

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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**Prepared by the Legislative Council staff  
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**TITLE 50**  
**STATE BOARD OF MEDICAL EXAMINERS**



## CHAPTER 50-02-07.1

**50-02-07.1-01. License fees.** The fee for licensure in North Dakota, whether it be by qualification, reciprocity, endorsement, or special license, is two hundred dollars. The fee for a locum tenens license is two hundred dollars and the annual registration fee for all licensed physicians is ~~one hundred fifty~~ two hundred dollars.

**History:** Effective January 1, 2010; amended effective October 1, 2011.

**General Authority:** NDCC 43-17-25

**Law Implemented:** NDCC 43-17-25

## CHAPTER 50-02-11

**50-02-11-01. Eligibility for examination.** To be eligible for steps 1 and 2 of USMLE (United States medical licensing examination), the applicant must be in one of the following categories:

1. A medical student officially enrolled in, or a graduate of, a United States or Canadian medical school accredited by the liaison committee on medical education (LCME).
2. A medical student officially enrolled in, or a graduate of, a United States osteopathic medical school accredited by the American osteopathic association (AOA).
3. A medical student officially enrolled in, or a graduate of, a foreign medical school and eligible for examination by the educational commission for foreign medical graduates (ECFMG) for its certificate.

To be eligible for USMLE step 3, the applicant must (a) have obtained the MD degree or the DO degree; (b) have completed successfully both parts I and II of the national board examination or steps 1 and 2 of the USMLE or part I and step 2 or step 1 and part II or FLEX component 1; (c) if a graduate of a foreign medical school, be certified by the ECMFG or have successfully completed a fifth pathway program; and (d) have completed, or be within six months of having completed, at least one postgraduate training year in a program of graduate medical education accredited by the accreditation council for graduate medical education or the American osteopathic association or the royal college of physicians and surgeons of Canada or the college of family physicians of Canada or be enrolled in an approved postgraduate training program within the state of North Dakota.

**History:** Effective November 1, 1993; amended effective November 1, 1995; December 1, 1996; December 1, 2000; July 26, 2001; March 1, 2003.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

### **50-02-11-02. Successful completion of examination - Time limitation.**

The examination requirements for licensure must be successfully completed within a seven-year period. The board may grant an exception to this requirement for applicants who have concurrently pursued both MD and PhD degrees provided that the applicant's PhD studies have been in a field of the biological sciences, and provided that the applicant presents a verifiable and rational explanation for not meeting the seven-year time limit.

**History:** Effective November 1, 1993; amended effective December 1, 2000.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

**50-02-11-03. Limitation on attempts at examination passage.** Repealed effective August 1, 2003.

**50-02-11-03.1. Limitation on attempts at examination passage.**

1. An applicant is permitted a maximum of three attempts to pass each step or part or component of a licensing examination. This rule does not apply to an individual who required more than three attempts to pass USMLE step 1 or USMLE step 2 if that individual was enrolled in a postgraduate training program in North Dakota prior to July 10, 2005, and if:
  1. a. The individual is still enrolled in the program when the application for licensure is submitted to the board's office; or
  2. b. The individual has completed the program successfully.

Parts, steps, and components may not be combined so as to enlarge the number of attempts permitted under this rule.

2. Upon review of an individual applicant, the board may allow an exception to this rule if it finds that it is in the best interest of the state and the applicant:
  - a. Is validly licensed as a physician in another state;
  - b. Has practiced a minimum of ten years;
  - c. Has no disciplinary actions imposed by any other state medical licensing board;
  - d. Is certified by a specialty board recognized by the American board of medical specialties or by the royal college of physicians and surgeons of Canada; and
  - e. Meets the requirement of section 50-02-11-02, regarding the time limit for examination attempts.

**History:** Effective June 1, 2005; amended effective October 1, 2011.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

**CHAPTER 50-03-01  
PHYSICIAN ASSISTANTS**

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50-03-01-10.1	Disciplinary Action
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50-03-01-15	Forms of Licensure
50-03-01-16	Renewal of Licenses
50-03-01-17	Late Fees

**50-03-01-16. Renewal of licenses.** Provided that all renewal requirements are deemed by the board to be met, a physician assistant who applies for renewal of a physician assistant license within thirty-one days of the expiration date of that license shall be granted a license with an effective date of the first day following expiration of the physician assistant's license. Nothing in this rule shall be construed to affect the board's ability to impose statutory fines or other disciplinary action against a physician assistant for failing to renew a license prior to its expiration date or for practicing with an expired license.

**History:** Effective October 1, 2011.

**General Authority:** NDCC 43-17-07.1

**Law Implemented:** NDCC 43-17-02(9)

**50-03-01-17. Late fees.** A physician assistant seeking to renew the annual license who has failed to complete the annual registration process within the time specified by the state board of medical examiners must be assessed a fee equal to three times the normal annual license registration fee, in addition to such other

penalties as are authorized by law, if that physician assistant is found to have been practicing in this state after the physician assistant's license expired.

**History:** Effective October 1, 2011.

**General Authority:** NDCC 43-17-07.1

**Law Implemented:** NDCC 43-17-02(9)



**TITLE 66**  
**STATE BOARD OF PSYCHOLOGIST EXAMINERS**



## CHAPTER 66-01-01

### 66-01-01-01. Organization of board of psychologist examiners.

1. **History.** The 1967 legislative assembly passed legislation establishing the state board of psychologist examiners, codified as North Dakota Century Code chapter 43-32. The board of psychologist examiners licenses psychologists who practice psychology in this state.
2. **Board membership.** The board consists of five members appointed by the governor. Each member must be a licensed psychologist and at least one member must be currently engaged primarily in providing service in psychology and at least one member must be engaged primarily in teaching, training, or research in psychology. Members of the board serve three-year terms, with at least one but not more than two terms expiring each year.
3. **Board officers.** The board annually elects from its membership a president and vice president.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

~~Maria Gokim~~ Brenda Biber  
Executive Secretary  
State Board of Psychologist Examiners  
P.O. Box ~~7458~~ 7042  
Bismarck, ND ~~58507-7458~~ 58507-7042  
www.ndsbpe.org

**History:** Amended effective September 1, 1983; March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007; October 1, 2011.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

## ARTICLE 66-02

### PSYCHOLOGIST LICENSURE

Chapter	
66-02-01	Licensure and Examining Applications
66-02-02	Guidelines for Establishing Equivalency [Repealed]
66-02-03	Licensure Exemptions

#### CHAPTER 66-02-01 LICENSURE AND EXAMINING APPLICATIONS

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66-02-01-04	Licensure by Equivalency [Repealed]
66-02-01-05	Licensure of Master's Level Psychologists [Repealed]
66-02-01-06	Licensure of Other Applicants
66-02-01-07	Application of Code of Ethics
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66-02-01-11	Additional Documentation for Clinical Work or Counseling or Therapy [Repealed]
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66-02-01-12	Identifying Psychology and Industrial-Organizational Psychology Doctoral Programs as Substantially Psychological in Nature [Repealed]
66-02-01-12.1	Approved Industrial-Organizational Psychology Program Accrediting Bodies
66-02-01-13	Psychology Resident and Industrial-Organizational Psychology Resident
66-02-01-14	Nonpayment of Annual License Fee

**66-02-01-03. Licensing of psychologists and industrial-organizational psychologists from other jurisdictions.** Licensing of psychologists and industrial-organizational psychologists of other jurisdictions will follow the procedures described in North Dakota Century Code sections ~~43-32-49~~ 43-32-19.1 and 43-51-06. A psychologist or industrial-organizational psychologist

licensed pursuant to North Dakota Century Code sections ~~43-32-19~~ 43-32-19.1 and 43-51-06 must pass the North Dakota oral examination.

