

CHAPTER 75-02-09
RATESETTING FOR ACCREDITED RESIDENTIAL TREATMENT CENTERS FOR
CHILDREN PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

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SECTION 1. Section 75-02-09-01 is amended as follows:

75-02-09-01. Definitions.

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. "Adjustment factors factor" means ~~indices used to adjust reported costs for inflation or deflation based on economic forecasts~~ the inflation rate for psychiatric residential treatment facility services used to develop the legislative appropriation for the department for the applicable rate year.
3. "Allowable cost" means the center's facility's actual and reasonable cost after adjustments required by department rules.
4. "Center" means ~~a licensed residential treatment center for children that has been accredited by the joint commission on accreditation of hospitals as a psychiatric facility.~~
5. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting and which are used in the determination of cost limitations and rates.
- 6.5. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.
- 7.6. "Department" means the department of human services.
- 8.7. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

8. "Desk rate" means the rate established by the department based upon the cost report.
9. "Education" means the cost of activities related to academic and vocational training generally provided by a school district.
10. "Facility" means an entity that is a licensed psychiatric residential treatment facility for children under chapter 75-03-17.
11. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
12. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
- 11-13. "Fringe benefits" means workers' compensation insurance, group health, dental or vision insurance, group life insurance, payment towards retirement plans, uniform allowances, employer's share of Federal Insurance Contributions Act, unemployment compensation taxes, and medical services furnished at ~~center~~ facility expense.
- 12-14. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- 13-15. "In-house day" means a day that an individual was actually residing in the facility and was not on leave.
16. "Interest" means cost incurred for the use of borrowed funds.
- 14-17. "Leave day" means any day that an individual is not in the facility but is expected to return to the facility.
18. "Private-pay resident" means an individual on whose behalf the facility is not receiving medical assistance payments.
19. "Rate year" means the twelve-month period beginning the seventh month after the end of a ~~center's~~ facility's fiscal year.
- 15-20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated ~~center~~ facility to provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. Reasonable cost takes into account that the ~~center~~ facility seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.
- 16-21. "Related organization" means an organization that a ~~center~~ facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by; and which furnishes services, facilities, or supplies to the ~~center~~ facility. Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or ~~center~~ facility.
- 17-22. "Report year" means the ~~center's~~ facility's fiscal year.
- 18-23. "Resident day" means a day for which service is actually provided or for which payment is ordinarily sought.
- 19-24. "Special rate" means a desk rate or a final rate adjusted for nonrecurring or initial costs not included in the historical cost basis.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 2. Section 75-02-09-02 is amended as follows:

75-02-09-02. Financial reporting requirements.

1. Records.
 - a. The ~~center~~ facility shall maintain on the premises census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
 - b. If several ~~centers~~ facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted for those items known to be lacking support at the reporting ~~center~~ facility prior to the audit or review of the ~~center~~ facility. Accounting or financial information regarding a related organization must be readily available to substantiate cost.
 - c. Each ~~center~~ facility shall maintain, until any rate based upon a cost report is final and not subject to any appeal, but in any event, for a period of not less than three years following the date of submission of the cost report to the state agency, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. Each ~~center~~ facility shall make the records available upon reasonable demand to representatives of the department.
2. Accounting and reporting requirements.
 - a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles. A ~~center~~ facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.
 - b. To properly facilitate auditing, the accounting system ~~should~~ must be maintained in a manner that ~~will allow~~ allows cost accounts to be grouped by cost category and readily traceable to the cost report.
 - c. The cost report must be submitted on or before the last day of the third month following the ~~center's~~ facility's fiscal yearend except as provided in subdivision g. The report must contain all actual costs of the ~~provider~~ facility, adjustments for nonallowable costs, and resident days.
 - d. The department may impose a nonrefundable penalty of ten percent of any amount claimed for services furnished after the due date if the ~~center~~ facility fails to file the cost report on or before the due date. The penalty may be imposed on the first day of the fourth

