CHAPTER 75-03-20
RATESETTING FOR RESIDENTIAL TREATMENT CENTERS FOR CHILDREN

Section

75-03-20-01. 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. "Addiction evaluation" means an assessment by an addiction counselor to determine the nature or extent of possible alcohol abuse, drug abuse, or chemical dependency.

3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on economic forecasts for the rate year.

4. "Administration" means the cost of activities performed by the center staff in which the direct recipient of the activity is the organization itself. These include, but are not limited to, fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to reimbursable services provided.

5. "Allowable cost" means the center's actual and reasonable cost after adjustments required by department rules.

6. "Case management" means services which may assist individuals to gain access to needed medical, social, educational, and other services. Case management includes case-related paper work, contacts with significant others and agencies, phone contacts, case-related travel, and consultation with other staff, supervisors, and peers.

7. "Center" means the residential treatment center for children.

8. "Client day" means a day for which service is provided or for which payment is ordinarily sought and includes in-house, trial placement, approved leave, or hospital days.

9. "Clinical consultation" means services provided by psychiatrists, clinical psychologist, psychiatric nurses, social workers, addiction counselors, occupational therapists, and other

mental health professionals to center staff to develop or increase their skills in providing mental health services.

10. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting and the determination of cost limitations and rates. For the purposes of this chapter, the cost categories of administration, education, maintenance, and rehabilitation will be used.

11. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.

12. "Department" means the department of human services.

13. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

14. "Education" means the cost of activities related to academic and vocational training generally provided by a school district.

15. "Family counseling or therapy" means treatment in which a counselor or a therapist works with various combinations of family members.

16. "Final rate" means the rate established after any adjustments by the department, including, but not limited to, adjustments resulting from cost report reviews and audits.

17. "Fringe benefits" means workers compensation insurance, group health, dental or vision insurance, group life insurance, payment towards retirement plans, accrued compensation for absences, uniform allowances, employer's share of Federal Insurance Contributions Act and unemployment compensation taxes.

18. "Group counseling" or "group therapy" means a form of treatment in which a group of clients, with similar problems, meet with a counselor or a therapist to discuss difficulties, provide support for each other, gain insight into problems, and develop better methods of meeting their problems.

19. "Individual counseling" or individual therapy" means a form of treatment in which a counselor or therapist works with a client on an individual basis.

20. "Interest" means cost incurred for the use of borrowed funds.

21. "Maintenance" means room and board and includes all costs associated with the preparation and serving of food, the provision of shelter and the maintenance thereof, including depreciation and interest or lease payments, and operating expenses of a vehicle used for transportation of clients.

22. "Medication review" means prescription monitoring and consultation to a client regarding the client's use of medication performed by a psychiatrist or a physician, or a registered nurse or a licensed practical nurse under the medical direction and supervision of a psychiatrist or physician.

23. "Other clinical evaluation" means the evaluation of the client's environmental and personal situation. This includes, but is not limited to, developmental, social, and independent living evaluations.

24. "Partial care" means center or community-based rehabilitative services provided to mentally ill persons to maintain and promote social, emotional, and physical well-being through opportunities for socialization, therapy, work participation, education, and other self-enhancement activities.

25. "Plant operations costs" means the costs for repairing and maintaining the physical plant of the center. These costs include utilities, repairs, and compensation for housekeepers, janitors, engineers, caretakers, and all personnel performing tasks related to repairing and maintaining the physical plant.

26. "Program consultation" means services provided to center staff for development of program design and planning for mental health services to the center.

27. "Property costs" means depreciation, interest on capital debt, property taxes, and rental expense.

28. "Psychiatric evaluation" means the assessment or evaluation of a client by a psychiatrist.

29. "Psychological evaluation" means the assessment or evaluation of a client by or under the supervision of a licensed psychologist.

30. "Rate year" means the twelve-month period beginning the seventh month after the end of a center's fiscal year.

31. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated center 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 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 services.

32. "Rehabilitation" means services provided for maximum reduction of physical or mental disability and restoration of a client to the best possible functional level. Services can 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.

33. "Related organization" means an organization which a center 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. Control exists where an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or center.

34. "Report year" means the center's fiscal year.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-02. Financial reporting requirements.

1. Records.

   a. The center will maintain on the premises census records and financial information which will be 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. Where several centers 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 prior to the audit or review of the center. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

c. Each center shall maintain, for a period of not less than five years following the date of submission of the cost report to the state agency, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. Each center shall make such 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. However, if conflicts occur between ratesetting procedures and generally accepted accounting principles, ratesetting procedures will prevail. A center 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 be maintained in such a manner that cost accounts will be grouped by cost category and be 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 report year. The report must contain all actual costs of the provider, adjustments for nonallowable costs, and client days.

   d. 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 or a certification that the content of any such document 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.

      (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services which are claimed as allowable costs.

   e. If the center fails to file the cost report on or before the due date, the department may impose a nonrefundable penalty of ten percent of any amount claimed for reimbursement. The penalty may be imposed after the last day of the first month following the due date and continues through the month in which the statement or report is received.

   f. The center will make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report when the information which has been filed is incomplete or inaccurate. In the event that a cost report is rejected, the department may impose the penalties described in subdivision e.

   g. The department may grant an extension of the reporting deadline to a center. To receive such an extension, a center must submit a written request to the division of mental health services.

3. The department will perform an audit of the latest available report year of each center 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 which are utilized and

generated by audit staff in performance of audits and in establishing rates. Audits will meet generally accepted governmental auditing standards.

4. Penalties for false reports.

    a. A false report is one wherein a center knowingly supplies inaccurate or falseinformation in a required report that results in an overpayment. If a false report is received, the department may:

        (1) Immediately adjust the center's payment rate to recover the entire overpayment within the rate year;

        (2) Terminate the department's agreement with the center;

        (3) Prosecute under applicable state or federal law; or

        (4) Use any combination of the foregoing actions.

    b. If a center claims as an allowable cost costs which have been previously adjusted, the department may determine that the report is a false report. Previously adjusted costs which are being appealed must be identified as unallowable costs. The center may indicate that the costs are under appeal and not claimed under protest to perfect a claim should the appeal be successful.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2, 25-03.2-08(3)

75-03-20-03. General cost principles.

1. For ratesetting purposes, a cost must:

    a. Be ordinary, necessary, and related to client care;

    b. Be no more than an amount which 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 the center.

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 client-related costs will be determined in accordance with the ratesetting procedures set forth in this chapter and instructions issued by the department.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-04. 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 which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. No retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for in this chapter.

2. Desk audit rate.

   a. The department will establish desk rates for maintenance and rehabilitation, based on the cost report, which will be effective the first day of the seventh month following the center's fiscal yearend.

   b. The desk rates will continue in effect until final rates are established.

   c. The cost report will be reviewed taking into consideration the prior year's adjustments. Centers will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the center may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rates.

   d. No reconsideration will be given by the department for the desk rates unless the center has been notified that the desk rates are the final rates.

3. Final rate.

   a. The cost report may be field audited to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the center from the department.

   b. The final rate for rehabilitation will be effective beginning the first day of the seventh month following the center's fiscal yearend.

   c. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the center. There will be no retroactive adjustments to the beginning of the rate year for any increase or decrease in the maintenance rate.

   d. 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 five cents per day.

   e. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.

4. Special rates.

   a. Centers providing services for the first time.

      (1) Rates for a center which is providing services which are purchased by the department will be established using the following methodology for the first two fiscal years of the center if such period is less than twenty-four months.

         (a) The center must submit a budget for the first twelve months of operation. A final rate will be established for a rate period which begins on the first of the month in which the center begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first year final rate.

         (b) Upon completion of the first twelve months of operation, the center must submit a cost report for the twelve-month period regardless of the fiscal yearend of the center.

[1] 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.

[2] 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.

(2) The center must submit a cost report which will be used to establish rates in accordance with subsections 2 and 3 after the center has been in operation for the entire twelve months of the center's fiscal year.

b. Centers changing ownership.

(1) For centers changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.

(2) The rate for the second rate year after a change in ownership occurs will beestablished as follows:

(a) For a center 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.

(b) For a center 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 appropriate adjustments.

c. Centers having a capacity increase or major renovation or construction.

(1) For centers which increase licensed capacity by twenty percent or more or have renovation or construction projects in excess of fifty thousand dollars, the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete may be adjusted to include projected property costs. The 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 established rate for rehabilitation, including projected property costs, 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. The established rate for maintenance including projected property costs will be effective on the first of the month in which notification of the rate is given to the center.

(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.

d. Centers that have changes in services or staff.

