

**CHAPTER 75-04-05**  
**REIMBURSEMENT FOR PROVIDERS OF SERVICES TO INDIVIDUALS WITH**  
**DEVELOPMENTAL DISABILITIES**  
**and**  
**CHAPTER 75-04-06**  
**ELIGIBILITY FOR MENTAL RETARDATION-DEVELOPMENTAL DISABILITIES**  
**CASE MANAGEMENT SERVICES**

**SECTION 1.** Section 75-04-05-01 is amended as follows:

**75-04-05-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

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. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
4. "Board" means all food and dietary supply costs.
5. "Clients" means eligible individuals with developmental disabilities on whose behalf services are provided or purchased.
6. "Consumer" means an individual with developmental disabilities.
7. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities.
8. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a providership are divided for purposes of cost assignment and allocations.
9. "Day supports" means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety.
10. "Department" means the North Dakota department of human services.
11. "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
12. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining

employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.

13. "Facility-based" means a workshop for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.
14. "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.
15. "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
16. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
17. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
18. "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
19. "Individualized supported living arrangements" means a residential support services option in which services are authorized for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
20. "Interest" means the cost incurred with the use of borrowed funds.
21. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
22. "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, regulations, and quality and safety standards.
23. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
24. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.

25. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
26. "Staff training" means an organized program to improve staff performance.
27. "Units of service" for billing purposes means:
  - a. In residential settings, one individual served for one 24-hour day;
  - b. In day service settings, one individual served for one hour; and
  - c. In extended services, one individual served for one hour of job coach intervention.

The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

28. ~~"Units of service in infant development" means, for billing purposes, one child enrolled for service Monday through Friday.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**SECTION 2.** Section 75-04-05-10 is amended as follows:

**75-04-05-10. Reimbursement.** Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. Providers are required to submit a statement of budgeted costs to the department no less than annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the provider's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
  - a. Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider for an underpayment.
  - b. Interprovider settlements between intermediate care facilities for the mentally retarded and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing

services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.

- b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding.
- c. Providers shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- d. Providers of residential services must offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers may not be reimbursed for those days in which services are not offered to clients.
- e. Providers of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days must be offered. The budgeted units of service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.
- f. Services exempted from the application of subdivisions d and e are:
  - (1) Emergency services.
  - (2) ~~Infant development.~~
  - (3) Family subsidy.
  - (4) (3) Supported living.
- g.
  - (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
  - (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
  - (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;

- (2) Comparable salaries and benefits for comparable positions in state government;
  - (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
  - (4) Data from paragraphs 1, 2, and 3, taken in combination.
- By using private funds, providers may establish higher salaries and benefit levels than those established by the department.
- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**SECTION 3.** Section 75-04-05-22 is amended as follows:

**75-04-05-22. Staff-to-client ratios.** The following overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to individuals with developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for the mentally retarded shall be subject to the direct contact staffing requirements of 42 CFR 483.430.
2. Transitional community living facility shall maintain a one to eight direct contact staff-to-client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct contact staff-to-client ratio of one to twenty.
6. Day supports shall maintain a direct contact staff-to-client ratio of one to five.
7. ~~Infant development shall maintain one service coordinator for every eleven children.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**Section 4.** Section 75-04-06-06 is created as follows:

**75-04-06-06. Developmental disabilities program management eligibility for three-year old and four-year old children.**

1. A child is eligible for developmental disabilities program management if all of the following conditions are met:
  - a. The child is three or four years of age.
  - b. The child has an autism spectrum disorder diagnosis confirmed by the autism spectrum disorder waiver evaluation and diagnostic team;
  - c. An autism spectrum disorder waiver slot is available; and
  - d. The child is or will be receiving a service through the autism spectrum disorder waiver.
2. If all of the above conditions are met, the child will be eligible for developmental disabilities program management until the child's fifth birthday, at which time developmental disabilities program management adult eligibility criteria will apply.

**History:** Effective July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-01.2-02, 50-06-05.3