

**CHAPTER 63**

**LONG-TERM CARE SERVICES**

**Authority**

N.J.S.A. 30:4D-6a(4)(a) and b(14); 30:4D-6.7 and 6.8; 30:4D-7, 7a, b and c; 30:4D-12; Section 1919 of the Social Security Act; 42 U.S.C. § 1396r; 42 C.F.R. 483; and P.L. 1985, c.303.

**Source and Effective Date**

R.1999 d.364, effective September 24, 1999.  
See: 31 N.J.R. 1759(a), 31 N.J.R. 3116(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 63, Long-Term Care Services, expires on March 23, 2005. See: 36 N.J.R. 4700(a).

**Chapter Historical Note**

Chapter 63, Skilled Nursing Home Services Manual, was adopted as R.1971 d.163, effective September 22, 1971. See: 3 N.J.R. 206(b).

Chapter 63, Skilled Nursing Home Services Manual, was repealed and Chapter 63, Long-Term Care Services Manual, was adopted as new rules by R.1979 d.126, effective March 29, 1979. See: 10 N.J.R. 190(b), 11 N.J.R. 248(b).

Pursuant to Executive Order No. 66(1978), Subchapter 1, General Provisions, was readopted as R.1984 d.123, effective March 21, 1984. See: 16 N.J.R. 204(a), 16 N.J.R. 896(a).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Cost Study, Rate Review Guidelines and Reporting System for Long-Term Care Facilities, was readopted as R.1984 d.573, effective November 29, 1984. See: 16 N.J.R. 2484(a), 16 N.J.R. 3437(a).

Pursuant to Executive Order No. 66(1978), Chapter 63, Long-Term Care Services Manual, was readopted as R.1989 d.622, effective November 29, 1989. See: 21 N.J.R. 2752(a), 21 N.J.R. 3918(a).

Pursuant to Executive Order No. 66(1978), Chapter 63, Long-Term Care Services, was readopted as R.1994 d.624, effective November 23, 1994, and former Subchapters 1, 2, 2A and 4, and Appendix I were repealed and Subchapter 1, General Provisions, Subchapter 2, Nursing Facilities Services, and Appendices A through Q were adopted as new rules, and Subchapter 5, Audits, was recodified as Subchapter 4 by R.1994 d.624, effective January 3, 1995. See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

Pursuant to Executive Order No. 66(1978), Chapter 63, Long-Term Care Services, was readopted as R.1999 d.364, effective September 24, 1999. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 10:63-1.1 Scope

This chapter addresses the provision of quality, cost-prudent health care services available to New Jersey Medicaid eligible children and adults in a nursing facility (NF) and addresses the provision of and reimbursement for services required to meet the individual's medical, nursing, rehabilitative and psychosocial needs to attain and maintain the highest practicable mental and physical functional status. Although the scope of the Long-Term Care Services chapter encompasses other long-term care facilities such as governmental psychiatric hospitals, inpatient psychiatric services/programs for the under 21 (residential treatment centers) and intermediate care facilities/mentally retarded (ICF/MRs), the following subchapters specifically address nursing facility services. However, the Fiscal Agent Billing Supplement applies to all the above cited long-term care facilities.

## Case Notes

Radioactive application of regulation valid. In re: Medicaid Long Term Care Services Bulletin 84-2, 212 N.J.Super. 48, 513 A.2d 967 (App.Div.1986), certification denied 526 A.2d 125, 107 N.J. 31.

Denial of request for reclassification from low to medium salary region assignment not inequitable. *Rosewood Manor, Inc. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 20.

## 10:63-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Advance directive" means a written instruction relating to the provision of health care when the individual is incapacitated, such as a living will or durable power of attorney for health care.

"Air fluidized therapy bed" means a device employing the circulation of filtered air through ceramic spherules (small, round ceramic objects).

"Case management" means a process by which the Division of Medical Assistance and Health Services Medical Social Care Specialist monitors the provision of nursing facility care to assure timely and appropriate provider responses to changes in care needs and delivery of coordinated services.

"Case mix" means a system of staffing and reimbursement for nursing services based on variation in patient acuity and care needs that influences the type and amount of service needed.

"Clinical audits" means a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, in accordance with 42 CFR 456.1(b)(1), to monitor the utilization of and payment for nursing facility care and services reimbursable under the Medicaid State Plan.