**History:** Amended effective September 1, 2000; April 1, 2007; October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC ~~43-32-19~~ 43-32-19.1, 43-51-06

**66-02-01-04. Licensure by equivalency.** Repealed effective October 1, 2011. ~~Licensing of individuals whose doctoral programs are considered equivalent to doctoral programs in psychology will follow the procedures described in chapter 66-02-02.~~

**History:** ~~Amended effective April 1, 1988.~~

**General Authority:** ~~NDCC 43-32-08~~

**Law Implemented:** ~~NDCC 43-32-20~~

**66-02-01-07. Application of code of ethics.** The American psychological association ethical principles of psychologists and code of conduct (~~2002~~ 2010) shall apply to licensed psychologists and licensed industrial-organizational psychologists.

**History:** Amended effective September 1, 2000; April 1, 2007; October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-27

**66-02-01-07.1. Procedural exception for processing multiple complaints from the same complainant.** If a complainant filed a complaint which was dismissed, the board may dismiss subsequent complaints filed by that complainant without requesting written responses from the licensees.

**History:** Effective October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-27.1

**66-02-01-08. Fees.** The license application fee is ~~two~~ three hundred ~~fifty~~ dollars plus the actual cost of the examination for the professional practice of psychology when it is required. An annual license fee of one hundred ~~fifty~~ dollars will be charged all licensed psychologists and industrial-organizational psychologists.

**History:** Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007; October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-12, 43-32-13

**66-02-01-11.1. Supervised professional experience.**

1. Applicants for licensure as a psychologist must complete one thousand five hundred hours of supervised predoctoral internship ~~and one~~

~~thousand five hundred hours of supervised postdoctoral experience in the practice of psychology. At least one hundred hours of supervision at each level is required, at least fifty of which must be one to one at each level. Successful completion of an American psychological association or Canadian psychological association accredited internship or accredited postdoctoral program will be accepted as fulfilling these requirements, respectively this requirement. Any other supervised predoctoral internship experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant. In addition, an applicant for licensure as a psychologist must complete one of the following:~~

- a. One thousand five hundred hours of supervised postdoctoral experience in the practice of psychology. At least one hundred hours of supervision is required, at least fifty of which must be one to one. Successful completion of an American psychological association or Canadian psychological association accredited postdoctoral program will be accepted as fulfilling this requirement. Any other supervised postdoctoral experience must be described in detail by the applicant, including nature of service setting or settings, nature of consumers served, nature and amount of supervision, and specific skills in which the applicant demonstrated proficiency. The supervisor or supervisors must corroborate the areas of competence claimed by the applicant.
  
- b. One thousand five hundred hours of additional supervised predoctoral training experience in the practice of psychology. At least one hundred hours of supervision is required, at least fifty of which must be one to one. In addition, this training experience must meet all of the following requirements:
  - (1) Be part of a doctoral program that meets requirements of subdivision b of subsection 1 of North Dakota Century Code section 43-32-20.
  
  - (2) Be completed within six years of the award of the terminal doctoral degree.
  
  - (3) Be completed within ten years of first application for licensure.
  
  - (4) Be completed following any introductory practicum experience in applied professional psychology or psychotherapy of a minimum duration of six hundred hours.

- (5) Be part of an individualized written plan for an organized, sequential series of supervised experiences of increasing complexity.
- (6) Occur outside of the classroom setting and involve the trainee's direct delivery of supervised psychological services in a practice, agency, institution, counseling center, graduate training clinic, or other setting approved by the director of training or designee.
- (7) Consist of activities defined as the practice of psychology by subsection 6 of North Dakota Century Code section 43-32-01.
- (8) Occur in placements that are made or approved in advance by the doctoral program director of training or designee.
- (9) Occur in placements in which a licensed psychologist is directly responsible for the integrity and quality of the training experience and specifies training objectives in terms of the competencies expected of the trainee.
- (10) Have an identifiable licensed psychologist who serves as the primary supervisor of the trainee, is clearly available to and professionally responsible for the trainee's clients or patients, has been licensed for at least three years, and is licensed in the jurisdiction in which the training occurs.
- (11) Be part of a sequential training plan that consists of no less than thirty weeks with a weekly onsite presence of no less than fifteen hours.
- (12) Provide, on average, weekly individual face-to-face supervision, which may include remote face-to-face audio and video interactions, devoted to the trainee's cases at a ratio of no less than one hour per fifteen hours onsite and no less than one hour per week. No less than fifty percent of the supervision required in this paragraph shall be provided by the primary supervisor. The remaining face-to-face supervision required in this paragraph may be individual or group supervision provided by a licensed psychologist who has been licensed for at least three years. Supplemental individual or group supervision in excess of the minimum ratio required is encouraged, and may be provided by a psychologist, school psychologist, other licensed mental health professional, or a psychology trainee under an umbrella supervision arrangement, but it may not replace the weekly individual face-to-face supervision requirements.

- (13) May include the use of secure remote technologies, such as telephone, internet, or online communications as a supplemental training and consultation aid and for supervision in excess of the minimum ratio required, although it may not replace the minimum weekly face-to-face individual supervision requirement.
  - (14) Must include on average at least one additional hour per week in learning activities, such as additional face-to-face individual supervision, group supervision, case conference or grand rounds, didactic consultations with psychologists or other appropriate licensed mental health professionals, guided professional readings, seminars, or cotherapy with a licensed psychologist or other appropriate professional.
  - (15) Must include regularly scheduled and documented interaction concerning the trainee's progress between the primary supervisor and the director of training at the graduate program or designee, and copies of such documentation will be provided to the board for review upon request.
2. Applicants for licensure as an industrial-organizational psychologist must complete three thousand hours of supervised experience in the practice of industrial-organizational psychology. At least one thousand five hundred hours must be completed after the granting of the doctoral degree. Applicants must submit an individualized supervision plan which is subject to approval by the board. ~~Until January 1, 2010, supervisors of industrial-organizational psychologist applicants may be identified by earned degrees, positions, memberships in professional organizations, and publications and not necessarily licensed as psychologists in their jurisdiction. However, as of January 1, 2010, supervisors~~ Supervisors of industrial-organizational psychologist applicants must be licensed in their jurisdiction of practice. The supervised experience of applicants for licensure as an industrial-organizational psychologist must be consistent with the applicant's intended area of practice.

**History:** Effective September 1, 2000; amended effective April 1, 2007; October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20, 43-32-20.1

**66-02-01-12. Identifying psychology and industrial-organizational psychology doctoral programs as substantially psychological in nature.** Repealed effective October 1, 2011. ~~The following criteria will be used to identify psychology and industrial-organizational psychology doctoral programs as substantially psychological in nature:~~

1. ~~Programs that are accredited by the American psychological association or Canadian psychological association.~~
2. ~~For licensure as a psychologist, programs that meet the following criteria:~~
  - a. ~~Training in professional psychology is doctoral training sponsored by an institution of higher education accredited by a nationally recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution is publicly recognized by the association of universities and colleges of Canada as a member in good standing.~~
  - b. ~~The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures the explicit philosophy of training by which it intends to prepare students for the practice of psychology and its intent to educate and train professional psychologists. The program's philosophy, educational model, and curriculum plan should be substantially consistent with the mission, goals, and culture of the program's sponsor institution. They must also be consistent with the principle of the discipline that psychological practice is based on the science of psychology, which, in turn, is influenced by the professional practice of psychology.~~
  - c. ~~The psychology program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.~~
  - d. ~~There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.~~
  - e. ~~The program must be an integrated, organized sequence of study that is sequential, cumulative, and graded in complexity and designed to prepare students for further organized training.~~
  - f. ~~There must be an identifiable core (i.e., full-time) psychology faculty and a psychologist responsible for the program.~~
  - g. ~~The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities necessary to ensure meaningful peer interaction, support, and socialization.~~

- h. ~~The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:~~
- ~~(1) Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;~~
  - ~~(2) Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experiences; and~~
  - ~~(3) Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.~~
- i. ~~The curriculum must encompass a minimum of three academic years of graduate study, at least one academic year of which must be in residence at the degree-granting institution. The academic year in residence must include twenty-four semester hours taken on a full-time or part-time basis at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings must include interaction between the student and faculty and the student and other students and must relate to program content areas. These meetings must be in addition to the practicum, clerkship, or externship supervision hours or dissertation hours. On request by the applicant or the board, the institution shall provide documentation showing how the applicant's performance was assessed and documented. In addition, the program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.~~
- j. ~~In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:~~

