

8. The Department may establish provisional per diem rates for newly-constructed facilities and for facilities experiencing major expansion based upon projected costs. Facilities must submit their estimates of projected costs to the Department prior to the opening date of a newly-constructed or expanded facility.

Provisional per diem rates are effective for six (6) months, with rates being adjusted retroactively on the basis of actual costs. All rates discussed in this section shall be determined in accordance with the provisions of this Plan.

For a facility acquired through purchase or a capital lease, the daily rate of reimbursement is the amount paid to the facility under the previous operator. The agency may adjust the rate by inflation or other increases as allowed by the existing provisions of this Plan until the facility's new required financial reports are used to calculate rates. A change in operational ownership occurs when all of the following criteria are met:

- a. The legal right to make management, executive, operating, and planning decisions for the existing facility is transferred to a new organization;
  - b. The new organization is a separate organization and is not a parent, subsidiary, or related party of the existing facility; and
  - c. Neither the individuals associated with the existing facility nor the existing organizations have the power, directly or indirectly, to influence or direct the actions or the policies of the new organization.
9. The reimbursement rate for out-of-state facilities providing nursing services to residents of the State of South Dakota is the lesser of the Medicaid rate established by the state in which the facilities are located or the South Dakota statewide average Medicaid rate for all in-state facilities. Payment to out-of-state facilities for care not available at in-state facilities is at the rate recognized for the facility by the Medicaid agency in the state in which the facility is located.
  10. South Dakota Medicaid reimburses swing-bed hospitals on a per diem basis equal to the average Medicaid payment, excluding therapies, paid to nursing facilities, excluding intermediate care facilities for the mentally retarded, during the previous state fiscal year. The reimbursement for swing-bed hospitals for assisted living care is at the current maximum rate paid for assisted living care.