

**ARTICLE 75-04  
DEVELOPMENTAL DISABILITIES**

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75-04-02	Purchase of Service for Developmentally Disabled Persons [Repealed]
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**CHAPTER 75-04-01  
LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH INTELLECTUAL  
DISABILITIES - DEVELOPMENTAL DISABILITIES**

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**SECTION 1:** Section 75-04-01-01 is amended as follows:

**75-04-01-01. Definitions.**

In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through intellectual disabilities - developmental disabilities program management, on whose behalf services are provided or purchased.
5. "Client-authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the client.
6. "Day habilitation" means a day program of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.
7. "Department" means the North Dakota department of human services.

8. "Developmental disability" means a severe, chronic disability of an individual which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome;
  - b. Is manifested before the individual attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;
    - (5) Self-direction;
    - (6) Capacity for independent living; and
    - (7) Economic sufficiency; and
  - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
9. "Employment support" means ongoing supports to assist clients in obtaining and maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.
10. "Family member" means relatives of a client to the second degree of kinship.
11. "Family support services" means a family-centered support service contracted based on the client's or primary caregiver's need for support in meeting the health, developmental, and safety needs to remain in an appropriate home environment. Family support services ~~may include~~includes parenting support, extended home health care, in-home supports, and family care option.
12. "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.

13. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
14. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
15. ~~"Independent habilitation" means formalized training and staff supports provided to clients on less than a daily basis. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community.~~
16. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.
- ~~17.~~16. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior as accepted by the American psychiatric association, and made by an appropriately licensed professional.
- ~~18.~~17. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.
- ~~19.~~18. "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
- ~~20.~~19. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.
- ~~21.~~20. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
- ~~22.~~21. "Primary caregiver" means a responsible person providing continuous care and supervision to an eligible individual that prevents institutionalization in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to this chapter.
- ~~23.~~22. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.

~~24.23.~~ "Program management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.

~~25.24.~~ "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.

~~26.25.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.

~~27.26.~~ "Residential habilitationservices" means formalized training and supports provided to clients ~~who require some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential services include residential rehabilitation and independent habilitation.~~

~~28.27.~~ "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for employment supports results in accreditation by the commission on accreditation of rehabilitation facilities.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

**SECTION 2:** Section 75-04-01-17 is amended as follows:

**75-04-01-17. Identification of basic services subject to licensure.**

Services provided to eligible clients must be identified and licensed by the following titles:

1. Residential ~~habilitation~~ services;

a. Residential habilitation; or

b. Independent habilitation;

2. Day habilitation;

3. ~~Independent habilitation services~~;

4. ~~Intermediate care facility for individuals with intellectual disabilities~~;

~~5.4.~~ Employment supports:

- a. Individual employment supports; or
- b. Small group employment supports;
- 6.5. Prevocational services;
- 7.6. Family support services:
  - a. Parenting supports;
  - b. In-home supports;
  - c. Extended home health care; or
  - d. Family care option; or
- 8.7. Infant development services.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

**SECTION 3:** Subsection 2 of section 75-04-01-23 is amended as follows:

- 2. Applicant's ~~residential-servicegroup home~~ facilities which are not intermediate care facilities for individuals with intellectual disabilities shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the ~~residential-servicegroup home~~ facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department.

**History:** Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000; May 1, 2004; July 1, 2012; April 1, 2020.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

**CHAPTER 75-04-05**  
**PAYMENT FOR PROVIDER AGENCIES OF SERVICES TO INDIVIDUALS WITH**  
**INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES**

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75-04-05-23	Staff Hours [Repealed]
75-04-05-24	Application
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**SECTION 4:** Section 75-04-05-01 is amended as follows:

**75-04-05-01. Definitions.**

In this chapter, unless the context or subject matter requires otherwise:

1. ~~"Absence factor" means a cost component of the residential habilitation direct care rate intended to cover costs when a client is not in the residence.~~
2. ~~—~~"Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of costs in the period when incurred, regardless of when they are paid.
- 3.2. "Administrative costs" means those costs that are necessary to operate the business but are not client related.

