CHAPTER 75-03-33
INTERGOVERNMENTAL TRANSFER PROGRAM

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75-03-33-01. Definitions.

1. "Advisory committee" means a committee established by the department to review loan applications.

2. "Alternative to nursing facility care" means services described in the department's home and community-based service waiver for aged and disabled individuals eligible for medical assistance.

3. "Assisted living facility" has the meaning provided in North Dakota Century Code section 50-24.5-01.

4. "Basic care facility" has the meaning provided in North Dakota Century Code section 23-09.3-01.

5. "Department" means the North Dakota department of human services.

6. "Entity" means a corporation, unincorporated association, business, trust, estate, partnership, state, or two or more individuals having a joint or common economic interest.

7. "Individual eligible for assistance" means an individual who meets the qualifying criteria for participation in programs funded by the department, including the medical assistance program, Medicaid waiver for the aged and disabled, service payments for the elderly and disabled, expanded service payments for the elderly and disabled, and the basic care assistance program.

8. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and North Dakota Century Code chapter 50-24.1.

9. "Nursing facility" has the same meaning as provided in North Dakota Century Code section 50-24.4-01 for the term "nursing home".

10. "Project" means a plan or proposal to renovate a nursing facility, basic care facility, or assisted living facility.

11. "Qualified service provider" means a county agency or independent contractor who has met standards for services and operations established by the department.

12. "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, regulations, and quality and safety standards. Reasonable cost takes into account that the

entity 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.

13. "Related organization" means a close relative or individual or an organization which an entity is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the entity. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or entity.

14. "Renovate" means to restore to an earlier condition as by repairing or remodeling.

15. "Unit" means a residential living space for one or more individuals within an assisted living facility.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-01

75-03-33-02. General.

Repealed effective July 1, 2001.

75-03-33-03. Application approval process.

1. At least annually, the department shall request applications from nursing facilities, basic care facilities, and assisted living facilities for loans for renovation projects. The department shall establish a calendar for receiving and evaluating proposals. Applicants shall submit documents outlined in the request for applications by the dates indicated by the calendar.

2. For each stage of the application process, the advisory committee shall review the documents submitted by the applicants and make a recommendation to the department regarding the proposed projects.

3. The Bank of North Dakota shall review all loan applications prior to final approval by the department. The Bank of North Dakota may request any financial information it deems necessary for its review of a loan application.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04, 50-30-05

75-03-33-04. Eligible applicants.

The department may approve loans to the following entities renovating an existing nursing facility, basic care facility, or assisted living facility:

1. A nursing facility located in North Dakota which is enrolled, as of the date of the application, as a provider under the medical assistance program;

2. An entity enrolled, as of the date of the application, as a basic care provider in North Dakota; or

3. An entity registered, as of the date of application, as an assisted living facility in North Dakota.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04

75-03-33-05. Loans.

1. Subject to limitations in this chapter, the department may approve loans for costs related to the renovation of a nursing facility, basic care facility, or assisted living facility.

2. The interest rate for loans distributed from the long-term care facility loan fund is two percent of the outstanding principal balance of the loan.

3. The department shall approve loans to the extent funds are available based on the criteria set forth in this chapter. The department's denial of an application for a loan does not preclude an entity from making future applications.

4. Effective July 1, 2001, projects converting nursing facility bed capacity to basic care bed capacity shall be given preference for a loan.

5. The department shall not approve loans to renovate an assisted living facility unless the facility can demonstrate that accommodations or housing costs are affordable to individuals eligible for assistance.

6. Loan funds may not be awarded for costs that are payable through other state, local, or federal programs.

7. Loan funds may not be awarded to refinance debt.

8. Loan funds may not be awarded for new construction whether attached or detached from an existing building.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04

75-03-33-06. Limits.

1. To be eligible for a loan to renovate a nursing facility, basic care facility, or assisted living facility, an entity shall provide at least ten percent of the total cost of renovation. Loan funds available for renovation are limited to the lesser of one million dollars or ninety percent of the actual cost of renovation.