- month following the center's facility's fiscal yearend and continues to the end of the month in which the statement or report is received.
- e. Upon request, the following information must be made available:
- (1) A statement of ownership including the name, address, and proportion of ownership of each owner;
 - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the center facility or a certification that the content of those documents remains unchanged since the most recent statement given pursuant to this subsection;
 - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report; or
 - (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.
- f. The center facility must make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may impose the penalties described in subdivision d.
- g. The department may grant an one thirty-day extension of the reporting deadline to a center facility. To receive an extension, a center facility must submit a written request to the department's medical services division.
- h. If a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the facility's most recently established rate. Reinstatement of the rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
3. The department ~~will~~ shall perform an audit of the latest available report year of each center facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in the performance of audits and in the establishment of rates. Audits must meet generally accepted governmental auditing standards.
4. Penalties for false reports.
- a. A false report is one where a center facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:
- (1) Immediately adjust the center's facility's payment rate to recover the entire overpayment within the rate year;
 - (2) Terminate the department's agreement with the center facility;
 - (3) Prosecute under applicable state or federal law; or

- (4) Use any combination of the foregoing actions.
- b. The department may determine a report is a false report if a center facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The center facility may indicate that the costs are under appeal and not claimed under protest to perfect a claim should the appeal be successful.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 3. Section 75-02-09-03 is amended as follows:

75-02-09-03. General cost principles.

1. For ratesetting purposes, a cost must:
 - a. Be ordinary, necessary, and related to resident care;
 - b. Be no more than an amount a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction; and
 - c. Be for goods or services actually provided in by the center facility.
2. The cost effects of transactions which circumvent these rules are not allowable under the principle that the substance of the transaction prevails over the form.
3. Reasonable resident-related costs will be determined in accordance with the ratesetting procedures set forth in this chapter and instructions issued by the department.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 4. Section 75-02-09-04 is amended as follows:

75-02-09-04. Ratesetting.

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs not includable in allowable costs. Adjustment factors are then applied to allowable costs. ~~No retroactive~~ Retroactive settlements for actual costs incurred during the rate year exceeding the final rate will not be made unless specifically provided for in this chapter.
2. The department ~~will~~ shall establish a desk rate, based on the cost report, which will be effective the first day of the seventh month following the center's facility's fiscal yearend or on an alternate effective date determined by the department.
 - a. The desk rate will continue in effect until a final rate is established.

- b. The cost report will be reviewed taking into consideration the prior year's adjustments. ~~Centers~~ A facility will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the ~~center~~ facility may submit information to explain why a desk adjustment should not be made. The department ~~will~~ shall review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rate.
 - c. ~~No reconsideration~~ Reconsideration will not be given by the department for the desk rate unless the ~~center~~ facility has been notified that the desk rate is the final rate.
 - d. A desk rate may be adjusted at any time if subsection 4 applies to the ~~center~~ facility.
3. The cost report may be field audited by the department to establish a final rate. If no field audit is performed, the desk rate will become the final rate upon notification to the ~~center~~ facility from the department.
- a. The final rate will be effective ~~beginning the first day of the seventh month following the center's fiscal yearend~~ as of the effective date of the desk rate.
 - b. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least twenty-five cents per day.
 - c. Adjustments, errors, or omissions found after a final rate has been established will be included as an adjustment in the report year the adjustments, errors, or omissions are found.
 - d. The final rate may be adjusted at any time if subsection 4 applies.
4. ~~Special rates~~ A special rate will be established for ~~centers~~ a facility providing services for the first time, ~~whose rates were established under chapter 75-03-20 prior to accreditation,~~ changing ownership, having a capacity increase or major renovation or construction, or having changes in services or staff.
- a. The rate for a ~~center~~ facility providing first-time services purchased by the department will be established using this subdivision for the first two fiscal years of the ~~center~~ facility if that period is less than twenty-four months.
 - (1) The ~~center~~ facility shall submit a budget, to the department's medical services division, for the first twelve months of operation. A final rate based on the budget and adjustments, if any, will be established for a rate period beginning on the first of the month in which the ~~center~~ facility begins operation. This rate will remain in effect for eighteen months. ~~No adjustment~~ Adjustment factors will ~~not~~ be included in the first year final rate. No retroactive settlements will be made.
 - (2) Upon completion of the first twelve months of operation, the ~~center~~ facility must submit a cost report for the twelve-month period regardless of the fiscal yearend of the ~~center~~ facility.

