

5101:3-3-51.5

7

lease if the provider requests a rate adjustment for the change in lease.

(c) Imputed interest expense shall be based on the allowable cost basis as determined under paragraph (F)(2)(a) of this rule. For purposes of calculating the imputed interest expense, the lessee shall:

(i) Assume an amortization period of thirty-three years.

(ii) Calculate the imputed interest rate for the first year of operation under the lease.

(iii) An amortization schedule established at the inception of the lease shall be used to calculate the annual imputed interest expense, except as provided under paragraph (F)(2)(c)(v) of this rule.

(iv) The imputed interest rate shall be recalculated on the first business day of January following five calendar years of operation and every five years thereafter.

(v) A revised amortization schedule shall be established each time the imputed interest rate is recalculated under paragraph (F)(2)(c)(iv) of this rule using the recalculated imputed interest rate, the remaining amortization period and the unamortized balance from the previous amortization schedule.

(G) For a lease of a NF with a date of licensure on or after May 27, 1992, that was not initially operated under a lease and has not been in existence at least ten years, actual, allowable cost of ownership shall include the lesser of the following:

(1) The annual lease expense; or

(2) The portion of the annual lease expense that is equal to an imputed expense for depreciation and interest calculated at the inception of the lease using the lessor's historical capital asset cost basis. The imputed expense is calculated below:

(a) Imputed depreciation expense shall be based on the lessor's historical capital asset cost basis. For purposes of calculating the imputed depreciation expense, the lessee shall:

APR 25 2003

TN #03-002 APPROVAL DATE _____

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

5101:3-3-51.5

8

(i) Separate the leased assets into three accounts and depreciate the separated leased assets using the following useful lives:

(a) "Land" is not depreciated; and

(b) "Buildings" include buildings and renovations completed by the lessor and shall be depreciated over a thirty-three-year useful life; and

(c) "Equipment" is all assets not included in land or buildings and shall be depreciated over a ten-year useful life.

(ii) A depreciation schedule established at the inception of the lease shall be used to determine the annual imputed depreciation expense.

(iii) In the case of a capital lease, report double accumulated depreciation in an amount equal to twice the depreciation expense incurred on its cost report for the first year of operation under the lease if the provider requests a rate adjustment for the change in lease.

(b) The greater of the imputed interest expense calculated below:

(i) The lessor's actual annual amortization of financing costs and interest expense; or

(ii) Imputed interest expense based on seventy per cent of the lessor's historical capital asset cost basis. For purposes of calculating the imputed interest expense, the lessee shall:

(a) Assume an amortization period of thirty-three years.

(b) Calculate the imputed interest rate for the first year of operation under the lease.

(c) An amortization schedule established at the inception of the lease shall be used to calculate the annual imputed interest expense, except as provided under paragraph (E)(2)(b)(ii)(e) of this

TN #03-002 APPROVAL DATE APR 25 2003

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

- (d) The imputed interest rate shall be recalculated on the first business day of January following five calendar years of operation and every five years thereafter
- (e) A revised amortization schedule shall be established each time the imputed interest rate is recalculated under paragraph (E)(2)(b)(ii)(d) of this rule using the recalculated imputed interest rate, the remaining amortization period and the unamortized balance from the previous amortization schedule.
- (H) For a new lease of a NF that was operated under a lease on May 27, 1992, and the old lease was in effect for ten years, actual, allowable cost of ownership shall include the lesser of the following:
- (1) The annual new lease expense; or
 - (2) The old lease payment at the inception of the lease adjusted by the lesser of the following:
 - (a) One-half of the change in construction costs from the beginning of the old lease to the beginning of the new lease, as calculated by ODJFS using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (b) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, from the beginning of the old lease to the beginning of the new lease.
- (I) For a new lease of a NF that was operated under a lease on May 27, 1992, and the old lease was not in effect for ten years, actual, allowable cost of ownership shall include the lesser of the following:
- (1) The annual new lease expense; or
 - (2) The old lease payment.
- (J) Except as provided under paragraph (L) of this rule, for a new lease of a NF that was not in existence or that was in existence but not operated under a lease, on May 27, 1992, and the old lease was in effect for ten years, actual, allowable cost of

APR 25 2003

TN #03-002 APPROVAL DATE _____

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

ownership shall include the lesser of the following:

- (1) The annual new lease expense; or
- (2) The portion of the annual lease expense that is equal to an imputed expense for depreciation and interest calculated at the inception of the new lease using the lessor's historical capital asset cost basis. The imputed expense is calculated below:
 - (a) Adjust the lessor's historical capital asset cost basis by the lesser of:
 - (i) One-half of the change in construction costs during the time the lessor held each asset until the beginning of the new lease, as calculated by ODJFS using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (ii) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, during the time that the lessor held each asset until the beginning of the new lease.
 - (b) Imputed depreciation expense shall be based on the allowable cost basis as determined under paragraph (J)(2)(a) of this rule. For purposes of calculating the imputed depreciation expense, the lessee shall:
 - (i) Separate the leased assets into three accounts and depreciate the separated leased assets using the following useful lives:
 - (a) "Land" is not depreciated; and
 - (b) "Buildings" include buildings and renovations completed by the lessor and shall be depreciated over a thirty-three-year useful life; and
 - (c) "Equipment" is all assets not included in land or buildings and shall be depreciated over a ten-year useful life.
 - (ii) A depreciation schedule established at the inception of the lease shall be used to determine the annual imputed depreciation expense.