- (1) ~~The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~
  - (a) ~~Biological aspects of behavior;~~
  - (b) ~~Cognitive and affective aspects of behavior;~~
  - (c) ~~Social aspects of behavior;~~
  - (d) ~~History and systems of psychology;~~
  - (e) ~~Psychological measurement;~~
  - (f) ~~Research methodology; and~~
  - (g) ~~Techniques of data analysis;~~
  
- (2) ~~The scientific, methodological, and theoretical foundations of practice in the substantive areas of professional psychology in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~
  - (a) ~~Individual differences in behavior;~~
  - (b) ~~Human development;~~
  - (c) ~~Dysfunctional behavior or psychopathology; and~~
  - (d) ~~Professional standards and ethics;~~
  
- (3) ~~Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~
  - (a) ~~Theories and methods of assessment and diagnosis;~~
  - (b) ~~Effective intervention;~~
  - (c) ~~Consultation and supervision; and~~
  - (d) ~~Evaluating the efficacy of interventions;~~

- (4) ~~Issues of cultural and individual diversity that are relevant to all of the above; and~~
- (5) ~~Attitudes essential for lifelong learning, scholarly inquiry, and professional problem-solving as psychologists in the context of an evolving body of scientific and professional knowledge.~~

k. ~~The program must include course requirements in specialty areas:~~

- 3. ~~To identify a program as a professional industrial-organizational psychology program, until January 1, 2010, the program must be identified as a doctoral-level industrial-organizational psychology program at a regionally accredited school or college. As of January 1, 2010, the program must be identified as a doctoral-level industrial-organizational psychology program at a regionally accredited school or college and must be designated as a doctoral program in industrial-organizational psychology by the association of state and provincial psychology boards and the national register of health service providers in psychology.~~

~~History: Effective March 1, 1985; amended effective April 1, 1988; September 1, 2000; April 1, 2007.~~

~~General Authority: NDCC 43-32-08~~

~~Law Implemented: NDCC 43-32-20~~

**66-02-01-12.1. Approved industrial-organizational psychology program accrediting bodies.** For purposes of subdivision b of subsection 2 of North Dakota Century Code section 43-32-20, programs designated as doctoral programs in industrial-organizational psychology by the association of state and provincial psychology boards and the national register of health service providers in psychology are approved.

**History:** Effective October 1, 2011.

**General Authority:** NDCC 43-32-08

**Law Implemented:** NDCC 43-32-20

**CHAPTER 66-02-02  
GUIDELINES FOR ESTABLISHING EQUIVALENCY**

**[Repealed effective October 1, 2011]**

**Section**

<del>66-02-02-01</del>	<del>General Equivalency Requirements</del>
<del>66-02-02-02</del>	<del>Letter From Department Chairperson</del>
<del>66-02-02-03</del>	<del>Documentation of Training and Coursework</del>
<del>66-02-02-04</del>	<del>Supervised Professional Experience for Equivalency</del>

~~**66-02-02-01. General equivalency requirements.** If the applicant has received a doctorate degree in a program of studies other than psychology, the degree may be substantially psychological in nature if the program meets all provisions of this chapter as judged by the board. The substantial portion of the applicant's doctorate program must be in an organized program within the department deemed equivalent to a department of psychology and deemed equivalent to coursework in a psychology program, as judged by the board.~~

~~**History:** Amended effective April 1, 1988; September 1, 2000; April 1, 2007.~~

~~**General Authority:** NDCC 43-32-08~~

~~**Law Implemented:** NDCC 43-32-20~~

~~**66-02-02-02. Letter from department chairperson.** If the school or college of which the degree is obtained also has a department of psychology at a graduate level offering a doctorate in psychology, the applicant shall present a letter from that department and the applicant's own department chairperson attesting to the fact that the coursework in the candidate's program is substantially psychological in nature. The letter will be given great evidentiary weight by the board in judging the candidate's program.~~

~~**History:** Amended effective March 1, 1985; September 1, 2000.~~

~~**General Authority:** NDCC 43-32-08~~

~~**Law Implemented:** NDCC 43-32-20~~

~~**66-02-02-03. Documentation of training and coursework.** There must be documented evidence, in the form illustrated in the appendix to this chapter, of the following:~~

- ~~1. The doctoral training must be sponsored by an institution of higher education accredited by a nationally recognized regional accrediting body in the United States or, in the case of Canadian programs, the institution must be publicly recognized by the association of universities and colleges of Canada as a member in good standing.~~
- ~~2. The program must be an integral part of the mission of the academic department, college, school, or institution in which it resides. It must be represented in the institution's operating budget and plans in a manner designed to enable the program to achieve its goals and objectives.~~

3. ~~There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.~~
4. ~~The program must be an integrated, organized sequence of study that is sequential, cumulative, and grading in complexity and designed to prepare students for further organized training.~~
5. ~~There must be an identifiable core (i.e., full-time faculty with a director, chair, or head whom is clearly administratively responsible for the functioning of the program).~~
6. ~~The program must have an identifiable body of students who are matriculated in the program for a degree. There must be a sufficient number of such students and the facilities necessary to ensure meaningful peer interaction, support, and socialization.~~
7. ~~The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology. To this end the program should:~~
  - a. ~~Place students in settings that are clearly committed to training, supervise students using an adequate number of appropriate professionals, and provide a wide range of training and educational experiences through applications of empirically supported intervention procedures;~~
  - b. ~~Integrate the practicum component of the students' education and training with the other elements of the program and provide adequate forums for the discussion of practicum experience; and~~
  - c. ~~Ensure that the sequencing, duration, nature, and content of these experiences are both appropriate for and consistent with the program's immediate and long-term training goals and objectives.~~
8. ~~The curriculum must encompass a minimum of three academic years of graduate study, at least one academic year of which must be in residence at the degree-granting institution. The academic year in residence must include twenty-four semester hours taken on a full-time or part-time basis at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings must include interaction between the student and faculty and the student and other students and must relate to program content areas. These meetings must be in addition to the practicum, clerkship, or externship supervision hours or dissertation hours. On request by the applicant or the board, the institution shall provide documentation showing how the applicant's performance was assessed and documented. The~~

~~program must specify education and training goals in terms of the competencies expected of its graduates. Those competencies must be consistent with the program's philosophy and training model, the substantive areas of professional psychology for which the program prepares students, and an understanding of professional issues, including ethical, legal, and quality assurance principles.~~

9. ~~In achieving its objectives, the program has and implements a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence in the following areas:~~

a. ~~The breadth of scientific psychology, its history of thought and development, its research methods, and its applications. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~

- ~~(1) Biological aspects of behavior;~~
- ~~(2) Cognitive and affective aspects of behavior;~~
- ~~(3) Social aspects of behavior;~~
- ~~(4) History and systems of psychology;~~
- ~~(5) Psychological measurement;~~
- ~~(6) Research methodology; and~~
- ~~(7) Techniques of data analysis;~~

b. ~~The scientific, methodological, and theoretical foundations of practice in the substantive areas in which the program has its training emphasis. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~

- ~~(1) Individual differences in behavior;~~
- ~~(2) Human development;~~
- ~~(3) Dysfunctional behavior or psychopathology; and~~
- ~~(4) Professional standards and ethics;~~

c. ~~Diagnosing and defining problems through psychological assessment and measurement and formulating and implementing intervention strategies, including training in empirically supported~~

~~procedures. To achieve this end, the students shall be exposed to the current body of knowledge in at least the following areas:~~

- ~~(1) Theories and methods of assessment and diagnosis;~~
- ~~(2) Effective intervention;~~
- ~~(3) Consultation and supervision; and~~
- ~~(4) Evaluating the efficiency of interventions;~~
- ~~d. Issues of cultural and individual diversity that are relevant to all of the above; and~~
- ~~e. Attitudes essential for lifelong learning, scholarly inquiry, and professional problem-solving in the context of an evolving body of scientific and professional knowledge.~~

