provider agreement with the department.

2. A facility may charge to hold a bed for a period in excess of the periods covered under subsection 2 or 3 of section 75-02-07.1-05 if:

a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and

b. For an eligible beneficiary, the payment comes from sources other than from the beneficiary's monthly income.

3. A facility may not violate any resident rights as set forth in North Dakota Century Code section 50-10.2-02. Collection and use by a facility of financial information of any applicant pursuant to a screening process does not raise an inference that the facility is using that information for any purpose prohibited by North Dakota Century Code section 50-10.2-02 or this section.

4. A facility may not require any vendor of medical care, who is paid by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the facility except as payment for the fair market value of renting or leasing space or equipment of the facility or purchasing support services, if those agreements are disclosed to the department.

5. A facility shall file on behalf of each resident or assist each resident in filing requests for any third-party benefits to which the resident may be entitled.

6. If a facility does not comply with this section, the department, if extreme hardship to the residents would otherwise result, may continue to make medical assistance and aid to vulnerable aged, blind, and disabled persons program payments to the facility for a period not to exceed ninety days from the date of mailing a written notice of a violation of this section. The facility may seek reconsideration of or appeal the department's action.

7. A facility may charge a higher rate for a private room used by an eligible beneficiary if:

a. The private room is not necessary to meet the eligible beneficiary's care needs;

b. The eligible beneficiary, or a person acting on behalf of the eligible beneficiary, has requested the private room;

c. The facility informs the individual making the request, at the time of the request, of the amount of payment and that the payment must come from sources other than the eligible beneficiary's monthly income;

d. The payment does not exceed the amount charged to private-pay individuals for use of a private room; and

e. Appropriate semiprivate accommodations are available at the time the first charges for a private room apply.

History: Effective July 1, 1996; amended effective July 1, 2001; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-05. Resident census.

1. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:

a. Identification of the resident;

b. Entries for all days, and not just by exception;

c. Identification of type of day, i.e., medical care, in-house; and

d. Monthly totals by resident and by type of day.

2. A maximum of thirty days per occurrence may be allowed for payment of the room and board rate for medical care leave. Medical care leave days in excess of thirty consecutive days not billable to the aid to vulnerable aged, blind, and disabled persons program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.

3. A maximum of twenty-eight therapeutic leave days per rate year may be allowed for payment of the room and board rate. Nonbillable therapeutic leave days in excess of twenty-eight are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.

4. Residents admitted to the facility through a hospice program, or electing hospice benefits while in a facility, must be identified as hospice residents for census purposes.

5. Payment may not be sought for payment of the personal care rate for any day in which an eligible beneficiary is not in the facility or for the day of discharge. Payment of the personal care rate may be sought for the day of death.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; April 1, 2018.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-06. Direct care costs.

Direct care costs include only those costs identified in this section.

1. **Resident care.**

   a. Salary and employment benefits for the director or supervisor of resident care staff, inservice trainers for resident care staff, quality assurance personnel, resident care aides, medication aides, and ward clerks.

   b. Routine hair and personal hygiene items and services furnished routinely and relatively uniformly to all residents; items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities; and items used by individual residents that are reusable, vary by the needs of the individual, and are expected to be available in the facility.

   c. Medically necessary items, services, and durable medical equipment which could otherwise be billed directly to Medicaid if the facility chooses to provide them.

2. **Licensed health care professionals.**

   a. Salary and employment benefits for the director or supervisor of licensed health care professional staff, registered nurses, licensed practical nurses, speech, occupational, and physical therapists.

   b. The cost of supplies used to provide therapy, or noncapitalized therapy and resident care equipment.

3. **Laundry.**

   a. Salary and employment benefits for a director of laundry, laundry aides, seamstresses, and other personnel who gather, transport, sort, and clean linen and clothing.

   b. The cost of laundry supplies including detergents, softeners, and linens.

c. Contracted services for laundry.

4. **Social services.** Salary and employment benefits or consultant fees for social workers or social worker designees.

5. **Activities.**

   a. Salary and employment benefits for activities director, activities aides, and other personnel who directly provide for leisure and recreational activities.

   b. The cost of leisure and recreational activities and supplies including games, ceramics, pets, out-of-house activities, and noncapitalized exercise equipment.

History: Effective July 1, 1996; amended effective July 1, 2001; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-07. Indirect care costs.

Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. **Administration.** Costs for administering the overall activities of the facility include:

   a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.

   b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, medical director, and salary and employment benefits of all personnel not designated in other cost categories.

   c. Board of directors' fees and related travel expenses.

   d. Security personnel or services.

   e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.

   f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.

   g. Telephone.

   h. Postage and freight.

   i. Membership dues and subscriptions.

   j. Professional fees for services such as legal, accounting, and data processing.

   k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.

   l. Advertising and personnel recruitment costs.

   m. Management consultants and fees.

n. Business meetings, conventions, association meetings, and seminars.

o. Travel.

p. Training, including inservice training.

q. Business office functions.

r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.

s. Working capital interest.

t. Any costs that cannot be specifically classified to other cost categories.

2. **Chaplain.**

   a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.

   b. Supplies and other expenses related to meeting the spiritual needs of the residents.

