

- (1) Who has a beneficial interest of 10 percent or more in the net worth of the home; or
- (2) Who has a beneficial interest of 10 percent or more in an entity related by (h)1i(2) or (3) above; or
- (3) Who is a relative of an individual who is related by the definition in (h)1ii(1) or (2) above;
- (4) Beneficial interest is cumulative, if it relates to spouse, parent or children.

(i) In related lease transactions, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include in its costs the property expenses of ownership of the facility. The effect is to treat the facility as though it were owned by the provider. The treatment of these non-allowable costs is consistent with Federal regulations as they apply to costs to related organizations.

(j) Any legal expenses and related fees associated with any action initiated by the facility that is dismissed on the basis that no reasonable ground existed for the institution of such action will be excluded for reimbursement purposes.

(k) The cost of legal services for the appeal of reimbursement rates shall be excluded for reimbursement purposes.

Amended by R.1979 d.482, effective January 1, 1980.

See: 11 N.J.R. 552(a), 12 N.J.R. 42(b).

Amended by R.1983 d.74, effective March 21, 1983.

See: 14 N.J.R. 742(a), 15 N.J.R. 442(b).

(c) and (d) added regarding lease transactions.

Amended by R.1984 d.573, effective December 16, 1984.

See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

Deleted "(a)4 and recodified (a)5-6 as (a)4-5.

Amended by R.1985 d.705, effective January 21, 1986.

See: 17 N.J.R. 2331(a), 18 N.J.R. 189(a).

The text "established at the . . . 3, 4 or" deleted from (a).

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

Recodified from 10:63-3.2 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

Amended by R.1996 d.147, effective March 18, 1996.

See: 27 N.J.R. 3314(a), 28 N.J.R. 1535(a).

#### Case Notes

County hospital which did not participate in pre-adoption rulemaking proceedings is not entitled to an agency or court hearing. *Bergen Pines County Hospital v. New Jersey Dept. of Human Services*, 96 N.J. 456, 476 A.2d 784 (1984).

Unit staffing costs not reimbursable after case mix system became effective. *Matter of Seashore Gardens* October 1, 1990 Rates, 93 N.J.A.R.2d (DMA) 69.

Evidence failed to rebut presumption of reasonableness of agency's rate methodology. *Morris View Nursing Home v. Div. of Medical Assistance and Health Services*, 8 N.J.A.R. 561 (1983) affirmed per curiam Dkt. No. A-973-83 (App.Div.1985).

Rate reimbursement system challenged by facility utilizing minimum staffing report prepared for other purposes by the Department of Health. In re: *Preakness Hospital*, 8 N.J.A.R. 389 (1982).

Challenge to Medicaid reimbursement rate on basis of failure to consider cost of related party lease denied. *Hudson Manor Skilled Nursing Facility v. Div. of Medical Assistance and Health Services*, 8 N.J.A.R. 283 (1983), affirmed per curiam Dkt. No. A-972-83 (App.Div.1984).

#### 10:63-3.4 Equalized costs

(a) In order to equitably develop and apply screens the following computation will be made:

1. General fringe benefits will be allocated to function as a percentage of salaries reported to develop total compensation. General fringe benefits will include the raw food value of free and subsidized meals to employees.

2. Costs will be equalized to adjust for timing differences among NF's fiscal years.

3. The term "equalized costs" means the net amount of compensation costs (salary and fringe benefits) plus other expenses, less expense recoveries and nonallowable costs, adjusted for timing differences among NF's fiscal years.

4. For NFs which provide residential, sheltered or domiciliary care, equalized nursing facility costs will be determined by apportioning equalized cost in the same ratio as the apportionment of unequalized net expenses.

5. The equalized net routine expenses will be apportioned to residential/sheltered care and nursing facility care in the same ratio as unequalized net routine expenses are apportioned, except in the case of land and building related items (see sections 6 and 10, of this subchapter).

6. In the calculation of costs screens, the per diem median runs and the cost regression analysis for the administrator/management screen will be calculated using actual patient days excluding bed hold days.