- (a) The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.
 - (b) The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.
- (3) The center facility shall submit a cost report that will be used to establish rates in accordance with subsections 2 and 3 after the center facility has been in operation for the entire twelve months of the center's facility's fiscal year.
- b. ~~Centers receiving accreditation by the joint commission on accreditation for hospitals and which had a desk or final rate established under chapter 75-03-20 prior to the accreditation will receive a rate established based on the cost report submitted under chapter 75-03-20, and the provisions of this chapter.~~
- e. For centers ~~changing a facility with a change in~~ changing a facility with a change in ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change ~~occurred~~ of ownership occurs. The rate for the second rate year after a change in ownership occurs will be established as follows:
 - (1) For a center facility with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred will be used to establish the rate for the next rate year; and
 - (2) For a center facility with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner will be indexed forward using the appropriate adjustments adjustment factor.
- d. c. For centers ~~a facility that increase~~ a facility that increases licensed capacity by twenty percent or more or ~~have~~ has a renovation or construction ~~projects~~ project in excess of fifty thousand dollars, the established desk or final rate ~~established~~ may be adjusted for the period after the licensed capacity increase occurs or the construction or renovation is complete ~~may be adjusted~~ to include projected property costs.
 - (1) For the rate year in which the capacity increase occurs or construction or renovation is completed, an adjusted rate will be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census, plus a rate for property costs based on projected property costs divided by projected census. The adjusted rate will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.

- (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate will be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census plus a rate for property costs, based on projected property costs, divided by projected census.
- e. d. The department may provide for an increase in the established rate for additional costs necessary to add services or staff to the existing program.
 - (1) The ~~center must~~ facility shall submit information, to the department's medical services division, supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.
 - (2) The department ~~will~~ shall review the submitted information and may request additional documentation or conduct onsite visits. The established rate will be adjusted if an increase in costs is approved. The effective date of the rate increase will be the later of the first day of the month following approval by the department or the first day of the month following the addition of services or staff. The adjustment will not be retroactive to the beginning of the rate year and will exclude adjustment factors provided for in subsection 8.
 - (3) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 2, the ~~center~~ facility may request consideration be given to additional costs. The ~~center~~ facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period, exclusive of adjustment factors provided for in subsection 8.
5. The final rate must be considered as payment for all accommodations that include items identified in section 75-02-09-06. For any resident whose rate is paid in whole or in part by the department, no payment may be solicited or received from the resident or any other person to supplement the rate as established.
6. When a ~~center~~ facility terminates its participation in the program, whether voluntarily or involuntarily, the department may authorize the ~~center~~ facility to receive continued payment until residents can be relocated.
7. Limitations.
 - a. The department ~~may~~ shall accumulate and analyze statistics on costs incurred by ~~accredited and nonaccredited residential treatment centers. These statistics~~ psychiatric residential treatment

- 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. These limitations Limitations and incentives may be established on the basis of cost of comparable centers facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. Limitations and incentives are effective upon notification of a center by the department The department may implement ceilings at any time based upon information available.
- b. The department shall review, on an ongoing basis, aggregate payment to facilities to determine that payments do not exceed an amount that can be reasonably estimated would have been paid for these services under federally required payment principles. If aggregate payments to facilities exceed estimated payments under federally required payment principles, the department may make adjustments to rates so that aggregate payments do not exceed an amount that can be estimated would have been paid under an upper payment limit.
- c. Allowable administration costs to be included in the established rate are the lesser of the actual cost of administration as direct costed or allocated to the ~~center~~ facility or an amount equal to fifteen percent of the total allowable costs, exclusive of administration costs, for the ~~center~~ facility.
8. ~~Adjustment factors~~ An adjustment factor may be applied used to adjust historical allowable costs. ~~The department will determine the appropriate adjustment factor to be applied. The following cost components may have individual adjustment factors calculated at the point in time when the cost report is due for each rate year:~~
- a. ~~Salaries and fringe benefits;~~
 - b. ~~Food;~~
 - c. ~~Utilities; and~~
 - d. ~~Other costs exclusive of~~ but may not be used to adjust property costs.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 5. Section 75-02-09-05 is amended as follows:

75-02-09-05. Resident census.

1. A daily census record must be maintained by the ~~center~~ facility. Any day services are provided or for which payment is ordinarily sought for an available bed must be counted as a resident day. The day of admission ~~or~~ and day of death will be counted are resident days. The day of discharge will be counted if payment is sought for that day. For a medical assistance

residents resident, payment may not be sought for any day on which the resident was not in the facility or for the day of discharge.

2. The daily census records must include:
 - a. Identification of the resident;
 - b. Entries for all days, and not just by exception; and
 - c. Identification of type of day, i.e., in-house or hospital leave day.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 6. Section 75-02-09-06 is amended as follows:

75-02-09-06. Allowable costs by cost category.

1. Administration costs are those allowable costs of activities performed by the staff in which the direct recipient of the activity is the organization itself, including fiscal activities, statistical reporting, recruiting, and general office management indirectly related to reimbursable services provided. Administration personnel includes administrators, regional directors, program directors, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel. ~~Costs~~ Administration costs directly assignable to the center facility must be reported as center facility administration. ~~Costs~~ Administration costs not directly assignable to the center facility must be reported as other administration. Costs for administration include:
 - a. Salary and fringe benefits for individuals who provide services administrative in nature or who are not included specifically in any other cost category;
 - b. Office supplies;
 - c. Insurance, except property insurance and insurance included as a fringe benefit;
 - d. Postage and freight;
 - e. Professional fees for services such as legal, accounting, and data processing;
 - f. Central or home office costs;
 - g. Personnel recruitment costs;
 - h. Management consultants and fees;
 - i. Dues, license fees, and subscriptions;
 - j. Travel and training for employees;
 - k. Interest on funds borrowed for working capital;
 - l. Startup costs;
 - m. Telephone service not included in other cost categories; and
 - n. All ~~other~~ costs not specifically identified in other cost categories.
2. Direct care costs are those allowable costs incurred for providing services for the maximum reduction of physical or mental disability and restoration of a resident to the best possible functional level and for providing for the personal needs of the resident. Those services may include any medical

or remedial service recommended by a physician or other licensed practitioner of the healing arts, within the scope of the practitioner's practice under state law. Direct care costs include:

- a. Salaries and fringe benefits for individuals providing treatment or supervision of residents;
 - b. Personal supplies used by an individual resident;
 - c. Clothing necessary to maintain a resident's wardrobe;
 - d. School supplies and activity fees, when not provided by or at the expense of the school;
 - e. Costs incurred for providing recreation to the residents including subscriptions, sports equipment, and admission fees to sporting, recreation, and social events;
 - f. All costs related to transporting residents, and ~~transportation~~ transportation costs that may include actual expenses of ~~center-owned~~ facility-owned vehicles or mileage paid to employees for use of personal vehicle; and
 - g. The cost of services purchased and not provided at the ~~center~~ facility, including case management, addiction, psychiatric, psychological, and other clinical evaluations, medication review, and partial care or day treatment.
3. Dietary costs are those allowable costs associated with the preparation and serving of food. Dietary costs include:
- a. Salaries and fringe benefits for all personnel involved with the preparation and delivery of food;
 - b. Food; and
 - c. Dietary supplies and utensils including paper products and noncapitalized dietary equipment.
4. Laundry costs are those allowable costs associated with gathering, transporting, sorting, and cleaning of linen and clothing. Laundry costs include:
- a. Salaries and fringe benefits of personnel who gather, transport, sort, and clean linen and clothing;
 - b. The cost of laundry supplies; and
 - c. Contracted laundry services.
5. Plant and housekeeping costs are those allowable costs related to repairing, cleaning, and maintaining the ~~center's~~ facility's physical plant. Plant and housekeeping costs include:
- a. Salaries and fringe benefits of personnel involved in cleaning, maintaining, and repairing the ~~center~~ facility;
 - b. Supplies necessary to maintain the ~~center~~ facility, including such items as cleaning supplies, paper products, and hardware goods;
 - c. Utility costs, including heating and cooling, electricity, water, sewer, garbage, and cable television;
 - d. Local telephone service to the living quarters and long distance telephone service directly related to providing treatment; and

- e. Routine repairs and maintenance of property and equipment, including maintenance contracts and purchased services.
- 6. Property costs are those allowable capital costs associated with the physical plant of the ~~center~~ facility. Property costs include:
 - a. Depreciation;
 - b. Interest;
 - c. Lease costs on equipment and buildings;
 - d. Property taxes; and
 - e. Property insurance on buildings and equipment.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 7. Section 75-02-09-07 is amended as follows:

75-02-09-07. Cost allocation.

- 1. Direct costing of allowable ~~center~~ facility costs must be used whenever possible. If direct costing is not possible, the allocation methods for ~~center facility~~ and ~~noncenter~~ non-facility operations described in this subsection must be used.
 - a. Salaries for direct care employees, which cannot be reported based on direct costing, must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibility. Allocation percentages based on the time studies must be used starting with the next pay period following completion of the time study or averaged for the report year.
 - b. Salaries of supervisory personnel must be allocated based on full-time equivalents of the employees supervised or on a ratio of salaries.
 - c. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
 - d. Plant and housekeeping expenses must be allocated based on square footage.
 - e. Property costs must be allocated based on square footage.
 - f. Administration costs must be allocated on the basis of the percentage of total costs, excluding the allocable administration costs.
 - g. Dietary costs must be allocated based on meals served.
 - h. Laundry costs must be allocated on the basis of pounds of laundry.
 - i. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for all miles driven and purpose of travel. If sufficient documentation is not available to determine which cost category vehicle expenses are to be

allocated, vehicle expenses must be allocated in total to administration.

- j. Costs not direct costed or allocable using methods identified in subdivisions a through i must be included as administration costs.
2. If the center facility cannot use any of the allocation methods described in subsection 1, a waiver request may be submitted to the department's medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the center facility. The center facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department will shall determine the allocation method used to report costs.

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General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 8. Section 75-02-09-08 is amended as follows:

75-02-09-08. Nonallowable costs. Nonallowable costs include:

1. Promotional, publicity, and advertising expenses, exclusive of personnel procurement;
2. Political contributions;
3. Salaries or expenses of a lobbyist;
4. Basic research;
5. Fines or penalties including interest charges on the penalty, bank overdraft charges, and late payment charges;
6. Bad debts;
7. Compensation and expenses for officers, directors, or stockholders, except as provided for in section 75-02-09-15;
8. Contributions or charitable donations;
9. Costs incurred for activities directly related to influencing employees with respect to unionization;
10. Costs of membership or participation in health, fraternal, or social organizations such as eagles, country clubs, or knights of columbus;
11. Corporate costs such as organization costs, reorganization costs, costs associated with acquisition of capital stock, costs relating to the issuance and sale of capital stock or other securities, and other costs not related to resident services;
12. Home office costs that would be nonallowable if incurred directly by the center facility;
13. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors, including annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements, stock transfer agent fees, and stockbroker and investment analyses;
14. The cost of any equipment, whether owned or leased, not exclusively used by the center facility except to the extent the center facility

- demonstrates to the satisfaction of the department that any particular use of equipment was related to resident care;
15. Costs, including by way of illustration and not by way of limitation, for legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any center facility;
 16. Depreciation expense for center facility assets not related to resident care;
 17. Personal expenses of owners and employees for items or activities including vacation, boats, airplanes, personal travel or vehicles, and entertainment;
 18. Costs not adequately documented (adequate documentation includes written documentation, of date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or centers facilities);
 19. The following taxes, when levied on providers a facility:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operations such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes such as real estate and sales tax for which exemptions are available to the center facility;
 - e. Taxes on property not used in the provision of covered services; and
 - f. Taxes such as sales taxes, levied, collected, and remitted by the center facility;
 20. The unvested portion of a center's facility's accrual for sick or annual leave;
 21. Expenses or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies, provided that reasonable insurance expenses may not be limited by this subsection;
 22. Fringe benefits, not within the definition of that term, which have not received written prior approval of the department;
 23. Fringe benefits that discriminate in favor of certain employees, excluding any portion that relates to costs that benefit all employees;
 24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
 25. Funeral and cemetery expenses;
 26. Travel not directly related to professional conferences, state or federally sponsored activities, or resident services;

27. Items or services such as telephone, television, and radio located in a resident's room and furnished solely for the convenience of the resident;
28. Value of donated goods and services;
29. Religious salaries, space, and supplies;
30. Miscellaneous expenses not related to resident services;
31. Premiums for top management personnel life insurance policies, except that the premiums shall be allowed if the policy is included within a group policy provided for all employees, or if a policy is required as a condition of a mortgage or loan and the mortgagee or lending institution is listed as the beneficiary;
32. Travel costs involving the use of vehicles not exclusively used by the ~~center~~ facility unless:
 - a. Vehicle travel costs do not exceed the amount established by the internal revenue service;
 - b. The ~~center~~ facility supports vehicle costs related to resident care with sufficient documentation, including mileage logs for all miles, purpose of travel, and receipts for purchases; and
 - c. The ~~center~~ facility documents all costs associated with a vehicle not exclusively used by the ~~center~~ facility;
33. Vehicle and aircraft costs not directly related to ~~center~~ facility business or resident services;
34. Nonresident-related operations and the associated administrative costs;
35. Costs related to income-producing activities regardless of the profitability of the activity;
36. Costs incurred by the ~~center's~~ facility's subcontractors or by the lessor of property the ~~center~~ facility leases, and which become an element in the subcontractor's or lessor's charge to the ~~center~~ facility, if such costs would not have been allowable had they been incurred by a ~~center~~ facility directly furnishing the subcontracted services or owning the leased property;
37. All costs for services paid directly by the department to an outside ~~provider~~ facility;
38. Depreciation on the portion of assets acquired with government grants;
39. Costs incurred due to management inefficiency, unnecessary care or services, agreements not to compete, or activities not commonly accepted in the industry;
40. The cost of consumable food products, in excess of income from employees, guests, and nonresidents offset in accordance with subsection 1 of section 75-02-09-16, consumed by persons other than residents or direct care personnel;
41. Payments to residents, whether in cash or in kind, for work performed or for bonuses or rewards based on behavior; and
42. In-house education costs including:
 - a. Compensation for teachers and teacher aides who provide academic training to residents in-house;

- b. Property and plant operation expenses for space used to provide in-house academic training to residents; and
- c. The cost of supplies and equipment used in a classroom normally provided by a school district as part of the academic training.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 9. Section 75-02-09-09 is amended as follows:

75-02-09-09. Depreciation.

1. Ratesetting principles require that payment for services should include depreciation on all depreciable type assets used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the ~~center~~ facility, but are in use at the time the ~~center~~ facility enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets used in a normal standby or emergency capacity. 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 ~~center~~ facility and must be included as a gain or loss on the cost report.
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, are unacceptable. 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 ~~center~~ facility.
 - b. ~~Centers~~ A facility must use a minimum composite useful life of ten years for all equipment and land improvements, and four years for vehicles. Buildings and improvements to buildings are to be depreciated over the length of the mortgage or a minimum of twenty-five years, whichever is greater.
3. Acquisitions.
 - a. If a depreciable asset has at the time of its acquisition historical cost of at least one thousand dollars for each item, its cost must be capitalized and depreciated over the estimated useful life of the asset except as provided for in subsection 3 of section 75-02-09-11. Costs, such as architectural, consulting and legal fees, and interest, incurred during the construction of an asset 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 or one-half of the original estimated useful life, whichever is greater.
- 4. Proper records must provide accountability for the fixed assets and also 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. Basis for depreciation.
 - a. Determination of the cost basis of a ~~center and its~~ facility's depreciable assets, which have not been involved in any programs funded in whole or in part by the department, depends on whether or not the transaction is a bona fide ~~sale~~ purchase. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide ~~sale~~ purchase. Purchases where the buyer and seller are related organizations are not bona fide.
 - (1) If the ~~sale~~ purchase is bona fide, the cost basis will be the lower of the actual cost of the buyer or the fair market value of the ~~facility or~~ asset at the time of the ~~sale~~ purchase.
 - (2) If the ~~sale~~ purchase is not bona fide, the cost basis will be the seller's cost basis less accumulated depreciation.
 - b. Cost basis of a ~~center and its~~ facility's depreciable assets purchased as an ongoing operation will be the seller's cost basis less accumulated depreciation.
 - c. Cost basis of a ~~center and its~~ facility's depreciable assets used in any programs funded in whole or in part by the department will be the cost basis used by the other program less accumulated depreciation.
 - d. Sale and leaseback transactions will be considered a related party transaction. The cost basis of a ~~center and its~~ facility's depreciable assets purchased and subsequently leased to ~~a provider an entity~~ who will continue to operate the ~~center~~ facility will be the seller's cost basis less accumulated depreciation.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 10. Section 75-02-09-10 is amended as follows:

75-02-09-10. Interest expense.