3. **Pharmacy.** Compensation for pharmacy consultants.

4. **Plant operations.**

   a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.

   b. Motor vehicle operating and resident transportation expenses.

5. **Housekeeping.**

   a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.

   b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.

   c. Contracted services for housekeeping.

6. **Dietary.**

   a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.

   b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. **Medical records.** Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996; amended effective July 1, 2001; April 1, 2018.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-08. Property costs.

Property-related costs and pass-through costs include only those costs identified in this section.

1. Depreciation.
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in section 75-02-07.1-17.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal and related expenses:
   a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after July 1, 1995, regarding a rate year beginning on or after July 1, 1995;
   b. Related to legal services furnished on or after July 1, 1995; and
   c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal and related expenses paid.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-08.1. Food and plant costs.

Food and plant costs include only those costs identified in this section.

1. The cost of consumable food products and dietary supplements.
2. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
3. Repairs and maintenance contracts and purchased services.
4. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.

History: Effective July 1, 2001.
General Authority: NDCC 50-06-15
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-09. Cost allocations.

1. Direct costing of allowable costs must be used whenever possible. For a facility that cannot direct cost, the following allocation methods must be used:
   a. If a facility is combined with other residential or health care facilities, except for a nursing facility, the following allocation methods must be used:
      (1) Resident care salaries that cannot be reported based on actual costs must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. Time studies must

represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, resident care salaries must be allocated based on revenues for resident services.

(2) Salaries for a director or supervisor of resident care or licensed health care professionals that cannot be reported based on actual costs or time studies must be allocated based on resident care salaries, licensed health care professional salaries or full-time equivalents of resident care staff, or licensed health care professional staff.

(3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.

(4) Other resident care costs must be allocated based on resident days.

(5) Dietary and food costs must be allocated based on the number of meals served or in-house resident days.

(6) Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.

(7) Activity costs must be allocated based on in-house resident days.

(8) Social service costs must be allocated based on resident days.

(9) Housekeeping costs must be allocated based on weighted square footage.

(10) Plant operation costs must be allocated based on weighted square footage.

(11) Medical records costs must be allocated based on the number of admissions or discharges and deaths.

(12) Pharmacy costs for consultants must be allocated based on in-house resident days.

(13) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, chaplain, and utility costs, in each facility.

(14) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center must be allocated using the methodologies set forth in this section for that particular cost center.

(15) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.

(16) Employment benefits must be allocated based on the ratio of salaries to total salaries.

b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the department. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

c. Malpractice, professional liability insurance, therapy salaries, purchased therapy services, and resident care salaries and benefits costs for a facility combined with an optional Alzheimer's, dementia, special memory care or traumatic brain injury facility, or unit must be direct costed.

d. The costs of operating a pharmacy may not be included as facility costs.

e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.

2. If a facility is combined with a nursing facility, the allocation methodologies, exceptions, and waivers set forth in chapter 75-02-06 must also be used for the facility.

3. If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:

a. Salaries must be allocated using time studies. Time studies must be conducted semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, salaries must be allocated entirely to indirect care costs if any of the employee's job duties are included in this cost category.

b. Employment benefits must be allocated based on the ratio of salaries in the cost center to total salaries.

4. A facility that operates or is associated with nonresident-related activities, such as apartment complexes, shall allocate all costs, except administration costs, in the manner required by subsection 1, and shall allocate administration costs as follows:

a. If total costs of all nonresident-related activities, exclusive of property, administration, chaplain, and utility costs, exceed five percent of total facility costs, exclusive of property, administration, chaplain, and utility costs, administration costs must be allocated on the basis of the percentage of total costs, excluding property, administration, chaplain, and utility costs.

b. If total costs of all nonresident-related activities, exclusive of property, administration, chaplain, and utility costs, are less than five percent of total facility costs, exclusive of property, administration, chaplain, and utility costs, administration costs must be allocated to each activity based on the percent gross revenues for the activity is of total gross revenues except that the allocation may not be based on a percentage exceeding two percent for each activity.

c. If the provider can document, to the satisfaction of the department, that none of the facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.

d. The provisions of this subsection do not apply to the activities of health care facilities associated with a facility.

5. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on mileage logs.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; October 1, 2011; April 1, 2018.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-10. Nonallowable costs.

Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of the facility and its activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-07.1-08;
6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations such as elks, YMCA, country clubs, or knights of columbus;
8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies, including all dues unless an allocation of dues to such costs is provided;
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockbroker and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with the acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with the transaction described in subsection 4 of section 75-02-07.1-13; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;

15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any portion of the use of equipment was related to resident care;

16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administration costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any health care facility or basic care facility;

17. Costs incurred by the provider's subcontractors or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 1, 1995;

18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;

19. Depreciation expense for facility assets not related to resident care;

20. Nonbasic care facility operations and associated administration costs;

21. All costs for services paid directly by a government entity to an outside provider, such as prescription drugs;

22. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:

    a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;

    b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and

    c. The facility documents all costs associated with a vehicle not exclusively used by the facility;

23. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;

24. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;

25. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;

26. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;

27. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion which relates to costs that benefit all eligible employees;

28. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if

the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;

29. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;

30. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;

31. The following taxes:

    a. Federal income and excess profit taxes, including any interest or penalties paid thereon;

    b. State or local income and excess profit taxes;

    c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;

    d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;

    e. Taxes on property not used in the provision of covered services;

    f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider; and

    g. Self-employment (FICA) taxes, applicable to persons such as individual proprietors, partners, or members of a joint venture;

32. The unvested portion of a facility's accrual for sick or annual leave;

33. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the facility's fiscal yearend;

34. Employment benefits associated with salary costs not includable in a rate set under this chapter;

35. The cost, including depreciation, of equipment or items purchased with funds received from a government agency;

36. Hair care, other than routine hair care, furnished by the facility;

37. The cost of education unless:

    a. The education was provided by an accredited academic or technical educational facility;

    b. The expenses were for materials, books, or tuition;

    c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility and is in that position; and

    d. The facility claims the cost of the education at a rate that does not exceed one dollar per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided the amount claimed per employee may not

exceed two thousand dollars per year, or an aggregate of eight thousand dollars, and in any event may not exceed the cost to the facility of the employee's education;

38. Repealed effective July 1, 1999.

39. Increased lease costs of a provider except to the extent:

    a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;

    b. The increased costs related to the ownership are charged to the lessee; and

    c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;

40. Bad debts expense;

41. Costs associated with or paid for the acquisition of licensed basic care capacity; and

42. Goodwill.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-11. Offsets to costs.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income received by the facility in any form must be offset up to the total of the appropriate allowable costs, with the following exceptions:

    a. The established rate;

    b. Income from payments made under the Job Training Partnership Act;

    c. Income from charges for private rooms or special services;

    d. Noncovered bed hold days; or

    e. The deferred portion of patronage dividends credited to the facility and not previously offset.

2. If actual costs are not identifiable, income must be offset up to the total of costs as described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Sources of income and the related offset include:

    a. Activities income. Income from the activities department and the gift shop must be offset to activity costs.

    b. Bad debt recovery. Income for bad debts previously claimed must be offset to administration costs in total in the year of recovery.

    c. Dietary income. Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.

    d. Drugs or supplies income. Amounts received from the sale of resident care supplies to employees, doctors, or others not admitted as residents must be offset to resident care supplies.

e. Insurance recoveries income. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.

f. Interest or investment income. Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.

g. Laundry income. All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.

h. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.

i. Rentals of facility space income. Revenues received from outside sources for the use of facility space and equipment must be offset to property costs.

j. Telephone income. Revenues received from residents, guests, or employees for use of a telephone must be offset to administration costs. Income from emergency answering services need not be offset.

k. Therapy income. Income from all therapy services must be offset to licensed health care professional costs.

l. Vending income. Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.

3. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

4. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.

5. Where an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's cost for goods or services purchased from the vendor.

6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-12. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish central administration or other services including centralized accounting, purchasing, personnel, or management services. To the extent the home office furnishes services related to resident care to a facility, the reasonable resident-related costs, not to exceed actual costs of the services, are includable in the facility's cost report and are includable as part of the facility's rate.

2. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

3. Home office costs incurred for expansion of a chain organization must be directly allocated to the appropriate component of the chain. The costs of abandoned plans are not allowable.

4. Central or home office costs representing services of consultants required by law in areas for social services, nursing, therapies, or activities and central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of resident care may be allocated to the appropriate cost category of a facility according to subdivisions a through e.

   a. Only the salaries and employment benefits associated with the individual performing the service may be allocated. No other costs may be allocated.

   b. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services in the facility.

   c. The cost in subdivision a for each consultant may not be allocated to more than one cost category in the facility. If more than one facility is served by a consultant, all facilities shall allocate the consultant's cost to the same operating category.

   d. Top management personnel may not be considered consultants.

   e. An allocation may not be made unless the consultant's full-time responsibilities are to provide the services identified in this section.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-13. Related organizations.

1. Except as provided in subsection 4, costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The provider shall identify the related organizations and costs in the cost report.

2. A provider may lease a facility from a related organization within the meaning of ratesetting principles. In such case, the rent paid to the lessor by the provider is not allowable as cost. The provider may include in its cost the allowable costs of ownership of the facility. These costs are property insurance, depreciation as provided for in section 75-02-07.1-15, interest on the mortgage as provided for in section 75-02-07.1-16, and real estate taxes as provided for in section 75-02-07.1-17. Other operating expenses of the related organization, relating to

the leased facility, are not includable by the provider as an allowable cost of ownership, but may be included as allowable operating expenses subject to subsection 1.

3. The relationship between a provider and a related organization at the time a transaction between the two parties occurs must govern the treatment of cost regardless of subsequent events that may change the relationship between the parties.

