

**CHAPTER 75-02-07.1
RATESETTING FOR BASIC CARE FACILITIES**

Section	
75-02-07.1-01	Definitions
75-02-07.1-02	Financial Reporting Requirements
75-02-07.1-03	General Cost Principles
75-02-07.1-04	Participation Requirement
75-02-07.1-05	Resident Census
75-02-07.1-06	Direct Care Costs
75-02-07.1-07	Indirect Care Costs
75-02-07.1-08	Property Costs
75-02-07.1-08.1	Food and Plant Costs
75-02-07.1-09	Cost Allocations
75-02-07.1-10	Nonallowable Costs
75-02-07.1-11	Offsets to Costs
75-02-07.1-12	Home Office Costs
75-02-07.1-13	Related Organizations
75-02-07.1-14	Compensation
75-02-07.1-15	Depreciation
75-02-07.1-16	Interest Expense
75-02-07.1-17	Taxes
75-02-07.1-18	Startup Costs
75-02-07.1-19	Funded Depreciation
75-02-07.1-20	Rate Calculation
75-02-07.1-21	Adjustment Factors for Direct Care, Indirect Care, and Food and Plant Costs
75-02-07.1-22	Rate Limitations
75-02-07.1-23	Rates
75-02-07.1-24	Rate Payments
75-02-07.1-25	Special Rates
75-02-07.1-26	One-Time Adjustments
75-02-07.1-27	No Rate Adjustments of Less Than Twenty-Five Cents Per Day
75-02-07.1-28	Notification of Rates
75-02-07.1-29	Reconsiderations and Appeals
75-02-07.1-30	Resident Personal Funds

SECTION 1. Section 75-02-07.1-14 is amended as follows:

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. The limit set under this subsection for the previous rate year adjusted by the increase, if any, in the consumer price index, urban

- wage earners and clerical workers, all items, United States city average; or
- c. Thirty-three thousand seven hundred eighty-five dollars.
 - d. If the facility is combined with a nursing facility or hospital, the compensation for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.
 3. Compensation includes:
 - a. Salary for managerial, administrative, professional, and other services;
 - b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the person receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the person;
 - f. The cost of a domestic or other employee who works in the home of the person; or
 - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
 4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.
 5. Costs otherwise nonallowable under this chapter may not be included as compensation.
 6. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2011.

General Authority: NDCC 50-06-16, 50-24.5-02(3), 50-24.5-10

Law Implemented: NDCC 50-24.5-02(3), 50-24.5-10



— State of —
North Dakota
Office of the Governor

Jack Dalrymple
Governor



June 21, 2011


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

Dear Carol,

On June 15, 2011, I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code chapter 75-02-07.1-14 regarding Ratesetting for Basic Care relating to the compensation for top management personnel of a basic care facility combined with a hospital.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03 and House Bill 1423 and I find that an emergency rulemaking is reasonably necessary and I therefore approve adoption of your proposed rules as interim final rules.

Sincerely,


Jack Dalrymple
Governor

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JUN 23 2011

EXECUTIVE DIRECTOR
ND DEPT. OF HUMAN SERVICES