- ~~4.3.~~ "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
- ~~5.4.~~ "Assessment score" means the client's score from the standard assessment tool administered by the department or its designee.
- ~~6.5.~~ "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for payment through Medicaid federal financial participation.
- ~~7.6.~~ "Basic services" means all of the services that provider agencies deliver to clients, including nondevelopmental disabilities services.
- ~~8.7.~~ "Board" means all food and dietary supply costs.
- ~~9.8.~~ "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used for client care.
- ~~10.9.~~ "Client" means an individual found eligible as determined through the application of chapter 75-04-06 for services coordinated through developmental disabilities program management on whose behalf services are provided or purchased.
- ~~11.10.~~ "Client-authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the client.
- ~~12.11.~~ "Client representative" means a client-authorized representative or relative who has maintained significant contacts with the client.
- ~~13.12.~~ "Community contribution" means a contribution to a civic organization or sponsorship of community activities. Community contribution does not include a donation to a charity.
- ~~14.13.~~ "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 provider agency are divided for purposes of cost assignment and allocations.
- ~~15.14.~~ "Day habilitation" means a day program of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities must focus on improving a client's sensory motor, cognitive, communication, and social interaction skills.
- ~~16.15.~~ "Department" means the North Dakota department of human services.
- ~~17.16.~~ "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~18.17.~~ "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.



- ~~19-18.~~ "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in the most recently published "Estimated Useful Lives of Depreciable Hospital Assets".
- ~~20-19.~~ "Direct care staff" means employees who are actively providing support to clients receiving a service from a provider agency.
- ~~21-20.~~ "Direct care wage" means the wage level that is used as the basis of the payment system.
- ~~22-21.~~ "Direct program support costs" means costs that are specific to the service provision of a client, including medical and program supplies.
- ~~23-22.~~ "Documentation" means the furnishing of written or electronic records, including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
- ~~24-23.~~ "Employment-related expenses" means employee benefits, including federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, accrued paid time off, and unrecovered medical costs furnished at the provider agency's cost.
- ~~25-24.~~ "Employment support" means ongoing supports to assist clients in obtaining and maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.
- ~~26-25.~~ "Facility-based" means a facility for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining.
- ~~27-26.~~ "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.
- ~~28-27.~~ "Fixed equipment" means equipment used for client care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
- ~~29-28.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~30-29.~~ "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

- ~~31-30.~~ "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
- ~~32-31.~~ "Hospital leave day" means any day that a client is not in the facility, but is in an acute care setting as an inpatient and is expected to return to the facility. A hospital leave day is only available to clients residing in an intermediate care facility for the intellectually disabled individuals with intellectual disabilities.
- ~~33-32.~~ "In-house day" means a day that a client was actually receiving services in the intermediate care facility or residential habilitation for individuals with intellectual disabilities setting and was not on therapeutic leave, in the hospital, or absent.
- ~~34.~~ "Independent habilitation" means ~~formalized training and staff supports provided to clients on a less than daily basis. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community.~~
- ~~35-33.~~ "Indirect program support costs" means costs that are neither direct care nor administrative, such as program development, supervision and quality assurance, and are not separately billable.
- ~~36-34.~~ "In-home supports" means supports for a client residing with their primary caregiver and their family to prevent or delay unwanted out-of-home placement. Services may assist the client in activities of daily living, and help with maintaining health and safety.
- ~~37-35.~~ "Interest" means the cost incurred with the use of borrowed funds.
- ~~38-36.~~ "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.
- ~~39-37.~~ "Land improvements" means any improvement to the land surrounding the facility used for client care and identified as such in the depreciation guidelines.
- ~~40-38.~~ "Life-changing event" means a change in a client's life that will affect his or her support needs for six months or more, including a significant medical event, a crisis situation, a change in living arrangement, aging caregiver, significant medical or behavioral health event in the life of a caregiver, significant change in family functioning, or trauma.
- ~~44-39.~~ "Medical assistance program" means the program that pays the cost of medical care and other services to eligible clients pursuant to North Dakota Century Code chapter 50-24.1.
- ~~42-40.~~ "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.