4. In the case of a facility acquired through purchase of shares, interest and depreciation expense are treated in the same manner as if the capital assets of the acquired corporation were acquired as an ongoing operation by the acquiring entity on the day the secretary of state issues a certificate of dissolution of the acquired corporation if organized in North Dakota, or on the day the acquired corporation is irrevocably dissolved if organized other than in North Dakota, provided the transaction has all of the following characteristics:

   a. The facility was owned and operated by the acquired corporation;

   b. The acquired corporation is irrevocably dissolved, and all of its capital assets become the property of the acquiring entity, within one year after the first day on which any ownership interest in the acquired corporation was acquired by the acquiring entity; and

   c. Neither the acquiring entity nor any related organization of the acquiring entity has had any ownership interest in the acquired corporation, or any ownership interest in any related organization of the acquired corporation, for at least ten years prior to the day the acquiring entity, or a related organization of the acquiring entity, first acquired any ownership interest in the acquired corporation.

5. For purposes of subsection 4, "acquiring entity" means the entity that, upon dissolution of the acquired corporation, owns all the capital assets formerly owned by the acquired corporation.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:

   a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the previous report year increased by the consumer price index for all urban consumers, United States city average, all items;

   b. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed subdivision a; or

   c. For a facility licensed before July 1, 2016, which is located in North Dakota and shares a home office that is also located in North Dakota with no more than two nursing facilities that are located in North Dakota, but whose cost report does not include nursing facility costs, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed subdivision a.

2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.

3. Compensation includes:

   a. Salary for managerial, administrative, professional, and other services;

   b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;

   c. The cost of assets and services the person receives from the provider;

   d. Deferred compensation, pensions, and annuities;

   e. Supplies and services provided for the personal use of the person;

   f. The cost of a domestic or other employee who works in the home of the person; or

   g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.

4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.

5. Costs otherwise nonallowable under this chapter may not be included as compensation.

History: Effective July 1, 1996; amended effective July 1, 1998; October 1, 2011; July 1, 2011; April 1, 2018; October 1, 2022.
General Authority: NDCC 50-06-16, 50-24.5-02(3), 50-24.5-10
Law Implemented: NDCC 50-24.5-02(3), 50-24.5-10

75-02-07.1-15. Depreciation.

1. Ratesetting principles require that payment for services include depreciation on all capital assets used to provide necessary services.

   a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.

   b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.

   c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Depreciation methods.

a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different from that submitted on the cost report, a reconciliation must be prepared by the facility.

b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

(1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

(2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars for each item, its cost must be capitalized and depreciated over the estimated useful life of the asset. Costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.

b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.

4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and must be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.

6. Basis for depreciation of assets acquired as an ongoing operation.

a. Determination of the cost basis of a facility and its depreciable assets acquired as an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

b. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1995, is limited to the lowest of:

(1) Purchase price paid by the purchaser;

(2) Fair market value at the time of the sale; or

(3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.

c. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.

d. The cost basis of a facility and its depreciable assets acquired through donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.

e. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under paragraph 3 of subdivision b, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

7. An adjustment may not be allowed for any depreciable cost that exceeded the basis in effect for rate periods prior to July 1, 1995.

8. The department shall establish a cost basis limitation for construction or renovation of a facility. A per bed cost limitation must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.

a. Effective August 1, 2009, the per bed limitation basis for double occupancy is one hundred twelve thousand seven hundred thirty-two dollars.

b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by one and one-half.

c. The existing per bed limitations for single and double occupancy must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban

consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.

d. The per bed limitations in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.

e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitations.

History: Effective July 1, 1996; amended effective July 1, 1998; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-16. Interest expense.

1. To be allowable, interest expense must meet all of the following criteria:

   a. Interest expense must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds is required.

   b. Interest expense must be identifiable in the facility's accounting records.

   c. Interest expense must be related to the reporting period in which the costs are incurred.

   d. Interest expense must be necessary and proper for the operation, maintenance, or acquisition of the facility.

   e. Interest expense must not relate to funds borrowed to finance costs of assets in excess of the depreciable cost basis established at the time of purchase as recognized in section 75-02-07.1-15.

   f. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allowable when the debt was initially incurred.

   g. If associated with borrowing for the purpose of acquiring assets as an ongoing operation in a bona fide sale, interest expense must be limited to the amount of interest associated with borrowing, occurring at the time of the sale, that does not exceed ninety percent of the cost basis as determined in subsection 6 of section 75-02-07.1-15.

   h. In a sale not bona fide, interest expense may not exceed the amount that would have been allowable had the sale not occurred.

2. In cases where it is necessary to issue bonds for financing, any bond premium or discount must be amortized over the life of the bond issue.

3. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.

4. If a facility incurs interest expense because of late payments for resident services and charges a service charge or interest for late payments, the income must be offset against interest expense. If no interest expense is incurred by the facility because of late payments for resident services, service charges or interest paid must be offset against administration expenses.

5. For refinanced or refunded debt, the total net aggregate allowable costs to be incurred for all reporting periods may not exceed the total net aggregate costs that would have been allowed had the refinancing or refunding not occurred. Annual allowable costs must be limited to the lesser of the cost that would have been allowed had the refinancing or refunding not occurred or the costs associated with the refinancing or refunding plus the portion, if any, of adjustments not recognized in prior cost reporting periods.

