

**CHAPTER 75-04-05**  
**REIMBURSEMENT FOR PROVIDERS OF SERVICES TO INDIVIDUALS WITH**  
**DEVELOPMENTAL DISABILITIES**

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**75-04-05-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

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. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
4. "Board" means all food and dietary supply costs.

5. "Clients" means eligible individuals with developmental disabilities on whose behalf services are provided or purchased.
6. "Consumer" means an individual with developmental disabilities.
7. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities.
8. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a providership are divided for purposes of cost assignment and allocations.
9. "Day supports" means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety.
10. "Department" means the North Dakota department of human services.
11. "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
12. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
13. "Facility-based" means a workshop for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.

14. "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.
15. "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
16. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
17. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
18. "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
19. "Individualized supported living arrangements" means a residential support services option in which services are authorized for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
20. "Interest" means the cost incurred with the use of borrowed funds.
21. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
22. "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.
23. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
24. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the

maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.

25. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
26. "Staff training" means an organized program to improve staff performance.
27. "Units of service" for billing purposes means:
  - a. In residential settings, one individual served for one 24-hour day;
  - b. In day service settings, one individual served for one hour; and
  - c. In extended services, one individual served for one hour of job coach intervention.

The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-02. Eligibility for reimbursement.** Providers of service are eligible for reimbursement for the costs of rendered services contingent upon the following:

1. The provider, other than a state-owned or state-operated provider, holds, and is required to hold, a current valid license, issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
2. The provider's clients have on file with the department a current individual service plan.
3. The provider has a current valid purchase of service agreement with the department authorizing the reimbursement.
4. The provider adopts and uses a system of accounting prescribed by the department.
5. The provider participates in the program audit and utilization review process established by the department.
6. The provider is in compliance with chapter 75-04-02.

7. Providers, as a condition of eligibility for reimbursement for the cost of services for individuals with developmental disabilities, must accept, as payment in full, sums paid in accordance with the final rate of reimbursement.
8. Providers must obtain approval from the department for addition of square footage if the cost of the additional space is to be reimbursed by the department.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-03. Startup costs.** Repealed effective June 1, 1995.

**75-04-05-04. Application for advancement of startup costs.** Repealed effective June 1, 1995.

**75-04-05-05. Allowable startup costs.** Repealed effective June 1, 1995.

**75-04-05-06. Reimbursement requirements - Startup costs.** Repealed effective June 1, 1995.

**75-04-05-07. Grants-in-aid.** Repealed effective June 1, 1995.

**75-04-05-08. Financial reporting requirements.**

1. **Records.**

- a. The provider shall maintain on the premises the required 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 programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information shall be submitted for costs, undocumented at the reporting facility, with the cost report or provided prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, 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. If an audit has begun, but has

not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

**2. Accounting and reporting requirements.**

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual in accordance with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- c. To properly facilitate auditing, the accounting system must be maintained in a manner that will allow cost accounts to be grouped by cost center and readily traceable to the cost report.
- d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The department will send a letter to a provider containing budget instructions one hundred twenty days prior to the start of the provider's fiscal year. The provider shall submit the statement of budgeted costs to the department within sixty days of the date of the letter consistent with the budget guidelines for establishing an interim rate in the subsequent year. The department shall issue the provider's interim rate within sixty days of the receipt of a provider's budget. Providers must submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadline described in this subsection is met, the department shall not count any day in which sufficient information has not been timely provided by a provider when the provider has shown good cause for its inability to provide the required information within the time periods prescribed in this subdivision.
- e. A cost report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate. The mailing of a cost report by registered mail, return receipt requested, will ensure documentation of the filing date.

- f. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.
3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the provider, the department shall provide for audits as necessary.
- a. A provider shall submit its cost report ninety days from the last day of the provider's fiscal year.
  - b. A provider may request, and the department may grant, one thirty-day extension of the due date of the cost report for good cause. If an extension is granted, no penalty will apply during the extension period. The grant of a thirty-day extension does not extend the implementation of the penalty as described in subdivision a of subsection 4 if the cost report is not received by the extended due date.
  - c. The preliminary audit report shall be submitted to the provider no later than twelve months after the department receives the provider's cost report.
  - d. The provider shall submit a preliminary response to the preliminary audit report to the department within forty-five days of receipt of the preliminary audit report.
  - e. The final audit report shall be submitted to the provider within ninety days of the department's receipt of the preliminary response.
  - f. Providers must submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadlines described in subdivision c, d, or e have been met, the department shall not count any day in which sufficient information has not been timely provided by a provider when the provider has shown good cause for its inability to provide the required information within the time periods prescribed in any one of those subdivisions.