~~History: Amended effective March 1, 1985; April 1, 1988; September 1, 2000; April 1, 2007.~~

~~General Authority: NDCC 43-32-08~~

~~Law Implemented: NDCC 43-32-20~~

~~**66-02-02-04. Supervised professional experience for equivalency.** The applicant must have completed all supervised professional experience required by subsection 1 of section 66-02-01-11.1.~~

~~History: Amended effective September 1, 2000; April 1, 2007.~~

~~General Authority: NDCC 43-32-08~~

~~Law Implemented: NDCC 43-32-20~~

**OUTLINE FOR DOCUMENTING COURSEWORK**

The applicant must document the aforementioned coursework by specifying the following information for each:

<b>COLLEGE</b>	<b>DEPARTMENT</b>	<b>COURSE TITLE</b>	<b>CATALOG DESCRIPTION</b>	<b>TEXT NAME &amp; AUTHOR</b>	<b>*INSTRUCTOR</b>	<b>**ACADEMIC AREA</b>

\* Full name and highest degree.

\*\*Academic area as listed in section 66-02-02-03(9).



**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



**CHAPTER 75-02-07.1  
RATESETTING FOR BASIC CARE FACILITIES**

Section	
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#### **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 ~~factors~~ factor" means ~~indices used to adjust reported costs for inflation or deflation based on forecasts for 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 1998 2008 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 and, 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 ~~diagnosis~~, 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 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 provider's fiscal year ending during the calendar 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 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 ~~and~~, 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 diagnosis, treatment, or services primarily to individuals with mental disease.
61. ~~"Statewide minimum room and board rate" means a rate calculated based on the sum of the maximum amount of supplemental security income an eligible individual can receive as of the beginning of the rate year less sixty dollars multiplied by twelve and then divided by three hundred sixty-five.~~
62. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
- ~~63:~~ 62. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- ~~64:~~ 63. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.

- 65- 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.

**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 the last day of the third month following the facility's fiscal yearend, except as provided for in subdivision d, 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. A facility may elect to file a cost report based on a December thirty-first report year or a June thirtieth report year, rather than on the facility's fiscal yearend. Once elected, the facility may not change the reporting period without written approval from the department. The due date for the information required in subdivision c will be March thirty-first if the facility elects a December thirty-first report year and September thirtieth if the facility elects a June thirtieth report year.
- e. ~~In the event~~ 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.
- f. 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.
- g. 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



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 ~~provisions~~ of 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. ~~Effective January 1, 2002, appropriate~~ 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)

**75-02-07.1-06. 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, ~~resident care supervisors~~, inservice trainers for resident care staff, ~~registered nurses, licensed practical nurses,~~ quality assurance personnel, resident care aides, medication aides, ~~speech, occupational, and physical therapists~~ and ward clerks.
- b. Routine hair and personal hygiene items and services ~~necessary to meet the needs of~~ furnished routinely and relatively uniformly to all residents, including hair hygiene supplies, combs, brushes, soap, razors, shaving cream, toothbrush, toothpaste, denture adhesive, dental floss, moisturizing lotion, tissues, deodorant, sanitary napkins, towels, washcloths, nail hygiene services, bathing, and personal laundry; 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. ~~The cost of supplies used to provide therapy, or noncapitalized therapy or resident care equipment.~~
- d. 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.

~~3.~~ 4. **Social services.** Salary and employment benefits or consultant fees for social workers or social worker designees.

~~4.~~ 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)

**75-02-07.1-09. 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 ~~resident care supervisors~~ 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, and purchased therapy services 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.

**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 report year;
  - b. Sixty thousand nine hundred seventy-four dollars;
  - c. The limit set under this subsection for the previous rate year adjusted by the ~~increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city~~ average adjustment factor; or
  - ~~c.~~ ~~Thirty-three thousand seven hundred eighty-five dollars.~~
  - d. If the facility is combined with a nursing facility, 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 the greatest of subdivision a, b, or c.
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.
6. ~~The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year.~~

**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)

#### **75-02-07.1-15. 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)

#### **75-02-07.1-20. 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 provided for in section 75-02-07.1-22 are added to establish the facility's personal care rate. The rates for property costs and 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 ~~actual~~ 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 ~~room and board~~ 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.
- ~~3. If the actual room and board rate component of an established rate calculated using the provisions of subsection 1 or 2 is less than the statewide minimum room and board rate, the actual room and board rate~~

~~component of the established rate shall be increased to the statewide minimum room and board rate and the personal care rate component of the established rate shall be decreased by the same amount.~~

**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 factors ~~factor~~ for direct care, indirect care, and food and plant costs.** ~~Adjustment factors shall be applied to adjust historical allowable costs. The adjustment factor applied shall not exceed the lesser of the inflation factor allowed by the legislative assembly or the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year. The adjustment factor must be used to adjust direct care, indirect care, and food and plant costs. Costs reported for a period other than twelve months ended December thirty-first of a report year must be adjusted to December thirty-first of a report year using 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.~~

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.**

1. 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. The department shall, for each cost category, rank licensed beds in all facilities reporting historical costs, excluding specialized facilities for individuals with mental disease, by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. For each cost category, the rate associated with the position ranked at eighty percent of the ranked beds is the limit rate for that cost category. When establishing a facility's rate:
  - a. 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;
  - b. 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
  - c. 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.
2. ~~If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.~~
3. ~~The reduced rate for each facility subject to a reduced rate is determined by:~~
  - a. ~~Establishing the total appropriation available for supplements during that reduced rate quarter;~~
  - b. ~~Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;~~
  - c. ~~Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;~~

- d. ~~Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;~~
  - e. ~~Subtracting the amount projected under subdivision c from the amount determined under subdivision a;~~
  - f. ~~Subtracting the amount determined under subdivision e from the amount projected under subdivision d;~~
  - g. ~~Dividing the amount determined under subdivision f by the number projected under subdivision b; and~~
  - h. ~~Reducing the established rate set for that facility by the amount determined under subdivision g.~~
4. ~~A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.~~
5. ~~A reduced rate is effective during the reduced rate quarter for which it is established.~~
6. ~~A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.~~
7. ~~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.~~
8. ~~For purposes of this section:~~
- a. ~~"New facility" means a facility for which no rate was set, under this chapter, for any period before July 1, 1995.~~
  - b. ~~"Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.~~
  - c. ~~"Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's~~

~~licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.~~

- d. ~~"Supplement" means payments provided or the provision of payments under North Dakota Century Code chapter 50-24.5.~~

**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.

**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 ~~for semiprivate accommodations~~ 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. ~~The~~ By August thirty-first, the facility shall file an interim cost report ~~by August thirty-first~~ 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. ~~The~~ 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. ~~The~~ 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. ~~The~~ By August thirty-first, the facility shall file an interim cost report ~~by August thirty-first~~ 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. ~~The~~ 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. ~~The~~ 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. Adjustments for salary and benefit enhancements.**

- a. The department may provide for a salary and benefit enhancement rate.

- b. The salary and benefit enhancement rate shall be added to the personal care and room and board rates otherwise established under this chapter for the rate years beginning July 1, 2009, and July 1, 2010. The enhancement rate may not be effective before the implementation date of the enhancement by the facility.
  - c. For the rate year beginning July 1, 2010, the salary and benefit enhancement rate effective July 1, 2009, shall be reduced by one-twelfth for each month the costs related to the implementation of the enhancement are included in the cost report used to establish the facility's July 1, 2010, rate and then increased by the adjustment factor set forth in section 75-02-07.1-21.
  - d. Any additional funds provided must be used to provide salary and benefit enhancements 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.
4. 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.

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

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

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

#### **75-02-07.1-29. 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)

**CHAPTER 75-02-09**  
**RATESETTING FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES**

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**75-02-09-01. 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. "Adjustment ~~factors~~ factor" means ~~indices used to adjust reported costs for inflation or deflation based on economic forecasts~~ the inflation rate for psychiatric residential treatment facility services used to develop the legislative appropriation for the department for the applicable rate year.
3. "Allowable cost" means the ~~center's~~ facility's actual and reasonable cost after adjustments required by department rules.
4. "~~Center~~" means ~~a licensed residential treatment center for children that has been accredited by the joint commission on accreditation of hospitals as a psychiatric facility.~~
5. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting ~~and~~ which are used in the determination of cost limitations ~~and rates.~~
6. ~~5.~~ "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.
7. ~~6.~~ "Department" means the department of human services.

- ~~8:~~ 7. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
8. "Desk rate" means the rate established by the department based upon the cost report.
9. "Education" means the cost of activities related to academic and vocational training generally provided by a school district.
10. "Facility" means an entity that is a licensed psychiatric residential treatment facility for children under chapter 75-03-17.
11. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
12. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
- ~~11:~~ 13. "Fringe benefits" means workers' compensation insurance, group health, dental or vision insurance, group life insurance, payment toward retirement plans, uniform allowances, employer's share of Federal Insurance Contributions Act, unemployment compensation taxes, and medical services furnished at ~~center~~ facility expense.
- ~~12:~~ 14. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~13:~~ 15. "In-house day" means a day that an individual was actually residing in the facility and was not on leave.
16. "Interest" means cost incurred for the use of borrowed funds.
17. "Leave day" means any day that an individual is not in the facility but is expected to return to the facility.
18. "Private-pay resident" means an individual on whose behalf the facility is not receiving medical assistance payments.
- ~~14:~~ 19. "Rate year" means the twelve-month period beginning the seventh month after the end of a ~~center's~~ facility's fiscal year.
- ~~15:~~ 20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated ~~center~~ facility to provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. Reasonable cost takes into account that the ~~center~~ facility 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 service.

- ~~16-~~ 21. "Related organization" means an organization that a center facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by; and which furnishes services, facilities, or supplies to the center facility. Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or center facility.
- ~~17-~~ 22. "Report year" means the center's facility's fiscal year.
- ~~18-~~ 23. "Resident day" means a day for which service is actually provided or for which payment is ordinarily sought.
- ~~19-~~ 24. "Special rate" means a desk rate or a final rate adjusted for nonrecurring or initial costs not included in the historical cost basis.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-02. Financial reporting requirements.**

1. Records.
  - a. The center facility shall maintain on the premises census records and financial information 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. If several centers 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 center facility prior to the audit or review of the center facility. Accounting or financial information regarding a related organization must be readily available to substantiate cost.
  - c. Each center facility shall maintain, until any rate based upon a cost report is final and not subject to any appeal, but in any event, for a period of not less than three years following the date of submission of the cost report to the state agency, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. Each center facility shall make the records available upon reasonable demand to representatives of the department.
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. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles. A center 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.
- b. To properly facilitate auditing, the accounting system ~~should~~ must be maintained in a manner that ~~will allow~~ allows cost accounts to be grouped by cost category and readily traceable to the cost report.
- c. The cost report must be submitted on or before the last day of the third month following the ~~center's~~ facility's fiscal yearend except as provided in subdivision g. The report must contain all actual costs of the ~~provider~~ facility, adjustments for nonallowable costs, and resident days.
- d. The department may impose a nonrefundable penalty of ten percent of any amount claimed for services furnished after the due date if the center facility fails to file the cost report on or before the due date. The penalty may be imposed on the first day of the fourth month following the ~~center's~~ facility's fiscal yearend and continues to the end of the month in which the statement or report is received.
- e. Upon request, the following information must be made available:
  - (1) A statement of ownership including the name, address, and proportion of ownership of each owner;
  - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the center facility or a certification that the content of those documents remains unchanged since the most recent statement given pursuant to this subsection;
  - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report; or
  - (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
- f. The center facility must make all adjustments and allocations 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 impose the penalties described in subdivision d.

- g. The department may grant ~~an~~ one thirty-day extension of the reporting deadline to a center facility. To receive an extension, a center facility must submit a written request to the department's medical services division.
  - h. 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 rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
3. The department ~~will~~ shall perform an audit of the latest available report year of each center facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in the performance of audits and in the establishment of rates. Audits must meet generally accepted governmental auditing standards.
  4. Penalties for false reports.
    - a. A false report is one where a center 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 ~~center's~~ facility's payment rate to recover the entire overpayment within the rate year;
      - (2) Terminate the department's agreement with the center facility;
      - (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 center facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The center facility may indicate that the costs are under appeal and not claimed under protest to perfect a claim should the appeal be successful.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

### **75-02-09-03. General cost principles.**

1. For ratesetting purposes, a cost must:
  - a. Be ordinary, necessary, and related to resident care;
  - b. Be no more than an amount 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~~ by the center 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 the form.
3. Reasonable resident-related costs will be determined in accordance with the ratesetting procedures set forth in this chapter and instructions issued by the department.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

### **75-02-09-04. Ratesetting.**

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs not includable in allowable costs. Adjustment factors are then applied to allowable costs. ~~No retroactive~~ Retroactive settlements for actual costs incurred during the rate year exceeding the final rate will not be made unless specifically provided ~~for~~ in this chapter.
2. The department ~~will~~ shall establish a desk rate, based on the cost report, which will be effective the first day of the seventh month following the ~~center's~~ facility's fiscal yearend or on an alternate effective date determined by the department.
  - a. The desk rate will continue in effect until a final rate is established.
  - b. The cost report will be reviewed taking into consideration the prior year's adjustments. ~~Centers~~ A facility will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the ~~center~~ facility may submit information to explain why a desk adjustment should not be made. The department ~~will~~ shall review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rate.

- c. ~~No reconsideration~~ Reconsideration will not be given by the department for the desk rate unless the center facility has been notified that the desk rate is the final rate.
      - d. A desk rate may be adjusted at any time if subsection 4 applies to the center facility.
- 3. The cost report may be field audited by the department to establish a final rate. If no field audit is performed, the desk rate will become the final rate upon notification to the center facility from the department.
  - a. The final rate will be effective ~~beginning the first day of the seventh month following the center's fiscal yearend~~ as of the effective date of the desk rate.
  - b. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least twenty-five cents per day.
  - c. Adjustments, errors, or omissions found after a final rate has been established will be included as an adjustment in the report year the adjustments, errors, or omissions are found.
  - d. The final rate may be adjusted at any time if subsection 4 applies.
- 4. ~~Special rates~~ A special rate will be established for centers a facility providing services for the first time, ~~whose rates were established under chapter 75-03-20 prior to accreditation~~, changing ownership, having a capacity increase or major renovation or construction, or having changes in services or staff.
  - a. The rate for a center facility providing first-time services purchased by the department will be established using this subdivision for the first two fiscal years of the center facility if that period is less than twenty-four months.
    - (1) The center facility shall submit a budget, to the department's medical services division, for the first twelve months of operation. A final rate based on the budget and adjustments, if any, will be established for a rate period beginning on the first of the month in which the center facility begins operation. This rate will remain in effect for eighteen months. ~~No adjustment~~ Adjustment factors will not be included in the first year final rate. No retroactive settlements will be made.
    - (2) Upon completion of the first twelve months of operation, the center facility must submit a cost report for the twelve-month period regardless of the fiscal yearend of the center facility.

- (a) The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.
  - (b) The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.
- (3) The ~~center~~ facility shall submit a cost report that will be used to establish rates in accordance with subsections 2 and 3 after the ~~center~~ facility has been in operation for the entire twelve months of the ~~center's~~ facility's fiscal year.
- b. ~~Centers receiving accreditation by the joint commission on accreditation for hospitals and which had a desk or final rate established under chapter 75-03-20 prior to the accreditation will receive a rate established based on the cost report submitted under chapter 75-03-20, and the provisions of this chapter.~~
  - c. For ~~centers changing a facility with a change in ownership~~, the rate established for the previous owner will be retained until the end of the rate year in which the change ~~occurred~~ of ownership occurs. The rate for the second rate year after a change in ownership occurs will be established as follows:
    - (1) For a ~~center~~ facility with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred will be used to establish the rate for the next rate year; and
    - (2) For a ~~center~~ facility with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner will be indexed forward using the appropriate adjustments adjustment factor.
  - d. c. For ~~centers~~ a facility that ~~increase~~ increases licensed capacity by twenty percent or more or ~~have~~ has a renovation or construction ~~projects~~ project in excess of fifty thousand dollars, the ~~established~~ established desk or final rate ~~established~~ may be adjusted for the period after the licensed capacity increase occurs or the construction or renovation is complete ~~may be adjusted~~ to include projected property costs.
    - (1) For the rate year in which the capacity increase occurs or construction or renovation is completed, an adjusted rate will be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census,

plus a rate for property costs based on projected property costs divided by projected census. The adjusted rate will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.

- (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate will be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census plus a rate for property costs, based on projected property costs, divided by projected census.

e. d. The department may provide for an increase in the established rate for additional costs necessary to add services or staff to the existing program.

- (1) The ~~center must~~ facility shall submit information, to the department's medical services division, supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.
- (2) The department ~~will~~ shall review the submitted information and may request additional documentation or conduct onsite visits. The established rate will be adjusted if an increase in costs is approved. The effective date of the rate increase will be the later of the first day of the month following approval by the department or the first day of the month following the addition of services or staff. The adjustment will not be retroactive to the beginning of the rate year and will exclude adjustment factors provided for in subsection 8.
- (3) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 2, the ~~center~~ facility may request consideration be given to additional costs. The ~~center~~ facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period, exclusive of adjustment factors provided for in subsection 8.

5. The final rate must be considered as payment for all accommodations that include items identified in section 75-02-09-06. For any resident whose rate is paid in whole or in part by the department, no payment

may be solicited or received from the resident or any other person to supplement the rate as established.

6. When a center facility terminates its participation in the program, whether voluntarily or involuntarily, the department may authorize the center facility to receive continued payment until residents can be relocated.
7. Limitations.
  - a. The department ~~may~~ shall accumulate and analyze statistics on costs incurred by ~~accredited and nonaccredited residential treatment centers.~~ These statistics psychiatric residential treatment facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. ~~These limitations~~ Limitations and incentives may be established on the basis of cost of comparable ~~centers~~ facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. ~~Limitations and incentives are effective upon notification of a center by the department.~~ The department may implement ceilings at any time based upon information available.
  - b. The department shall review, on an ongoing basis, aggregate payment to facilities to determine that payments do not exceed an amount that can be reasonably estimated would have been paid for these services under federally required payment principles. If aggregate payments to facilities exceed estimated payments under federally required payments principles, the department may make adjustments to rates so that aggregate payments do not exceed an amount that can be estimated would have been paid under an upper payment limit.
  - c. Allowable administration costs to be included in the established rate are the lesser of the actual cost of administration as direct costed or allocated to the center facility or an amount equal to fifteen percent of the total allowable costs, exclusive of administration costs, for the center facility.
8. ~~Adjustment factors~~ An adjustment factor may be ~~applied~~ used to adjust historical allowable costs. ~~The department will determine the appropriate adjustment factor to be applied. The following cost components may have individual adjustment factors calculated at the point in time when the cost report is due for each rate year:~~
  - a. ~~Salaries and fringe benefits;~~
  - b. ~~Food;~~

- c. ~~Utilities; and~~
- d. ~~Other costs exclusive of~~ but may not be used to adjust property costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-05. Resident census.**

1. A daily census record must be maintained by the ~~center~~ facility. Any day services are provided or for which payment is ordinarily sought for an available bed must be counted as a resident day. The day of admission ~~or and day of death will be counted~~ are resident days. The day of discharge will be counted if payment is sought for that day. For a medical assistance residents resident, payment may not be sought for any day on which the resident was not in the facility or for the day of discharge.
2. The daily census records must include:
  - a. Identification of the resident;
  - b. Entries for all days, and not just by exception; and
  - c. Identification of type of day, i.e., in-house or ~~hospital~~ leave day.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-06. Allowable costs by cost category.**

1. Administration costs are those allowable costs of activities performed by the staff in which the direct recipient of the activity is the organization itself, including fiscal activities, statistical reporting, recruiting, and general office management indirectly related to reimbursable services provided. Administration personnel includes administrators, regional directors, program directors, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel. ~~Costs~~ Administration costs directly assignable to the ~~center~~ facility must be reported as ~~center~~ facility administration. ~~Costs~~ Administration costs not directly assignable to the ~~center~~ facility must be reported as other administration. Costs for administration include:

- a. Salary and fringe benefits for individuals who provide services administrative in nature or who are not included specifically in any other cost category;
  - b. Office supplies;
  - c. Insurance, except property insurance and insurance included as a fringe benefit;
  - d. Postage and freight;
  - e. Professional fees for services such as legal, accounting, and data processing;
  - f. Central or home office costs;
  - g. Personnel recruitment costs;
  - h. Management consultants and fees;
  - i. Dues, license fees, and subscriptions;
  - j. Travel and training for employees;
  - k. Interest on funds borrowed for working capital;
  - l. Startup costs;
  - m. Telephone service not included in other cost categories; and
  - n. All other costs not specifically identified in other cost categories.
2. Direct care costs are those allowable costs incurred for providing services for the maximum reduction of physical or mental disability and restoration of a resident to the best possible functional level and for providing for the personal needs of the resident. Those services may include any medical or remedial service recommended by a physician or other licensed practitioner of the healing arts, within the scope of the practitioner's practice under state law. Direct care costs include:
- a. Salaries and fringe benefits for individuals providing treatment or supervision of residents;
  - b. Personal supplies used by an individual resident;
  - c. Clothing necessary to maintain a resident's wardrobe;

- d. School supplies and activity fees, when not provided by or at the expense of the school;
  - e. Costs incurred for providing recreation to the residents including subscriptions, sports equipment, and admission fees to sporting, recreation, and social events;
  - f. All costs related to transporting residents, and ~~transportation~~ transportation costs that may include actual expenses of ~~center-owned~~ facility-owned vehicles or mileage paid to employees for use of personal vehicle; and
  - g. The cost of services purchased and not provided at the ~~center~~ facility, including case management, addiction, psychiatric, psychological, and other clinical evaluations, medication review, and partial care or day treatment.
3. Dietary costs are those allowable costs associated with the preparation and serving of food. Dietary costs include:
- a. Salaries and fringe benefits for all personnel involved with the preparation and delivery of food;
  - b. Food; and
  - c. Dietary supplies and utensils including paper products and noncapitalized dietary equipment.
4. Laundry costs are those allowable costs associated with gathering, transporting, sorting, and cleaning of linen and clothing. Laundry costs include:
- a. Salaries and fringe benefits of personnel who gather, transport, sort, and clean linen and clothing;
  - b. The cost of laundry supplies; and
  - c. Contracted laundry services.
5. Plant and housekeeping costs are those allowable costs related to repairing, cleaning, and maintaining the ~~center's~~ facility's physical plant. Plant and housekeeping costs include:
- a. Salaries and fringe benefits of personnel involved in cleaning, maintaining, and repairing the ~~center~~ facility;
  - b. Supplies necessary to maintain the ~~center~~ facility, including such items as cleaning supplies, paper products, and hardware goods;

- c. Utility costs, including heating and cooling, electricity, water, sewer, garbage, and cable television;
  - d. Local telephone service to the living quarters and long distance telephone service directly related to providing treatment; and
  - e. Routine repairs and maintenance of property and equipment, including maintenance contracts and purchased services.
6. Property costs are those allowable capital costs associated with the physical plant of the center facility. Property costs include:
- a. Depreciation;
  - b. Interest;
  - c. Lease costs on equipment and buildings;
  - d. Property taxes; and
  - e. Property insurance on buildings and equipment.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-07. Cost allocation.**

- 1. Direct costing of allowable center facility costs must be used whenever possible. If direct costing is not possible, the allocation methods for center facility and ~~noncenter~~ nonfacility operations described in this subsection must be used.
  - a. Salaries for direct care employees, which cannot be reported based on direct costing, 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. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibility. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time study or averaged for the report year.
  - b. Salaries of supervisory personnel must be allocated based on full-time equivalents of the employees supervised or on a ratio of salaries.

- c. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
  - d. Plant and housekeeping expenses must be allocated based on square footage.
  - e. Property costs must be allocated based on square footage.
  - f. Administration costs must be allocated on the basis of the percentage of total costs, excluding the allocable administration costs.
  - g. Dietary costs must be allocated based on meals served.
  - h. Laundry costs must be allocated on the basis of pounds of laundry.
  - i. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for all miles driven and purpose of travel. If sufficient documentation is not available to determine which cost category vehicle expenses are to be allocated, vehicle expenses must be allocated in total to administration.
  - j. Costs not direct costed or allocable using methods identified in subdivisions a through i must be included as administration costs.
2. If the center facility cannot use any of the allocation methods described in subsection 1, a waiver request may be submitted to the department's medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the center facility. The center facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department ~~will~~ shall determine the allocation method used to report costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-08. Nonallowable costs.** Nonallowable costs include:

1. Promotional, publicity, and advertising expenses, exclusive of personnel procurement;
2. Political contributions;
3. Salaries or expenses of a lobbyist;
4. Basic research;
5. Fines or penalties including interest charges on the penalty, bank overdraft charges, and late payment charges;
6. Bad debts;
7. Compensation and expenses for officers, directors, or stockholders, except as provided for in section 75-02-09-15;
8. Contributions or charitable donations;
9. Costs incurred for activities directly related to influencing employees with respect to unionization;
10. Costs of membership or participation in health, fraternal, or social organizations such as eagles, country clubs, or knights of columbus;
11. Corporate costs such as organization costs, reorganization costs, costs associated with acquisition of capital stock, costs relating to the issuance and sale of capital stock or other securities, and other costs not related to resident services;
12. Home office costs that would be nonallowable if incurred directly by the center facility;
13. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors, including annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements, stock transfer agent fees, and stockbroker and investment analyses;
14. The cost of any equipment, whether owned or leased, not exclusively used by the center facility except to the extent the center facility demonstrates to the satisfaction of the department that any particular use of equipment was related to resident care;
15. Costs, including by way of illustration and not by way of limitation, for legal fees, accounting and administrative 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 center facility;

16. Depreciation expense for center facility assets not related to resident care;
17. Personal expenses of owners and employees for items or activities including vacation, boats, airplanes, personal travel or vehicles, and entertainment;
18. Costs not adequately documented (adequate documentation includes written documentation, of 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 centers facilities);
19. The following taxes, when levied on providers a facility:
  - 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 operations such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., 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 such as real estate and sales tax for which exemptions are available to the center facility;
  - e. Taxes on property not used in the provision of covered services; and
  - f. Taxes such as sales taxes, levied, collected, and remitted by the center facility;
20. The unvested portion of a center's facility's accrual for sick or annual leave;
21. Expenses or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies, provided that reasonable insurance expenses may not be limited by this subsection;
22. Fringe benefits, not within the definition of that term, which have not received written prior approval of the department;

23. Fringe benefits that discriminate in favor of certain employees, excluding any portion that relates to costs that benefit all employees;
24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
25. Funeral and cemetery expenses;
26. Travel not directly related to professional conferences, state or federally sponsored activities, or resident services;
27. Items or services such as telephone, television, and radio located in a resident's room and furnished solely for the convenience of the resident;
28. Value of donated goods and services;
29. Religious salaries, space, and supplies;
30. Miscellaneous expenses not related to resident services;
31. Premiums for top management personnel life insurance policies, except that the premiums shall be allowed if the policy is included within a group policy provided for all employees, or if a policy is required as a condition of a mortgage or loan and the mortgagee or lending institution is listed as the beneficiary;
32. Travel costs involving the use of vehicles not exclusively used by the center facility unless:
  - a. Vehicle travel costs do not exceed the amount established by the internal revenue service;
  - b. The center facility supports vehicle costs related to resident care with sufficient documentation, including mileage logs for all miles, purpose of travel, and receipts for purchases; and
  - c. The center facility documents all costs associated with a vehicle not exclusively used by the center facility;
33. Vehicle and aircraft costs not directly related to center facility business or resident services;
34. Nonresident-related operations and the associated administrative costs;
35. Costs related to income-producing activities regardless of the profitability of the activity;

36. Costs incurred by the center's facility's subcontractors or by the lessor of property the center facility leases, and which become an element in the subcontractor's or lessor's charge to the center facility, if such costs would not have been allowable had they been incurred by a center facility directly furnishing the subcontracted services or owning the leased property;
37. All costs for services paid directly by the department to an outside provider facility;
38. Depreciation on the portion of assets acquired with government grants;
39. Costs incurred due to management inefficiency, unnecessary care or services, agreements not to compete, or activities not commonly accepted in the industry;
40. The cost of consumable food products, in excess of income from employees, guests, and nonresidents offset in accordance with subsection 1 of section 75-02-09-16, consumed by persons other than residents or direct care personnel;
41. Payments to residents, whether in cash or in kind, for work performed or for bonuses or rewards based on behavior; and
42. In-house education costs including:
  - a. Compensation for teachers and teacher aides who provide academic training to residents in-house;
  - b. Property and plant operation expenses for space used to provide in-house academic training to residents; and
  - c. The cost of supplies and equipment used in a classroom normally provided by a school district as part of the academic training.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-09. Depreciation.**

1. Ratesetting principles require that payment for services should include depreciation on all depreciable type assets used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the center facility, but are in use at the time the center facility enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets used in a normal standby

or emergency capacity. 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 center facility and must be included as a gain or loss on the cost report.

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, are unacceptable. 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 than that submitted on the cost report, a reconciliation must be prepared by the center facility.
  - b. ~~Centers~~ A facility must use a minimum composite useful life of ten years for all equipment and land improvements, and four years for vehicles. Buildings and improvements to buildings are to be depreciated over the length of the mortgage or a minimum of twenty-five years, whichever is greater.
3. Acquisitions.
  - a. If a depreciable asset has at the time of its acquisition 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 except as provided for in subsection 3 of section 75-02-09-11. Costs, such as architectural, consulting and legal fees, and interest, incurred during the construction of an asset 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 or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and also 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. Basis for depreciation.

- a. Determination of the cost basis of a ~~center and its~~ facility's depreciable assets, which have not been involved in any programs funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale purchase. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale purchase. Purchases where the buyer and seller are related organizations are not bona fide.
  - (1) If the sale purchase is bona fide, the cost basis will be the lower of the actual cost of the buyer or the fair market value of the ~~facility or~~ asset at the time of the sale purchase.
  - (2) If the sale purchase is not bona fide, the cost basis will be the seller's cost basis less accumulated depreciation.
- b. Cost basis of a ~~center and its~~ facility's depreciable assets purchased as an ongoing operation will be the seller's cost basis less accumulated depreciation.
- c. Cost basis of a ~~center and its~~ facility's depreciable assets used in any programs funded in whole or in part by the department will be the cost basis used by the other program less accumulated depreciation.
- d. Sale and leaseback transactions will be considered a related party transaction. The cost basis of a ~~center and its~~ facility's depreciable assets purchased and subsequently leased to ~~a provider an entity~~ who will continues to operate the ~~center~~ facility will be the seller's cost basis less accumulated depreciation.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-10. Interest expense.**

- 1. To be allowable under the program, interest must be:
  - 1. a. Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required. Repayment of operating loans must be made within two years of the borrowing;
  - 2. b. Identifiable in the ~~center's~~ facility's accounting records;
  - 3. c. Related to the reporting period in which the costs are incurred;
  - 4. d. Necessary and proper for the operation, maintenance, or acquisition of the ~~center~~ facility. Necessary means that the

interest be incurred on a loan made to satisfy a financial need of the center facility and for a purpose reasonably related to resident care. Proper means that the interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in an arm's-length transaction. In addition, the interest must be paid to a lender not related to the center facility through common ownership or control;

5. e. Unrelated to funds borrowed to finance costs of assets in excess of the depreciable cost of the asset as recognized in "depreciation"; section 75-02-09-09; and
  6. f. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allocable when the debt was initially incurred.
2. If it is necessary to issue bonds for financing to finance the costs of assets, any bond premium or discount will must be amortized on a straight-line basis over the life of the bond issue.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-11. Taxes.**

1. Taxes assessed against the center facility in accordance with the levying enactments of the several states and lower levels of government and for which the center facility is liable for payment are allowable costs except for those taxes identified as nonallowable in section 75-02-09-08.
2. Whenever exemptions to taxes are legally available, the center facility is to take advantage of them. If the center facility does not take advantage of available exemptions, the expense incurred for such 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 May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-12. Home office costs.**

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their

member facilities. Although the home office of a chain is normally not a center facility in itself, it may furnish to the individual center facility central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing services is includable in the center's facility's allowable costs under the program.

2. Costs not allowed in the center facility are not allowed as home office costs allocated to the center facility.
3. Any service provided by the home office included in costs as payments by the center facility to an outside vendor or which duplicates costs for services provided by the center facility is a duplication of costs and is not allowed.
4. 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.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-13. Related organizations.**

1. Costs applicable to services, facilities buildings, equipment, and supplies furnished to a center facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities buildings, equipment, or supplies purchased elsewhere primarily in the local market. Centers A facility must identify such related organizations and costs. If any such costs are allocated, the allocation methods and statistics supporting the allocations must be submitted with the cost report.
2. A center facility may lease buildings or equipment from a related organization within the meaning of ratesetting principles. In such a case, the rent paid to the lessor by the center facility is not allowable as cost unless the rent paid is less than the allowable costs of ownership. If rent paid exceeds the allowable costs of ownership, the center facility may include only the allowable costs of ownership. These costs are property insurance, depreciation, interest on the mortgage, real estate taxes, and plant operation expenses incurred by the lessor.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-14. Startup costs.** In the first stages of operation, a new center facility incurs certain costs in developing its ability to care for residents prior to

their admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during that period because there are not residents receiving services. ~~Such~~ These costs are commonly referred to as startup costs. The startup costs are to be capitalized and will be recognized as allowable administration costs amortized over sixty consecutive months on a straight-line basis starting with the month the first resident is admitted.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-15. Compensation.** Reasonable compensation for a person with a minimum of five percent ownership, persons on the governing board, or family members of top management personnel, including spouses and persons in the following relationship to top management personnel or their spouses: parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, and stepsister will be considered an allowable cost if services are actually performed and required to be performed. The amount allowed must be in an amount not to exceed the average of salaries paid to individuals in like positions in all ~~accredited and nonaccredited licensed residential treatment centers~~ psychiatric residential treatment facilities that are nonprofit organizations and have no top management personnel who have a minimum of five percent ownership or are on the governing board. Salaries used to determine the average will be based on the latest information available to the department. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the ~~center~~ facility would have to employ another person to perform them.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-16. Revenue offsets.** ~~Centers~~ A facility must identify income to offset facility costs when applicable ~~in order that~~ so state financial participation does not supplant or duplicate other funding sources. Any income whether in cash or in any other form received by the ~~center~~ facility, with the exception of the established rate ~~and~~, income from ~~payment~~ payments made under the ~~Job Training Partnership~~ Workforce Investment Act, donations, and income from charges for private rooms, special services, or bed holds will be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income will be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset based on the ratio of costs in each of the cost categories. Sources of income include:

1. Income received from or on behalf of employees, guests, or other nonresidents for meals or snacks ~~and~~, or the income received for food and related costs from other government programs such as the United

States department of agriculture or the department of public instruction must be offset to against dietary costs.

2. Income received from the sale of beverages, candy, or other food items must be offset to against dietary costs.
3. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category regardless of when the cost was incurred if the center facility did not adjust the basis for depreciable assets.
4. Any refund, rebate, or discount received for a reported cost must be offset against the appropriate cost.
5. Any amount received for use of the center's facility's vehicles must be offset to against transportation costs.
6. Gain on the sale of an asset must be offset against depreciation expense.
7. Revenue received from outside sources for the use of center facility buildings or equipment will be offset to against property expenses.
8. Any amount received by the center facility from outside sources for services provided by center facility employees will be offset to against salaries.
9. Revenue from investments will be offset against interest expense.
10. Grants, gifts, restricted donations, and awards from the federal, state, local, or philanthropic agencies will be offset to ~~allowable costs~~ against the appropriate cost.
11. Gifts or endowment income designated by a donor for paying specific operating costs incurred in providing contract services must be offset to against costs in the year the cost is incurred regardless of when the gift or endowment is received.
12. Other cost-related income or miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset to against the cost category where the item was expensed.

13. Other income to the center facility from local, state, or federal units of government may be determined by the department to be an offset to against costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-17. Private pay rates.**

1. The medical assistance rate will may not exceed the full rate charged to nonmedical assistance residents for the same service. The rate being charged nonmedical assistance residents at the time the services were are provided will govern. In cases where the residents are not charged a daily rate, a daily rate will be computed by dividing the total nonmedical assistance charges for each month by the total nonmedical assistance census for each month.
2. If the established medical assistance rate exceeds the rate charged to nonmedical assistance residents for a service, on any given date, the center facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the center facility shall, within thirty days, refund the overpayment. The refund will must be the difference between the established rate and the rate charged to nonmedical assistance residents times the number of medical assistance resident days paid during the period in which the established rate exceeded the nonmedical assistance rate plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. Interest charges on these refunds are not allowable costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-18. Reconsiderations and appeals.**

1. **Reconsiderations.**
  - a. A center facility dissatisfied with the final rate established must request a reconsideration of the final rate before a formal appeal may be made. Any requests for reconsideration must be filed with the department's medical services division 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 item that is disputed; and
  - (3) The statute or rule upon which the facility is relying for each disputed item.
- c. The department may request additional documentation or information relating to a 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's medical services division ~~will~~ shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

## 2. Appeals.

- a. A ~~center~~ facility dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. ~~This~~ An appeal must be filed with the department within thirty days of the date of on the written notice of the determination by the ~~department's~~ medical services division with respect to the a request for reconsideration.
- b. An appeal under this section is timely perfected only if accompanied by written documents, including:
- (1) A copy of the letter received from the department's medical services division advising of that division's 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 which 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 upon whom all notices will be served regarding the appeal.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**TITLE 92**  
**WORKFORCE SAFETY AND INSURANCE**



**CHAPTER 92-01-02  
RULES OF PROCEDURE - NORTH DAKOTA WORKERS'  
COMPENSATION ACT**

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92-01-02-02.1	Temporary Partial Disability Benefits
92-01-02-02.2	Additional Twenty-Five Percent Rehabilitation Allowance Benefit Payment [Repealed]
92-01-02-02.3	First Report of Injury
92-01-02-03	Informal Hearing [Repealed]
92-01-02-04	Rehearing - Formal Hearing [Repealed]
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92-01-02-06	Evidence [Repealed]
92-01-02-07	Subpoena - Depositions [Repealed]
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**92-01-02-22.2. Out-of-state coverage for law enforcement training.** The organization may, at its sole discretion, extend workers' compensation coverage by written agreement to North Dakota employers for their employees engaged in law enforcement training outside the state for a limited period of time, provided the North Dakota employer provides documentation that the workers' compensation system of that state is not applicable to the employer.

**History:** Effective October 1, 2011.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-08-01(1)(a), 65-02-13.1

