

**CHAPTER 75-02-06  
RATESETTING FOR NURSING HOME CARE**

Section	
75-02-06-01	Definitions
75-02-06-02	Financial Reporting Requirements
75-02-06-02.1	General Cost Principles
75-02-06-02.2	Direct Care Costs
75-02-06-02.3	Other Direct Care Costs
75-02-06-02.4	Indirect Care Costs
75-02-06-02.5	Property Costs and Other Passthrough Costs
75-02-06-02.6	Cost Allocations
75-02-06-03	Depreciation
75-02-06-04	Interest Expense
75-02-06-04.1	Funded Depreciation
75-02-06-05	Compensation
75-02-06-06	Return on Investment
75-02-06-06.1	Home Office Costs
75-02-06-07	Related Organization
75-02-06-08	Rental Expense Paid to a Related Organization
75-02-06-09	Taxes
75-02-06-10	Bad Debts
75-02-06-11	Startup Costs
75-02-06-12	Offsets to Costs
75-02-06-12.1	Nonallowable Costs
75-02-06-13	Cost Allocation and Classification [Repealed]
75-02-06-14	Resident Days
75-02-06-15	Nursing Care [Repealed]
75-02-06-16	Rate Determinations for Cost
75-02-06-16.1	Adjustments for Salary and Benefit Enhancements [Repealed]
75-02-06-16.2	One-Time Adjustments for Legislatively Approved Cost Increases
75-02-06-16.3	Rate Determinations for Price
75-02-06-17	Classifications
75-02-06-18	Reviewer Criteria [Repealed]
75-02-06-19	Appeal From Facility Transfer or Discharge [Repealed]
75-02-06-20	Resident Personal Funds
75-02-06-21	Specialized Rates for Extraordinary Medical Care
75-02-06-22	Participation Requirements
75-02-06-23	Violation of Chapter Subjects Facility to Action
75-02-06-24	Exclusions
75-02-06-25	Notification of Rates
75-02-06-26	Reconsiderations

**SECTION 1:** Subsections 17 and 69 of section 75-02-06-01 are amended as follows:

17. "Department" means the department of health and human services.

69. "Resident" means ~~a person~~ an individual who has been admitted to the facility, but not discharged.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010; July 1, 2012; January 1, 2014; July 1, 2016; January 1, 2020; January 1, 2022; October 1, 2022; January 1, 2024.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**SECTION 2:** Section 75-02-06-05 is amended as follows:

**75-02-06-05. Compensation.**

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the highest market-driven compensation of an administrator employed by a freestanding facility, with licensed capacity, during the previous report year, at least equal to the licensed capacity of the smallest facility within the top quartile of all facilities ranked by licensed capacity, increased by the consumer price index for all urban consumers (all items, United States city average). Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation divided by three hundred sixty-five times the number of calendar days the individual was employed.
2. Compensation includes:
  - a. Salary for managerial, administrative, professional, and other services.
  - b. Amounts paid for the personal benefits of the ~~person~~ individual, e.g., housing allowance, flat-rate automobile allowance.
  - c. The cost of assets and services the ~~person~~ individual receives from the facility.
  - d. Deferred compensation, pensions, and annuities.
  - e. Supplies and services for the personal use of the ~~person~~ individual.
  - f. The cost of a domestic or other employee who works in the home of the ~~person~~ individual.
  - g. Life and health insurance premiums paid for the ~~person~~ individual and medical services furnished at facility expense.

3. Reasonable compensation for a person with at least five percent ownership, ~~persons~~individuals on the governing board, or any ~~person~~individual related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated employee. 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 compensation on an hourly basis may not exceed the amount determined to be the limitation in subsection 1, divided by two thousand eighty.
4. Costs otherwise nonallowable under this chapter may not be included as personal compensation.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1999; January 1, 2020; January 1, 2024.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**SECTION 3:** Subsections 6 and 9 of section 75-02-06-16 are amended as follows:

6. Rate adjustments.
  - a. Desk audit rate.
    - (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by 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 should not be made. The department shall review the information and make appropriate adjustments.
    - (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
    - (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
    - (4) The facility may request a reconsideration of the desk rate for

purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least the rate adjustment percentage per day.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least the rate adjustment percentage per day that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
  - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least

the rate adjustment percentage per day must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

- (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least the rate adjustment percentage per day had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
  - (c) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.
- c. Pending decision rates for private-pay residents.
- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
  - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
  - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.