#### 4. Penalties.

- a. If a provider fails to file its cost report on or before the due date, the department shall assess against the provider a nonrefundable penalty of one percent of one-twelfth of final allowable costs for each month in which the cost report was not timely filed. Final allowable costs means a program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations for the cost report year being reported.
- b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:
  - (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
  - (2) After identification and notification through a previous audit, a provider continues to list items exempted in audit as allowable costs on the cost report.
- c. Penalties may be separately imposed for each violation.
- d. No penalty may be waived by the department except those described in subdivision b and only then upon a showing of good cause.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### 75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the mentally retarded, payment rates will be established for training, room, and board.
2. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year.
3. Room and board charges to clients may not exceed the maximum supplemental security income payment less twenty-five dollars for the personal incidental expenses of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider shall reimburse clients in a manner approved by the department.

4. In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients will be established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. No payments may be solicited or received by a provider from a client or any other individual to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
  - a. Submission requirements of section 75-04-05-02; and
  - b. Field and desk audits.
11. Rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, will be based on the following:
  - a. Rates for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the rated occupancy established by the department or actual occupancy, whichever is greater.
  - b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:
    - (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and

- (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
    - c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the failure to do so would have imposed a detriment to the well-being of its clients.
      - (1) Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefit costs for the day service or group home proportionate to the decrease in units.
      - (2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.
12. Adjustments and appeal procedures are as follows:
- a. Rate adjustments may be made to correct errors.
  - b. A final adjustment will be made for those facilities that have terminated participation in the program.
  - c. Any requests for reconsideration of the rate must be submitted in writing to the disability services division within ten days of the date of the final rate notification. The department may redetermine the rate on its own motion.
  - d. A provider may appeal a decision within thirty days after mailing of the written notice of the decision on a request for reconsideration of the final rate.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-10. Reimbursement.** Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

- 1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. Providers are required to submit a statement of budgeted costs to the department no less than

annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the provider's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.

2. a. Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider for an underpayment.
- b. Interprovider settlements between intermediate care facilities for the mentally retarded and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.
  - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding.
  - c. Providers shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
  - d. Providers of residential services must offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of

reimbursement will be established on the same basis. Providers may not be reimbursed for those days in which services are not offered to clients.

- e. Providers of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days must be offered. The budgeted units of service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.
- f. Services exempted from the application of subdivisions d and e are:
  - (1) Emergency services.
  - (2) Family subsidy.
  - (3) Supported living.
- g.
  - (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
  - (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
  - (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
  - (2) Comparable salaries and benefits for comparable positions in state government;
  - (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
  - (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, providers may establish higher salaries and benefit levels than those established by the department.

- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-11. Cost report.**

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. When costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. When costs are incurred jointly for two or more basic services, the costs will be allocated as follows:
  - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff-to-client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. When no time studies exist, the applicable units must be used for allocation. When there is no definition of a unit of service, the department will use the unit of service for billing purposes for residential settings.
  - b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.
  - c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
  - d. Real property expense. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. When multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
  - e. Travel. The total of all unassigned travel costs must be included in administrative costs.

- f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
  - g. Food services. The total of all food costs should be allocated based on meals served. When the number of meals served has not been identified, applicable units must be used.
  - h. Insurance and bonds. The total of all such costs, except insurance costs representing real property expense or vehicle insurance costs applicable to vehicles used for one or more basic services, must be included as administrative costs.
  - i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
  - j. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, board, supported living arrangements, family support services, and extended services based on actual units of service. When determining the day support ratio of general client costs, total day support units will be divided by eight and rounded to the nearest whole number.
  - k. Administrative costs. Total administrative expenses may be allocated to all service categories, on time studies done in compliance with subdivision a. If time studies are not available, total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.
2. Identification of the means of financing is to be as follows:
- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
  - b. Revenues must be distributed on the appropriate budget report by program. When private contributions are used to supplement or enrich services, the sum may be distributed accordingly. When contributions are held in reserve for special purposes, it may be described by narrative.