- 43.41. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
- 44.42. "Other asset" means any asset that has a life of more than one year and has a cost of five thousand dollars or greater.
- 45.43. "Parenting supports" means assisting clients who are or will be parents in parenting skills training that is individualized to assist with focusing on the health, welfare, and developmental needs of their child.
- 46.44. "Person-centered service plan" means an individual plan that identifies service needs of the eligible client, the services to be provided, and is developed by the client or client-authorized representative, or both, client select team, and developmental disabilities program manager considering all relevant input.
45. "Personal assistance retainer" means a payment used in residential habilitation to allow continued reimbursement during a client's temporary absence from the setting. The personal assistance retainer allows for payment while a client is hospitalized or otherwise away from the setting in order to ensure stability and continuity of staffing.
- 47.46. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
- 48.47. "Program support" means the direct and indirect program support costs that support providing services to a client.
- 49.48. "Program support staff" means employees whose duties are associated with client care but who are not actively providing direct support services to clients receiving a service from a provider agency.
- 50.49. "Property costs" means the cost category for allowable costs to operate the owned or leased property.
- 51.50. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
- 52.51. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
- 53.52. "Related organization" means an organization which a provider agency 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 agency. Control

exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.

- ~~54-53.~~ "Relief staff" means the replacement of direct care staff when the regular direct care staff are on leave and there is a cost component in the direct care hourly rate that covers the cost of relief staff.
- ~~55-54.~~ "Residential habilitation services" means formalized training and supports provided to clients who require some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential services include residential habilitation and independent habilitation.
- ~~56.~~ "~~Residential services~~" means ~~services provided in an intermediate care facility for individuals with intellectual disabilities or residential habilitation.~~
- ~~57-55.~~ "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.
- ~~58-56.~~ "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
- ~~59-57.~~ "Staff training" means an organized program to improve staff performance.
- ~~60-58.~~ "Statement of costs" means the department-approved form for reporting costs, statistical data, and other relevant information of the provider agency.
- ~~61-59.~~ "Statement of costs year" means the fiscal year from July first through June thirtieth.
- ~~62-60.~~ "Therapeutic leave day" means any day that a client is not in the intermediate care facility for individuals with intellectual disabilities, nursing facility, swing-bed facility, transitional care unit, subacute unit, another intermediate care facility for individuals with intellectual disabilities, a basic care facility, or an acute care setting, or if not in an institutional setting, is not receiving home- and community-based waiver services and is expected to return to the facility. A therapeutic leave day is only available to clients residing in an intermediate care facility for the intellectually disabled.
- ~~63-61.~~ "Top management personnel" means owners; board members; corporate officers; general, regional, and district managers; administrators; and any other person performing functions ordinarily performed by such personnel.
- ~~64-62.~~ "Units of service" for billing purposes means:

- a. (1) In residential serviceshabilitation and intermediate care facility for individuals with intellectual disabilities, one client served for one 24-hour day;
- (2) In day habilitation, prevocational services, employment supports, and independent habilitation settings, one client served for fifteen minutes; or
- (3) In parenting supports and in-home support settings, one client served for one hour.
- b. The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential serviceshabilitation and intermediate care facility for individuals with intellectual disabilities.

~~65-63. "Vacancy factor" means an opening in residential services where a client has not been admitted. A vacancy can occur when a client leaves a residence with no intent to return, or in a residence that has capacity for more clients than those who are currently living in the residencea cost component of the residential habilitation and intermediate care facility for individuals with intellectual disabilities rate intended to cover costs when a client is no longer in the setting, with no intent to return.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010; January 1, 2013; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-18-03, 50-24.1-01

**SECTION 5:** Subsection 2 of section 75-04-05-08 is amended as follows:

**2. Census records.**

- a. Adequate census records for all clients, regardless of payer source, must be prepared and maintained on a daily basis by the provider agency to allow for proper audit of the census data. The daily census records must include:
  - (1) Identification of the client;
  - (2) Entries for all days that services are offered, including the duration of service, and not just by exception; and
  - (3) Identification of type of day, i.e., hospital, personal assistance retainer, or in-house day.
- b. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave day in an intermediate care facility for individuals with intellectual disabilities. Hospital leave days in excess of fifteen consecutive days are not billable to the medical assistance program.

- c. A maximum of thirty therapeutic leave days per client per calendar year may be allowed for payment by the medical assistance program in an intermediate care facility for individuals with intellectual disabilities. Therapeutic leave days in excess of thirty per calendar year are not billable to the medical assistance program.
- d. A maximum of thirty personal assistance retainer days per client per calendar year may be allowed for payment by the medical assistance program in residential habilitation. Personal assistance retainer days in excess of thirty per calendar year are not billable to the medical assistance program.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-18-03, 50-24.1-01

**SECTION 6:** Section 75-04-05-09 is amended as follows:

**75-04-05-09. Rate payments.**

- 1. The direct care hourly rate and components for each service are issued in a rate matrix established by the department. The components are:
  - a. The direct care hourly rate for intermediate care facilities for individuals with developmental disabilities must include direct care wage, employment-related costs, relief staff, administrative cost, vacancy factor, and program support, including room and board. Building depreciation and related interest costs will be calculated either by an established percentage, or if a facility is acquired or built after January 1, 2010, the provider agency may choose the actual building depreciation and related interest costs relating to the facility for the life of the building to be added to the rate. For facilities acquired after January 1, 2010, subdivision c of subsection 3 of section 75-04-05-15 must be followed in determining remaining useful life. After the depreciable life is complete the established percentage for building depreciation and related interest costs will be utilized.
  - b. The direct care hourly rate for residential habilitation must include direct care wage, employment-related expenses, relief staff, program support, administrative costs, and ~~an absence~~ vacancy factor.
  - c. The direct care hourly rate for independent habilitation, day habilitation, prevocational services, individual employment supports, and small group employment supports must include direct care wage, employment-related expenses, relief staff, program support, and administrative costs.
  - d. ~~The direct care hourly rate for in-home supports and parenting supports must include direct care wage, employment-related expenses, program support, and administrative costs.~~

2. For residential habilitation, intermediate care facility for individuals with intellectual disabilities, independent habilitation, day habilitation, prevocational services, and employment supports, the maximum authorized assessment score hours for a client are:
  - a. ~~For each of the above services the established payment must be calculated by multiplying the rate from the rate matrix times the hours identified by the multiplier based on the client's assessment score from the standard assessment tool, except for residential servicessupports provided in an intermediate care facility for individuals with intellectual disabilities, for which the established rate shall be the sum of all services identified for the client. A provider may request and the department may grant an outlier request for clients who have needs exceeding the client's assessment score.~~
  - b.3. Self-directed services or provider agency directed in-home supports do not require prior authorization based on the assessment score. Hours must be estimated by the program manager based on the person-centered services planning process with input from the client and the client-authorized representative, if applicable. These services are subject to the maximum annual hours as prescribed by the department.

3.4. Base staffing rate:

- a. A provider agency may receive a base staffing rate when opening a new licensed group home or intermediate care facility for individuals with intellectual disabilities, including prior to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] certification and survey requirements.
- b. A base staffing rate must be calculated based on minimum required staffing levels identified by the department.
- c. A base staffing rate is effective for an intermediate care facility for individuals with intellectual disabilities on the date it is licensed by the department.
- d. A provider agency shall receive a base staffing rate until the setting is fully occupied, or for three months, whichever comes first.

~~4.~~ Vacancy:

- ~~a.~~ ~~A residential habilitation provider agency or intermediate care facility for individuals with intellectual disabilities may receive a vacancy rate add-on in the event of a vacancy.~~
- ~~b.~~ ~~A provider agency shall request the vacancy rate add-on within fifteen days of the vacancy.~~
- ~~c.~~ ~~A vacancy rate add-on is available only for residential habilitation or intermediate care facilities for individuals with intellectual disabilities.~~

- ~~d. The vacancy rate add-on is calculated using the rate of the client who vacated the setting. The vacancy rate add-on is evenly applied to all other client rates in the setting.~~
- ~~e. A provider agency shall receive a vacancy rate add-on until the vacancy is filled, but shall not exceed three months.~~
5. Room and board charges to clients may not exceed the maximum supplemental security income payment less one hundred dollars for the personal incidental costs of the client, plus the average dollar value of supplemental nutrition assistance program to the eligible clientele in the facility.
  6. In ~~residential facilities~~ group homes where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients are established by the governmental unit providing the subsidy.
  7. In ~~residential facilities~~ group homes where energy assistance program benefits are available to individual clients or the facility, room and board rates are reduced to reflect the average annual dollar value of such benefits.
  8. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of title 29, Code of Federal Regulations, part 525.
  9. A provider agency may not solicit or receive a payment from a client or any other individual to supplement the established rate of payment.
  10. The rate of payment established must be no greater than the rate charged to a private payor for the same or similar service.
  11. Limitations:
    - a. The department shall accumulate and analyze statistics on costs incurred by provider agencies. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.
    - b. The department shall review, on an ongoing basis, aggregate payments to intermediate care facilities for the intellectually disabled to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to facilities exceed estimated payments under Medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.



