

**CHAPTER 75-02-09**  
**RATESETTING FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES**

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**75-02-09-01. Definitions.**

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Adjustment factor" means the legislatively approved inflation rate for psychiatric residential treatment facilities services.
3. "Allowable cost" means the facility's actual and reasonable cost after adjustments required by department rules.
4. "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 directly for resident care.
5. "Certification of need" has the same meaning as provided in section 75-02-02-03.2.
6. "Chain organization" means a group of two or more health care facilities owned, leased, or through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
7. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting which are used in the determination of cost limitations and rates.
8. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.
9. "Department" means the department of health and human services.
10. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

11. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2021 edition.
12. "Desk rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
13. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
14. "Education" means the cost of activities related to academic and vocational training generally provided by a school district.
15. "Facility" means an entity that is a licensed psychiatric residential treatment facility for children under chapter 75-03-17.
16. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
17. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
18. "Fringe benefits" means workers' compensation insurance, group health, dental or vision insurance, group life insurance, payment toward retirement plans, uniform allowances, employer's share of Federal Insurance Contributions Act, unemployment compensation taxes, and medical services furnished at facility expense.
19. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
20. "Historical costs" means the allowable costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
21. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care or psychiatric hospital or psychiatric unit setting and admitted as an inpatient.
22. "In-house day" means a day that an individual was actually residing in the facility and was not on leave.
23. "Interest" means cost incurred for the use of borrowed funds.
24. "Leave day" means any day that an individual is not in the facility but is expected to return to the facility.
25. "Private-pay resident" means an individual on whose behalf the facility is not receiving medical assistance payments.
26. "Rate year" means the calendar year from January first through December thirty-first.
27. "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, rules, and quality and safety standards. Reasonable cost takes into account that the facility seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.
28. "Related organization" means an organization that a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by; and which furnishes services, facilities, or supplies to the facility. Control exists when an individual or organization has the

power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.

29. "Report year" means fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
30. "Resident day" means a day for which service is actually provided or for which payment is ordinarily sought.
31. "Special rate" means a desk rate or a final rate adjusted for nonrecurring or initial costs not included in the historical cost basis.
32. "Therapeutic leave day" means any day that a resident is not in the facility, another psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or an acute care or psychiatric hospital or psychiatric unit setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
33. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025; January 1, 2026.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-02. Financial reporting requirements.**

1. Records.
  - a. The facility shall maintain on the premises census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
  - b. If several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted for those items known to be lacking support at the reporting facility prior to the audit or review of the facility. Accounting or financial information regarding a related organization must be readily available to substantiate cost.
  - c. Each facility shall maintain, until any rate based upon a cost report is final and not subject to any appeal, but in any event, for a period of not less than five years following the date of submission of the cost report to the state agency, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. Each facility shall make the records available upon reasonable demand to representatives of the department.
2. Accounting and reporting requirements.
  - a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. Ratesetting procedures must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.

- b. To properly facilitate auditing, the accounting system must be maintained in a manner that allows cost accounts to be grouped by cost category and readily traceable to the cost report.
  - c. The cost report must be submitted on or before October first. The report must contain all actual costs of the facility, adjustments for nonallowable costs, and resident days.
  - d. The department may impose a nonrefundable penalty of ten percent of any amount claimed for services furnished after the due date if the facility fails to file the cost report on or before the due date. The penalty may be imposed on the first day of the fourth month following the facility's fiscal yearend and continues to the end of the month in which the statement or report is received.
  - e. Upon request, the following information must be made available:
    - (1) A statement of ownership including the name, address, and proportion of ownership of each owner;
    - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of those documents remains unchanged since the most recent statement given pursuant to this subsection;
    - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report; or
    - (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
  - f. The facility shall make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may impose the penalties described in subdivision d.
  - g. The department may grant one thirty-day extension of the reporting deadline to a facility. To receive an extension, a facility must submit a written request to the department's medical services division.
  - h. If a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the facility's most recently established rate. Reinstatement of the rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
3. The department shall perform an audit of the latest available report year of each facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in the performance of audits and in the establishment of rates. Audits must meet generally accepted governmental auditing standards.
4. A false report is one where a facility knowingly supplies inaccurate or false information in a required report which results in an overpayment. If a false report is received, the department may:
- a. Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
  - b. Terminate the department's agreement with the facility;

- c. Prosecute under applicable state or federal law; or
  - d. Use any combination of the foregoing actions.
5. The department may determine a report is a false report if a facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The facility may indicate that the costs are under appeal and not claimed under protest to perfect a claim should the appeal be successful.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025; January 1, 2026.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-03. General cost principles.**

1. For ratesetting purposes, a cost must:
  - a. Be ordinary, necessary, and related to resident care;
  - b. Be no more than an amount 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 by the facility.
2. The cost effects of transactions which circumvent these rules are not allowable under the principle that the substance of the transaction prevails over the form.
3. Reasonable resident-related costs will be determined in accordance with the ratesetting procedures set forth in this chapter and instructions issued by the department.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-04. Ratesetting.**

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs not includable in allowable costs. Adjustment factors are then applied to allowable costs. Retroactive settlements for actual costs incurred during the rate year exceeding the final rate may not be made unless specifically provided in this chapter.
2. The department shall establish a desk rate, based on the cost report, which must be effective January first of each rate year or on an alternate effective date determined by the department.
  - a. The desk rate must continue in effect until a final rate is established.
  - b. The cost report must be reviewed taking into consideration the prior year's adjustments. A facility must be notified by telephone or electronic mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department shall review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rate.
  - c. Reconsideration may not be given by the department for the desk rate unless the facility has been notified that the desk rate is the final rate.
  - d. A desk rate may be adjusted at any time if subsection 4 applies to the facility.

3. The cost report may be field audited by the department to establish a final rate. If no field audit is performed, the desk rate will become the final rate upon notification to the facility from the department.
  - a. The final rate must be effective as of the effective date of the desk rate.
  - b. The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least twenty-five cents per day.
  - c. Adjustments, errors, or omissions found after a final rate has been established must be included as an adjustment in the report year the adjustments, errors, or omissions are found.
  - d. The final rate may be adjusted at any time if subsection 4 applies.
4. A special rate must be established for a facility providing services for the first time, changing ownership, having a capacity increase or major renovation or construction, or having changes in services or staff.
  - a. The rate for a facility providing first-time services purchased by the department must be established using this subdivision for the first two fiscal years of the facility if that period is less than twenty-four months.
    - (1) The facility shall submit a budget, to the department's medical services division, for the first twelve months of operation. A final rate based on the budget and adjustments, if any, must be established for a rate period beginning on the first of the month in which the facility begins operation. This rate must remain in effect for eighteen months. Adjustment factors may not be included in the first year final rate. No retroactive settlements may be made.
    - (2) Upon completion of the first twelve months of operation, the facility must submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.
      - (a) The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.
      - (b) The twelve-month cost report must be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors must be used to establish the rate.
    - (3) The facility shall submit a cost report that must be used to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the facility's fiscal year.
  - b. For a facility with a change in ownership, the rate established for the previous owner must be retained until the end of the rate year in which the change of ownership occurs. The rate for the second rate year after a change in ownership occurs must be established as follows:
    - (1) For a facility with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred must be used to establish the rate for the next rate year; and
    - (2) For a facility with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner must be indexed forward using the appropriate adjustment factor.

- c. For a facility that increases licensed capacity by twenty percent or more or has a renovation or construction project in excess of fifty thousand dollars, the established desk or final rate may be adjusted for the period after the licensed capacity increase occurs or the construction or renovation is complete to include projected property costs.
  - (1) For the rate year in which the capacity increase occurs or construction or renovation is completed, an adjusted rate must be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census, plus a rate for property costs based on projected property costs divided by projected census. The adjusted rate will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.
  - (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate must be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census plus a rate for property costs, based on projected property costs, divided by projected census.
- d. The department may provide for an increase in the established rate for additional costs necessary to add services or staff to the existing program.
  - (1) The facility shall submit information, to the department's medical services division, supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.
  - (2) The department shall review the submitted information and may request additional documentation or conduct onsite visits. The established rate must be adjusted if an increase in costs is approved. The effective date of the rate increase must be the later of the first day of the month following approval by the department or the first day of the month following the addition of services or staff. The adjustment may not be retroactive to the beginning of the rate year and will exclude adjustment factors provided for in subsection 8.
  - (3) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 2, the facility may request consideration be given to additional costs. The facility shall demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs must be based on a projection of costs for the remainder of a twelve-month period, exclusive of adjustment factors provided for in subsection 8.
- 5. The final rate must be considered as payment for all accommodations that include items identified in section 75-02-09-06. For any resident whose rate is paid in whole or in part by the department, no payment may be solicited or received from the resident or any other person to supplement the rate as established.
- 6. When a facility terminates its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until residents can be relocated.
- 7. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by psychiatric residential treatment facilities. Statistics may be used to establish reasonable ceiling

limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

- b. The department shall review, on an ongoing basis, aggregate payment to facilities to determine that payments do not exceed an amount that can be reasonably estimated would have been paid for these services under federally required payment principles. If aggregate payments to facilities exceed estimated payments under federally required payments principles, the department may make adjustments to rates so that aggregate payments do not exceed an amount that can be estimated would have been paid under an upper payment limit.
  - c. Allowable administration costs to be included in the established rate are the lesser of the actual cost of administration as direct costed or allocated to the facility or an amount equal to seventeen percent of the total allowable costs, exclusive of administration costs, for the facility.
8. An adjustment factor may be used to adjust historical allowable costs but may not be used to adjust property costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025; January 1, 2026.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-05. Resident census.**

1. A daily census record must be maintained by the facility. Any day services provided or for which payment is ordinarily sought for an available bed must be counted as a resident day. The day of admission and day of death are resident days. The day of discharge must be counted if payment is sought for that day. For a medical assistance resident, payment may not be sought for the day of discharge.
2. The daily census records must include:
  - a. Identification of the resident;
  - b. Entries for all days, and not just by exception;
  - c. Identification of type of day, i.e., in-house, hospital leave, or therapeutic leave day; and
  - d. Monthly totals by resident and by type of day.
3. A maximum of fifteen consecutive days per occurrence are allowed for payment by the medical assistance program for hospital leave. Hospital leave days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-09-19.
4. A maximum of fifteen days per certification of need period are allowed for payment by the medical assistance program for therapeutic leave. Prior authorization is necessary for additional days beyond the fifteen-day certification of need period. The payment rate for therapeutic leave days must be five hundred dollars per day.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025; January 1, 2026.

**General Authority:** NDCC 50-24.1-04

**75-02-09-06. Allowable costs by cost category.**

1. Administration costs are the allowable costs of activities performed by the staff in which the direct recipient of the activity is the organization itself, including fiscal activities, statistical reporting, recruiting, and general office management indirectly related to reimbursable services provided. Administration personnel includes administrators, regional directors, program directors, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel. Administration costs directly assignable to the facility must be reported as facility administration. Administration costs not directly assignable to the facility must be reported as other administration. Costs for administration include:
  - a. Salary and fringe benefits for individuals who provide services administrative in nature or who are not included specifically in any other cost category;
  - b. Office supplies;
  - c. Insurance, except property insurance and insurance included as a fringe benefit;
  - d. Postage and freight;
  - e. Professional fees for services such as legal, accounting, and data processing;
  - f. Central or home office costs;
  - g. Personnel recruitment costs;
  - h. Management consultants and fees;
  - i. Dues, license fees, and subscriptions;
  - j. Travel and training for employees, except for training for personnel required to maintain licensure, certification, or professional standards requirements;
  - k. Interest on funds borrowed for working capital if repayment of working capital debt is made within three years of the borrowing;
  - l. Startup costs;
  - m. Security personnel or services;
  - n. Telephone service not included in other cost categories; and
  - o. All costs not specifically identified in other cost categories.
2. Direct care costs are the allowable costs incurred for providing services for the maximum reduction of physical or mental disability and restoration of a resident to the best possible functional level and for providing for the personal needs of the resident. The services may include any medical or remedial service recommended by a physician or other licensed practitioner of the healing arts, within the scope of the practitioner's practice under state law. Direct care costs include:
  - a. Salaries and fringe benefits for individuals providing treatment or supervision of residents;
  - b. Personal supplies used by an individual resident;