- 1. To be allowable under the program, interest must be:
 - 1.a. Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are

required. Repayment of operating loans must be made within two years of the borrowing;

- 2.b. Identifiable in the center's facility's accounting records;
 - 3.c. Related to the reporting period in which the costs are incurred;
 - 4.d. Necessary and proper for the operation, maintenance, or acquisition of the center facility. Necessary means that the interest be incurred on a loan made to satisfy a financial need of the center facility and for a purpose reasonably related to resident care. Proper means that the interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in an arm's-length transaction. In addition, the interest must be paid to a lender not related to the center facility through common ownership or control;
 - 5.e. Unrelated to funds borrowed to finance costs of assets in excess of the depreciable cost of the asset as recognized in "depreciation" section 75-02-09-09; and
 - 6.f. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allocable when the debt was initially incurred.
2. If it is necessary to issue bonds ~~for financing~~ to finance the costs of assets, any bond premium or discount ~~will~~ must be amortized on a straight-line basis over the life of the bond issue.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 11. Section 75-02-09-11 is amended as follows:

75-02-09-11. Taxes.

1. Taxes assessed against the center facility in accordance with the levying enactments of the several states and lower levels of government and for which the center facility is liable for payment are allowable costs except for those taxes identified as nonallowable in section 75-02-09-08.
2. Whenever exemptions to taxes are legally available, the center facility is to take advantage of them. If the center facility does not take advantage of available exemptions, the expense incurred for such taxes is not an allowable cost.
3. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as they are billed by the taxing authority.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 12. Section 75-02-09-12 is amended as follows:

75-02-09-12. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a center facility in itself, it may furnish to the individual center facility central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing services is includable in the center's facility's allowable costs under the program.
2. Costs not allowed in the center facility are not allowed as home office costs allocated to the center facility.
3. Any service provided by the home office included in costs as payments by the center facility to an outside vendor or which duplicates costs for services provided by the center facility is a duplication of costs and is not allowed.
4. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 13. Section 75-02-09-13 is amended as follows:

75-02-09-13. Related organizations.

1. Costs applicable to services, ~~facilities buildings, equipment,~~ and supplies furnished to a center facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, ~~facilities buildings, equipment,~~ or supplies purchased elsewhere primarily in the local market. Centers A facility must identify such related organizations and costs. If any such costs are allocated, the allocation methods and statistics supporting the allocations must be submitted with the cost report.
2. A center facility may lease buildings or equipment from a related organization within the meaning of ratesetting principles. In such a case, the rent paid to the lessor by the center facility is not allowable as cost unless the rent paid is less than the allowable costs of ownership. If rent paid exceeds the allowable costs of ownership, the center facility may include only the allowable costs of ownership. These costs are property insurance, depreciation, interest on the mortgage, real estate taxes, and plant operation expenses incurred by the lessor.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 14. Section 75-02-09-14 is amended as follows:

75-02-09-14. Startup costs. In the first stages of operation, a new center facility incurs certain costs in developing its ability to care for residents prior to their admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during that period because there are not residents receiving services. ~~Such~~ These costs are commonly referred to as startup costs. The startup costs are to be capitalized and will be recognized as allowable administration costs amortized over sixty consecutive months on a straight-line basis starting with the month the first resident is admitted.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 15. Section 75-02-09-15 is amended as follows:

75-02-09-15. Compensation. Reasonable compensation for a person with a minimum of five percent ownership, persons on the governing board, or family members of top management personnel, including spouses and persons in the following relationship to top management personnel or their spouses: parent, stepparent, child, stepchild, grandparent, ~~stepgrandparent~~, grandchild, ~~stepgrandchild~~, brother, sister, half-brother, half-sister, stepbrother, and stepsister will be considered an allowable cost if services are actually performed and required to be performed. The amount allowed must be in an amount not to exceed the average of salaries paid to individuals in like positions in ~~all accredited and nonaccredited licensed residential treatment centers~~ psychiatric residential treatment facilities that are nonprofit organizations and have no top management personnel who have a minimum of five percent ownership or are on the governing board. Salaries used to determine the average will be based on the latest information available to the department. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the center facility would have to employ another person to perform them.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 16. Section 75-02-09-16 is amended as follows:

75-02-09-16. Revenue offsets. ~~Centers~~ A facility must identify income to offset facility costs when applicable ~~in order that~~ so state financial participation does not supplant or duplicate other funding sources. Any income whether in cash or in any other form received by the center facility, with the exception of the established rate ~~and~~, income from ~~payment~~ payments made under the Job Training Partnership Workforce Investment Act, donations, and income from charges for private rooms, special

services, or bed holds will be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income will be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset based on the ratio of costs in each of the cost categories.

Sources of income include:

1. Income received from or on behalf of employees, guests, or other nonresidents for meals or snacks ~~and~~ or the income received for food and related costs from other government programs such as the United States department of agriculture or the department of public instruction must be offset ~~to~~ against dietary costs.
2. Income received from the sale of beverages, candy, or other food items must be offset ~~to~~ against dietary costs.
3. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category regardless of when the cost was incurred if the center facility did not adjust the basis for depreciable assets.
4. Any refund, rebate, or discount received for a reported cost must be offset against the appropriate cost.
5. Any amount received for use of the center's facility's vehicles must be offset ~~to~~ against transportation costs.
6. Gain on the sale of an asset must be offset against depreciation expense.
7. Revenue received from outside sources for the use of center facility buildings or equipment will be offset ~~to~~ against property expenses.
8. Any amount received by the center facility from outside sources for services provided by center facility employees will be offset ~~to~~ against salaries.
9. Revenue from investments will be offset against interest expense.
10. Grants, gifts, restricted donations, and awards from the federal, state, local, or philanthropic agencies will be offset ~~to allowable costs~~ against the appropriate cost.
11. Gifts or endowment income designated by a donor for paying specific operating costs incurred in providing contract services must be offset ~~to~~ against costs in the year the cost is incurred regardless of when the gift or endowment is received.
12. Other cost-related income or miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset ~~to~~ against the cost category where the item was expensed.
13. Other income to the center facility from local, state, or federal units of government may be determined by the department to be an offset ~~to~~ against costs.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 17. Section 75-02-09-17 is amended as follows:

75-02-09-17. Private pay rates.

1. The medical assistance rate ~~will~~ may not exceed the full rate charged to nonmedical assistance residents for the same service. The rate being charged nonmedical assistance residents at the time the services were are provided will govern. In cases where the residents are not charged a daily rate, a daily rate will be computed by dividing the total nonmedical assistance charges for each month by the total nonmedical assistance census for each month.
2. If the established medical assistance rate exceeds the rate charged to nonmedical assistance residents for a service, on any given date, the ~~center~~ facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the ~~center~~ facility shall, within thirty days, refund the overpayment. The refund ~~will~~ must be the difference between the established rate and the rate charged to nonmedical assistance residents times the number of medical assistance resident days paid during the period in which the established rate exceeded the nonmedical assistance rate plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. Interest charges on these refunds are not allowable costs.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)

SECTION 18. Section 75-02-09-18 is amended as follows:

75-02-09-18. Reconsiderations and appeals.

1. **Reconsiderations.**
 - a. A ~~center~~ facility dissatisfied with the final rate established must request a reconsideration of the final rate before a formal appeal may be made. Any requests for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification.
 - b. A request for reconsideration must include:
 - (1) A statement of each disputed item and the reason or basis for the dispute;
 - (2) The dollar amount of each item that is disputed; and
 - (3) The statute or rule upon which the facility is relying for each disputed item.
 - c. The department may request additional documentation or information relating to a disputed item. If additional documentation is not provided within fourteen days of the department's request, the department shall makes its determination based on the information and documentation

available as of the fourteenth day following the date the department requested additional documentation.

- d. The department's medical services division ~~will~~ shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. **Appeals.**

- a. A center facility dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal must be filed with the department within thirty days of the date ~~of~~ on the written notice of the determination by the department's medical services division with respect to the a request for reconsideration.
- b. An appeal under this section is timely perfected only if accompanied by written documents including:
 - (1) A copy of the letter received from the department's medical services division advising of that division's decision on the request for reconsideration;
 - (2) A statement of each disputed item and the reason or basis for the dispute;
 - (3) A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
 - (4) The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - (5) The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

History: Effective May 1, 1994; amended effective October 1, 2011.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(30)(A)



Legal Advisory Unit

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Jack Dalrymple, Governor
Carol K. Olson, Executive Director

May 12, 2011

RE: Proposed Amendments to N.D. Admin. Code Chapter 75-02-09
Ratesetting for Psychiatric Residential Treatment Facilities

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-02-09, Ratesetting for Psychiatric Residential Treatment Facilities. The department has adopted procedures to assure public input into the formulation of such rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on Monday, June 27, 2011.

The department has scheduled an oral hearing on Thursday, June 16, 2011. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,

A handwritten signature in black ink that reads "Carol K. Olson". The signature is written in a cursive, flowing style.

Carol K. Olson,
Executive Director

CKO/kh

Attachments

Cc: John Walstad, Legislative Council
LeeAnn Thiel, Medical Services