"Comprehensive assessment" means a process conducted by each member of the interdisciplinary team which, for each resident, identifies problems; determines care needs; and in conjunction with the resident and his or her significant other or legal representative, results in an interdisciplinary plan of care.

"Consultant pharmacist" means a pharmacist licensed by the New Jersey State Board of Pharmacy who meets the qualifications in N.J.A.C. 10:51-3.3.

"Conventional nursing facility"—see nursing facility.

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities (DDD)" means the Division of Developmental Disabilities within the New Jersey State Department of Human Services.

"Division of Mental Health and Hospitals (DMH & H)" means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Regional Staff Nurse during the Pre-Admission Screening (PAS) assessment process which reflects the individual's current or potential health problems and required care needs.

"Interdisciplinary care plan" means the care plan developed by the interdisciplinary team which includes measurable objectives and time tables to meet the resident's medical, nursing, dietary and psychosocial needs that are identified through the comprehensive assessment process.

"Interdisciplinary team" means a team consisting of a physician and a registered professional nurse and may also include other health professions relative to the provision of needed services. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

"Low airloss therapy bed" means a bed frame that is equipped with air sacs which are grouped into zones corresponding to various body areas. The air sacs are inflated by a constant flow of air, some of which is directed through the air sacs to the patient surface.

1. The minimum nursing requirements in terms of hours worked will be calculated for each Class I and Class II NF based upon the case mix patient classification (see N.J.A.C. 10:63-3.9(b)1ii(2) and standards in effect during the base period. Minimum nursing requirements in terms of hours shall be calculated for each NF based upon:

i. The number of patient days during the base period;

ii. The base period patient mix related to additional nursing services requiring additional minimum nursing time as derived from patient counts reported by each facility to the Medicaid fiscal agent:

(1) Patients with conditions requiring additional nursing services will be reported by means of the billing turnaround document (TAD) for Medicaid recipients, and the Medicaid billing certification document for non-Medicaid patients. If a facility fails to report a condition requiring additional nursing services on the original TAD or billing certification document, the count will not be used in the facility's rate calculation.

(2) Facilities will report patients with conditions requiring additional nursing services if a patient: resided in the facility and had the condition(s) for the entire month; resided in the facility for the entire month and developed the condition(s) during that month; or entered the facility and had the condition(s) for some portion of the month. This count shall include patients who develop condition(s) during a month or enter the facility with condition(s) and cease to have this condition, are discharged, or die during the same month. No reporting shall be made for a patient who ceased to have the condition(s), died or left the facility during a month (other than the month of admission or onset of the condition(s)), except for a patient who was on a bed hold leave to an acute care hospital and returned to the facility.

iii. The State Department of Health minimum nurse staffing standards, according to N.J.A.C. 8:39-25.

iv. If the calculation of the minimum nurse staffing requirement results in an amount of hours for each type of nurse (RNs, LPNs, and Aides) which includes some part of a full-time equivalent staff position (FTE at seven days per week), the minimum hours required for each type of nurse will be increased to include time sufficient to staff a full-time equivalent staff position (FTE at seven days per week).

2. The minimum nursing requirements in terms of hours worked will be calculated for each Class III program as follows:

i. A base of 2.5 hours per patient day (20 percent RNs and LPNs; 80 percent Aides);

ii. An additional three hours per patient day (60 percent RNs, 40 percent LPNs);

iii. The total minimum hours per year for each type of nurse will be at least 8,760 (that is, allowing staff of one RN, LPN and Aide on each shift.

3. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary NFs in the State. Separate rankings will be developed for governmental NFs and each type of SCNF. The percentage for the median NF for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

4. The hours developed in (b)1i-iv and (b)2i-iii above will be incremented by the applicable percentage for each class of NF.

5. The average equalized hourly compensation rate of each type of nurse (see N.J.A.C. 10:63-3.4) will be calculated separately for Class I, Class II, and each type of Class III facility.

i. The average equalized compensation rate for the median NF for each class/type of NF will be selected as the norm for the State.

6. The compensation rates for each class/type of facility will be multiplied by the paid hours developed in (b)4 above for each type of nurse and aggregated for all three types of nurses.

7. The reasonableness limit for total nursing care will be established at 115 percent of this total for Class I and Class II facilities and 125 percent of this total for Class III facilities, in order to allow for variations in staffing patterns, mix of nursing personnel, and so forth. This total will be adjusted for timing differences to each NF's base period.

(c) Reasonableness limits for the below listed special patient care services other than nursing will be established for each class of NF.

1. Those items which are considered special patient care services are:

- i. Medical Director;
- ii. Patient activities;
- iii. Pharmaceutical consultant;
- iv. Non-legend drugs;
- v. Medical supplies;
- vi. Social services;
- vii. Oxygen.

(d) Reasonableness limits for medical supplies and patient activities will be established at:

1. 150 percent of the median per diem cost of Class I NFs which had over 20 percent Medicaid days in the base period.

2. 150 percent of the median per diem cost of Class II NFs which had over 20 percent Medicaid days in the base period.

3. 150 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs.

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 medical supplies will be determined by multiplying applicable patient days (ventilator patient days versus a non-ventilator/respirator SCNF-type patient days) times the appropriate medical supplies screen (ventilator versus a non-ventilator/respirator SCNF type) and adding the products, as follows:

	(1) Base period Patient Days	(2) Limit Per day	(3) Total (1) × (2)
Vent	A	C	E
Other	B	D	F
Total reasonable limit (E + F)			G

(e) Reasonableness limits for medical director, pharmaceutical consultant, non-legend drugs, social services and oxygen will be established at:

1. 110 percent of the median per diem cost of Class I NFs which had over over 20 percent Medicaid days in the base period.

2. 110 percent of the median per diem cost of Class II NFs which had over over 20 percent Medicaid days in the base period.

3. 110 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs, except as provided in (e)3i and ii below:

i. For freestanding SCNFs, a separate medical director screen will be calculated for each type of SCNF.

ii. For Class III NFs which are approved as a combination of a Ventilator/Respirator type and some other SCNF type listed at N.J.A.C. 10:63-3.3(a)3, reasonable limits for oxygen will be determined by multiplying applicable patient days (ventilator patient days versus a non-ventilator/respirator SCNF type patient days) times the appropriate oxygen screen (ventilator versus a non-ventilator/respirator type SCNF) and adding the products, as follows:

	(1) Base period Patient Days	(2) Limit Per day	(3) Total (1) × (2)
Vent	A	C	E
Other	B	D	F
Total reasonable limit (E + F)			G

(f) Where actual base period costs for routine patient care are below the limits established, the actual costs will be included in the rate base. The Department of Health, Health Facilities Inspection, will be notified of all cases where a NF patient care costs per day are less than 75 percent of the limits in N.J.A.C. 10:63-3.8(b)6 and of all cases where nursing hours worked appear to be below State standards.

Amended by R.1981 d.326, effective September 10, 1981 (operative October 1, 1981).

See: 13 N.J.R. 360(b), 13 N.J.R. 579(e).

(b)6: "115" was "110"; delete language concerning 10 percent latitude reduction.

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

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

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

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

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).

Revised (b)1, adding i.-iv. regarding minimum nursing requirements.

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 10:63-3.8 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**

State's Medicaid reimbursement plan was not shown to be inadequate to provide recipients with nursing care required by federal law. *New Jersey Ass'n of Health Care Facilities, Inc. v. Gibbs*, D.N.J.1993, 838 F.Supp. 881.

State substantially complied with procedural requirements for computing Medicaid reimbursement rates for nursing facilities. *New Jersey Ass'n of Health Care Facilities, Inc. v. Gibbs*, D.N.J.1993, 838 F.Supp. 881.

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

Mortgage insurance expense is a reimbursable capital financing cost. In re: *Waterview Nursing Home*, 8 N.J.A.R. 231 (1981), affirmed per curiam Dkt. No. A-3363-80 (App.Div.1982).

**10:63-3.10 Property—capital costs**

(a) Included in this category are the following rate components:

1. Depreciation (except autos);
2. Maintenance and replacement of plant and equipment;
3. Rentals of building and equipment (except autos);
4. Interest on all indebtedness;
5. Amortization of leasehold improvement;
6. Property insurance costs;

7. Fees and other expenses incurred in connection with the construction, purchase, alteration or leasing of land, buildings, and fixed equipment; and

8. Fees and other expenses incurred in financing or refinancing of the NF itself or any of its assets.

(b) The rules promulgated herein have been developed with the following objectives and considerations:

1. The departments should not concern themselves with the method and attendant costs with which individuals NFs are financed and constructed or the arrangements under which they are acquired or leased.

2. While not concerning themselves about the costs, financing and so forth, of individual NFs the departments mandate with respect to the reasonableness of cost requires it to develop this rate component upon the presumption of reasonable facility costs and prudent financing.

3. Private capital should be attracted into the industry with a reasonable rate of return, which should recognize that the existence of the certificate of need process to control the supply of NFs in relation to demand, removes several risks inherent in most free enterprise situations.

(c) The departments believe that the above objectives can best be met by establishing an aggregate "capital facilities allowance" (CFA). The aggregate annual CFA for building, land, and movable equipment shall constitute the maximum reasonable reimbursement for depreciation (except automobiles), rentals of buildings and equipment (except automobiles), interest on all indebtedness, and amortization of leasehold improvements. Reimbursement shall be limited to the lower of:

1. The total actual NF expenses for depreciation, interest and rental; or
2. The aggregate capital facilities allowance for building, land, and movable equipment.

(d) The following considerations will be addressed in determining the CFA:

1. Buildings (see N.J.A.C. 10:63-3.11);
2. Land and land improvements (see N.J.A.C. 10:63-3.12);
3. Equipment (routine moveable) (see N.J.A.C. 10:63-3.13);
4. Maintenance and replacements (see N.J.A.C. 10:63-3.14);
5. Property insurance (see N.J.A.C. 10:63-3.15);
6. Economic occupancy level (see N.J.A.C. 10:63-3.16).

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)8 and recodified (a)9 to (a)8.  
Recodified from 10:63-3.9 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 prospective hardship relief amounting to perpetual lease pass-through for its reimbursement rate. Stratford Nursing and Convalescent Center, Inc. v. Kilstein, D.N.J.1991, 802 F.Supp. 1158, affirmed 972 F.2d 1332.

Nursing home was not entitled to full reimbursement for rent or for dispensing non-legend drugs. White House Nursing Home v. DMAHS, 93 N.J.A.R.2d (DMA) 114.

Long-term care facility's expert's appraisal not preferred. Matter of Elizabeth General Medical Center, 93 N.J.A.R.2d (DMA) 51.

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).

#### 10:63-3.11 Buildings and fixed equipment

(a) The CFA for buildings and fixed equipment will be based upon appraised value as follows:

1. For NFs beginning operation before January 1, 1978, the CFA will be determined based upon appraised 1977 replacement costs derived from nationally recognized construction cost manuals, less wear and tear and subject to reasonableness limits as described in (c), (d) and (e) below.

2. For new NFs, replacement NFs, or significant additions to existing NFs, beginning operation on or after January 1, 1978, the appraised value will be determined at the time construction is completed, based upon price levels derived from nationally recognized construction cost manuals, subject to reasonableness limits as described in (c), (d) and (e) below.

(b) The appraisals are to be conducted by an agent designated by the State.

(c) A reasonableness limit on plant square feet will be set at 110 percent of the median plant square feet per available bed of all Class I and Class III NFs which had over 20 percent Medicaid patient days in the base period. A separate reasonableness limit will be developed for governmental Class II NFs by the same method. NFs not substantially complying with current State and Federal space requirements or carrying space waivers will be excluded from this calculation.

(d) The Department shall establish a reasonableness limit on the amount of reimbursement that an NF shall receive for the building and fixed equipment component of its CFA.

1. The reasonableness limits on appraised value per square foot set for NFs from 1977 through 2000 are as follows:

Year	Year Specific Factor Class I & III NFs	Year Specific Factor Class II NFs	Year	Year Specific Factor Class I & III NFs	Year Specific Factor Class II NFs
1977	\$ 43.00	\$ 50.00	1989	\$109.00	\$128.00
1978	\$ 49.00	\$ 57.00	1990	\$114.00	\$133.00
1979	\$ 54.00	\$ 63.00	1991	\$119.00	\$139.00
1980	\$ 59.00	\$ 69.00	1992	\$123.00	\$144.00
1981	\$ 65.00	\$ 76.00	1993	\$128.00	\$150.00
1982	\$ 72.00	\$ 84.00	1994	\$133.00	\$156.00
1983	\$ 79.00	\$ 92.00	1995	\$138.00	\$162.00
1984	\$ 87.00	\$101.00	1996	\$143.00	\$168.00
1985	\$ 92.00	\$107.00	1997	\$146.00	\$172.00
1986	\$ 96.00	\$112.00	1998	\$150.00	\$177.00
1987	\$100.00	\$117.00	1999	\$154.00	\$182.00
1988	\$103.00	\$121.00	2000	\$159.00	\$188.00

2. The reasonableness limit on appraised value per square foot set for NFs from 2001 and thereafter shall be incremented annually by multiplying by an index factor, which is the average of percentages derived from:

- i. The Marshall Swift Valuation Index for the Eastern District; published by Marshall and Swift, 1617 Beverly Blvd., PO Box 26307, Los Angeles, California; and
- ii. The weighted average of the Consumer Price Index and the average hourly earnings of factory production workers published by the New Jersey State Department of Labor.