- c. Clothing necessary to maintain a resident's wardrobe;
  - d. School supplies and activity fees, when not provided by or at the expense of the school;
  - e. Costs incurred for providing recreation to the residents including subscriptions, sports equipment, and admission fees to sporting, recreation, and social events;
  - f. All costs related to transporting residents, and transportation costs that may include actual expenses of facility-owned vehicles or mileage paid to employees for use of personal vehicle;
  - g. The cost of services purchased and not provided at the facility, including case management, addiction, psychiatric, psychological, and other clinical evaluations, medication review, and partial care or day treatment; and
  - h. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
3. Dietary costs are the allowable costs associated with the preparation and serving of food. Dietary costs include:
- a. Salaries and fringe benefits for all personnel involved with the preparation and delivery of food;
  - b. Food; and
  - c. Dietary supplies and utensils including paper products and noncapitalized dietary equipment.
4. Laundry costs are the allowable costs associated with gathering, transporting, sorting, and cleaning of linen and clothing. Laundry costs include:
- a. Salaries and fringe benefits of personnel who gather, transport, sort, and clean linen and clothing;
  - b. The cost of laundry supplies; and
  - c. Contracted laundry services.
5. Plant and housekeeping costs are the allowable costs related to repairing, cleaning, and maintaining the facility's physical plant. Plant and housekeeping costs include:
- a. Salaries and fringe benefits of personnel involved in cleaning, maintaining, and repairing the facility;
  - b. Supplies necessary to maintain the facility, including such items as cleaning supplies, paper products, and hardware goods;
  - c. Utility costs, including heating and cooling, electricity, water, sewer, garbage, and cable television;
  - d. Local telephone service to the living quarters and long distance telephone service directly related to providing treatment; and
  - e. Routine repairs and maintenance of property and equipment, including maintenance contracts and purchased services.
6. Property costs are the allowable capital costs associated with the physical plant of the facility. Property costs include:

- a. Depreciation;
- b. Interest;
- c. Lease costs on equipment and buildings;
- d. Property taxes; and
- e. Property insurance on buildings and equipment.

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**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-07. Cost allocation.**

1. Direct costing of allowable facility costs must be used whenever possible. If direct costing is not possible, the allocation methods for facility and nonfacility operations described in this subsection must be used.
  - a. Salaries for direct care employees, which cannot be reported based on direct costing, must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibility. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time study or averaged for the report year.
  - b. Salaries of supervisory personnel must be allocated based on full-time equivalents of the employees supervised or on a ratio of salaries.
  - c. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
  - d. Plant and housekeeping expenses must be allocated based on square footage.
  - e. Property costs must be allocated based on square footage.
  - f. Administration costs must be allocated on the basis of the percentage of total costs, excluding the allocable administration, property, and utility costs.
  - g. Dietary costs must be allocated based on meals served.
  - h. Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.
  - i. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for all miles driven and purpose of travel. If sufficient documentation is not available to determine which cost category vehicle expenses are to be allocated, vehicle expenses must be allocated in total to administration.
  - j. Costs not direct costed or allocable using methods identified in subdivisions a through i must be included as administration costs.
2. If the facility cannot use any of the allocation methods described in subsection 1, a waiver request may be submitted to the department's medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility shall also provide a rationale for the proposed allocation method.

Based on the information provided, the department shall determine the allocation method used to report costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-08. Nonallowable costs.**

Nonallowable costs include:

1. Promotional, publicity, and advertising expenses, exclusive of personnel procurement;
2. Political contributions;
3. Salaries or expenses of a lobbyist;
4. Basic research;
5. Fines or penalties including interest charges on the penalty, bank overdraft charges, and late payment charges;
6. Bad debts;
7. Compensation and expenses for officers, directors, or stockholders, except as provided for in section 75-02-09-15;
8. Contributions or charitable donations;
9. Costs incurred for activities directly related to influencing employees with respect to unionization;
10. Costs of membership or participation in health, fraternal, or social organizations such as eagles, country clubs, or knights of columbus;
11. Corporate costs such as organization costs, reorganization costs, costs associated with acquisition of capital stock, costs relating to the issuance and sale of capital stock or other securities, and other costs not related to resident services;
12. Home office costs that would be nonallowable if incurred directly by the facility;
13. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors, including annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements, stock transfer agent fees, and stockbroker and investment analyses;
14. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent the facility demonstrates to the satisfaction of the department that any particular use of equipment was related to resident care;
15. Costs, including by way of illustration and not by way of limitation, for legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any facility;
16. Depreciation expense for facility assets not related to resident care;

17. Personal expenses of owners and employees for items or activities including vacation, boats, airplanes, personal travel or vehicles, and entertainment;
18. Costs not adequately documented (adequate documentation includes written documentation of date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities);
19. The following taxes, if levied on a facility:
  - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
  - b. State or local income and excess profit taxes;
  - c. Taxes in connection with financing, refinancing, or refunding operations such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
  - d. Taxes such as real estate and sales tax for which exemptions are available to the facility;
  - e. Taxes on property not used in the provision of covered services; and
  - f. Taxes such as sales taxes, levied, collected, and remitted by the facility;
20. The unvested portion of a facility's accrual for sick or annual leave;
21. Expenses or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies, provided that reasonable insurance expenses may not be limited by this subsection;
22. Fringe benefits, not within the definition of that term, which have not received written prior approval of the department;
23. Fringe benefits that discriminate in favor of certain employees, excluding any portion that relates to costs that benefit all employees;
24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
25. Funeral and cemetery expenses;
26. Travel not directly related to professional conferences, state or federally sponsored activities, or resident services;
27. Items or services such as telephone, television, and radio located in a resident's room and furnished solely for the convenience of the resident;
28. Value of donated goods and services;
29. Religious salaries, space, and supplies;
30. Miscellaneous expenses not related to resident services;
31. Premiums for top management personnel life insurance policies, except that the premiums shall be allowed if the policy is included within a group policy provided for all employees, or if a policy is required as a condition of a mortgage or loan and the mortgagee or lending institution is listed as the beneficiary;

32. Travel costs involving the use of vehicles not exclusively used by the facility unless:
  - a. Vehicle travel costs do not exceed the amount established by the internal revenue service;
  - b. The facility supports vehicle costs related to resident care with sufficient documentation, including mileage logs for all miles, purpose of travel, and receipts for purchases; and
  - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
33. Vehicle and aircraft costs not directly related to facility business or resident services;
34. Nonresident-related operations and the associated administrative costs;
35. Costs related to income-producing activities regardless of the profitability of the activity;
36. Costs incurred by the facility's subcontractors or by the lessor of property the facility leases, and which become an element in the subcontractor's or lessor's charge to the facility, if such costs would not have been allowable had they been incurred by a facility directly furnishing the subcontracted services or owning the leased property;
37. All costs for services paid directly by the department to an outside facility;
38. Depreciation on the portion of assets acquired with government grants;
39. Costs incurred due to management inefficiency, unnecessary care or services, agreements not to compete, or activities not commonly accepted in the industry;
40. The cost of consumable food products, in excess of income from employees, guests, and nonresidents offset in accordance with subsection 1 of section 75-02-09-16, consumed by individuals other than residents or direct care personnel;
41. Payments to residents, whether in cash or in kind, for work performed or for bonuses or rewards based on behavior;
42. In-house education costs including:
  - a. Compensation for teachers and teacher aides who provide academic training to residents in-house;
  - b. Property and plant operation expenses for space used to provide in-house academic training to residents; and
  - c. The cost of supplies and equipment used in a classroom normally provided by a school district as part of the academic training; and
43. Medical assistance noncovered services.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-09. Depreciation.**

1. Ratesetting principles require that payment for services should include depreciation on all depreciable type assets used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of such assets are considered not to have

ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report.

2. Depreciation methods.

- a. The straight-line method of depreciation must be used. All accelerated methods of depreciation including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year, and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.
- b. A facility must use a minimum composite useful life of ten years for all equipment and land improvements, and four years for vehicles. Buildings and improvements to buildings are to be depreciated over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

3. Acquisitions.

- a. If a depreciable asset has at the time of its acquisition historical cost of at least one thousand dollars for each item, its cost must be capitalized and depreciated over the estimated useful life of the asset except as provided for in subsection 3 of section 75-02-09-11. Costs, such as architectural, consulting and legal fees, and interest, incurred during the construction of an asset must be capitalized as a part of the cost of the asset.
- b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.