(1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or staff to the existing program.

(2) The center must submit information to the division of mental health services 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.

(3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate will be adjusted. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.

(4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3, the center may request that consideration be given to additional costs. The center 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.

5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-20-06. For any client whose rate is paid in whole or in part by the department, no payment may be solicited or received from the client or any other person to supplement the rate as established.

6. For a center terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the center to receive continued payment until clients can be relocated.

7. Limitations.

   a. The department may accumulate and analyze statistics on costs incurred by the centers. These 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 and incentives may be established on the basis of cost of comparable centers 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.

   b. Allowable administration costs to be included in the maintenance and rehabilitation rates are the lesser of the actual cost of administration as allocated to the cost category or an amount equal to fifteen percent of the allowable costs for the cost category.

8. Adjustment factors. Adjustment factors may be applied to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.

History: Effective December 1, 1991; amended effective July 1, 1999.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-05. Client census.

1. A daily census record must be maintained by the center. Any day for which services are provided or payment is ordinarily sought for an available bed must be counted as a client day. The day of admission or death must be counted. The day of discharge must be counted if payment is sought for that day. No payment may be sought from the department for the day of discharge. No payment may be sought from the department for the rehabilitation portion of the rate for any day in which the resident was not in the facility.

2. The daily census records must include:

   a. Identification of the client;

   b. Entries for all days. Entries may not be made just by exception; and

   c. Identification of type of day, i.e., in-house or hospital day.

History: Effective December 1, 1991; amended effective January 1, 2000.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-06. Cost categories.

1. **Administration.** Costs for administration include only those allowable costs for administering the overall activities of the center identified as follows:

   a. Compensation for administrators, regional directors, program directors, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel.

   b. Office supplies and forms.

   c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit.

   d. The cost of telephone service not specifically included in other cost categories.

   e. Postage and freight.

   f. Professional fees for services such as legal, accounting, and data processing.

   g. Central or home office costs.

   h. Personnel recruitment costs.

   i. Management consultants and fees.

   j. Dues, license fees, and subscriptions.

   k. Travel and training not specifically included in other cost categories.

   l. Utilities. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration.

   m. Repairs. The cost of routine repairs and maintenance of property and equipment used to provide administration.

   n. Plant and housekeeping salaries. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration.

   o. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration.

   p. Interest on funds borrowed for working capital.

   q. Startup costs.

r. Any costs which cannot be specifically classified or assigned as a direct cost to other cost categories.

2. **Maintenance.** Costs for maintenance include only those allowable costs identified as follows:

a. Compensation for community home counselors when performing functions other than rehabilitation, houseparents, dietary personnel, cooks, and laundry personnel.

b. Plant and housekeeping salaries. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide maintenance.

c. Food. The cost of consumable food products consumed by clients, houseparents, or community home counselors when performing functions other than rehabilitation.

d. Operating supplies. The cost of supplies necessary to maintain the householdfor clients. Costs include such items as cleaning supplies, paper products, and hardware goods.

e. Personal supplies. The cost of supplies used by an individual client for his or her personal needs.

f. Clothing. The cost of clothing to maintain a client's wardrobe.

g. Personal allowances. The cost of moneys given periodically to clients for personal use. The cost does not include payment, whether in cash or in kind, for work performed by the client or for bonuses or rewards based on behavior.

h. School supplies. The cost of school supplies and activity fees, when not provided by or at the expense of the school.

i. Recreation expenses. Costs incurred for providing recreation to the clients including subscriptions, sports equipment, dues for clubs, and admission fees to sporting, recreation, and social events.

j. Utilities. The cost of heating and cooling, electricity, water, sewer, and garbage, and cable television for space which would normally be included in a single-family dwelling.

k. Telephone. The cost of local telephone service to the living quarters.

l. Repairs. The cost of routine repairs and maintenance of property and equipment used for the maintenance of the clients.

m. Travel. All costs related to transporting clients exclusive of transportation costs involved with active treatment. Transportation costs may include actual expenses of center-owned vehicles or mileage paid to employees for use of personal vehicles.

n. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space associated with the provision of shelter.

o. Property insurance. The cost of insuring property and equipment used in the maintenance of clients.

3. **Rehabilitation.** Costs for rehabilitation include only those allowable costs identified as follows:

a. Compensation for social workers, human relations counselors, community home counselors, clinical psychologists, psychiatrists, physicians, nurses or other individuals who provide ongoing rehabilitative services in order to reduce the mental disability of the clients and restore them to their best possible functional level. Rehabilitative services include family, group, and individual counseling or therapy, and case and program consultation.

b. The cost of services purchased and not provided at the center which include: case management; addiction, psychiatric, psychological, and other clinical evaluations; medication review; and partial care or day treatment.

c. Utilities. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide rehabilitation.

d. Telephone. The cost of long distance telephone service directly related to providing rehabilitation.

e. Repairs. The cost of routine repairs and maintenance of property and equipment used to provide rehabilitation.

f. Plant and housekeeping salaries. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide rehabilitation.

g. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide rehabilitation.

h. Property insurance. The cost of insuring property and equipment used to provide rehabilitation.

i. Travel. Costs related to transporting clients for rehabilitation. Transportation costs may include actual expenses of center-owned vehicles or mileage paid to employees for use of personal vehicles.

j. Training. The cost of training which is necessary to maintain licensure, certification, or professional standards for rehabilitation personnel and the related travel costs.

4. **Education.** Costs for education include only those allowable costs identified as follows:

a. Compensation for teachers and teacher aides who provide academic training to clients in-house.

b. Property and plant operation expenses for space used to provide in-house academic training to clients.

c. The cost of supplies and equipment used in a classroom that are normally provided by a school district as part of the academic training.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-07. Cost allocation.

1. Direct costing of allowable costs will be used whenever possible. If direct costing is not possible and the center has more than one license or has services which are jointly used for administration, education, maintenance, rehabilitation, or nonclient activities, the following allocation methods will be used:

a. Salaries which cannot be reported based on direct costs are to 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 are to be used starting with the next pay period following completion of the time study or averaged for the report year. The methodology used by the center may not be changed without approval by the department.

b. Salaries of direct care supervisory personnel may 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 operation expenses must be allocated based on square footage.

e. Property costs must be allocated based on square footage.

f. Administration cost must be allocated on the basis of the percentage of total costs, excluding administration and property costs, in each cost center.

g. Dietary costs and food must be allocated based on meals served.

h. 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 to, vehicle expenses will be allocated in total to administration.

i. Costs not direct costed or allocable using methods identified in subdivisions a through h must be included as administration costs.

2. If any of the above allocation methods cannot be used by the center, a waiver request may be submitted to the division of mental health services. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the center. The center must also provide a rationale for the proposed allocation method. Based on the information provided, the department will determine the allocation method that will be used to report costs.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-08. Nonallowable costs.

Nonallowable costs include, but are not limited to:

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;
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, 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 client services;

12. Home office costs which would be unallowable if incurred directly by the center;

13. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors. Such costs include, but are not limited to, annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements, stock transfer agent fees, and stockbroker and investment analysis;

14. The cost of any equipment, whether owned or leased, not exclusively used by the center except to the extent that the center demonstrates to the satisfaction of the department that any particular use of equipment was related to client 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;

16. Depreciation expense for center assets which are not related to client care;

17. Personal expenses of owners and employees for items or activities including, but not limited to, vacations, boats, airplanes, personal travel or vehicles, and entertainment;

18. Costs which are not adequately documented. Adequate documentation includes written documentation, 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;

19. The following taxes, when levied on providers:

    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. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense;

    d. Taxes such as real estate and sales tax for which exemptions are available to the center;

    e. Taxes on property which is not used in the provision of covered services; and

    f. Taxes such as sales taxes, levied, collected, and remitted by the center;

20. The unvested portion of a center's accrual for sick or annual leave;

21. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense may not be limited by this subsection;

22. Fringe benefits, exclusive of the Federal Insurance Contributions Act, unemployment compensation, health, dental and vision insurance, life insurance, workers compensation insurance, payments toward retirement plans, accrued compensation for absences, and uniform allowances which have not received written prior approval of the department;

23. Fundraising costs including salaries, advertising, promotional, or publicity costs incurred for such a purpose;

24. Funeral and cemetery expenses;;

25. Travel not directly related to professional conferences, state or federally sponsored activities, or client services;

26. Items or services such as telephone, television, and radio which are located in a client's room and which are furnished solely for the convenience of the clients;

27. Value of donated goods and services except as provided for in subsection 5 of section 75-03-20-09;

28. Religious salaries, space, and supplies;

29. Miscellaneous expenses not related to client services;

30. Premiums for top management personnel life insurance policies, except that such premiums shall be allowed if the policy is included within a group policy provided for all employees, or if such a policy is required as a condition of a mortgage or loan and the mortgagee or lending institution is listed as the beneficiary;

31. Travel costs involving the use of vehicles not exclusively used by the center are allowable only within the limits of this subsection:

    a. Vehicle travel costs may not exceed the amount established by the internal revenue service.

    b. The center must support vehicle costs related to client care with sufficient documentation. Documentation includes mileage logs for all miles, purpose of travel, and receipts for purchases.

    c. The center must document all costs associated with a vehicle not exclusively used by the center;

32. Vehicle and aircraft costs not directly related to center business or client services;

33. Nonclient-related operations and the associated administrative costs;

34. Costs related to income-producing activities regardless of the profitability of the activity;

35. Costs which are incurred by the center's subcontractors or by the lessor of property which the center leases, and which become an element in the subcontractor's or lessor's charge to the center, if such costs would not have been allowable had they been incurred by a center directly furnishing the subcontracted services or owning the leased property;

36. All costs for services paid directly by the department to an outside provider;

37. Depreciation on assets acquired with federal or state grants;

38. Costs that are incurred due to management inefficiency, unnecessary care or services, agreements not to compete, or activities not commonly accepted in the industry;

39. The cost of consumable food products, in excess of income from employees, guests, and nonclients offset in accordance with section 75-03-20-16.1, consumed by persons other than clients or maintenance personnel identified in subdivision c of subsection 2 of section 75-03-20-06; and

40. Payments to clients, whether in cash or in kind, for work performed or for bonuses or rewards based on behavior.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-09. Depreciation.

1. Ratesetting principles require that payment for services should include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the center, but are in use at the time the center 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 that are 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 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.

   b. Centers must use a 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 75-03-20-11. 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 client-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. For purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. In the case where the center's records do not contain the fair market value of the donated asset as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation purposes. The center may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.

6. Basis for depreciation.

   a. Determination of the cost basis of a center and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

      (1) If the sale is bona fide, the cost basis will be the actual cost of the buyer.

      (2) If the sale 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 depreciable assets which are purchased as an ongoing operation will be the seller's cost basis less accumulated depreciation.

   c. Cost basis of a center and its depreciable assets which have been used in any programs which are 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 depreciable assets purchased and subsequently leased to a provider who will operate the center will be the seller's cost basis less accumulated depreciation.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-10. Interest expense.

To be allowable under the program, interest must be:

1. 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. Identifiable in the center's accounting records.

3. Related to the reporting period in which the costs are incurred.

4. Necessary and proper for the operation, maintenance, or acquisition of the center. Necessary means that the interest be incurred on a loan made to satisfy a financial need of the center and for a purpose reasonable related to client 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 through common ownership or control.

5. Unrelated to funds borrowed to finance costs of assets in excess of the depreciable cost of the asset as recognized in "depreciation".

6. In such cases where it is necessary to issue bonds for financing, any bond premium or discount will be amortized on a straight-line basis over the life of the bond issue.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-11. Taxes.

1. Taxes assessed against the center in accordance with the levying enactments of the several states and lower levels of government and for which the center is liable for payment are allowable costs except for those taxes identified as unallowable in section 75-30-20-08.

2. Whenever exemptions to taxes are legally available, the center is to take advantage of them. If the center does not take advantage of available exemptions, the expense incurred for such taxes is not recognized as an allowable cost under the program.

3. Special assessments in excess of one thousand dollars which are 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 December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-12. 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 in itself, it may furnish to the individual center central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing such services is includable in the center's allowable costs under the program.

2. Costs which are not allowed in the center will not be allowed as home office costs which are allocated to the center.

3. Any service provided by the home office which is included in costs as payments by the center to an outside vendor or which duplicates costs for services provided by the center will be considered a duplication of costs and will not be 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 December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-13. Related organizations.

1. Costs applicable to services, facilities, and supplies furnished to a center by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Centers must identify such related organizations and costs, and allocations must be submitted with the cost report.

2. A center may lease buildings or equipment from a related organization within the meaning of ratesetting principles. In such case, rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to clients. the actual costs associated with the asset are limited to depreciation, interest, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-14. Startup costs.

In the first stages of operation, a new center incurs certain costs in developing its ability to care for clients 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 client care during that period because there are no clients receiving services. Such 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 starting with the month in which the first client is admitted.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-15. Compensation.

1. Reasonable compensation for a person with a minimum of 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 allowed must be in an amount not to exceed the average of salaries paid to individuals in like positions in all centers which are nonprofit organizations and which 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 would have to employ another person to perform them.

2. Items which are considered compensation include, but are not limited to, the following:

   a. Salary.

   b. Amounts paid by the center for the personal benefit of the person, e.g., housing or automobile allowance.

   c. The cost of assets, services, or supplies provided by the center for the personal use of the person.

   d. Pension, retirement benefits, annuities, or deferred compensation.

e. Insurance premiums.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-16. Revenue offsets.

Centers must identify income to offset costs where applicable in order that state financial participation not supplant or duplicate other funding sources. Any income whether in cash or in any other form which is received by the center, with the exception of the established rate and income from payment made under the Job Training Partnership Act, 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 in the ratio of the costs in each of the cost categories. These sources of income include, but are not limited to:

1. Food income. Centers receiving reimbursement for food and related costs from other programs such as the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or other nonclients for meals or snacks must reduce allowable food costs by the revenue received.

2. Vending income. Income from the sale of beverages, candy, or other items will be offset to the cost of the vending items or, if the cost is not identified, all vending income will be offset to maintenance costs.

3. Insurance recovery. Any amount received from insurance fora loss incurred must be offset against the appropriate cost category regardless of when the cost was incurred if the center did not adjust the basis for depreciable assets.

4. Refunds and rebates. Any refund or rebate received for a reported cost must be offset against the appropriate cost.

5. Transportation income. Any amount received for use of the center's vehicles must be offset to transportation costs.

6. Gain on the sale of assets. Revenue from the sale of an asset will be offset against depreciation expense.

7. Rental income. Revenue received from outside sources for the use of center buildings or equipment will be offset to property expenses.

8. Interest income. Revenue from investments will be offset against interest expense.

9. Grant income. Grants, gifts, and awards from the federal, state, or philanthropic agencies will be offset to the costs which are allowed under the grant.

10. Restricted gifts and income from endowments. Gifts or endowment income designated by a donor for paying specific operating costs incurred in providing contract services must be offset to costs in the year the cost is incurred regardless of when the gift or endowment is received.

11. Other cost-related income. Miscellaneous income including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset to the cost category where the item was expensed.

12. Other income to the center from local, state, or federal units of government may be determined by the department to be an offset to costs.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-17. Private pay rates.

1. The department's rate will not exceed the full rate charged to nondepartmental or private pay clients for the same service. The rate being charged nondepartmental or private pay clients at the time the services were provided will govern. In cases where the clients are not charged a daily rate, a daily rate will be computed by dividing the total nondepartmental or private pay charges for each month by the total nondepartmental or private pay census for each month. If at any time the center discounts any rates for those periods of time that a client is not in the facility and the discount creates a situation in which the rate is less than the established rate paid by the department, then the discounted rate will be the maximum chargeable for departmental clients and the department will be afforded a discount in the amount of the difference between the discounted rate and the established rate.

2. If the established rate exceeds the rate charged to nondepartmental or private pay clients for a service, on any given date, the center 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 shall, within thirty days, refund the overpayment. The refund will be the difference between the established rate and the rate charged to nondepartmental or private pay clients times the number of department client days paid during the period in which the established rate exceeded the nondepartmental or private 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 December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2

75-03-20-18. Reconsiderations and appeals.

1. **Reconsiderations.**

   a. A center dissatisfied with the final rate established must request a reconsideration of the final rate before a formal appeal can be made. Any requests for reconsideration must be filed with the department's division of mental health services for administrative consideration within thirty days of the date of the rate notification.

   b. The department's division of mental health services will make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. **Appeals.**

   a. A center dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. This appeal must be filed with the department within thirty days of the date of the written notice of the determination by the division of mental health services with respect to the request for reconsideration.

   b. An appeal under this section is timely perfected only if accompanied by written documents including the following information:

      (1) A copy of the letter received from the division of mental health services 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.

(5) The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

History: Effective December 1, 1991.
General Authority: NDCC 25-03.2-10, 50-06-16
Law Implemented: NDCC 25-03.2