2. Grant funds are payable upon receipt of a claim or submission of a cost report identifying expenses incurred. An entity shall request grant funds within six months after incurring the cost, except when requesting grant funds for operating losses. Grant funds awarded for operating losses are payable on a quarterly or yearly basis upon submission of a cost report. If reimbursement is requested on a quarterly basis, the amount reimbursed for the first three quarters may not exceed ninety percent of the total amount of the grant awarded for the first-year operating loss. A final cost report must be filed no later than eighteen months following the start of operation for final reimbursement. Grant funds reimbursed in excess of the allowable first-year operating loss must be refunded to the department within thirty days of notification by the department to the entity. In addition to other remedies provided by law, the department may deduct the amount of any refund due from an entity from any money owed by the department to the entity or the entity's successor in interest.

3. The department may not pay grant funds or approve loans for costs incurred by an entity for services or items furnished by a related organization that exceed the lower of:

   a. The cost to the related organization;

   b. The amount charged the entity by the related organization; or

c. The price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04

75-03-33-07. Participation requirements.

1. The department may not disburse grant funds if the entity discontinues services on or before the date the entity submits a claim requesting payment.

2. The entity shall expend grant or loan funds for costs that are directly attributable to the project, in accordance with the application approved by the department.

3. The entity shall separately identify related party costs included in any amounts requested from the department.

4. The entity may not give preferential treatment to individuals who are not eligible for assistance over individuals eligible for assistance when determining admission or to whom services will be provided.

5. An entity accepting loan or grant funds to develop a particular service must enroll or have a provider agreement with the department to provide those services.

6. The entity shall make available a minimum of thirty percent of licensed capacity or units constructed, renovated, or converted, to individuals eligible for assistance, except when the entity can demonstrate that the minimum occupancy cannot be met because of a lack of individuals eligible for assistance requiring accommodations.

7. The entity shall comply with all applicable rules, regulations, policies, or procedures established by the department pertaining to the department's assistance programs from which the entity is receiving payment.

8. The entity shall comply with all local, state, and national laws and regulations pertaining to construction.

9. The entity shall be responsible for all incidental costs related to project completion.

10. The entity shall refund to the North Dakota health care trust fund any grant awarded for construction, renovation, or conversion if the entity or its successor in interest ceases to operate a basic care facility, assisted living facility, or facility providing other alternatives to nursing facility care or does not meet the minimum occupancy requirements during the ten-year period following the date grant funds were awarded. The amount of the grant to be refunded shall be reduced by ten percent per year for each year the entity operated a basic care facility, assisted living facility, or provided other alternatives to nursing facility care.

11. All loans become immediately due and payable if the entity or its successor in interest ceases to operate a nursing facility, basic care facility, assisted living facility, orprovide other alternatives to nursing facility care or does not meet the minimum occupancy requirements during the ten-year period following the date the loan was awarded.

12. In addition to other remedies provided by law, the department may deduct the amount of any refund due from an entity from any money owed by the department to the entity or the entity's successor in interest.

History: Effective May 31, 2000; amended effective July 1, 2001.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-03, 50-30-04

75-03-33-08. Startup costs.

Grant awards for startup costs are limited to approved applications submitted prior to July 1, 2001.

1. Startup costs are those costs incurred by an entity prior to providing services and while developing the ability to provide services. Startup costs generally include the costs of obtaining staff, training and education, and other operating costs incurred while developing the ability to provide services. Startup costs must be reasonable, necessary, and related to assisted living, basic care, or other alternative to nursing facility care.

2. An entity awarded a grant for startup costs must request payment of grant funds no later than six months following the date the entity begins providing services.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04

75-03-33-09. Operating loss.

Grant awards for operating losses are limited to approved applications submitted prior to July 1, 2001.

1. First-year operating losses are operating losses incurred by an entity after July 1, 1999, for the first twelve months of operation following the date an entity begins providing basic care services, assisted living services, or other alternative to nursing facility care. Grants for operating losses shall not exceed the difference between expenses and revenues related to providing the services.

2. Operating expenses shall include only necessary, reasonable, and actual expenses related to the project and incurred while providing services.

3. Operating expenses shall not include costs that are not appropriate, necessary, or proper for the development or operation of the project. These costs include personal expenses of the owners or employees, good will, donations, startup costs, political contributions, fines or penalties, bad debt, fundraising costs, loss contingencies, or extraordinary losses.

4. Principal and interest rather than depreciation and interest shall be used when determining the operating loss.

5. Operating revenue shall include all revenue received for providing services, but does not include donation income.

6. An entity awarded a grant for operating losses may request payment of grant funds on a quarterly or yearly basis by submitting a cost report on forms prescribed by the department. The entity shall submit a final cost report no later than eighteen months following the start of operation.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-04

75-03-33-10. Records and reporting.

1. An entity that receives loan funds shall annually submit to the department cost reports, on forms prescribed by the department, for a period of ten years following the datethe entity closes the loan.

2. When services are provided in a facility sharing services with a licensed nursing facility or basic care facility, the allocation methods set forth in chapter 75-02-06 or 75-02-07 shall apply.

3. The entity shall maintain, for a period of not less than three years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by the cost report in sufficient detail to substantiate the cost data reported. The entity shall make such records available to the department upon demand.

4. The entity shall maintain complete and separate records regarding loan and grant expenditures.

5. The entity shall maintain occupancy or use statistics that separately identify individuals who are not eligible for assistance from individuals eligible for assistance.

6. The entity shall request payment of grant funds on forms prescribed by the department.

History: Effective May 31, 2000; amended effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-07

75-03-33-11. Nursing facility licensed bed capacity reduction incentive payments.

The department shall make an incentive payment, to the extent funds are available, to a nursing facility that offers to delicense beds based on criteria set forth in this chapter.

1. The department may pay an incentive:

   a. Up to fifteen thousand dollars per licensed nursing facility bed to a nursing facility that reduces all of its licensed bed capacity;

   b. Up to twelve thousand dollars per licensed nursing facility bed to a nursing facility that reduces its licensed nursing facility bed capacity by at least eight beds; or

   c. Up to eight thousand dollars per licensed nursing facility bed to a nursing facility that reduces its licensed nursing facility capacity by seven or fewer beds.

2. The department shall give priority for payment of incentives to facilities offering to reduce their entire licensed bed capacity. If offers exceed funds available, the department shall make a counteroffer to each facility.

3. If, after payment of incentives under subsection 2, funds are available, the department shall make incentive payments to facilities offering to delicense a portion of their licensed bed capacity. If offers exceed funds available, the department shall give priority to the lowest per bed offer. The department may have facilities resubmit offers if there are two or more offers for the same per bed amount.

4. The department shall request offers on a quarterly basis from nursing facilities to delicense nursing facility bed capacity to the extent funds are available.

5. To be eligible for an incentive payment, a nursing facility's offer to reduce bed capacity must be received by the department by the first day of the quarter for which incentives shall be

approved. The effective date of all bed delicensing may not be later than the last day of the quarter following the quarter for which the incentive shall be approved.

6. Incentive payments may only be made for the delicensing of nursing facility bed capacity that is medicaid-certified.

7. The department shall not pay incentives to nursing facilities for nursing facility beds that were delicensed prior to the first day of the quarter for which incentives shall be approved.

8. Incentive payments may not be paid until after the effective date of the reduction in licensed capacity.

9. An incentive may not be paid for nursing facility licensed bed capacity that is converted to basic care bed capacity.

10. No later than the first day of the second month of a quarter, the department shall inform all facilities that have submitted an offer by the first day of the quarter of the department's approval or disapproval of the offer.

11. The department's denial of an offer does not preclude a nursing facility from making future offers.

History: Effective July 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-30-07