6. Interest on operating loans paid more than three years after the borrowing is not allowable.

7. Interest expense must be allocated between allowable and nonallowable expense based on the ratio of the principal balance of allowable debt to the principal balance of nonallowable debt at the time the debt was incurred, except that the ratio may be adjusted to reflect principal payments on nonallowable debt made in excess of scheduled repayments, provided no funded depreciation or borrowed funds are used to make the excess principal payments.

8. For purposes of this section:

   a. "Necessary" means that the interest is incurred on debt made to satisfy a financial need of the facility and for a purpose reasonably related to resident care; and

   b. "Proper" means that the interest is incurred at a rate not in excess of what a prudent borrower would be obliged to pay in an arm's-length transaction and is incurred on debt made by a lender that is not a related organization, except for funds borrowed in accordance with section 75-02-07.1-19.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-17. Taxes.

1. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes identified as nonallowable costs in section 75-02-07.1-10.

2. Whenever exemptions to taxes are legally available, the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for the taxes is not an allowable cost.

3. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as they are billed by the taxing authority.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-18. Startup costs.

In the first stages of operation, a new facility incurs certain costs in developing its ability to care for residents prior to admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation that cannot be allocated to resident care because there are no residents receiving services. These costs are commonly referred to as startup costs. Actual allowable startup costs may be considered as deferred charges and allocated over a number of periods that benefit from the costs. Where a facility has properly capitalized startup costs as a deferred charge, the startup costs

must be recognized as allowable costs amortized over sixty consecutive months starting with the month in which the first resident is admitted.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-19. Funded depreciation.

1. Funding of depreciation is the practice of placing funds, including nonborrowed bond reserve and sinking funds, in a segregated account for the acquisition of capital assets used in rendering resident care or for other capital purposes related to resident care. Other capital purposes include capital debt liquidation, such as principal payments for bonds and mortgages.

2. All provisions of this subsection must be met in order to qualify as funding of depreciation. If the provisions are not met, income earned on investments must be offset to interest expense.

   a. The action to fund depreciation must be approved by the appropriate managing body of the facility.

   b. The fund or funds must be clearly designated in the facility's records as funded depreciation.

   c. Funded depreciation (total market value of fund) must be available, unless contractually committed as provided in subsections 8 and 9, on an as-needed basis for the acquisition of the facility's capital assets used to render resident care, or for other capital purposes related to resident care. Loans made from funded depreciation do not alter the requirement that funded depreciation must be available.

   d. Income earned on investments in the fund must be deposited in and become part of the funded depreciation account.

   e. Deposits to the funded depreciation account must remain for six months or more to be considered as funded depreciation. Deposits of less than six months are not eligible for the benefits of the funded depreciation account. Investment income earned prior to elapse of the six-month period may not be offset unless the deposits are actually withdrawn and then only if the withdrawal is not for capital purposes.

   f. Funded depreciation may not be restricted for a specific or future purpose.

   g. When a provider invests or transfers the assets of the fund to a home office of a chain organization or the motherhouse or governing body of a religious order or to other related parties, the assets are considered to be the facility's funds and are subject to all provisions of this section.

3. Total funded depreciation from deposits in excess of accumulated depreciation on resident-related assets must be considered as ordinary investments and the income therefrom must be used to offset interest expense.

4. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on the assets, and other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis.

5. The facility may borrow from funded depreciation to obtain working capital for normal operating expenses used for resident care. In addition, the facility may borrow from funded depreciation accounts of related health care facilities if the funded depreciation accounts of

the related facilities are maintained in accordance with health care financing administration regulations. The interest incurred by the general fund is allowable provided the loans are necessary and proper, and provided the funds withdrawn have met the six-month funding requirement. If the funds withdrawn do not meet the six-month funding requirement, interest paid on the loan is not an allowable cost. Funds loaned from funded depreciation under the provisions of this subsection are treated as available funded depreciation for purposes of this section. Costs incurred to secure lines of credit to ensure availability are not allowable costs.

6. Interest paid by the general fund to the funded depreciation account is not an allowable cost if the facility borrows the funds to acquire capital assets. The facility is expected to use funded depreciation for that purpose.

7. Deposits of funds into the funded depreciation account must be first applied to reduce loans outstanding from the funded depreciation account to the general fund. Until such loans, including related-party loans, are repaid in full, funds deposited in the funded depreciation account must be considered as repayments on the loans and any subsequent interest expense of the general fund to the extent of the repaid loans is not allowable.

8. Available funded depreciation must be withdrawn and used before resorting to borrowing for the acquisition of capital assets or other capital purposes. Because it is frequently difficult to time a bond offering or other borrowing to coincide with the exhaustion of available funded depreciation, it is sufficient if available funded depreciation is contractually committed to and expended during the course of construction.

9. Funds are considered available unless committed, by virtue of contractual arrangements, to the acquisition of capital assets used to render resident care, or to other capital purposes. Borrowing for a purpose intended by funded depreciation is unnecessary to the extent funded depreciation is available. Thus, interest expense for borrowing up to the amount of available funded depreciation is not an allowable cost.

10. When funded depreciation is used by the facility for other than the acquisition of capital assets, other capital purposes related to resident care, or loans to the general fund for current operating costs, the income earned on these funds while on deposit in the funded account must be adjusted in the report year the withdrawal was made. The adjustment must include all offsets not made in prior reporting periods for earnings applicable to the funds.

