

CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE

SECTION 1. Section 75-02-06-02.5 is amended as follows:

75-02-06-02.5. Property costs. Property-related costs and other passthrough costs include only those costs identified in this section:

1. Depreciation.
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in section 75-02-06-09.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal and related expenses:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990;
 - b. Related to legal services furnished on or after January 1, 1990; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal expenses paid.
7. Allowable bad debt expense under section 75-02-06-10 in the report year in which bad debt is determined to be uncollectible with no likelihood of future recovery.
8. Education expense allowed under section 75-02-06-12.1 in the report year in which it is expended.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996; January 1, 2010.

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 75-02-06-10 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.
 - 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 avenues of collection available to the facility, including liens and judgments. In instances where 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 the bringing of an action for a transfer in fraud of creditors.

- c. The collection fee may not exceed the amount of the bad debt.
 - d. The bad debt may not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.
 - e. The bad debt may not result from nonpayment of a private room rate in excess of the established rate, charges for special services not included in the established rate, or charges for bed hold days not billable to the medical assistance program under subsections 3, 4, 5, and 6 of section 75-02-06-14.
 - f. The facility shall have an aggressive policy of avoiding bad debt expense that limits potential bad debts. The 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 ~~twenty eight~~ days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual.
 3. Finance charges on bad debts allowable under subsections 1 and 2 are allowable only if the finance charges have been offset as interest income.

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.

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

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

SECTION 3. 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, with the exception of an established rate, income from payments made under the Workforce Investment Act, bed reduction incentive payments, donations, the deferred portion of patronage dividends credited to the facility and not previously offset, ~~and~~ income from charges for private rooms, special services, or noncovered bed holds hold days, and late charges must be offset up to the total of the appropriate actual allowable cost. 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 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 administrative 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, ~~e.g.,~~ 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. 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. 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. 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. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
6. 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.

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

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

SECTION 4. Subsection 37 of section 75-02-06-12.1 is 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:

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;
 - b. (2) The allowable portion of a student loan relates to education expenses ~~were~~ for materials, books, or tuition and does not include any interest expense;
 - c. (3) The education expenses were incurred as a result of the employee was being enrolled in a course of study ~~intended to prepare that prepared~~ the employee for a position at the facility, and the employee is in that position; and
 - d. (4) The facility claims the ~~cost of the education~~ amount of student loan repayment assistance at a rate that does not exceed ~~one dollar~~ two dollars and twenty-five cents per hour of work performed by the employee in the position for which the employee received education ~~at the facility's expense~~, provided the amount claimed per employee may not exceed ~~two~~ the lesser of one-half of the allowable student loan or three thousand seven hundred fifty dollars per year, or an aggregate of ~~eight~~ fifteen thousand dollars, and in any event may not exceed one-half the cost ~~to the facility~~ 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 one-half 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 thousand six hundred sixty-four hours of employment after completion of the 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.

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.

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

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

SECTION 5. Subsection 3 of section 75-02-06-16 is amended as follows:

75-02-06-16. Rate determinations.

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~~ 2006. 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~~ 2006, 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~~ 2010, the limit rate for each cost category is:
 - (a) For the direct care cost category, ~~ninety-five~~ one hundred fifteen dollars and ~~fifty-seven~~ seventy-eight cents;
 - (b) For the other direct care cost category, ~~eighteen~~ twenty-one dollars and ~~twenty-seven~~ ninety-four cents; and

- (c) For the indirect care cost category, ~~forty-five~~ fifty-five dollars and ~~twenty-three~~ forty-two cents.
 - (3) For rate years beginning on or after January 1, ~~2007~~ 2011, the limit rate for each cost category is calculated based on:
 - (a) For the direct care cost category, ~~ninety-five~~ one hundred twenty-seven dollars and ~~fifty-seven~~ fifty cents multiplied by the adjustment factor determined under subsection 4;
 - (b) For the other direct care cost category, ~~eighteen~~ twenty-three dollars and ~~twenty-seven~~ eighty-nine cents multiplied by the adjustment factor determined under subsection 4; and
 - (c) For the indirect care cost category, ~~forty-five~~ sixty dollars and ~~twenty-three~~ fifty-seven 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.

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.

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

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



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North Dakota
Office of the Governor

John Hoeven
Governor

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**EXECUTIVE DIRECTOR
ND DEPT. OF HUMAN SERVICES**

December 21, 2009

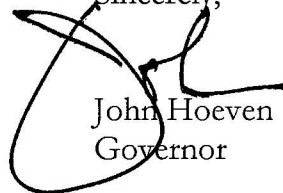
Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Ave
Bismarck, ND 58505-0250

Dear Carol,

On December 18, 2009, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code chapter 75-02-06 relating to rate setting for nursing home care.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03 and find that emergency rulemaking is reasonably necessary to avoid a delay in implementing an appropriations measure.

Sincerely,



John Hoeven
Governor

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600 E Boulevard Ave.
Bismarck, ND 58505-0001
Phone: 701.328.2200
Fax: 701.328.2205
www.nd.gov

