

CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE

SECTION 1. Section 75-02-06-03 is amended as follows:

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.
 - a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.
 - b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.
 - c. 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. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
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, may not be used. 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. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

- (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
 - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
 - c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
 - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) A composite remaining useful life for movable equipment, determined from the seller's records.
3. Acquisitions.
 - a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, 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 repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records must provide accountability for the fixed assets and 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. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.
6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the

purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

- a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:
 - (1) Purchase price paid by the purchaser;
 - (2) Fair market value at the time of the sale; or
 - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.
- b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.
- c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.
- d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.
- e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.
- f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.
- g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to

- the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.
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 ~~August 1, 2007~~ July 1, 2009, the per bed limitation basis for double occupancy is ~~\$88,872~~ \$112,732 and for a single occupancy is ~~\$133,308~~ \$169,098.
 - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.
 - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.
 - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.
 - e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.
 - f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.
 - g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

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.

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 75-02-06-16.2 is created as follows:

Section 75-02-06-16.2. One-time adjustments for legislatively-approved cost increases.

1. The department shall increase rates otherwise established by this chapter for supplemental payments or one-time adjustments to historical costs approved by the legislative assembly.
2. Any additional funds made available by the supplemental payments or one-time adjustments must be used for the legislatively-prescribed purpose and are subject to audit. If the department determines that the funds were not used for the appropriate purpose, an adjustment must be made in accordance with 75-02-06-16(5).

History: Effective July 1, 2009

General Authority: 50-24.1-04; 50-24.4-02

Law Implemented: 50-24.4

CHAPTER 75-02-07.1
RATESETTING FOR BASIC CARE FACILITIES

SECTION 1. Subsection 3 of section 75-02-07.1-26 is amended as follows:

3. Adjustments for salary and benefit enhancements.
 - a. The department may provide for a salary and benefit enhancement rate. ~~A facility must submit a plan detailing enhancements for employee salary and benefits at least forty-five days prior to the implementation of the enhancement by the facility.~~
 - b. The salary and benefit enhancement rate shall be added to the personal care rate and room and board rates otherwise established under this chapter for the rate years beginning July 1, ~~2001~~ 2009, and July 1, ~~2002~~ 2010. The enhancement rate may not be effective before the implementation date of the enhancement by the facility.
 - c. ~~The salary and benefit enhancement rate may not exceed one dollar and eighty-two cents for the rate year beginning July 1, 2001.~~ For the rate year beginning July 1, ~~2002~~ 2010, the salary and benefit enhancement rate effective July 1, ~~2001~~ 2009, shall be reduced by one-twelfth for each month the costs related to the implementation of the enhancement are included in the cost report used to establish the facility's July 1, ~~2002~~ 2010, rate and then increased by the adjustment factor set forth in section 75-02-07.1-21.
 - d. Any additional funds provided must be used to provide the salary and benefit enhancements ~~outlined in the facility's plan~~ 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 section 75-02-07.1-23.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; July 1, 2009.

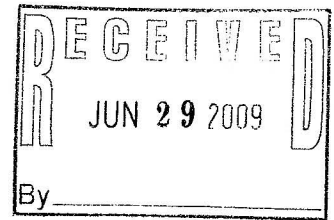
General Authority: NDCC 50-06-16, 50-24.5-02(3)

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



— State of —
North Dakota
Office of the Governor

John Hoeven
Governor



June 29, 2009

Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Avenue
Bismarck, ND 58505-0250

Dear Carol,

On June 26, 2009, I received your request for approval of emergency rulemaking to increase Ratesetting for Nursing Facilities and Basic Care Facilities.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03(2) and find that emergency rulemaking is necessary to implement the additional appropriations in House Bill 1012 to increase reimbursement rates for nursing and basic care facilities effective July 1, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "John Hoeven".

John Hoeven
Governor

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