Amended by R.1990 d.428, effective August 20, 1990 (operative October 1, 1990).

See: 22 N.J.R. 118(a), 22 N.J.R. 2588(a).

Stylistic changes in referring to types of facilities.

Amended by R.1993 d.371, effective July 19, 1993.

See: 25 N.J.R. 433(a), 25 N.J.R. 3215(a).

Recodified from 10:63-3.3 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

#### Case Notes

Administrator's salary as calculated using the N.J.A.C. 10:63-3.5 regression analysis formula was reasonable. In re: *Cranford Hall Nursing Home*, 8 N.J.A.R. 463 (1982), affirmed per curiam Dkt. No. A-1641-82 (App.Div.1984).

**10:63-3.5 Raw food costs**

(a) Raw food costs per patient day for voluntary and proprietary NFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be determined. NFs which contract for their dietary operations will be excluded. These per diem costs will be ranked in descending order on a Statewide basis. The reasonableness limit will be set at 120 percent of the median cost per day.

1. Governmental NFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be ranked separately and the reasonableness limit will be set at 120 percent of their median cost per day.

2. SCNFs which provide their own food service will be ranked separately for each type of Class III NF and a reasonableness limit for each type will be set at 120 percent of the median cost per day.

(b) For NFs below this limit, prospective rates will be based upon actual costs. Where homes report unit costs 15 percent or more below the median, the Department of Health, Health Facilities Inspection, will be asked to inspect the food operations for compliance with State standards.

(c) For NFs above this limit, the excess of actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total as described in N.J.A.C. 10:63-3.5. Accordingly, a credit may be applied to excess raw food costs if non-food general service costs are below the reasonable limit where an excess raw food costs is indicated. Any such credit is limited to amount of raw food cost excess.

Amended by R.1979 d.482, effective January 1, 1980.

See: 11 N.J.R. 552(a), 12 N.J.R. 42(b).

Amended by R.1984 d.573, effective December 16, 1984.

See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

(c) added: "Accordingly, a credit . . . food cost excess".

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

(a)1 added.

Recodified from 10:63-3.4 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

**Case Notes**

Administrator's salary as calculated using the N.J.A.C. 10:63-3.5 regression analysis formula was reasonable. In re: Cranford Hall Nursing Home, 8 N.J.A.R. 463 (1982), affirmed per curiam Dkt. No. A-1641-82 (App.Div.1984).

**10:63-3.6 General services expenses**

(a) For purposes of screening reported base period costs, the general services category will be segregated into the following cost components:

1. Food;
2. Administrator;

3. Assistant Administrator;
4. Other general services/legal fees.

i. Reasonableness limits will be developed for each of these components of cost. Reimbursement rates will include the lower of actual costs or reasonable limits developed for each component. No trade-offs among cost components will be allowed with the exception of raw food (see N.J.A.C. 10:63-3.4).

(b) The bases for screen development and reported costs subject to applicable screens, are as follows:

1. Food: As indicated in N.J.A.C. 10:63-3.4.

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Department of Health and Senior Services Nursing Facility and Reimbursement.

i. The regression will utilize as variables: fringed salaries of unrelated administrators and facility bed size. The constants resulting from the regression formula will then be used in the following formula, effective July 1, 1996, to produce reasonableness limits for each long term care provider.

$$\left[ \chi + \left( \frac{Y}{\text{Median Days per bed}} \times \frac{\text{NF Patient Days}}{\text{Days}} \right) \right] \times 1.0 = \text{Limit}$$

$\chi$  = Salary constant from regression

Y = per bed salary constant from regression

ii. The administrator screen will be applied to the aggregate reported costs of management, administrator, and assistant administrator, for facilities with less than 100 licensed nursing facility beds.

iii. Compensation and special fringe benefits of all owners, officers, related parties, and other employees acting in an administrative capacity must be reported as Management unless such parties specifically carry out the function of Administrator or Assistant Administrator.

iv. Non-working officer, owner or related party compensation and special fringe benefits are non-allowable.

