

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

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SECTION 1: Subsections 46 and 57 of section 75-02-07.1-01 are amended as follows:

75-02-07.1-01. Definitions.

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

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

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; July 1, 2016; April 1, 2018.

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

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

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

75-02-07.1-05. Resident census.

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

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

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

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

SECTION 3: Subsection 1 of section 75-02-07.1-07 is amended as follows:

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

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

1. **Administration.** Costs for administering the overall activities of the facility include:
- a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, medical director, and salary and employment benefits of all personnel not designated in other cost categories.

- c. Board of directors' fees and related travel expenses.
- d. Security personnel or services.
- e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
- f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
- g. Telephone.
- h. Postage and freight.
- i. Membership dues and subscriptions.
- j. Professional fees for services such as legal, accounting, and data processing.
- k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.
- l. Advertising and personnel recruitment costs.
- m. Management consultants and fees.
- n. Business meetings, conventions, association meetings, and seminars.
- o. Travel.
- p. Training, including inservice training.
- q. Business office functions.
- r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
- s. Working capital interest.
- t. Any costs that cannot be specifically classified to other cost categories.

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

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

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

SECTION 4: Subsection 1 of section 75-02-07.1-09 is amended as follows:

75-02-07.1-09. Cost allocations.

1. Direct costing of allowable costs must be used whenever possible. For a facility that cannot direct cost, the following allocation methods must be used:
 - a. If a facility is combined with other residential or health care facilities, except for a nursing facility, the following allocation methods must be used:
 - (1) Resident care salaries that cannot be reported based on actual costs must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, resident care salaries must be allocated based on revenues for resident services.
 - (2) Salaries for a director or supervisor of resident care or licensed health care professionals that cannot be reported based on actual costs or time studies must be allocated based on resident care salaries, licensed health care professional salaries or full-time equivalents of resident care staff, or licensed health care professional staff.
 - (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents of supervised staff.
 - (4) Other resident care costs must be allocated based on resident days.
 - (5) Dietary and food costs must be allocated based on the number of meals served or in-house resident days.
 - (6) Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.

- (7) Activity costs must be allocated based on in-house resident days.
 - (8) Social service costs must be allocated based on resident days.
 - (9) Housekeeping costs must be allocated based on weighted square footage.
 - (10) Plant operation costs must be allocated based on weighted square footage.
 - (11) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
 - (12) Pharmacy costs for consultants must be allocated based on in-house resident days.
 - (13) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, chaplain, and utility costs, in each facility.
 - (14) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center must be allocated using the methodologies set forth in this section for that particular cost center.
 - (15) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.
 - (16) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the department. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.
- c. Malpractice, professional liability insurance, therapy salaries, and purchased therapy services, and resident care costs for a facility

combined with an optional Alzheimer's, dementia, special memory care or traumatic brain injury facility or unit must be direct costed.

- d. The costs of operating a pharmacy may not be included as facility costs.
- e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; October 1, 2011; April 1, 2018.

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

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

SECTION 5: Subsection 1 of section 75-02-07.1-14 is amended as follows:

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the 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 adjustment factor;~~or~~
 - d. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c; or
 - e. For a facility licensed before July 1, 2016, that is located in North Dakota and shares a home office that is also located in North Dakota with no more than two nursing facilities that are located in North Dakota but whose cost report does not include nursing facility costs, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility, may not exceed the greatest of subdivision a, b, or c.

History: Effective July 1, 1996; amended effective July 1, 1998; October 1, 2011; July 1, 2011; April 1, 2018.

General Authority: NDCC 50-06-16, 50-24.5-02(3), 50-24.5-10

Law Implemented: NDCC 50-24.5-02(3), 50-24.5-10

SECTION 6: Section 75-02-07.1-22 is amended as follows:

75-02-07.1-22. Rate limitations.

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

1. Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for direct care cost category shall receive the limit rate for that cost category;
2. A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and
3. A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.
4. The July 1, ~~2014~~2017, direct care limit rate ~~may not be less than forty-three~~ is fifty-seven dollars and ~~fifty~~thirty-two cents.
5. The July 1, ~~2014~~2017, indirect care limit rate ~~may not be less than thirty-nine~~ is forty-nine dollars and ~~ninety-eight~~ninety-five cents.
6. The department may use an adjustment factor to calculate the ~~July 1, 2015,~~ direct care and indirect care limits for future rate years within legislative appropriation.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; amended July 1, 2001; February 1, 2007; October 1, 2011; July 1, 2014; April 1, 2018.

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

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