11. Borrowing for a purpose for which funded depreciation account funds may have been used makes the borrowing unnecessary to the extent that funded depreciation account funds were available at the time of the borrowing. Available funds in the funded depreciation account, to the extent of the unnecessary borrowing, are tainted funds. Interest expense incurred on borrowing for a capital purpose is not an allowable cost to the extent that funded depreciation account funds were available at the time of the borrowing.

12. A provider may remove the unnecessary characterization of borrowing, and thereby cure tainted funded depreciation, by using the tainted funds for a proper purpose described in subsection 1. Any funded depreciation that existed at the time of the unnecessary borrowing and is not classified as tainted must be used before any of the tainted funds.

13. When only a portion of the borrowing is considered unnecessary under subsection 11, subsequent repayments of the borrowing from general funds must first be applied to the allowable portion of the borrowing and then, when all of the allowable borrowing is repaid, to the unallowable portion of the borrowing. When funds from the funded depreciation account are used for the repayment of the unnecessary borrowing, an equivalent amount of tainted funds is cured without regard to the provisions of subsections 11 and 12. Where general funds are used to pay for the unallowable borrowing after the necessary borrowing has been repaid,

an equivalent amount of tainted funded depreciation is cured without regard to the provisions of subsections 11 and 12.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-20. Rate calculation.

1. For each cost category, the actual rate is calculated using allowable historical operating costs plus adjustment factors provided for in section 75-02-07.1-21 for the direct care, indirect care, and food and plant cost categories, divided by in-house resident days for the direct care and indirect care cost categories and resident days for the food and plant and property cost categories. The actual rate as calculated for direct care and indirect care is compared to the limit rate for each category to determine the lesser of the actual rate or the limit rate. The lesser of the actual rates or the limit rates for the direct personal care and indirect personal care costs and the operating margin are added to establish the facility's personal care rate. The rates for property costs, food and plant costs, the operating margin for room and board, and the lesser of the actual rates or the limit rates for direct room and board and indirect room and board costs are added to establish the facility's room and board rate. The sum of the personal care rate and the room and board rate is the facility's established rate.

2. The established rate for a licensed nursing facility providing services to an eligible beneficiary is:

   a. For a nursing facility that shares basic services with a licensed basic care facility, the rate established for the licensed basic care facility as provided for in subsection 1; and

   b. For a nursing facility that does not share basic services with a licensed basic care facility, the sum of the limit rates for direct care and indirect care costs, the maximum three percent operating margin calculated in section 75-02-07.1-21, and a rate calculated using allowable food and plant and property costs and census used in establishing the nursing facility's current rate under chapter 75-02-06.

History: Effective July 1, 1996; amended effective July 1, 1999; July 1, 2001; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-21. Adjustment factor for direct care, indirect care, and food and plant costs.

1. The adjustment factor will be applied to adjust historical costs. The adjustment factor will be used to adjust direct care, indirect care, and food and plant costs.

2. Costs reported for a period other than twelve months ended December thirty-first of a report year will be adjusted to December thirty-first using:

   a. The increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, over the period ending December thirty-first of the report year, and beginning at the end of the month within which the report period ends.

   b. The increase, if any, identified in subsection a of this section shall be applied prior to any application of the adjustment factor.

History: Effective July 1, 1996; amended effective July 1, 2001; July 2, 2002; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-22. Rate limitations.

Historical costs, as adjusted, for all facilities for which a rate is established excluding specialized facilities for individuals with mental disease, must be used in the establishment of a limit rate for the direct care and indirect care cost categories. The actual rate for each cost category for each facility must be determined in accordance with this chapter. When establishing a facility's rate:

1. Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for direct care cost category shall receive the limit rate for that cost category;

2. A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and

3. A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.

4. The July 1, 2017, direct care limit rate is fifty-seven dollars and thirty-two cents.

5. The July 1, 2017, indirect care limit rate is forty-nine dollars and ninety-five cents.

6. The department may use an adjustment factor to calculate the direct care and indirect care limits for future rate years within legislative appropriation.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; amended July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014; April 1, 2018.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-23. Rates.

1. **Desk audit rate.**

   a. The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment may not be made. The department shall review the information and make any appropriate adjustments.

   b. The desk audit rate must be effective July first of each rate year unless the department specifically identifies an alternative effective date, and must continue in effect until a final rate is established.

   c. The desk rate may be adjusted for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.

   d. The desk rate may be adjusted to reflect errors, omissions, or adjustments for the report year that results in a change of at least twenty-five cents per day.

2. **Final rate.**

a. The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective July first of each rate year unless the department specifically identifies an alternative effective date.

b. The final rate must include any adjustments for nonallowable costs, errors, or omissions found during a field audit or reported by the facility and that result in a change from the desk audit rate of at least twenty-five cents per day.

c. The final rate may be revised at any time for special rates or one-time adjustments provided for in section 75-02-07.1-25 or 75-02-07.1-26.

d. If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:

(1) Adjustments, errors, or omissions found within twelve months of the date of notification of the final rate not including subsequent revisions, and resulting in a change of at least twenty-five cents per day, must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

(2) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate not including subsequent revisions, and that would have resulted in a change of at least twenty-five cents per day had they been included, must be included as an adjustment on the latest filed cost report.

(3) Adjustments resulting from an audit of home office costs, and that result in a change of at least twenty-five cents per day, must be included as an adjustment in the report year in which the costs were incurred.

(4) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

3. **Adjustment of the total payment rate.** The final rate as established must be retroactive to the effective date of the desk rate.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2002; July 1, 2014.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-24. Rate payments.

1. The established rate must be considered as payment for all accommodations and includes all items includable as allowable under this chapter for an eligible beneficiary. No payment may be solicited or received from the eligible beneficiary or any other person to supplement the rate as established, unless otherwise provided for in this chapter.

2. The department may supplement the income of an eligible beneficiary receiving necessary basic care services only if the lowest rate charged to private-pay residents equals or exceeds the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to an eligible beneficiary for the same bed type, including medical leave or therapeutic leave days.

3. If the established rate exceeds the rate charged to a private-pay resident on any given date, the facility shall immediately report that fact to the department and charge an eligible beneficiary at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment to the department. The refund must be the

difference between the established rate and the rate charged the private-pay residents times the number of resident days paid for eligible beneficiaries during the period in which the established rate exceeded the rate charged to the private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

4. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically identified in other sections of this chapter.

5. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change the peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

History: Effective July 1, 1996; amended effective July 1, 2001; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-25. Special rates.

1. For a new facility, the department shall establish an interim rate equal to the lesser of the limit rates for direct and indirect care for the rate year in which the facility begins operation, plus the maximum operating margin, plus a room and board rate equal to the average food and plant rate, of all facilities for which a rate was established for the rate year, plus a projected property rate calculated based on projected property costs and imputed census, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. No retroactive adjustment may be made to the rate.

   a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. By August thirty-first, the facility shall file an interim cost report for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.

   b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. By March first, the facility shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.

   c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. By March first, the facility shall file a cost report for the period ending December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.

2. For a facility with renovations or replacements in excess of fifty thousand dollars, and without a significant capacity increase, the rate established for direct care, indirect care, food and plant, and the operating margin, based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first of the month following the time the project is completed and placed into service or on the first of the month following submission

of a request for a projected property rate, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

3. For a facility with a significant capacity increase, the rate established for direct care, indirect care, food and plant, and the operating margin, based on the last report year, must be applied to all licensed beds. A property rate must be established based on projected property costs and projected census. The property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health through the end of the rate year.

4. For a facility with no significant capacity increase and no renovations or replacements in excess of fifty thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.

5. Rates for a facility changing ownership during the rate period are set under this subsection. The total rate established by adding the components of the rate may not exceed the limit rate established under subsection 1 of section 75-02-07.1-22.

    a. The rates established for direct care, indirect care, food and plant, and the operating margin for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:

        (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; or

        (2) For a facility with less than four months of operations under the new ownership during the report year:

            (a) By indexing the rate established for the previous owner forward using the adjustment factors as set forth in section 75-02-07.1-21; or

            (b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.

    b. Unless a facility elects to have a property rate established under subdivision c, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

        (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and

        (2) For a facility with less than four months of operation under the new ownership during the report year:

            (a) By using the rate established for the previous owner for the previous rate year; or

(b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.

c. A facility may choose to have a property rate established during the remainder of the rate year and the subsequent rate year based on interest and principal payments on the allowable portion of debt expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on subdivision b, multiplied by actual census for the period, must be determined. The property rate established in each of the twelve years, beginning with the first rate year following the use of a property rate established using this subdivision, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

6. For a facility terminating its participation in the aid to vulnerable aged, blind, and disabled persons program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until eligible beneficiaries can be relocated.

7. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subsection 2 or 3 and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subsection 2 or 3 may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

8. For purposes of this section, "new facility" means a facility operated in a premises for which no costs were claimed and no rate was set under this chapter for any period prior to July 1, 1995, but does not mean a facility with:

a. Renovations or replacements;

b. A capacity increase; or

c. A change of ownership.

9. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility does not share basic services with a licensed basic care facility prior to the conversion:

a. For the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year;

b. For the first rate year following the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year; and

c. A cost report must be used to establish the rates for all subsequent rate years.

10. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility shares basic services with a licensed basic care facility prior to the conversion,

the rates established for the licensed basic care facility shall apply to the converted bed capacity.

11. A facility that meets the definition of a specialized facility for individuals with mental disease as a result of a reduction in licensed capacity to less than seventeen may choose to have an interim rate established for the remainder of the rate year following the capacity decrease and the subsequent rate based on the lesser of the limit rates for a specialized facility for individuals with mental disease for the rate year in which the institution for mental disease decreases its licensed capacity, plus the maximum operating margin, plus a room and board rate equal to the average food and plant rate, of all facilities for which a rate was established for the rate year, plus a projected property rate calculated based on projected property costs and imputed census, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. Retroactive adjustments may not be made to the rate.

    a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. By August thirty-first, the facility shall file an interim cost report for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.

    b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. By March first, the facility shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.

    c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. By March first, the facility shall file a cost report for the period ending December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; February 1, 2007; October 1, 2011.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-26. One-time adjustments.