- c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- d. State financial participation in the habilitative costs associated with day supports shall not include production costs.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-12. Adjustment to cost and cost limitation.**

1. Providers under contract with the department to provide services to individuals with developmental disabilities must submit to the department, no less than annually, a statement of actual costs on the cost report.
2. Providers must disclose all costs and all revenues.
3. Providers must identify income to offset costs when applicable in order that state financial participation not supplant or duplicate other funding sources. Income must be offset up to the total of appropriate allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. 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 cost category. These sources, and the cost to be offset, must include the following:
  - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
  - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
  - c. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
  - d. Telephone and telegraph income from clients, staff, or guests, cost of the service.
  - e. Rental assistance or subsidy when not reported as third-party income, total costs.
  - f. Interest or investment income, interest expense.

- g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
  - h. Respite care income when received for a reserved bed, room, board, and staff costs.
  - i. Other income to the provider from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant, and as such may not be offset against costs. Examples include when:
    - a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
    - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor.
    - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
    - d. The contributor is not engaged in business with the provider or a facility related to the provider.
  5. If an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
  6. If the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates should be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
  7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They should be used to reduce the specific costs to which they apply. If possible, they should accrue

to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.

- a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
- b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
- c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
- d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that they are based on the dollar value of purchases, not the quantity of purchases.
- e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

**History:** Effective July 1, 1984; amended effective June 1, 1995; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-13. Nonallowable costs.** Nonallowable costs include:

1. Advertising designed to encourage potential consumers to select a particular provider.
2. Amortization of noncompetitive agreements.
3. Bad debt expense except as provided in section 75-04-05-13.1.
4. Barber and beautician services.
5. Basic research.
6. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid per day to a member of the legislative council pursuant to North Dakota Century Code section 54-35-10.

7. Concession and vending machine costs.
8. Contributions or charitable donations.
9. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
10. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.
11. Costs of functions performed by clients in a residential setting which are typical of functions of any individual living in the individual's own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
12. Costs of donations or memberships in sports, health, fraternal, or social clubs or organizations, such as Elks, YMCA, or country clubs.
13. Costs, including 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 the vendor.
14. Costs incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would not have been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
15. Costs exceeding the approved budget unless the written prior approval of the department has been received.
16. Depreciation on assets acquired with federal or state grants.
17. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child with disabilities" by subsection 2 of North Dakota Century Code section 15-59-01, who is enrolled in a school district pursuant to an interdepartmental plan of transition.
18. Employee benefits not offered to all full-time employees.
19. Entertainment costs.

20. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
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 shall not be limited by this subsection.
22. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, such as Lions, chamber of commerce, Kiwanis, in excess of one thousand five hundred dollars per cost reporting period.
23. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, education costs as described in subsection 33, and the cost of a provider's unrecovered cost of medical services rendered to an employee. The provider must receive written prior approval of the department before including any other benefits.
24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
25. Funeral and cemetery expenses.
26. Goodwill.
27. Home office costs when unallowable if incurred by facilities in a chain organization.
28. Travel not directly related to industry conferences, state or federally sponsored activities, or client services.
29. Interest cost related to money borrowed for funding depreciation.
30. Items or services, such as telephone, television, and radio, located in a client's room and furnished primarily for the convenience of the clients.
31. Key man insurance.
32. Laboratory salaries and supplies.
33. The cost of education unless:

- a. The education was provided by an accredited academic or technical educational facility;
  - b. The expenses were for materials, books, or tuition;
  - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility and is in the position; and
  - d. The facility claims the cost of the education at a rate that does not exceed one dollar and twenty-five cents per hour of work performed by the employee in the position for which the employee received education at the provider's expense provided the amount claimed per employee may not exceed two thousand five hundred dollars per year or an aggregate of ten thousand dollars per employee and in any event may not exceed the cost to the facility of the employee's education.
34. Meals and food service in day service programs.
35. Membership fees or dues for professional organizations exceeding three thousand dollars in any fiscal year.
36. Miscellaneous expenses not related to client services.
37. a. Except as provided in subdivisions b, c, and d, payments to a member of the governing board of the provider, a member of the governing board of a related organization, or a family member of a member of those governing boards, including a spouse and an individual in the following relationship to a member or to a spouse of a member: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, half brother, half sister, stepbrother, and stepsister.
- b. Payments made to a member of the governing board of the provider to reimburse that member for allowable expenses incurred by that member in the conduct of the provider's business may be allowed.
- c. Payments for a service or product unavailable from another source at a lower cost may be allowed.
- d. Wages allowed are limited to those wages paid to a family member of a member of the board and the amount must be consistent with wages paid to anyone else who would hold the same or similar position and the position is such that if the family member were not to hold the position, the provider would hire someone else to do the job.
38. Penalties, fines, and related interest and bank charges other than regular service charges.

