

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. 8:85-3.3(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)	(2)	(3)
	Base period	Limit	Total
	Patient Days	Per day	(1) x (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 and Senior Services, Long Term Care Assessment and Survey as authorized at N.J.A.C. 8:39, will be notified of all cases where NF patient care costs per day are less than 75 percent of the respective limit in N.J.A.C. 8:85-3.5 and 3.9 and in each case where nursing hours worked appear to be below the 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).

Recodified from N.J.A.C. 10:63-3.9 and amended by R.2005 d.389, effective January 17, 2006.

See: 36 N.J.R. 4700(a), 37 N.J.R. 1185(a), 38 N.J.R. 674(a).

Rewrote the section.

**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).

**8:85-3.10 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 Department should not concern itself with the method and attendant costs with which individual NFs are financed and constructed or the arrangements under which they are acquired or leased.
2. While not concerning itself about the costs, financing and so forth, of individual NFs, the Department's 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 Department believes 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. 8:85-3.11);
2. Land and land improvements (see N.J.A.C. 8:85-3.12);
3. Equipment (routine moveable) (see N.J.A.C. 8:85-3.13);
4. Maintenance and replacements (see N.J.A.C. 8:85-3.14);
5. Property insurance (see N.J.A.C. 8:85-3.15);
6. Economic occupancy level (see N.J.A.C. 8:85-3.16).

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).

Recodified from N.J.A.C. 10:63-3.10 and amended by R.2005 d.389, effective January 17, 2006.

See: 36 N.J.R. 4700(a), 37 N.J.R. 1185(a), 38 N.J.R. 674(a).

Substituted "Department" for "departments", changed references N.J.A.C. 10:63 to N.J.A.C. 8:85, and made grammatical changes throughout.

#### Case Notes

All site improvement costs for replacement facility were to be included as part of the land value, rather than to building value, in determining Medicaid reimbursement rate for licensed not-for-profit county-operated nursing care facility. *Runnells Specialized Hospital, v.*

Division of Medical Assistance and Health Services, 1998 WL 665893, Aug 17, 1998, N.J. Adm., (No. HLT 9933-95).

Interest on indebtedness to refinance existing mortgage loans was a property-capital cost that had to be included as a rate component in the calculation of long-term care facility's Medicaid reimbursement rate. *Department of Health and Senior Services, v. Holiday Care Center*, 2001 WL 670845, N.J. Adm., May 31, 2001, (No. HLT 915-99).

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 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).

#### 8:85-3.11 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.