- c. Provider agencies may not be reimbursed for services, rendered to a client, which exceed the rated occupancy of any facility as established by a fire prevention authority.
  - d. Provider agencies of residential services habilitation and intermediate care facilities for individuals with intellectual disabilities shall offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Provider agencies may not be reimbursed for those days in which services are not offered to a client.
  - e. Provider agencies of day services shall offer services to each client eight hours per day two hundred sixty days per year, except leap years in which two hundred sixty-one days must be offered, less any state-recognized holidays, unless a holiday exception is approved by the department. Provider agencies may not be reimbursed for hours of service in which the client is not in attendance.
  - f. Provider agencies of day services to clients of intermediate care facilities for individuals with intellectual disabilities shall bill the intermediate care facility for individuals with intellectual disabilities the day habilitation rate established for the client.
12. Adjustments and review procedures are as follows:
- a. Adjustments may be made to correct errors. Statement of costs must be reviewed taking into consideration prior years' adjustments. The provider agency must be notified by facsimile transmission or electronic mail of any adjustments based on the desk review. A provider agency may submit information, within thirty days after notification, to explain why the desk adjustment is incorrect. The department shall review the information and make appropriate adjustments.
  - b. A provider agency may submit a request for reconsideration of the final statement of costs review in writing to the developmental disabilities division within fifteen days of the date of the final statement of costs review notification. A request for reconsideration must provide new evidence indicating why a new determination should be made or explain how the department has incorrectly interpreted the law. The department shall respond to a properly submitted request for reconsideration within ninety days of receipt of the request. The department may revise the final statement of costs review on its own motion.
  - c. A provider agency may appeal the decision within thirty days after the department mails the written notice of the decision on a request for reconsideration of the final review of the statement of costs.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-18-03, 50-24.1-01

**SECTION 7:** Section 75-04-05-11 is amended as follows:

**75-04-05-11. Statement of costs allocations.**

The statement of costs provides for the identification of the allowable expenditures and basic services subject to payment by the department. When costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. When costs are incurred jointly for two or more basic services, and not able to be directly assigned, the costs must be allocated as follows:

1. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services. Time studies may be performed for one week at least quarterly for allocation. When no time studies exist, the applicable units must be used for allocation. When there is no definition of a unit of service, the department must use the unit of service for billing purposes ~~for residential settings~~.
2. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid are excluded.
3. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic services based on usage or applicable units.
4. Real property cost. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. When multiple usage of direct use area occurs, the allocation is first done by square footage and then by applicable units.
5. Travel. The total of all unassigned travel costs must be included in administrative costs.
6. Supplies. The total of all unassigned supply costs must be included with administrative costs.
7. Food services. The total of all food costs must be allocated based on meals served. When the number of meals served has not been identified, applicable units must be used.
8. Insurance and bonds. The total of all such costs, except insurance costs representing real property costs or vehicle insurance costs applicable to vehicles used for one or more basic services, must be included as administrative costs.

9. Indirect program support costs. Total indirect program support costs, not including personnel and fringe benefits, must be allocated to basic service categories, exclusive of production, room, and board, based on actual units of service. When determining the day habilitative ratio of indirect program support costs, total day habilitation units are divided by thirty-two and rounded to the nearest whole number.
10. Administrative costs. Total administrative costs must be allocated to all service categories, exclusive of residential habilitation room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for habilitation services must be based on total costs, including room and board, with the allocation made only to direct care costs, direct program support costs, and indirect program support costs.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-18-03, 50-24.1-01

**CHAPTER 75-04-06**  
**ELIGIBILITY FOR INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES**  
**PROGRAM MANAGEMENT SERVICES**

Section

75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility - Children Age Three and Above
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three-Year-Old and Four-Year-Old Children [Repealed]
75-04-06-07	Denial, Reduction, and Termination of Services by the Department – Appeal
<u>75-04-06-08</u>	<u>Developmental Disabilities Program Management Caseload and Responsibilities</u>

**SECTION 8:** Section 75-04-06-08 is created as follows:

75-04-06-08. Developmental disabilities program management caseload and responsibilities.

1. The average caseload of the developmental disabilities program managers must be no more than sixty clients per program manager.
2. The developmental disabilities program manager shall complete the following:
  - a. Review client rights with eligible clients.
  - b. Conduct service coordination and monitoring for eligible clients.
  - c. Authorize appropriate services for eligible clients.

History: Effective April 1, 2020.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18