39. Personal purchases.
40. Pharmacy salaries.
41. Physician and dentist salaries.
42.
  - a. For facility-based day supports programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified.
  - b. For non-facility-based day supports programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified, square footage, and equipment.
  - c. For extended services, in addition to subdivisions a and b, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.
  - d. Total production-related legal fees in excess of five thousand dollars in any fiscal period.
43. Religious salaries, space, and supplies.
44. Room and board costs in residential services other than an intermediate care facility for the mentally retarded.
45. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but when an election has been made to not participate in appropriate training approved by the department.
46. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
47. Travel of clients visiting relatives or acquaintances in or out of state.
48. Mileage reimbursement in excess of the standard mileage rate established by the state of North Dakota and meal reimbursement in excess of rates established by the general services administration for the destination city.
49. Undocumented expenditures.
50. Value of donated goods or services.

51. Vehicle and aircraft costs not directly related to provider business or client services.
52. X-ray salaries and supplies.

**History:** Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-13.1. Allowable bad debt expense.**

1. Bad debts for charges incurred in or after July 1, 2005, and fees paid for the collections of those bad debts are allowable only as provided in this section.
2. A bad debt expense must result from nonpayment of the payment rate for an individual who is no longer receiving services from the provider claiming the bad debt expense.
3. The provider must provide documentation to the department which verifies that the provider made reasonable collection efforts, the debt could not be collected, and there is no likelihood of future recovery. Reasonable collection efforts include maintaining written documentation that, in making those collection efforts, the provider received the assistance of an attorney licensed to practice law.
4. In no circumstance may the allowable expense for the collection fee exceed the amount of the bad debt.
5. A bad debt expense shall not be allowed when it resulted from the provider's failure to comply with any applicable laws or regulations.
6. Before any bad debt expense may be allowed, the provider must have a written policy that limits the potential for bad debts and the provider must provide written documentation that shows it has taken action to limit bad debts for individuals who refuse to or cannot make payments.
7. Allowable bad debt expense may not exceed debt associated with one hundred twenty days of services provided for any one individual.
8. Payments on outstanding accounts receivable shall be applied to the oldest invoices for covered services first, and then all subsequent charges until the balance is paid in full.

9. Allowable finance charges on bad debts described in this section are allowable only if the finance charges have been offset as interest income.

**History:** Effective May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-14. Profit-motivated entities - Return on investment.** Effective August 1, 1995, the annual average percentage of existing debt divided by the original asset cost shall determine the annual return on the original cost of fixed assets.

1. For an annual average percentage of debt to annual average assets that is between fifty-one and eighty percent, a two percent return on the original cost of fixed assets must be allowed.
2. For an annual average percentage of debt to annual average assets that is between zero and fifty percent, a three percent return on the original cost of fixed assets must be allowed.

**History:** Effective July 1, 1984; amended effective June 1, 1985; August 1, 1997.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 25-16-10.1, 50-24.1-01

**75-04-05-15. Depreciation.**

1. The principles of reimbursement for provider costs require that payment for services include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of these 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. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. 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 facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.
3. 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, may not be used. 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.
  - b. For all assets obtained prior to August 1, 1997, depreciation will be computed using a useful life of ten years for all items except vehicles, which must be four years, and buildings, which must be twenty-five years or more. For assets other than vehicles and buildings obtained after August 1, 1997, a provider may use the American hospital association guidelines as published by the American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2004 edition, to determine the useful life or the composite useful life of ten years. Whichever useful life methodology is chosen, the provider may not thereafter use the other option without the department's prior written approval. A useful life of ten years must be used for all equipment not identified in the American hospital association depreciation guidelines.
  - c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
    - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
    - (2) (a) A composite remaining useful life for movable equipment, determined from the seller's records; or  
(b) The remaining useful life for movable equipment, determined from the seller's records.
    - (3) Movable equipment means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the American hospital association depreciation guidelines.
4. Acquisitions are treated as follows:
- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 3.

Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.

- b. Major repair and maintenance costs on equipment or buildings must be capitalized if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 3.
5. Proper records will 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.
6. The basis for depreciation is the lower of the purchase price or fair market value at the time of purchase.

In the case of a trade-in, fair market value will consist of the sum of the book value of the trade-in plus the cash paid.

7. For depreciation and reimbursement purposes, donated depreciable assets may be recorded and depreciated based on their fair market value. If the provider'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. An appraisal made by a recognized appraisal expert will be accepted for depreciation.
8. Provision for increased costs due to the sale of a facility may not be made.
9. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principal payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2004; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 25-16-15, 50-24.1-01

#### **75-04-05-16. Interest expense.**

1. In general:
  - a. 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;

- (2) Identifiable in the provider'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 provider's facilities used therein;
    - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
    - (6) When borrowed for the purpose of making capital expenditures for assets that were owned by any other facility or service provider on or after July 18, 1984, limited to that amount of interest cost which such facility or service provider may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
  - b. In cases when it was necessary to issue bonds for financing, any bond premium or discount shall be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.
  3. A provider may combine or "pool" various funds in order to maximize the return on investment. If funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
  4. Funded depreciation requirements are as follows:
    - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.
    - b. The deposits are, in effect, made from the cash generated by the noncash expense depreciation and do not include interest income. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each

year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense.

- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.
- e. The provider may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of one thousand dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-17. Related organization.**

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers must identify such related organizations and costs

in the cost report. An appropriate statement of cost and allocations must be submitted with the cost report. For cost reporting purposes, management fees will be considered administrative costs.

2. A chain organization consists of a group of two or more service providers which are owned, leased, or through any other device, controlled by one business entity.
3. 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 provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are included in cost as payments to an outside provider will be considered a duplication of costs and not be allowed.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-18. Rental expense paid to a related organization.**

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider is not allowable as a cost, except for providers subject to chapter 75-04-03, whose rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other property expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider.
2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

**History:** Effective July 1, 1984; amended effective June 1, 1985.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-19. Taxes.**

1. **General.** Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:
  - 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 operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers 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 from which exemptions are available to the provider.
  - e. Taxes on property which is not used in the provision of covered services.
  - f. Taxes, including sales taxes levied against residents and collected and remitted by the provider.
  - g. Self-employment (FICA) taxes applicable to persons, including individual proprietors, partners, or members of a joint venture.

**History:** Effective July 1, 1984; amended effective July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-20. Personal incidental funds.**

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the client's cost of care. Generally, the source of income for personal needs is from social security, veterans' benefits, private income, economic assistance, or supplemental security income.

2. Providers managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department may conduct audits of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a client's income to determine:
  - a. Eligibility for medical assistance benefits.
  - b. Amount of income and other resources which must be applied toward the client's care.
  - c. Amount of income and other resources which can be retained by the client.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the client may be paid for by the client from the client's personal incidental allowance or by outside sources, such as relatives and friends:
  - a. Outside barber and beautician services, if requested by the client for regular shaves, haircuts, etc.
  - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
  - c. Drycleaning of personal clothing.
  - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the client desires for the client's personal use.
  - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand-controlled, if needed by client, recommended by the client's attending physician, and if no other payment resource is available.
  - f. Personal clothing, including robes, pajamas, and nightgowns, except for clothing at distinct parts of the state institution for individuals with developmental disabilities certified as intermediate care facilities for the mentally retarded, when the ownership of the

clothing is retained by the facility or the clothing is included as a part of the individual's plan of care.

9. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the client, parent, guardian, or responsible relative approves such use of the client's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.
8. A client's private property must be clearly marked by name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable client's accounts.
10. A client's funds on deposit with the facility must be available to a client on the client's request. No funds may be withdrawn from accounts of a client capable of managing the client's own funds without the client's permission.
11. Should a disagreement exist as to whether a client is capable of managing the client's own funds, a joint determination will be made by the individual service plan team, parent, guardian, or responsible relative in settling this dispute. The decision must be documented in the provider's records.
12. On discharge, the facility must provide the client with a final accounting of personal funds and remit any balance on deposit with the facility.
13. Upon death, the balance of a client's personal incidental funds along with the name and case number, will be maintained in an

interest-bearing account for disposition by the client's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, will be maintained for disposition by the client's estate.