3. Assistant Administrator: Effective July 1, 1996, limited to 100 percent of median unrelated assistant administrator compensation.

i. This cost category will apply only to facilities which exceed 99 licensed nursing facility beds.

4. Other general services and legal fees. This category will consist of the following cost elements:

- i. Other Administrative;
- ii. Dietary;
- iii. Laundry and linen;

- iv. Housekeeping;
  - v. Miscellaneous general services.
5. Reasonableness limits for the other general services category will be established, effective July 1, 1996, at:
- i. 100 percent of median costs as reported by Class I facilities which had over 20 percent Medicaid patient days.
  - ii. 100 percent of median costs as reported by Class II facilities which had over 20 percent Medicaid patient days.
  - iii. 100 percent of median costs for each type of Class III program reported by SCNFs.
6. The level of reasonableness for legal fees will be established at:
- i. 250 percent of median costs of Class I and Class III facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting Class I and Class III NFs which had over 20 percent Medicaid days.
  - ii. 250 percent of median costs of Class II facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting Class II NFs which had over 20 percent Medicaid days.
7. Reasonableness tests will exclude from rate calculations the greater of excess other general services or legal fee costs.
8. The following examples illustrate this procedure assuming reasonableness limits are established at \$100,000 and \$5,000 for other general services and legal fees respectively:

	Reported costs	Excess
Case No. 1		
Other general services	\$110,000	\$10,000
Legal fees	\$ 7,000	
Case No. 2		
Other general services	\$ 98,000	
Legal fees	\$ 7,000	\$ 2,000
Case No. 3		
Other general services	\$ 99,000	-0-
Legal fees	\$ 4,500	

As amended, R.1979 d.482, effective January 1, 1980.  
 See: 11 N.J.R. 552(a), 12 N.J.R. 42(b).  
 As amended, R.1980 d.42, effective January 23, 1980.  
 See: 12 N.J.R. 125(b).  
 As amended, R.1984 d.573, effective December 16, 1984.  
 See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).  
 Amended by R.1985 d.705, effective January 21, 1986.  
 See: 17 N.J.R. 2331(a), 18 N.J.R. 189(a).  
 Deleted text under chart "Historical unscreened rates ...".  
 Amended by R.1987 d.6, effective January 5, 1987.  
 See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).  
 Recodified from 10:63-3.5 and amended by R.1994 d.624, effective January 3, 1995.  
 See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).  
 See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).  
 Administrative Correction.  
 See: 28 N.J.R. 2998(a).  
 Amended by R.1997 d.231, effective June 2, 1997.  
 See: 29 N.J.R. 861(a), 29 N.J.R. 2561(b).  
 In (b)2, substituted "Nursing Facility and Reimbursement" for "Health Facilities Rate Setting"; in (b)2i, inserted "effective July 1, 1996", changed the multiplier in the equation from "1.05" to "1.00", and deleted "1.05 = 5 percent uniqueness factor"; in (b)3, substituted "Effective July 1, 1996, limited to 100 percent" for "Limited to 105 percent"; in (b)5, inserted "effective July 1, 1996"; and in (b)5i through (b)5iii, substituted "100 percent" for "105 percent".

**Case Notes**

Evidence failed to rebut presumption of reasonableness of agency's rate methodology. *Morris View Nursing Home v. Div. of Medical Assistance and Health Services*, 8 N.J.A.R. 561 (1983), affirmed per curium Dkt. No. A-973-83 (App.Div.1985).

Administrator's salary as calculated using the N.J.A.C. 10:63-3.5 regression analysis formula was reasonable. In re: *Cranford Hall Nursing Home*, 8 N.J.A.R. 463 (1982), affirmed per curium Dkt. No. A-1641-82 (App.Div.1984).

Square foot per bed limitation valid and reasonable. In re: *Water-view Nursing Home*, 8 N.J.A.R. 231 (1981), affirmed per curium Dkt. No. A-3363-80 (App.Div.1982).

**10:63-3.7 Property operating expenses**

(a) Property operating expenses include property taxes and utilities.

1. Property taxes will be considered reasonable so long as they are based upon reasonable plant square feet, costs per square foot, and reasonable land area and value.

2. For this purpose, reasonable plant square feet (and related property taxes) is determined as follows:

i. The ratio of plant square feet to licensed beds is determined as follows:

(1) Reasonable plant square feet for Class I NFs is determined separately to be 367 square feet per bed as in (a)1 above.

(2) Reasonable plant square feet for Class II NFs is determined separately to be 635 square feet per bed as in (a)1 above.

(3) Reasonable plant square feet for Class III NFs is determined separately (using a 1994 base) to be 504 square feet per bed as in (a)1 above.

ii. This ratio will establish the base plant square feet for a NF with a given number of licensed beds.

iii. The reasonableness limit for each NF's plant square feet shall be established at 110 percent of the base for its licensed beds. (see N.J.A.C. 10:63-3.11 for NFs with residential or sheltered care patients).

3. For NFs whose plant square feet exceeds this limit, the property taxes related to the excess will be excluded from the rate base. For this purpose, it will be assumed that assessed values for buildings vary directly in relation

to their areas. The latitude set forth in paragraph 2iii of this subsection is intended to provide for inequities that could result from this assumption. The department will review on an individual basis, any additional inequities which owners believe are brought about by unusual circumstances.

4. For NFs whose appraised value per plant square foot (as determined by an agent designated by the State) is greater than 110 percent of the median construction costs at 1977 price levels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new NFs, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See N.J.A.C. 10:63-3.11 for the methodology for calculating this limit at 1977 price levels.)

5. Reasonable land area (and related taxes) is established as follows:

- i. For urban NFs two acres;
- ii. For nonurban NFs five acres;
- iii. For this purpose, a city, town, and so forth is considered "urban" if its population exceeds 25,000 and its average population density exceeds 7,000 per square mile. All other areas are considered "nonurban" or rural.

6. Property taxes ascribable to unreasonable land area will be excluded from the prospective rate base, based upon the assumption that assessed values vary directly with area.

7. After making any adjustments per (a)6 above, taxes bases upon land appraisals in excess of 140 percent of the median appraisal value of five acres, rural and two acres, urban of all NFs in the county will also be considered unreasonable. In the case of counties with fewer than five NFs neighboring counties may be combined in determining the median value to be used.

8. The department will review on an individual basis any inequities which owners believe are brought about by unusual circumstances.

(b) As noted in the instructions for the submission of cost studies, where a lessor is paying the property taxes, the actual property taxes paid by the lessor are to be reported by the NF operator as a property tax expense and deducted from the amount reported as rent. The property tax component of such leases will be subject to the above screens.

(c) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed unreasonable to the extent that they exceed 125 percent of the Statewide median cost per bed, as determined for each class type of NF indicated in N.J.A.C. 10:63-3.3.

i. The Department will upon request review any inequities which owners believe are brought about by unusual circumstances.

As amended, R.1984 d.573, effective December 16, 1984.

See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

(a)7: substituted "county" for "country."

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

Recodified from 10:63-3.6 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

Amended by R.1996 d.147, effective March 18, 1996.

See: 27 N.J.R. 3314(a), 28 N.J.R. 1535(a).

#### Case Notes

Nursing home was not entitled to exemption from regulation limiting property tax reimbursement to two acres of urban property. *White House Nursing Home v. Division of Medical Assistance and Health Services*, 96 N.J.A.R.2d (DMA) 23.

Utility add-on rate adjustment denied on basis that increased fuel costs were not an unusual situation. *Lincoln Park Nursing and Convalescent Center v. Div. of Medical Assistance and Health Services*, 8 N.J.A.R. 475 (1982), affirmed per curiam Dkt. No. A-291-82 (App.Div. 1983).