3. For significant additions to existing NFs beginning operation since January 1, 1978, the reasonableness limit shall be at the original reasonableness limit as determined from (d)1 above, increased by a factor as specified at (d)2 above. A single weighted reasonableness limit for the entire NF will be calculated based upon the square footage and the corresponding year specific index factors of the building as originally appraised and the appraised addition(s).

4. A separate reasonableness limit will be developed for governmental NFs by the same method.

(e) The reasonable limits as described above will be combined to allow for square feet in excess of that established limit where value per square foot is less than that limit for each class of long term care facility.

(f) The CFA for buildings and fixed equipment will be determined by applying the appropriate interest or amortization rate, described in (f)1 and 2 below, to the reasonable appraised value of the building and fixed equipment.

1. Interest rate:

i. For NFs beginning operation before January 1, 1978, the interest rate is equal to the Medicare return on equity rate for the 12 month period ending with December of 1976 (10.719 percent).

ii. For NFs, or significant additions to existing NFs, beginning operation between January 1, 1978 and September 30, 1985, the interest rate is equal to the Medicare return on equity rate published at the inception of operations.

iii. For NFs, or significant additions to existing NFs, beginning operations between October 1, 1985 and September 30, 1993, the interest rate is equal to 150 percent of the Medicare return on equity rate published at the inception of operations.

iv. For NFs, or significant additions to existing NFs beginning operations on or after October 1, 1993, the interest rate is equal to 150 percent of the applicable interest rate at the inception of operations as indicated by 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.

2. The amortization rate shall be equal to the ratio of annual debt service (principal and interest) to original principal required to amortize a loan in 25 equal installments, with an interest rate equal to the appropriate above defined "interest rate".

(g) For the first 25 years of the life of a NF beginning with the year of construction, the amortization rate will be applied to the reasonable appraised value of the building and fixed equipment.

(h) Beyond the 25th year after construction, the interest rate will be applied to the reasonable appraised value of buildings and fixed equipment.

(i) For NFs built-in multiple stages, a weighted average year of original construction will be established by weighing licensed beds by the age of the component multiple stages of the building in which the beds are located. Where inequities could result from this calculation, homes with suitable records may request that the weighted average year of construction be calculated based upon plant square feet constructed.

(j) For NFs with residential and/or sheltered care patients, data relative to common areas will be apportioned to nursing patients based upon base period licensed beds. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c), (d) and (e) above and, where applicable, to the weighted average year of construction calculations described in (i) above. This proration will not be redetermined for subsequent years in the absence of significant changes in facilities or in patient mix.

	(1) Cost	(2) Limit Per square foot	(3) Total (1) × (2)
Vent	A	C	E
Other	B	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	\$ 60.00	\$ 85.00
Carried forward	+ 30.00	+ 30.00	+ 30.00
Total eligible	90.00*	\$115.00	\$115.00
Limit	105.00	\$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	\$120.00	\$130.00
Limit	\$105.00	\$105.00	\$105.00

  

	NF A	NF B
Plus carried forward	+ 20.00	+ 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 for 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) 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.

(c) 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).

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

(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) For rates implemented on or after January 1, 2003, target occupancy for the General Services, Nursing and Special Patient Care rate components shall be calculated as follows:

1. For those nursing facilities that are at or above 85 percent occupancy, the reasonable base period costs shall be divided by actual base period patient days.
2. For those nursing facilities that are below 85 percent occupancy, the reasonable base period costs shall be divided by 85 percent of licensed bed days.
3. Actual base period patient days shall include paid bed hold 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).

Amended by R.1999 d.74, effective March 1, 1999.

See: 30 N.J.R. 3191(a), 31 N.J.R. 678(b).

Rewrote (c).

Amended by R.2004 d.99, effective March 15, 2004.

See: 35 N.J.R. 2627(a), 36 N.J.R. 1356(a).

Rewrote the section.

### 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 additions 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 employee in New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent);