

**CHAPTER 75-02-09**  
**RATESETTING FOR 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 factor" means the ~~inflation rate for psychiatric residential treatment facility services used to develop the legislative appropriation for the department for the applicable rate year~~legislatively approved inflation rate for psychiatric residential treatment facilities services.
3. "Allowable cost" means the facility's actual and reasonable cost after adjustments required by department rules.
4. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
5. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated

by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.

- ~~4-6.~~ "Cost category" means the classification or grouping of similar or related costs for purposes of reporting which are used in the determination of cost limitations and rates.
- ~~5-7.~~ "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information to the department.
- ~~6-8.~~ "Department" means the department of health and human services.
- ~~7-9.~~ "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~10.~~ "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2021 edition.
- ~~8-11.~~ "Desk rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
- ~~12.~~ "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
- ~~9-13.~~ "Education" means the cost of activities related to academic and vocational training generally provided by a school district.
- ~~10-14.~~ "Facility" means an entity that is a licensed psychiatric residential treatment facility for children under chapter 75-03-17.
- ~~11-15.~~ "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~12-16.~~ "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
- ~~13-17.~~ "Fringe benefits" means workers' compensation insurance, group health, dental or vision insurance, group life insurance, payment toward retirement plans, uniform allowances, employer's share of Federal Insurance Contributions Act, unemployment compensation taxes, and medical services furnished at facility expense.

- ~~14-18.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
19. "Historical costs" means the allowable costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
20. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care or psychiatric hospital setting and admitted as an inpatient.
- ~~15-21.~~ "In-house day" means a day that an individual was actually residing in the facility and was not on leave.
- ~~16-22.~~ "Interest" means cost incurred for the use of borrowed funds.
- ~~17-23.~~ "Leave day" means any day that an individual is not in the facility but is expected to return to the facility.
- ~~18-24.~~ "Private-pay resident" means an individual on whose behalf the facility is not receiving medical assistance payments.
- ~~19-25.~~ "Rate year" means the ~~twelve-month period beginning the seventh month after the end of a facility's fiscal year~~ calendar year from January first through December thirty-first.
- ~~20-26.~~ "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. Reasonable cost takes into account that the 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.
- ~~21-27.~~ "Related organization" means an organization that a 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 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 facility.
- ~~22-28.~~ "Report year" means ~~the facility's fiscal year~~ fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- ~~23-29.~~ "Resident day" means a day for which service is actually provided or for which payment is ordinarily sought.

24.30. "Special rate" means a desk rate or a final rate adjusted for nonrecurring or initial costs not included in the historical cost basis.

31. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**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 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 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 facility prior to the audit or review of the facility. Accounting or financial information regarding a related organization must be readily available to substantiate cost.
- c. Each 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~~five 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 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 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 must be maintained in a manner that 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 facility's fiscal yearend except as provided in subdivision g~~October first. The report must contain all actual costs of the 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 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 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 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 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 one thirty-day extension of the reporting deadline to a facility. To receive an extension, a facility must submit



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. A facility will be notified by telephone or electronic mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department shall review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rate.
- c. Reconsideration will not be given by the department for the desk rate unless the 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 facility.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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

**SECTION 4:** 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 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 and day of death are resident days. The day of discharge will be counted if payment is sought for that day. For a medical assistance 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 leave day; and
  - d. Monthly totals by resident and by type of day.
3. A maximum of fifteen consecutive days per occurrence may be allowed for payment by the medical assistance program for hospital leave. Hospital

leave days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subsection 2 of section 75-02-09-19.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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

**SECTION 5:** 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. Administration costs directly assignable to the facility must be reported as facility administration. Administration costs not directly assignable to the 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, except for training for personnel



required to maintain licensure, certification, or professional standards requirements;

k. Interest on funds borrowed for working capital only if repayment of working capital debt is made within three years of the borrowing;

l. Startup costs;

m. Security personnel or services;

n. Telephone service not included in other cost categories; and

n.o. All 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 costs that may include actual expenses of 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 facility, including case management, addiction, psychiatric, psychological, and other clinical evaluations, medication review, and partial care or day treatment; and

h. Training required to maintain licensure, certification, or professional

standards requirements, and the related travel costs.

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 facility's physical plant. Plant and housekeeping costs include:
  - a. Salaries and fringe benefits of personnel involved in cleaning, maintaining, and repairing the facility;
  - b. Supplies necessary to maintain the 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 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; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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

**SECTION 6:** Section 75-02-09-07 is amended as follows:

**75-02-09-07. Cost allocation.**

1. Direct costing of allowable facility costs must be used whenever possible. If direct costing is not possible, the allocation methods for facility and nonfacility 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, property, and utility costs.

- g. Dietary costs must be allocated based on meals served.
  - h. Laundry costs must be allocated on the basis of pounds of laundry or in-house resident days.
  - 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 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 facility. The facility shall also provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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

**SECTION 7:** 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 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 facility except to the extent the 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 facility;
16. Depreciation expense for 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 facilities);

19. The following taxes, when levied on 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 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 facility;
20. The unvested portion of a 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 facility unless:
  - a. Vehicle travel costs do not exceed the amount established by the internal revenue service;
  - b. The 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 facility documents all costs associated with a vehicle not exclusively used by the facility;
33. Vehicle and aircraft costs not directly related to 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 facility's subcontractors or by the lessor of property the facility leases, and which become an element in the subcontractor's or lessor's charge to the facility, if such costs would not have been allowable had they been incurred by a facility directly furnishing the subcontracted services or owning the leased property;
37. All costs for services paid directly by the department to an outside 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~~individuals 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; and
43. Medical assistance noncovered services.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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

**SECTION 8:** Section 75-02-09-15 is amended as follows:

**75-02-09-15. Compensation.**

Reasonable compensation for a ~~person~~an individual with a minimum of five percent ownership, ~~persons~~individuals on the governing board, or family members of top management personnel, including spouses and ~~persons~~individuals 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 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 facility would have to employ another ~~person~~individual to perform them.

**History:** Effective May 1, 1994; amended effective October 1, 2011; January 1, 2025.

**General Authority:** NDCC 50-24.1-04



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

**SECTION 9:** Section 75-02-09-19 is created as follows:

**75-02-09-19. Participation requirement.**

1. A facility shall have an effective provider agreement with the department.
2. A facility may charge to hold a bed for a period in excess of the period covered under subsection 3 of section 75-02-09-05, if:
  - a. The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and
  - b. For a medical assistance resident, the payment comes from sources other than from the resident's monthly income.

**History:** Effective January 1, 2025.

**General Authority:** NDCC 50-24.1-04

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