#### 10:63-3.8 Special amortization

(a) The departments will consider on an individual basis, the amortization of start-up costs and special expenditures in rates. Each case will be reviewed on its particular merits and, accordingly, no guidelines are specified herein. As a rule, however, provisions for special amortization would relate to expenditures of a capital nature that are mandated by changes in laws and regulations. The amortization period would generally range from 12 to 60 months, depending upon the nature and magnitude of expenses.

(b) In approving the amortization of special expenditures, the departments will also consider the extent to which a NF's rates are based on capital and cost levels of fully complying NFs, or, for capital items, a review of a minimum of three bids on the acquisition or project.

Recodified from 10:63-3.1 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

#### Case Notes

Evidence failed to rebut presumption of reasonableness of agency's rate methodology. *Morris View Nursing Home v. Div. of Medical Assistance and Health Services*, 8 N.J.A.R. 561 (1983), affirmed per curiam Dkt. No. A-973-83 (App.Div.1985).

Rate reimbursement system challenged by facility utilizing minimum staffing report prepared for other purposes by the Department of Health. In re: *Preakness Hospital*, 8 N.J.A.R. 389 (1983).

**10:63-3.9 Routine patient care expenses**

(a) For reporting purposes (on schedule A) and for the application of the following guidelines, "routine patient care expenses" are defined as expenses relating to those services

defined as includable in the per diem rates for routine care under the Medicaid program.

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

(l) For existing NFs the State will not increase the CFA rate in future years should the Table of Average Interest Rates on Special Issues of Public-Debt Obligations issued to the Federal Hospital Insurance Trust Fund as published by the Office of the Actuary of the Federal Health Care Financing Administration increase.

(m) The departments will review, on an individual basis, situations where the strict application of the provisions of this section would be inappropriate under particular circumstances, such as:

1. Situation where an existing debt must be refinanced in connection with obtaining funds to expand existing NFs;
2. The inability of NFs to obtain 25-year financing.

As amended, R. 1983 d.73, effective March 21, 1983.

See: 14 N.J.R. 743(a), 15 N.J.R. 443(a).

Language concerning financing through a governmental authority.

As amended, R.1984 d.573, effective December 16, 1984.

See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

New (e); recodify (e)-(o) as (f)-(p).

Amended by R.1985 d.705, effective January 21, 1986.

See: 17 N.J.R. 2331(a), 18 N.J.R. 189(a).

(n)2 deleted; 3 recodified to 2.

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

Recodified from 10:63-3.10 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

Amended by R.1996 d.147, effective March 18, 1996.

See: 27 N.J.R. 3314(a), 28 N.J.R. 1535(a).

#### Case Notes

In establishing rate of reimbursement for Medicaid patients in an addition to a facility, an agency is required to use the actual interest rate paid in financing the addition in establishing the amortization rate. *Medicenter of Lakewood v. Dept. of Human Services*, 4 N.J.A.R. 26 (1983).

#### 10:63-3.12 Land

(a) The CFA for land will be based upon appraised value of land and land improvements determined by an agent designated by the State of New Jersey as follows:

1. For NFs beginning operation before January 1, 1978, the 1977 value of land and land improvements;
2. For NFs beginning operation on or after January 1, 1978, the value of land and land improvements as of the completion of construction;
3. For additions to existing NFs beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction of the addition. Land or land improvements previously included in a facility's appraisal will not be reappraised in determining value of an addition to a facility;

4. For replacement facilities beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction. Land or land improvement included in the original facilities appraisal will not be reappraised in determining value of a replacement facility;

5. Land and land improvement value will be subject to reasonable limits with respect to:

- i. Reasonable land area;
- ii. The total reasonable appraised value of reasonable land area.

6. Reasonableness limits for land and land improvements will be the same as defined for property taxes on land in N.J.A.C. 10:63-3.7. For NF's beginning operation on or after January 1, 1978, the original reasonableness limit for reasonable appraised value will be increased by a factor for inflation, which factor will be the same as described in N.J.A.C. 10:63-3.11(d)2. For acquisitions of land related to addition(s) to building or building replacements, a single weighted reasonableness limit for the entire NF land evaluation will be calculated based upon acreage and the appraisal land limit factors of land as originally appraised, and the land-appraised addition(s) to land.