(4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. ~~A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least one dollar per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.~~

9. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the ~~state department of~~department's public health division must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the ~~state department of~~department's public health division. The request must:

(a) Include a statement that costs or staff numbers have

not been reduced for the report year immediately preceding the ~~state department of health's department's~~ public health division's certification survey;

- (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
  - (c) Provide a detailed list of any other costs necessary to meet survey standards.
- (3) 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 to an amount not to exceed the limit rate.
- (4) 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 the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 6.
- b. Adjustments for unforeseeable expenses.
- (1) 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 must be beyond the control of those responsible for the management of the facility.
  - (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
    - (a) An explanation as to why the facility believes the expense was unforeseeable;
    - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
    - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
  - (3) 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 its background and knowledge of nursing care industry and business trends.

- (4) 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.
- (5) 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 subsection 6.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
- (2) The following conditions must be met before a facility can receive the adjustment:
  - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
  - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
  - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.



- (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
  - (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 6.
  - (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
  - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
  - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
  - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
  - (5) Insurance recoveries relating to the disaster recovery period

must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016; April 1, 2018; January 1, 2020; January 1, 2022; October 1, 2022; January 1, 2024.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**SECTION 4:** Subsections 5 and 8 of section 75-02-06-16.3 are amended as follows:

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by 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 should not be made. The department shall review the information and make appropriate adjustments.
- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate, except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. A decision on the request for reconsideration of the desk rate may not be made

by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year which result in a change of at least the rate adjustment percentage per day.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If a field audit is not performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year, unless the department specifically identifies an alternative effective date.
- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least the rate adjustment percentage per day which are found during a field audit or are reported by the facility within twelve months of the rate year end.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive, except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
  - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least the rate adjustment percentage per day must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

- (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, which would have resulted in a change of at least the rate adjustment percentage per day had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
  - (c) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.
- c. Pending decision rates for private-pay residents.
  - (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per-day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
  - (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
  - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
  - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the

difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. ~~A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least one dollar per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.~~

8. One-time adjustments.

- a. Adjustments to meet certification standards.

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the ~~state department~~ department's public health division must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

- (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the ~~state department~~ department's public health division. The request must:

- (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the ~~state~~ department of

health's department's public health division's  
certification survey;

- (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
  - (c) Provide a detailed list of any other costs necessary to meet survey standards.
- (3) 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 to an amount not to exceed the price rate.
  - (4) 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 the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

- (1) 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 must be beyond the control of those responsible for the management of the facility.
- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
  - (a) An explanation as to why the facility believes the expense was unforeseeable;
  - (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
  - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
- (3) 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 its background and knowledge of nursing care industry and business trends.

- (4) 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 price rate.
- (5) 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 subsection 5.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and use of margin cap.
- (2) The following conditions must be met before a facility can receive the adjustment:
  - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
  - (b) The facility shall document all available resources, including margin cap, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
  - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
- (3) The adjustment must be calculated based on the costs

necessary to increase nursing hours to the minimum standards less any margin cap included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any price rate limitations that may apply.

- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.
- (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.

d. Adjustments for disaster recovery costs when evacuation of residents occurs.

- (1) A facility may incur certain costs when recovering from a disaster, such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
- (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
- (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
- (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.
- (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month



amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

- e. Adjustments for a significant reduction in census.
  - (1) A facility may request a revised desk rate if the facility has a significant reduction in census. The reduction in census cannot be due to renovation.
  - (2) For purposes of this section a significant reduction in census is defined as:
    - (a) At least ten percent of licensed bed capacity for a facility in the large peer group; and
    - (b) At least five percent of licensed bed capacity for a facility in the small peer group.
  - (3) The licensed bed capacity will be based on the licensed beds used to establish the peer groups.
  - (4) The revised desk rate must be calculated using:
    - (a) The facility's allowable historical operating costs from the most recent base year increased by the adjustment factors, if any, up to the current report year.
    - (b) The facility's allowable property costs from the most recent report year.
    - (c) The standardized resident days and resident days from the most recent report year.
    - (d) The revised desk rate must be limited to the price rate for direct care, other direct care, and indirect cost categories.
  - (5) A facility that receives a revised desk rate under this section may not increase licensed bed capacity during the rate year.

**History:** Effective January 1, 2022; amended effective October 1, 2022; January 1, 2024.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4