14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer the client's personal incidental funds moneys and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds may constitute grounds for suspension of provider payments.
16. Client personal incidental funds must not be expended by the provider for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

#### **75-04-05-21. Transfer, discharge, and expulsion of clients.**

1. Movement of clients between levels of service by a provider or between providers must be pursuant to a determination by an individual habilitation team. Reimbursement for the cost of a new service must be contingent upon the timely submission to the department of an individual service plan.
2. Movement of clients must be subject to the policies and procedures of the North Dakota case management system and the approval of the department.
3. Any emergency movement may be initiated by the provider only with immediate notification of the department, parent, guardian, and advocate. The movement will be subject to the subsequent review by the department which will determine if:
  - a. An emergency existed;
  - b. The rights of the client were protected and preserved;
  - c. Documentation exists in support of the provider's action;
  - d. A prognosis of the client's potential for returning has been made; and

- e. Services required to maintain the client in a habilitative setting least restrictive of liberty have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-22. Staff-to-client ratios.** The following overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to individuals with developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for the mentally retarded shall be subject to the direct contact staffing requirements of 42 CFR 483.430.
2. Transitional community living facility shall maintain a one to eight direct contact staff-to-client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct contact staff-to-client ratio of one to twenty.
6. Day supports shall maintain a direct contact staff-to-client ratio of one to five.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

### **75-04-05-23. Staff hours.**

1. A calculation of the total number of employees necessary to meet staff-to-client ratios is made on the basis of a full-time equivalent employee. Assuming that a full-time employee has fifty-two working weeks of five days each, twelve holidays, ten vacation days, and ten sick days per year, the actual number of days worked is two hundred twenty-eight per year. Providers who grant fewer paid absences must use a full-time equivalent calculation which reflects a higher number of working days.
2. Assuming a two hundred twenty-eight day work year:
  - a. Staffing for the three hundred sixty-five day service provided by a residential service provider each year requires 1.6 full-time equivalent staff members for each shift slot to be filled at all times (two hundred twenty-eight times 1.6 equals three hundred sixty-five).
  - b. Staffing for the two hundred sixty days of service provided by a day service provider each year requires 1.14 full-time equivalent staff members for each staff required by the ratio (two hundred twenty-eight times 1.14 equals two hundred sixty).
3. To calculate the number of duty hours in a week, eight hours per day for five days (day services) and eight hours per night for seven nights (sleep time) are subtracted from the total hours of the week for residential service providers.

**History:** Effective July 1, 1984; amended effective July 1, 2001.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

### **75-04-05-24. Application.**

1. This chapter will be applied to providers of services to individuals with developmental disabilities, except distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for the mentally retarded, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for the mentally retarded. The sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, 6, and 7 of section 75-04-05-02; subsections 1, 2, and 3 of section

75-04-05-08; sections 75-04-05-09, 75-04-05-10, 75-04-05-11, and 75-04-05-12; subsections 1 through 10, 12 through 20, 22 through 27, 29 through 32, 34, 35, 37 through 40, 43, and 45 through 52 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23; and subsection 1 of section 75-04-05-24.

2. This chapter will be applied to providers of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1 through 3, 8 through 14, 16 through 18, 20 through 23, 26, and 27 of section 75-04-05-01; section 75-04-05-02; section 75-04-05-08; subsections 2, 6 through 10, and 12 of section 75-04-05-09; subsection 1, subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 10, 12 through 53 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; and subsections 1, 2, and 5 of section 75-04-05-21 of this chapter will be applied to supported employment extended services.
3. This chapter will be applied to providers of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the providers of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through 53 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of individualized supported living arrangements services:
  - a. Each provider of individualized supported living arrangements shall maintain separate revenue records for direct service

reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:

- (1) Direct service reimbursements from the department;
  - (2) Copayment responsibility of an individual receiving individualized supported living arrangements services; and
  - (3) Intended to cover direct service costs.
- b. Each provider of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.
  - c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.
  - d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.
4. This chapter will be applied to providers of family support services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to providers of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through 53 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of family support services:
- a. Each provider of family support services shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:

- (1) Direct service reimbursements from the department; and
  - (2) Parental copayment responsibility as documented on the family support service authorization.
- b. Each provider of family support services shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.
  - c. Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.
  - d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

**History:** Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01; 34 CFR 363