(b) The applicable interest rate developed for a facility per N.J.A.C. 10:63-3.11(f) will be applied to the reasonable appraised land value.

(c) The provisions of N.J.A.C. 10:63-3.11(l) through (m) will also apply to CFA for land.

(d) For LTCF's providing residential or sheltered care, reasonable appraised values for land will be prorated to nursing care patients based upon their proportion of base period total beds. This proportion will not be redetermined in the absence of significant changes in patient mix.

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

(d) added "re" to determined.

Recodified from 10:63-3.11 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

#### 10:63-3.13 Moveable equipment

(a) The moveable equipment allowance will be based upon the median requirements per bed at 1977 price levels. This median will be determined by:

1. Selecting new NFs built since 1969 which had over 20 percent Medicaid days in the base period.
2. Incrementing their original expenditures for moveable equipment to 1977 price levels by applying an appropriate index of inflation in equipment costs.

3. Converting these inflated expenditures to cost per bed and ranking Statewide.

(b) The allowance per licensed bed will be determined by applying to this median cost the applicable interest rate developed per N.J.A.C. 10:63-3.11(f).

(c) Inasmuch as this allowance will be based upon the current replacement cost of new equipment, it will be deemed to provide for unusually large expenditures for maintaining old equipment (the departments consider it to be purely a management prerogative as to when to replace, rather than repair, old equipment). A provision for ongoing routine equipment maintenance and replacements will be included in the maintenance and replacements allowance as described in N.J.A.C. 10:63-3.14.

As amended, R.1974 d.573, effective December 16, 1984.  
 See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).  
 Recodified from 10:63-3.12 and amended by R.1994 d.624, effective January 3, 1995.  
 See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).  
 Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).  
 See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

**10:63-3.14 Maintenance and replacements**

(a) An allowance for the maintenance of land, land improvements, building and equipment and for replacement of equipment will be developed for Class I and Class II facilities and each type of Class III facility as follows:

1. Expenditures for this purpose in the base period for Class I, Class II and each type of Class III of NF which had over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through the application of the inflation factor to reported costs for fiscal years ending prior to December. Class III NFs will not be excluded due to percentage of Medicaid days.

2. Homes which were substantially expanded or remodeled during this period will be excluded from calculations described in (a)3 below.

3. For the remaining NFs, maintenance and replacement costs per plant square foot at base period price levels will be calculated for each class of NF. Mathematical techniques will be used to determine a general formula describing the relationships between expenditures per plant square foot for maintenance and replacements and factors such as age of buildings, estimated building replacement costs, and so forth.

4. The 15 percent highest and 15 percent lowest extremes in actual expenditures compared with this general formula will then be removed from further calculations, except for Class III NFs. The same mathematical techniques will then be applied to the remaining 70 percent of the data to develop the formula to be used to calculate a reasonable allowance for each class of NF for maintenance and replacement.

5. Seventy percent of the costs of leasing equipment will be recognized as "maintenance and replacement" costs.

6. Each NF's maximum total allowance per reasonable plant square foot for any one year will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.7(a)1, 2 and 3.

i. For Class III NFs which are approved as a combination of Ventilator/Respirator type and some other SCNF type listed at N.J.A.C. 10:63-3.3(a)3ii, the reasonable limit for maintenance and replacements will be determined by multiplying the current costs of maintenance and replacement attributable to each type of SCNF patient times the respective cost per square foot maintenance and replacement cost limits. The products will be totalled, and then divided by the total current cost of maintenance and replacement expenses. The resulting combined cost limit will then be multiplied by the reasonable long term care square feet of the SCNF to determine the maintenance and replacement screen.

	(1)	(2)	(3)
	Cost	Limit	Total
Vent	A	Per square foot	(1) × (2)
Other	B	C	E
		D	F
Total	G		H

Weighted limit per square foot = H/G.  
 Total reasonable limit = Weighted limit × Square feet.

7. Base period expenditures in excess of this minimum allowance may be carried forward and applied in future years in which expenditures are below their respective maximum allowance.

i. Actual expenditures that are below the limits for the base period, may be carried and applied to excess expenditures in subsequent years. The following example illustrates how two typical NFs would be affected. Savings are indicated in parentheses, for example, (20.00) means a savings of \$20.00.

Year No. 1	NF A	NF B
Actual expenditures	\$130.00	\$ 80.00
Limit	100.00	100.00
Excess (savings) carried forward	30.00	(20.00)
Year No. 2 NF A	Example 1	Example 2
Actual expenditures	\$ 60.00	\$ 85.00
Carried forward	+ 30.00	+ 30.00
Total eligible	90.00*	\$115.00
Limit	105.00	\$105.00
Carried forward to Year No. 3	\$(15.00)	\$ 10.00
Year No. 2 NF B	Example 1	Example 2
Actual expenditures	\$120.00	\$130.00
Limit	\$105.00	\$105.00
Plus carried forward	NF A + 20.00	NF B + 20.00

Revised limit	\$125.00	\$125.00
Carried forward to Year No. 3	\$ (5.00)	\$ 5.00

\* Included in rates

8. Expenditures for replacements, capitalized maintenance and leases will be prorated to nursing patients, based upon the ratio of nursing square feet (including a prorated share of common areas) to total plant square feet.

As amended, R.1984 d.573, effective December 16, 1984.

See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

(a)1: Deleted old text and substituted new text.

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

Recodified from 10:63-3.13 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1996 d.147, effective March 18, 1996.

See: 27 N.J.R. 3314(a), 28 N.J.R. 1535(a).

### 10:63-3.15 Property insurance

(a) An allowance for property insurance will be developed for each home as follows:

1. Base period property insurance costs per dollar of appraised value and per dollar of 1977 replacement costs will be calculated for all Class I NFs. Separate calculations will be made for Class II facilities and each type of Class III facility.

2. Mathematical techniques will be applied to this data to develop formulas describing the normal relationships between property insurance costs and appraised values and estimated replacement costs. Separate formulas will be developed for urban and non urban NFs.

3. The procedures described in N.J.A.C. 10:63-3.14 will be used to eliminate extremes and to develop the formula to be used to calculate the reasonableness limit for property insurance, except for the calculation of Class III limits.

4. Each NF's reasonableness limit per reasonable plant square foot will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.7(a)1 and 2.

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

Added text in (a)1 "A separate calculation will be made for governmental facilities."

Recodified from 10:63-3.14 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

### 10:63-3.16 Target occupancy levels

(a) A target occupancy level of 95 percent of licensed bed-days (excluding quiet beds) will be used to develop the reasonable per diem amounts of the following rate components:

1. Property taxes;
2. Utilities;
3. Special amortization;
4. CFA for:
  - i. Buildings and building equipment;
  - ii. Land and land improvements;
  - iii. Moveable equipment;
  - iv. Maintenance and replacements;
  - v. Property insurance; and
5. Actual NF expenses for depreciation, rental, interest, and amortization in accordance with N.J.A.C. 10:63-3.10(c).

(b) For Class III NFs, if the base period Medicaid occupancy is 80 percent or greater, the target occupancy for the rate components in (a) above will be 90 percent.

(c) The per diem amounts for all other expenses will be based upon reasonable base period costs divided by actual base period patient days (but no less than 85 percent of licensed bed days will be used).

1. Actual base period patient days shall include paid bed hold days.

(d) For new Class I and Class II facilities an occupancy rate of 80 percent will be used for provisional rates during the first year of operation subject to retroactive adjustments to actual occupancy should it exceed 80 percent (but no higher than 95 percent will be used).

(e) For new Class III NFs, an occupancy rate of 80 percent will be used for provisional rates during the first year of operation. The retroactive adjustment from an interim to an actual rate for the first year of operation shall use actual occupancy should it exceed 80 percent (but no higher than 95 or 90 percent will be used, as determined by (a) or (b) above).

