

CHAPTER 75-02-07.1
RATESETTING FOR BASIC CARE FACILITIES

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SECTION 1. Subsections 3, 5, 17, 25, 47, and 55 of section 75-02-07.1-01 are amended as follows:

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

5. "Aid to vulnerable aged, blind, and disabled ~~persons~~individuals" means a program that supplements the income of an eligible beneficiary who resides in a facility.
17. "Department" means the department of health and human services.
25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled ~~persons~~individuals.
47. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled ~~persons~~individuals program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
55. "Resident" means a ~~person~~individual who has been admitted to the facility but not discharged.

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; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 2. Subsection 2 of section 75-02-07.1-02 is amended as follows:

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~~ January fifteenth of the year following the report year.

History: Effective July 1, 1996; amended effective October 1, 2011; October 1, 2022; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 3. Section 75-02-07.1-04 is amended as follows:

75-02-07.1-04. Participation requirement.

A facility may not receive aid to vulnerable aged, blind, and disabled ~~persons~~individuals 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~~individuals 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; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 4. Subsection 2 of section 75-02-07.1-05 is amended as follows:

- 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~~individuals program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-07.1-04.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; April 1, 2018; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 5. Section 75-02-07.1-08.1 is amended as follows:

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.

5. Allowable bad debt expense in the report year in which it was determined to be uncollectible with no likelihood of future recovery. The allowable bad debt expense may not exceed three hundred sixty-five days.

History: Effective July 1, 2001; amended effective January 1, 2024.

General Authority: NDCC 50-06-15

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

SECTION 6. Section 75-02-07.1-10 is amended as follows:

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 in excess of subsection 5 of section 75-02-07.1-08.1;
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; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 7. Section 75-02-07.1-14 is amended as follows:

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~~individual, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the ~~person~~individual receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the ~~person~~individual;
 - f. The cost of a domestic or other employee who works in the home of the ~~person~~individual; or
 - g. Life and health insurance premiums paid for the ~~person~~individual and

medical services furnished at facility expense.

4. Reasonable compensation for a person with at least five percent ownership, ~~persons~~individuals on the governing board, or any ~~person~~individual 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; January 1, 2024.

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

SECTION 8. Section 75-02-07.1-21 is amended as follows:

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, exclusive of bad debt expense.~~
- ~~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; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 9. Section 75-02-07.1-22 is amended as follows:

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~~2023, direct care limit rate is ~~fifty-seven~~seventy-six dollars and ~~thirty-two~~ninety-one cents.
5. The July 1, ~~2017~~2023, indirect care limit rate is ~~forty-nine~~sixty-two dollars and ~~ninety-five~~seventy-nine 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; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 10. Subsections 3 and 6 of section 75-02-07.1-25 are amended as follows:

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~~department's public health division through the end of the rate year.

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

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; February 1, 2007; October 1, 2011; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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

SECTION 11. Subsection 1 of section 75-02-07.1-26 is amended as follows:

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~~department's public health division 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~~department's public health division. 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~~department's public health division'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.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; July 1, 2009; October 1, 2011; July 1, 2014; January 1, 2024.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

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