1. **Adjustments to meet licensure standards.**

    a. The department may provide for an increase in the established rate for additional costs incurred to meet licensure standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary or other costs increased to correct the deficiencies cited in the survey process.

    b. The facility shall submit a written request to the department within thirty days of submitting the plan of correction to the state department of health. The request must:

        (1) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's licensure survey;

        (2) Identify the number of new staff or additional staff hours and the associated costs required to meet the licensure standards;

(3) Provide a detailed list of any other costs necessary to meet licensure standards;

(4) Describe how the facility shall meet licensure standards if the adjustment is received, including the number and type of staff to be added to the current staff and the projected salary and fringe benefit cost for the additional staff; and

(5) Document that all available resources, including efficiency incentives, if used to increase staffing, are not sufficient to meet licensure standards.

c. The department shall review the submitted information and may request additional documentation or conduct onsite visits.

d. If an increase in costs is approved, the adjustment must be calculated based on the costs necessary to meet licensure standards less any incentives included when calculating the established rate. The net increase must be divided by resident days and the amount calculated must be added to the established rate. This rate must then be subject to any rate limitations that may apply.

e. Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

f. If the actual cost of implementation exceeds the amount included in the adjustment, no retroactive settlement may be made.

2. **Adjustments for unforeseeable expenses.**

a. The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and beyond the control of those responsible for the management of the facility.

b. Within sixty days after first incurring the unforeseeable expense, the facility shall submit to the department a written request containing:

(1) An explanation as to why the facility believes the expense was unforeseeable;

(2) An explanation as to why the facility believes the expense was beyond the managerial control of the owner or administrator of the facility; and

(3) A detailed breakdown of the unforeseeable expenses by expense line item.

c. The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on their background and knowledge of basic care industry and business trends.

d. The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

e. Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

3. **One-time adjustments for cost increases approved by the legislative assembly.**

a. The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.

b. Any additional funds made available by the supplemental payments or one-time adjustments must be used for the legislatively prescribed purpose and are subject to audit. If the department determines that the funds were not used for the legislatively prescribed purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; July 1, 2009; October 1, 2011; July 1, 2014.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-27. No rate adjustments of less than twenty-five cents per day.

Under no circumstances, including an appeal or judicial decision to the effect that a rate was erroneously established, may a rate adjustment be made unless the cumulative impact of adjustments equals or exceeds twenty-five cents per day.

History: Effective July 1, 1996; amended effective January 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-28. Notification of rates.

The department shall notify each facility of the desk audit rate on or before May twenty-first of the year in which the rate year begins.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-29. Reconsiderations and appeals.

1. **Reconsiderations.**

a. Any requests for reconsideration of the final rate must be filed with the department within thirty days of the date of the rate notification.

b. A request for reconsideration must include:

(1) A statement of each disputed item and the reason or basis for the dispute;

(2) The dollar amount of each adjustment that is disputed; and

(3) The authority in statute or rule upon which the facility is relying for each disputed item.

c. The department may request additional documentation or information relating to the disputed item. If additional documentation is not provided within fourteen days of the department's request, the department shall make its determination based on the information and documentation available as of the fourteenth day following the date the department requested additional documentation.

d. The department shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. **Appeals.**

   a. A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination made with respect to a request for reconsideration, the information described in this subsection to the department, at the address the department designates. An appeal under this section is perfected only if accompanied by written documents including:

      (1) A copy of the letter received from the department advising of the decision on the request for reconsideration;

      (2) A statement of each disputed item and the reason or basis for the dispute;

      (3) A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;

      (4) The authority in statute or rule upon which the appealing party relies for each disputed item; and

      (5) The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.

History: Effective July 1, 1996; amended effective July 1, 1998.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

75-02-07.1-30. Resident personal funds.

1. A facility may not require a resident to deposit personal funds with the facility.

2. Upon written authorization of a resident or the resident's legal representative, a facility shall hold, safeguard, manage, and account for the resident's personal funds deposited with the facility.

3. A facility may not charge the resident for holding, safeguarding, managing, or accounting for the resident's personal funds. Any related administrative costs, including bank charges, must be included in the daily rate. A facility may not impose a charge against a resident's personal funds for any item or service included in the daily rate.

4. A facility may maintain a resident's personal funds not exceeding one hundred dollars in a noninterest-bearing account. A facility shall deposit any resident's personal funds in excess of one hundred dollars in an interest-bearing account separate from any of the facility's accounts. The facility shall credit interest earned to the resident's account.

5. A facility shall maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds. An individual financial record must be available on request and a written accounting of transactions must be provided quarterly to the resident or the resident's legal representative.

6. A resident's personal funds may not be commingled with any facility funds or with funds of any person other than another resident.

7. Upon death of a resident, a facility shall promptly convey the resident's personal funds, and a final accounting of those funds, to the individual administering the resident's estate. For purposes of this section, an "individual administering the resident's estate" includes a person

lawfully empowered to facilitate the transfer of small estates without the use of a personal representative.

History: Effective July 1, 1996.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)