4. Proper records must provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Basis for depreciation.

- a. Determination of the cost basis of a facility's depreciable assets, which have not been involved in any programs funded in whole or in part by the department, depends on whether or not the transaction is a bona fide purchase. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide purchase. Purchases where the buyer and seller are related organizations are not bona fide.
  - (1) If the purchase is bona fide, the cost basis will be the lower of the actual cost of the buyer or the fair market value of the asset at the time of the purchase.
  - (2) If the purchase is not bona fide, the cost basis will be the seller's cost basis less accumulated depreciation.
- b. Cost basis of a facility's depreciable assets purchased as an ongoing operation will be the seller's cost basis less accumulated depreciation.

- c. Cost basis of a facility's depreciable assets used in any programs funded in whole or in part by the department will be the cost basis used by the other program less accumulated depreciation.
- d. Sale and leaseback transactions will be considered a related party transaction. The cost basis of a facility's depreciable assets purchased and subsequently leased to an entity who continues to operate the facility will be the seller's cost basis less accumulated depreciation.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-10. Interest expense.**

1. To be allowable under the program, interest must be:
  - a. Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required. Repayment of operating loans must be made within two years of the borrowing;
  - b. Identifiable in the facility's accounting records;
  - c. Related to the reporting period in which the costs are incurred;
  - d. Necessary and proper for the operation, maintenance, or acquisition of the facility. Necessary means that the interest be incurred on a loan made to satisfy a financial need of the facility and for a purpose reasonably related to resident care. Proper means that the interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in an arm's-length transaction. In addition, the interest must be paid to a lender not related to the facility through common ownership or control;
  - e. Unrelated to funds borrowed to finance costs of assets in excess of the depreciable cost of the asset as recognized in section 75-02-09-09; and
  - f. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allocable when the debt was initially incurred.
2. If it is necessary to issue bonds to finance the costs of assets, any bond premium or discount must be amortized on a straight-line basis over the life of the bond issue.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-11. Taxes.**

1. Taxes assessed against the facility in accordance with the levying enactments of the several states and lower levels of government and for which the facility is liable for payment are allowable costs except for those taxes identified as nonallowable in section 75-02-09-08.
2. Whenever exemptions to taxes are legally available, the facility is to take advantage of them. If the facility does not take advantage of available exemptions, the expense incurred for such taxes is not an allowable cost.
3. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as they are billed by the taxing authority.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-12. Home office costs.**

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a facility in itself, it may furnish to the individual facility central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing services is includable in the facility's allowable costs under the program.
2. Costs not allowed in the facility are not allowed as home office costs allocated to the facility.
3. Any service provided by the home office included in costs as payments by the facility to an outside vendor or which duplicates costs for services provided by the facility is a duplication of costs and is not allowed.
4. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-13. Related organizations.**

1. Costs applicable to services, buildings, equipment, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, buildings, equipment, or supplies purchased elsewhere primarily in the local market. A facility must identify such related organizations and costs. If any such costs are allocated, the allocation methods and statistics supporting the allocations must be submitted with the cost report.
2. A facility may lease buildings or equipment from a related organization within the meaning of ratesetting principles. In such a case, the rent paid to the lessor by the facility is not allowable as cost unless the rent paid is less than the allowable costs of ownership. If rent paid exceeds the allowable costs of ownership, the facility may include only the allowable costs of ownership. These costs are property insurance, depreciation, interest on the mortgage, real estate taxes, and plant operation expenses incurred by the lessor.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-14. Startup costs.**

In the first stages of operation, a new facility incurs certain costs in developing its ability to care for residents prior to their admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during that period because there are not residents receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and will be recognized as allowable administration costs amortized over sixty consecutive months on a straight-line basis starting with the month the first resident is admitted.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-15. Compensation.**

Reasonable compensation for an individual with a minimum of five percent ownership, individuals on the governing board, or family members of top management personnel, including spouses and individuals in the following relationship to top management personnel or their spouses: parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, and stepsister will be considered an allowable cost if services are actually performed and required to be performed. The amount allowed must be in an amount not to exceed the average of salaries paid to individuals in like positions in all psychiatric residential treatment facilities that are nonprofit organizations and have no top management personnel who have a minimum of five percent ownership or are on the governing board. Salaries used to determine the average must be based on the latest information available to the department. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another individual to perform them.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-16. Revenue offsets.**

A facility must identify income to offset facility costs when applicable so state financial participation does not supplant or duplicate other funding sources. Any income whether in cash or in any other form received by the facility, with the exception of the established rate, income from payments made under the Workforce Investment Act, donations, and income from charges for private rooms, special services, or bed holds will be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income will be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset based on the ratio of costs in each of the cost categories. Sources of income include:

1. Income received from or on behalf of employees, guests, or other nonresidents for meals or snacks, or the income received for food and related costs from other government programs such as the United States department of agriculture or the department of public instruction must be offset against dietary costs.
2. Income received from the sale of beverages, candy, or other food items must be offset against dietary costs.
3. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category regardless of when the cost was incurred if the facility did not adjust the basis for depreciable assets.
4. Any refund, rebate, or discount received for a reported cost must be offset against the appropriate cost.
5. Any amount received for use of the facility's vehicles must be offset against transportation costs.
6. Gain on the sale of an asset must be offset against depreciation expense.
7. Revenue received from outside sources for the use of facility buildings or equipment will be offset against property expenses.

8. Any amount received by the facility from outside sources for services provided by facility employees will be offset against salaries.
9. Revenue from investments will be offset against interest expense.
10. Grants, gifts, restricted donations, and awards from the federal, state, local, or philanthropic agencies will be offset against the appropriate cost.
11. Gifts or endowment income designated by a donor for paying specific operating costs incurred in providing contract services must be offset against costs in the year the cost is incurred regardless of when the gift or endowment is received.
12. Other cost-related income or miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset against the cost category where the item was expensed.
13. Other income to the facility from local, state, or federal units of government may be determined by the department to be an offset against costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-17. Private pay rates.**

1. The medical assistance rate may not exceed the rate charged to nonmedical assistance residents for the same service. The rate being charged nonmedical assistance residents at the time the services are provided will govern. In cases where the residents are not charged a daily rate, a daily rate will be computed by dividing the total nonmedical assistance charges for each month by the total nonmedical assistance census for each month.
2. If the established medical assistance rate exceeds the rate charged to nonmedical assistance residents for a service, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged to nonmedical assistance residents times the number of medical assistance resident days paid during the period in which the established rate exceeded the nonmedical assistance rate plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. Interest charges on these refunds are not allowable costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

#### **75-02-09-18. Reconsiderations and appeals.**

1. **Reconsiderations.**
  - a. A facility dissatisfied with the final rate established must request a reconsideration of the final rate before a formal appeal may be made. Any requests for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification.
  - b. A request for reconsideration must include:
    - (1) A statement of each disputed item and the reason or basis for the dispute;

- (2) The dollar amount of each item that is disputed; and
- (3) The statute or rule upon which the facility is relying for each disputed item.
- c. 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. 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. A facility dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided in subsection 1. An appeal must be filed with the department within thirty days of the date on the written notice of the determination by the medical services division with respect to a request for reconsideration.
- b. An appeal under this section is timely perfected only if accompanied by written documents, including:
  - (1) A copy of the letter received from the department's medical services division advising of that division's decision on the request for reconsideration;
  - (2) A statement of each disputed item and the reason or basis for the dispute;
  - (3) A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
  - (4) The authority in statute or rule upon which the appealing party relies for each disputed item; and
  - (5) The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

**History:** Effective May 1, 1994; amended effective October 1, 2011.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)

**75-02-09-19. Participation requirement.**

- 1. A facility shall have an effective provider agreement with the department.
- 2. A facility may charge to hold a bed for a period in excess of the period covered under subsection 3 of section 75-02-09-05, if:
  - a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and
  - b. For a medical assistance resident, the payment comes from sources other than the resident's monthly income.

**History:** Effective January 1, 2025.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** 42 USC 1396a(a)(30)(A)