

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

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SECTION 1. Subsections 40 and 66 of section 75-02-06-01 are amended as follows:

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, or intermediate care facility for individuals with intellectual disabilities, ~~or basic care facility~~.
66. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an 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 waived services.

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.

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 75-02-06-02.1 is amended as follows:

75-02-06-02.1. General cost principles.

1. For ratesetting purposes, a cost must:
 - a. Be ordinary, necessary, and related to resident care;
 - b. Be what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction; and
 - c. Be for goods or services actually provided in the facility.
2. The cost effects of transactions which circumvent this chapter are not allowable under the principle that the substance of the transaction prevails over form.
3. Costs incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the nursing facility industry are not allowable.
4. Reasonable resident-related costs must be determined in accordance with the ratesetting procedures of this chapter, the ratesetting manual, instructions issued by the department, and ~~health care financing administration manual 15 (HCFA-15)~~ principles of reimbursement for provider costs (centers for medicare and medicaid services provider reimbursement manual). If conflicts occur between this chapter, the ratesetting manual, or instructions issued by the department and ~~HCFA-15~~ centers for medicare and medicaid services provider reimbursement manual, this chapter, the ratesetting manual, or instructions issued by the department must prevail.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996; July 1, 2016.

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

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

SECTION 3. Subdivision a of subsection 7 of section 75-02-06-03 is amended as follows:

75-02-06-03. Depreciation.

7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.
 - a. Effective July 1, ~~2013~~2015, the per bed limitation basis for double occupancy is ~~\$122,846~~156,783 and for a single occupancy is ~~\$184,271~~235,176.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009; January 1, 2014; July 1, 2016.

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

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

SECTION 4. Subdivision c of subsection 1 of section 75-02-06-10 is amended as follows:

75-02-06-10. Bad debts.

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable, provided all the requirements of this subsection are met.
 - c. The collection fee must be reasonable and may not exceed the amount of the bad debt.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2010; July 1, 2016.

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

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

SECTION 5. Section 75-02-06-12 is amended as follows:

75-02-06-12. Offsets to cost.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility must be offset up to the total of the appropriate actual allowable costs, with the exception of an following exceptions:
 - a. An established rate, income;
 - b. Income from payments made under the Workforce Investment Act, bed;
 - c. Bed reduction incentive payments, donations, the;

- d. Donations;
- e. The deferred portion of patronage dividends credited to the facility and not previously offset, ~~charges;~~
- f. Charges for private rooms, or special services, ~~and noncovered;~~
- g. Noncovered bed hold days ~~must be offset up to the total of the appropriate actual allowable cost;~~ or
- h. Sales tax revenue received from a political subdivision or local taxing authority for a facility located in a community with a population of less than twelve thousand five hundred people.

2. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. Sources of income include:

- a. "Activities income". Income from the activities department and the gift shop must be offset to activity costs.
- b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
- c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.
- d. "Insurance recoveries income". Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
- e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.
- f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
- g. "Private duty nurse income". Income received for the providing of a private duty nurse must be offset to nursing salaries.
- h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment must be offset to property costs.
- i. ~~"Telegraph and telephone~~ Telephone income". Income received from residents, guests, or employees must be offset to administration costs. Income from emergency answering services need not be offset.
- j. "Therapy income". Except for income from medicare part A, income from therapy services, including medicare part B income, must be offset to therapy costs unless the provider has elected to

make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.

- k. "Vending income". Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.
 - l. "Bad debt recovery". Income for bad debts previously claimed must be offset to property costs in total in the year of recovery.
 - m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, such as supplies or equipment, or the amount related to the default of a contractual agreement related to education expense assistance, must be offset, in total, to the cost category where the item was expensed or depreciated.
- 2.3. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
- 3.4. When an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- 4.5. When the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.
- 5.6. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
- 6.7. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993;

January 1, 1996; January 1, 1998; January 1, 2002; January 1, 2010; January 1, 2012; July 1, 2016.

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

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

SECTION 6. Subsections 35 and 37 of section 75-02-06-12.1 are amended as follows:

75-02-06-12.1. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs include:

35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds, unless identified as an offset to cost exception in subdivision h of subsection 1 of section 75-02-06-12;

37. The cost of education unless:
 - a. The facility is claiming an amount for repayment of an employee's student loans related to educational expenses incurred by the employee prior to the current cost report year provided:
 - (1) The education was provided by an accredited academic or technical educational facility;
 - (2) The allowable portion of a student loan relates to education expenses for materials, books, or tuition and does not include any interest expense;
 - (3) The education expenses were incurred as a result of the employee being enrolled in a course of study that prepared the employee for a position at the facility, and the employee is in that position; and
 - (4) The facility claims the amount of student loan repayment assistance ~~at a rate that does not exceed two dollars and twenty-five cents per hour of~~ for work performed by the employee in the position for which the employee received education, provided the amount claimed per employee may not exceed ~~the lesser of the allowable student loan or three thousand seven hundred fifty dollars per year, or an aggregate of fifteen thousand dollars, and in any event may not exceed the cost of the employee's education.~~
 - b. The facility is claiming education expense for an individual who is currently enrolled in an accredited academic or technical educational facility provided:
 - (1) The education expense is for materials, books, or tuition;
 - (2) The facility claims the education expense ~~annually in an amount not to exceed the lesser of the individual's education expense incurred during the cost report year or three thousand seven hundred fifty dollars;~~

- (3) The aggregate amount of education expense claimed for an individual over multiple cost report periods does not exceed fifteen thousand dollars; and
- (4) The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of ~~one six~~ six thousand six hundred sixty-four ~~fifty-six~~ hours of employment after completion of the individual's education program for each year education expense assistance was provided, as well as a repayment plan if the individual does not fulfill the contract obligations. The number of hours of employment required may be prorated for an individual who receives less than fifteen thousand dollars in assistance.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016.

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

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

SECTION 7. Subdivision a of subsection 7 of section 75-02-06-16 is amended as follows:

75-02-06-16. Rate determinations.

7. Partial year.

- a. Rates for a facility changing ownership during the rate period are set under this subdivision.
 - (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
 - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if
 - (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
 - (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the

previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

- (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if
 - (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

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.

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

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

SECTION 8. Section 75-02-06-26 is amended as follows:

75-02-06-26. Reconsiderations and appeals.

1. **Reconsiderations.**

- a. Any requests for reconsideration of the final rate must be filed with the department's medical services division within thirty days of the date of the rate notification.

~~b.2.~~ A request for reconsideration must include:

- (1)a. A statement of each disputed item and the reason or basis for the dispute;
 - (2)b. The dollar amount of each adjustment that is disputed; and
 - (3)c. The authority in statute or rule upon which the facility is relying for each disputed item.
- e.3. The department may request additional documentation or information relating to a disputed item. If additional documentation is not provided within fourteen days of the department's request, the department shall make its determination based on the information and documentation available as of the fourteenth day following the date the department requested additional documentation.
- d.4. The department's medical services division shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.
2. ~~Appeals.~~ A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration, the information described in subdivisions a through e to the department, at the address the department designates.
- a. ~~An appeal under this section is perfected only if accompanied by written documents including:~~
- a.~~(1)~~ A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;
 - b.~~(2)~~ A statement of each disputed item and the reason or basis for the dispute;
 - c.~~(3)~~ A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
 - d.~~(4)~~ The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - e.~~(5)~~ The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.

History: Effective January 1, 1996; amended effective January 1, 1998; July 1, 2016.

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

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

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

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75-02-07.1-29	Reconsiderations and Appeals
75-02-07.1-30	Resident Personal Funds

SECTION 9. Subsection 31 of section 75-02-07.1-01 is amended as follows:

75-02-07.1-01. Definitions.

31. "Food and plant costs" means the cost category for allowable food, utilities, bad debt, and maintenance and repair 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.

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

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

SECTION 10. 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; July 1, 2016.

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

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

SECTION 11. Section 75-02-07.1-08.1 is amended as follows:

75-02-07.1-08.1. Food and plant costs. Food and plant costs include only those costs identified in this section.

1. The cost of consumable food products and dietary supplements.
2. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
3. Repairs and maintenance contracts and purchased services.
4. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
5. Bad debt and collection fees as provided in section 75-02-07.1-31.

History: Effective July 1, 2001; amended effective July 1, 2016.

General Authority: NDCC 50-06-15

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

SECTION 12. Subsection 40 of section 75-02-07.1-10 is amended as follows:

75-02-07.1-10. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of the facility and its activities. These costs are not allowed in computing the rates. Nonallowable costs include:

40. Bad debts expense except as provided in section 75-02-07.1-31;

History: Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2016.

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

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

SECTION 13. Section 75-02-07.1-11 is amended as follows:

75-02-07.1-11. Offsets to costs.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income received by the facility in any form must be offset up to the total of the appropriate allowable costs, with the exception of the following exceptions:
 - a. The established rate, income;
 - b. Income from payments made under the Job Training Partnership Act, and income;
 - c. Income from charges for private rooms, or special services, or;
 - d. Noncovered bed hold, must be offset up to the total of the appropriate actual allowable costs days; or
 - e. The deferred portion of patronage dividends credited to the facility and not previously offset.
2. If actual costs are not identifiable, income must be offset up to the total of costs as described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Sources of income and the related offset include:
 - a. Activities income. Income from the activities department and the gift shop must be offset to activity costs.
 - b. Bad debt recovery. Income for bad debts previously claimed must be offset to administration costs in total in the year of recovery.
 - c. Dietary income. Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
 - d. Drugs or supplies income. Amounts received from the sale of resident care supplies to employees, doctors, or others not admitted as residents must be offset to resident care supplies.
 - e. Insurance recoveries income. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
 - f. Interest or investment income. Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.
 - g. Laundry income. All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
 - h. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.

- i. Rentals of facility space income. Revenues received from outside sources for the use of facility space and equipment must be offset to property costs.
 - j. Telephone income. Revenues received from residents, guests, or employees for use of a telephone must be offset to administration costs. Income from emergency answering services need not be offset.
 - k. Therapy income. Income from all therapy services must be offset to resident licensed health care professional costs.
 - l. Vending income. Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.
- ~~2.3.~~ Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
- ~~3.4.~~ Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
- ~~4.5.~~ Where an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's cost for goods or services purchased from the vendor.
- ~~5.6.~~ Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2016.

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

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

SECTION 14. 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~~2016, direct care limit rate ~~may not be less than forty-three~~is sixty-seven dollars and ~~fifty-four~~forty-four cents.
5. ~~The July 1, 2014~~2016, indirect care limit rate ~~may not be less than thirty-nine~~is fifty-eight dollars and ~~ninety-eight~~seventy-seven cents.
6. ~~The Beginning with the July 1, 2017, rate year, the department may use an adjustment factor to shall calculate the July 1, 2015, direct care and indirect care current year limits by applying the cost percentage change from the prior two rate years to the previous year's limits, within the limits of 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; July 1, 2016.

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

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

SECTION 15. Section 75-02-07.1-31 is created as follows:

75-02-07.1-31. Bad debts.

1. Bad debts for charges incurred on or after August 1, 2015, and fees paid for the collection of those bad debts, are allowable, provided all the following requirements of this subsection are met:
 - a. The bad debt must result from nonpayment of the payment rate or part of the payment rate.
 - b. The facility shall document that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all

legal avenues of collection available to the facility, including liens and judgments. If the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including bringing an action for a transfer in fraud of creditors.

- c. The fees paid for the collection of a bad debt must be reasonable and may not exceed the amount of the bad debt.
 - d. Allowable bad debt expense may not result from a facility's failure to comply with federal or state laws, state rules, or federal regulations.
 - e. Allowable bad debt expense may not result from a resident's nonpayment of a private room rate in excess of the established rate, charges to a resident for special services not included in the established rate, or charges to a resident for bed hold days not billable to the basic care assistance program under subsections 2, 3, and 5 of section 75-02-07.1-05.
 - f. A facility must have an aggressive policy of avoiding bad debt expense which limits potential bad debts. A facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment.
2. Allowable bad debt expense may not exceed one hundred eighty days of resident care for any one individual.
3. Finance charges are allowable on bad debt expense allowable under subsections 1 and 2 only if the finance charges have been offset as interest income as required under section 75-02-07.1-11.

History: Effective July 1, 2016.

General Authority: NDCC 50-06-15

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