

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

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SECTION 1. Subsections 20, 49, and 60 of section 75-02-07.1-01 are amended as follows:

75-02-07.1-01. Definitions.

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 2008 2013 edition.

49. "Property costs" means the cost category for allowable real property costs and ~~passthrough~~ pass-through costs.
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.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014.

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

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

SECTION 2. Section 75-02-07.1-22 is amended as follows:

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.1.~~ Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for direct care cost category shall receive the limit rate for that cost category;
 - ~~b.2.~~ A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and
 - ~~c.3.~~ A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.
4. The July 1, 2014 direct care limit rate is forty-three dollars and fifty cents.
5. The July 1, 2014 indirect care limit rate is thirty-nine dollars and ninety-eight cents.

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 effective July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

SECTION 3. Subdivision a of subsection 1 of section 75-02-07.1-23 is amended as follows:

75-02-07.1-23. Rates.

1. **Desk audit rate.**

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

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

SECTION 4. Section 75-02-07.1-26 is amended as follows:

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

- a. The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.
- b. Any additional funds made available by the supplemental payments or one-time adjustments must be used for the legislatively prescribed purpose and are subject to audit. If the department determines that the funds were not used for the legislatively prescribed purpose, an adjustment must be made in accordance with section 75-02-07.1-23.

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

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

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