

CHAPTER 75-02-06 RATESETTING FOR NURSING HOME CARE

Section	
75-02-06-01	Definitions
75-02-06-02	Financial Reporting Requirements
75-02-06-02.1	General Cost Principles
75-02-06-02.2	Direct Care Costs
75-02-06-02.3	Other Direct Care Costs
75-02-06-02.4	Indirect Care Costs
75-02-06-02.5	Property Costs and Other Passthrough Costs
75-02-06-02.6	Cost Allocations
75-02-06-03	Depreciation
75-02-06-04	Interest Expense
75-02-06-04.1	Funded Depreciation
75-02-06-05	Compensation
75-02-06-06	Return on Investment
75-02-06-06.1	Home Office Costs
75-02-06-07	Related Organization
75-02-06-08	Rental Expense Paid to a Related Organization
75-02-06-09	Taxes
75-02-06-10	Bad Debts
75-02-06-11	Startup Costs
75-02-06-12	Offsets to Costs
75-02-06-12.1	Nonallowable Costs
75-02-06-13	Cost Allocation and Classification [Repealed]
75-02-06-14	Resident Days
75-02-06-15	Nursing Care [Repealed]
75-02-06-16	Rate Determinations for Cost
75-02-06-16.1	Adjustments for Salary and Benefit Enhancements [Repealed]
75-02-06-16.2	One-Time Adjustments for Legislatively Approved Cost Increases
75-02-06-16.3	Rate Determinations for Price
75-02-06-17	Classifications
75-02-06-18	Reviewer Criteria [Repealed]
75-02-06-19	Appeal From Facility Transfer or Discharge [Repealed]
75-02-06-20	Resident Personal Funds
75-02-06-21	Specialized Rates for Extraordinary Medical Care
75-02-06-22	Participation Requirements
75-02-06-23	Violation of Chapter Subjects Facility to Action
75-02-06-24	Exclusions
75-02-06-25	Notification of Rates
75-02-06-26	Reconsiderations

SECTION 1. Subsection 2 of section 75-02-06-02.2 is amended as follows:

2. **Nursing.**

- a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, certified nurse aides, individuals providing assistance with activities of daily living ~~identified in subdivision a of subsection 5 of section 75-02-06-47~~, individuals with a cognitive impairment who provide care-related services and who require the direction or supervision of a registered nurse in order to perform those services, and ward clerks.
- b. Allowable routine nursing supplies, personal hygiene supplies, medical supplies, and noncapitalized equipment necessary to provide for the care of residents routinely used in the provision of daily care of residents based on the resident's needs.
- c. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
- d. Routine hair care.
- e. The cost of noncapitalized wheelchairs.

History: Effective January 1, 1990; amended effective January 1, 1992; November 22, 1993; January 1, 1996; January 1, 2000; July 2, 2002; November 19, 2003; January 1, 2020; January 1, 2026.

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

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

SECTION 2. Subsection 2 of section 75-02-06-16 is amended as follows:

2. Rate determination.

- a. For the direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by standardized resident days. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification ~~in subsection 5 of section 75-02-06-17~~ to establish the direct care rate for that classification.
- b. For the other direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by resident days. The actual rate as calculated is compared to the limit rate to determine the

lesser of the actual rate or the limit rate.

- c. For the indirect cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by resident days subject to the adjustments provided for in subdivision g of subsection 4. The actual rate as calculated is compared to the limit rate to determine the lesser of the actual rate or the limit rate.
- d. For the passthrough costs category, the actual rate is calculated using allowable historical operating costs divided by resident days subject to the adjustments provided for in subdivision g of subsection 4.
- e. The property rate must be the greater of the fair rental value rate or the rate calculated using allowable property costs. The property rate must be calculated using resident days subject to the adjustments provided for in subdivision g of subsection 4. The fair rental value rate must be the rate established under subdivision e of subsection 1 of section 75-02-06-16.3.
- f. The lesser of the actual rate or the limit rate for other direct care and indirect care, the passthrough rate, the property rate, and the adjustments provided for in subsections 3 and 4 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016; April 1, 2018; January 1, 2020; January 1, 2022; October 1, 2022; January 1, 2024; January 1, 2026.

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

SECTION 3. Subsection 1 of section 75-02-06-16.3 is amended as follows:

- 1. Rate determination.
 - a. For the direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate to determine the lesser of the actual rate or the price rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then

multiplied times the weight for each classification in ~~subsection 5 of section 75-02-06-17~~ to establish the direct care rate for that classification.

- b. For the other direct cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by resident days. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate to determine the lesser of the actual rate or the price rate.
- c. For the indirect cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 5 divided by resident days subject to the adjustments provided for in subdivision i of subsection 3. The actual rate must include the margin cap. The actual rate as calculated is compared to the price rate to determine the lesser of the actual rate or the price rate.
- d. For the passthrough costs category, the actual rate is calculated using allowable historical operating costs divided by resident days subject to the adjustments provided for in subdivision i of subsection 3.
- e. The property rate must be the greater of the fair rental value rate or the rate calculated using allowable property costs subject to subsection 2. The property rate must be calculated using resident days subject to the adjustments provided for in subdivision i of subsection 3.
- f. The lesser of the actual rate or the price rate for other direct care and indirect care, the passthrough rate, the property rate, and the adjustments provided for in subsection 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

History: Effective January 1, 2022; amended effective October 1, 2022; January 1, 2024; January 1, 2026.

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

Law Implemented: NDCC 50-24.4

SECTION 4. Section 75-02-06-17 is amended as follows:

75-02-06-17. Classifications.

- 1. A facility shall complete a resident assessment for any resident occupying a licensed facility bed, except a respite care, ~~hospice inpatient respite~~

~~care, or hospice general care resident.~~

2. A resident must be classified in ~~one of forty-eight classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group AAA, not classified~~the default classification, until the next required resident assessment is performed in accordance with subsection 3. ~~For purposes of determining standardized resident days, any resident day classified as group AAA must be assigned the relative weight of one. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified, must be billed at the group AAA~~default classification established rate. The case-mix weight for establishing the rate for ~~group AAA~~the default classification is ~~0.450.64~~. Days for a respite care, ~~hospice inpatient respite care, or hospice general inpatient care~~ resident who is not classified must be given a weight of one when determining standardized resident days. Therapeutic, hospital, or institutional leave days that are resident days must be given a weight of 0.450.64 when determining standardized resident days.
3. Resident assessments must be completed as follows:
 - a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay. The assessment reference date must be between day seven and day fourteen.
 - b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment reference period ends on the first day of the next month. The assessment reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.
 - c. ~~An assessment must be submitted upon initiation of rehabilitation therapy if initiation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.~~
 - d. ~~An assessment must be submitted upon discontinuation of rehabilitation therapy if discontinuation of rehabilitation therapy~~

~~occurs outside of the quarterly assessment reference period established in subdivision b.~~

4. ~~The resident classification is based on resident characteristics and health status recorded on the resident assessment instrument, including the ability to perform activities of daily living, diagnoses, and treatment received. The resident is first classified in one of seven major categories. The resident is then classified into subdivisions of each major category based on the resident's activities of daily living score and whether nursing rehabilitation services are needed or the resident has signs of depression~~clinical complexity, functional status, need for restorative services, cognitive impairment, and comorbidities.
5. For purposes of this section:
 - a. ~~A resident's activities of daily living score used in determining the resident's classification is based on the amount of assistance, as described in the resident assessment instrument, the resident needs to complete the activities of bed mobility, transferring, toileting, and eating;~~
 - b. ~~A resident has a need for nursing rehabilitation services if the resident receives two or more of the following for at least fifteen minutes per day for at least six of the seven days preceding the assessment:~~
 - (1) ~~Passive or active range of motion;~~
 - (2) ~~Amputation or prosthesis care;~~
 - (3) ~~Splint or brace assistance;~~
 - (4) ~~Dressing or grooming training;~~
 - (5) ~~Eating or swallowing training;~~
 - (6) ~~Bed mobility or walking training;~~
 - (7) ~~Transfer training;~~
 - (8) ~~Communication training; or~~
 - (9) ~~Urinary toileting, bladder, or bowel training program; and~~
 - c. ~~A resident has signs of depression if the resident's total severity score for depression is at least ten based on the following:~~

- ~~(1) — Little interest or pleasure in doing things;~~
- ~~(2) — Feeling down, depressed, or hopeless;~~
- ~~(3) — Trouble falling asleep or staying asleep or sleeping too much;~~
- ~~(4) — Feeling tired or having little energy;~~
- ~~(5) — Poor appetite or overeating;~~
- ~~(6) — Feeling bad or failure or let self or others down;~~
- ~~(7) — Trouble concentrating on things;~~
- ~~(8) — Moving or speaking slowly or being fidgety or restless;~~
- ~~(9) — Thoughts of being better off dead or hurting self; or~~
- ~~(10) — Short tempered or easily annoyed.~~

~~6. — The major categories in hierarchical order are:~~

- ~~a. — Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.~~
- ~~b. — Extensive services category. To qualify for the extensive services category, a resident must have an activities of daily living score of at least two and within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator or respirator while a resident.~~
- ~~c. — Special care high category.~~
 - ~~(1) — To qualify for the special care high category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:~~
 - ~~(a) — Comatose and completely dependent for activities of~~

daily living;

(b) ~~Septicemia;~~

(c) ~~Diabetes with:~~

~~[1] Insulin injections seven days a week; and~~

~~[2] Insulin order changes on two or more days;~~

(d) ~~Quadriplegia with an activities of daily living score of at least five;~~

(e) ~~Chronic obstructive pulmonary disease and shortness of breath when lying flat;~~

(f) ~~A fever in combination with:~~

~~[1] Pneumonia;~~

~~[2] Vomiting;~~

~~[3] Weight loss; or~~

~~[4] Tube feedings while a resident that comprise at least:~~

~~[a] Twenty six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or~~

~~[b] Fifty one percent of daily caloric requirements;~~

(g) ~~Parenteral or intravenous feedings provided in and administered in and by the nursing facility; or~~

(h) ~~Respiratory therapy seven days a week.~~

(2) ~~A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.~~

d. ~~Special care low category.~~

- ~~(1) To qualify for the special care low category, a resident must have at least one of the following conditions or treatments with an activities of daily living score of at least two:~~
- ~~(a) Multiple sclerosis, cerebral palsy, or Parkinson's disease with an activities of daily living score of at least five;~~
 - ~~(b) Respiratory failure and oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;~~
 - ~~(c) Tube feedings while a resident that comprise at least:
 - ~~[1] Twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day; or~~
 - ~~[2] Fifty-one percent of daily caloric requirements.~~~~
 - ~~(d) Two or more stage two pressure ulcers with two or more skin treatments;~~
 - ~~(e) Stage three or four pressure ulcer with two or more skin treatments;~~
 - ~~(f) Two or more venous or arterial ulcers with two or more skin treatments;~~
 - ~~(g) One stage two pressure ulcer and one venous or arterial ulcer with two or more skin treatments;~~
 - ~~(h) Foot infection, diabetic foot ulcer, or other open lesion of foot with application of dressings to the foot;~~
 - ~~(i) Radiation treatment while a resident; or~~
 - ~~(j) Dialysis treatment while a resident.~~
- ~~(2) A resident who qualifies for the special care low category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.~~

~~e. Clinically complex category.~~

~~(1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the extensive services or special care categories with an activities of daily living score of zero or one or have at least one of the following conditions, treatments, or circumstances:~~

~~(a) Pneumonia;~~

~~(b) Hemiplegia or hemiparesis with an activities of daily living score of at least five;~~

~~(c) Surgical wounds or open lesions with at least one skin treatment;~~

~~(d) Burns;~~

~~(e) Chemotherapy while a resident;~~

~~(f) Oxygen therapy while a resident administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment;~~

~~(g) Intravenous medication provided, instilled, and administered by staff within the facility while a resident; or~~

~~(h) Transfusions while a resident.~~

~~(2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.~~

~~f. Behavioral symptoms and cognitive performance category. To qualify for the behavioral symptoms and cognitive performance category, a resident must have an activities of daily living score of less than six.~~

~~(1) To qualify for the behavioral symptoms and cognitive performance category, a resident must either:~~

~~(a) Be cognitively impaired based on one of the following:~~

~~[1] A brief interview of mental status score of less than ten;~~

~~[2] Coma and completely dependent for activities of daily living;~~

~~[3] Severely impaired cognitive skills; or~~

~~[4] Have a severe problem being understood or severe cognitive skills problem and two or more of the following:~~

~~[a] Problem being understood;~~

~~[b] Short term memory problem; or~~

~~[c] Cognitive skills problem.~~

~~(b) Exhibit behavioral symptoms with one or more of the following symptoms:~~

~~[1] Hallucinations;~~

~~[2] Delusions;~~

~~[3] Physical or verbal behavior symptoms directed toward others on at least four days in the seven days preceding the assessment;~~

~~[4] Other behavioral symptoms not directed toward others on at least four days in the seven days preceding the assessment;~~

~~[5] Rejection of care on at least four days in the seven days preceding the assessment; or~~

~~[6] Wandering on at least four days in the seven days preceding the assessment.~~

~~(2) A resident who qualifies for the behavioral symptoms and cognitive performance category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.~~

- ~~g. — Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.~~
- ~~7. — Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:~~
- ~~a. — Rehabilitation with an activities of daily living score of fifteen or sixteen (group RAE); case-mix weight: 1.65.~~
 - ~~b. — Rehabilitation with an activities of daily living score between eleven and fourteen, inclusive (group RAD); case-mix weight: 1.58.~~
 - ~~c. — Rehabilitation with an activities of daily living score between six and ten, inclusive (group RAC); case-mix weight: 1.36.~~
 - ~~d. — Rehabilitation with an activities of daily living score between two and five, inclusive (group RAB); case-mix weight: 1.10.~~
 - ~~e. — Rehabilitation with an activities of daily living score of zero or one (group RAA); case-mix weight: 0.82.~~
 - ~~f. — Extensive services with an activities of daily living score of at least two and received tracheostomy care and ventilator or respirator care (group ES3); case-mix weight: 3.00.~~
 - ~~g. — Extensive services with an activities of daily living score of at least two and received tracheostomy, ventilator, or respirator care (group ES2); case-mix weight: 2.23.~~
 - ~~h. — Extensive services with an activities of daily living score of at least two and required infection isolation (group ES1); case-mix weight: 2.22.~~
 - ~~i. — Special care high with depression and an activities of daily living score of fifteen or sixteen (group HE2); case-mix weight: 1.88.~~
 - ~~j. — Special care high with an activities of daily living score of fifteen or sixteen (group HE1); case-mix weight: 1.47.~~
 - ~~k. — Special care high with depression and an activities of daily living score between eleven and fourteen, inclusive (group HD2); case-~~

~~mix weight: 1.69.~~

- ~~l. Special care high with an activities of daily living score between eleven and fourteen, inclusive (group HD1); case mix weight: 1.33.~~
- ~~m. Special care high with depression and an activities of daily living score between six and ten, inclusive (group HC2); case mix weight: 1.57.~~
- ~~n. Special care high with an activities of daily living score between six and ten, inclusive (group HC1); case mix weight: 1.23.~~
- ~~o. Special care high with depression and an activities of daily living score between two and five, inclusive (group HB2); case mix weight: 1.55.~~
- ~~p. Special care high with an activities of daily living score between two and five, inclusive (group HB1); case mix weight: 1.22.~~
- ~~q. Special care low with depression and an activities of daily living score of fifteen or sixteen (group LE2); case mix weight: 1.61.~~
- ~~r. Special care low with an activities of daily living score of fifteen or sixteen (group LE1); case mix weight: 1.26.~~
- ~~s. Special care low with depression and an activities of daily living score between eleven and fourteen, inclusive (group LD2); case mix weight: 1.54.~~
- ~~t. Special care low with an activities of daily living score between eleven and fourteen, inclusive (group LD1); case mix weight: 1.21.~~
- ~~u. Special care low with depression and an activities of daily living score between six and ten, inclusive (group LC2); case mix weight: 1.30.~~
- ~~v. Special care low with an activities of daily living score between six and ten, inclusive (group LC1); case mix weight: 1.02.~~
- ~~w. Special care low with depression and an activities of daily living score between two and five, inclusive (group LB2); case mix weight: 1.21.~~
- ~~x. Special care low with an activities of daily living score between two and five, inclusive (group LB1); case mix weight: 0.95.~~

- y. — ~~Clinically complex with depression and an activities of daily living score of fifteen or sixteen (group CE2); case-mix weight: 1.39.~~
- z. — ~~Clinically complex with an activities of daily living score of fifteen or sixteen (group CE1); case-mix weight: 1.25.~~
- aa. — ~~Clinically complex with depression and an activities of daily living score between eleven and fourteen, inclusive (group CD2); case-mix weight: 1.29.~~
- bb. — ~~Clinically complex with an activities of daily living score between eleven and fourteen, inclusive (group CD1); case-mix weight: 1.15.~~
- cc. — ~~Clinically complex with depression and an activities of daily living score between six and ten, inclusive (group CC2); case-mix weight: 1.08.~~
- dd. — ~~Clinically complex with an activities of daily living score between six and ten, inclusive (group CC1); case-mix weight: 0.96.~~
- ee. — ~~Clinically complex with depression and an activities of daily living score between two and five, inclusive (group CB2); case-mix weight: 0.95.~~
- ff. — ~~Clinically complex and an activities of daily living score between two and five, inclusive (group CB1); case-mix weight: 0.85.~~
- gg. — ~~Clinically complex with depression and an activities of daily living score of zero or one (group CA2); case-mix weight: 0.73.~~
- hh. — ~~Clinically complex and an activities of daily living score of zero or one (group CA1); case-mix weight: 0.65.~~
- ii. — ~~Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group BB2); case-mix weight: 0.81.~~
- jj. — ~~Behavioral symptoms and cognitive performance with an activities of daily living score between two and five, inclusive (group BB1); case-mix weight: 0.75.~~
- kk. — ~~Behavioral symptoms and cognitive performance with nursing rehabilitation and an activities of daily living score of zero or one (group BA2); case-mix weight: 0.58.~~
- ll. — ~~Behavioral symptoms and cognitive performance with an activities~~

~~of daily living score of zero or one (group BA1); case-mix weight: 0.53.~~

~~mm. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of fifteen or sixteen, (group PE2); case-mix weight: 1.25.~~

~~nn. Reduced physical functioning with an activities of daily living score of fifteen or sixteen, (group PE1); case-mix weight: 1.17.~~

~~oo. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and fourteen, inclusive (group PD2); case-mix weight: 1.15.~~

~~pp. Reduced physical functioning with an activities of daily living score between eleven and fourteen, inclusive (group PD1); case-mix weight: 1.06.~~

~~qq. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group PC2); case-mix weight: 0.91.~~

~~rr. Reduced physical functioning with an activities of daily living score between six and ten, inclusive (group PC1); case-mix weight: 0.85.~~

~~ss. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between two and five, inclusive (group PB2); case-mix weight: 0.70.~~

~~tt. Reduced physical functioning with an activities of daily living score between two and five, inclusive (group PB1); case-mix weight: 0.65.~~

~~uu. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of zero or one (group PA2); case-mix weight: 0.49.~~

~~vv. Reduced physical functioning with an activities of daily living score of zero or one (group PA1); case-mix weight: 0.45.~~

~~8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.~~

9.6. A facility complying with any provision of this section that requires a resident assessment must~~shall~~ use the minimum data set in a resident

assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

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