(f) If base period patient days exceed licensed bed days calculated per (a) above, then the target occupancy will be entered at 95 percent of actual base period patient days.

Amended by R.1987 d.6, effective January 5, 1987.

See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

"Target" substituted for "largest".

Recodified from 10:63-3.15 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).

See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

### 10:63-3.17 Restricted funds

(a) Where donor restricted funds have been expended for operating purposes and, accordingly have been reported as

an expense recovery/elimination, the availability and use of such funds will not be taken into account in establishing rates to the extent that they produce actual unit costs below the median unit costs and NF's developed for determining reasonableness. (It should be noted that the availability or use of such funds will not be taken into account at all with respect to CFA calculations.)

(b) The intent of this provision is to exclude, in screening, expenditures made from donor-restricted funds, but not to "appropriate" such funds where they result in net costs below the median.

Recodified from 10:63-3.16 and amended by R.1994 d.624, effective January 3, 1995.  
See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

#### Case Notes

Hiring of contract nurses not mandated; adjustment for costs not required. *Morristown Rehabilitation Center Inc. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 10.

#### 10:63-3.18 Adjustments to base period data

(a) As described elsewhere in this subchapter, with the exception of capital items, rates will be based upon reasonable actual base period costs. This section provides for adjustments to reasonable base period costs in establishing prospective rates.

1. Appropriate adjustments will be made to reasonable base period costs for the effect of changes between the base period and the prospective rate period in:

- i. State or Federal standards of care;
- ii. Definitions of "routine patient care services" reimbursable in Medicaid per diems;
- iii. Limitations on total or per diem amounts of special patient care services reimbursable in Medicaid per diems.

2. NFs may also request that cost in addition to base period expenditures be included in the prospective rates owing to:

- i. Actions mandated by governmental authorities and/or approved by same in the certificate of need process ("legal" changes);
- ii. Desires to increase the quality of care above that attainable at base period cost levels ("management" changes).
- iii. Appointment of a special medical guardian required to authorize emergency medical treatment for a patient.

iv. Emergency evacuation of a facility which was conducted consistent with an Emergency Management Evacuation Procedure which has been duly adopted and fully implemented by the facility. Costs in addition to base period expenditures for emergency evacuation shall be only those extraordinary costs which are directly related to evacuation, and routine costs which exceed base period levels as a direct result of the emergency evacuation.

3. With respect to requests for management changes, the departments will take the position that it is not a prerogative of a rate setting body to unilaterally make or amend social policies, especially with respect to the appropriateness of current allocations of State resources to the care of indigent NF patients. Accordingly, in the absence of other compelling reasons, management changes will be approved only in areas where quality has been found to be marginal by health facility inspection and actual costs are commensurately low.

4. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the NF.

5. In the case of significant items, the departments may exclude the effects of legal and management changes from rates until the change is effected, and if necessary, new appraisals made.

As amended, R.1984 d.573, effective December 16, 1984.  
See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

Deleted (a)4 and recodified (a)5 to (a)4.  
Amended by R.1986 d.69, effective March 17, 1986.  
See: 17 N.J.R. 1736(a), 18 N.J.R. 561(a).

(a)4 added; old (a)4 renumbered to (a)5.  
Amended by R.1987 d.6, effective January 5, 1987.  
See: 18 N.J.R. 257(a), 19 N.J.R. 126(a).

(a)4 added.  
Recodified from 10:63-3.17 and amended by R.1994 d.624, effective January 3, 1995.

See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).  
Amended by R.1995 d.174, effective March 20, 1995 (operative April 1, 1995).  
See: 27 N.J.R. 281(a), 27 N.J.R. 1307(a).

#### Case Notes

Inflation factor calculation valid and reasonable (Director's Final Decision). In re: *Waterview Nursing Home*, 8 N.J.A.R. 231 (1981), affirmed per curiam Dkt. No. A-3363-80 (App.Div.1982).

#### 10:63-3.19 Inflation

(a) A provision will be added to reasonable base period costs to provide for inflation/deflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. Average hourly earnings of manufacturing employees in New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent);