

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

**SECTION 1. Subsection 3 of section 75-02-06-16 is amended as follows:**

3. Limitations.
- a. The department shall accumulate and analyze statistics on costs incurred by 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 payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.
  - c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 2003. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
  - d. The limit rate for each of the cost categories must be established as follows:
    - (1) Historical costs for the report year ended June 30, 2003, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
    - (2) For the rate year beginning January 1, 2006, the limit rate for each cost category is:
      - (a) For the direct care cost category, ninety-five dollars and fifty-seven cents;
      - (b) For the other direct care cost category, eighteen dollars and twenty-seven cents; and

- (c) For the indirect care cost category, forty-five dollars and twenty-three cents.
- (3) For rate years beginning on or after January 1, 2007, the limit rate for each cost category is calculated based on:
  - (a) For the direct care cost category, ninety-five dollars and fifty-seven cents multiplied by the adjustment factor determined under subsection 4;
  - (b) For the other direct care cost category, eighteen dollars and twenty-seven cents multiplied by the adjustment factor determined under subsection 4; and
  - (c) For the indirect care cost category, forty-five dollars and twenty-three cents multiplied by the adjustment factor determined under subsection 4.
- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
  - (1) Actual census for the report year; or
  - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
    - (a) Multiplied times three hundred sixty-five; and
    - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
  - (1) The facility has reduced licensed capacity; or
  - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
- h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.

**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.

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

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