TN #03-002 APPROVAL DATE _____

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

APR 25 2003

5101:3-3-51.5

- (iii) In the case of a capital lease, report double accumulated depreciation in an amount equal to twice the depreciation expense incurred on its cost report for the first year of operation under the new lease if the provider requests a rate adjustment for the change in lease.
- (c) Imputed interest expense shall be based on the allowable cost basis as determined under paragraph (J)(2)(a) of this rule. For purposes of calculating the imputed interest expense, the lessee shall:
 - (i) Assume an amortization period of thirty-three years.
 - (ii) Calculate the imputed interest rate for the first year of operation under the lease.
 - (iii) An amortization schedule established at the inception of the lease shall be used to calculate the annual imputed interest expense, except as provided under paragraph (J)(2)(c)(v) of this rule.
 - (iv) The imputed interest rate shall be recalculated on the first business day of January following five calendar years of operation and every five years thereafter.
 - (v) A revised amortization schedule shall be established each time the imputed interest rate is recalculated under paragraph (J)(2)(c)(iv) of this rule using the recalculated imputed interest rate, the remaining amortization period and the unamortized balance from the previous amortization schedule.
- (K) Except as provided under paragraph (M) of this rule, for a new lease of a NF that was not in existence or that was in existence but not operated under a lease, on May 27, 1992, and the old lease was not in effect for ten years, actual, allowable cost of ownership shall include the lesser of the following:
 - (1) The annual new lease expense; or
 - (2) The annual amount calculated for the old lease using the lessor's historical capital asset cost under paragraphs (C)(2), (E)(2), (F)(2), (G)(2), and (J)(2) of this rule or for any previous new lease under this paragraph.
- (L) For a new lease of a NF with a date of licensure on or after May 27, 1992, that was

TN #03-002 APPROVAL DATE _____

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

APR 25 2003

initially operated under a lease, if there was a substantial commitment of money for construction of the NF after December 22, 1992, and before July 1, 1993, and the old lease was in effect for at least ten years, actual, allowable cost of ownership shall include the lesser of the following:

- (1) The annual new lease expense; or
- (2) The old lease payment at the inception of the lease adjusted by the lesser of the following:
 - (a) One-half of the change in construction costs from the beginning of the old lease to the beginning of the new lease, as calculated by ODJFS using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (b) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, from the beginning of the old lease to the beginning of the new lease.

(M) For a new lease of a NF with a date of licensure on or after May 27, 1992, that was initially operated under a lease, if there was a substantial commitment of money for construction of the NF after December 22, 1992, and before July 1, 1993, and the old lease was not in effect for at least ten years, actual, allowable cost of ownership shall include the lesser of the following:

- (1) The annual new lease expense; or
- (2) The old lease payment.

(N) For any revision of a lease specified under paragraphs (B) to (L) of this rule, or any subsequent lease of a NF operated under such a lease, other than execution of a new lease, the portion of actual, allowable cost of ownership attributable to the lease shall be the same as before the revision or subsequent lease.

(O) If a lessor adds beds or renovates a NF and the project has been prior approved by ODJFS, the lessee may seek rate reconsideration under rule 5101:3-3-24 of the Administrative Code to increase reimbursement under the cost of ownership for the increased lease payments which result from the added beds or renovations.

(P) This rule does not apply to specific leases of equipment, but does apply if the NF and equipment are leased under the same lease agreement.

TN #03-002 APPROVAL DATE APR 25 2003

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

5101:3-3-51.5

13

- (Q) A provider who acquires a facility through a capital lease is subject to the recover of excess depreciation paid (whether it is imputed or actual depreciation) in accordance with rule 5101:3-3-51.6 of the Administrative Code. A lessor who has never operated a NF under the medical assistance program is not subject to the provisions of rule 5101:3-3-51.6 of the Administrative Code.
- (R) A lease between related parties, occurring before May 17, 2001 will not be recognized as an initial lease. A lease between related parties occurring on or after this date and meeting the criteria for related party as defined under rule 5101:3-3-01 of the Administrative Code shall be considered an initial lease.
- (S) When an unrelated party lease transaction follows a related party lease transaction, ODJFS shall apply the provisions of paragraph (C) of this rule to determine the maximum reimbursable lease expense.

APR 25 2003

TN #03-002 APPROVAL DATE _____

SUPERSEDES

TN #02-010 EFFECTIVE DATE 01/01/03

5101:3-3-51.5

14

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CERTIFIED ELECTRONICALLY

Certification

12/12/2002

Date

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APR 25 2003

TN #03-002 APPROVAL DATE _____
SUPERSEDES
TN #02-010 EFFECTIVE DATE 01/01/03

- (3) Any provider operating a NF pursuant to a lease which changes its medicaid provider agreement and the change does not involve the relocation of residents shall provide written notice. at least forty-five days prior to the expiration of its lease if a new, extended or renewed lease is not in place at the time; and
 - (4) Any provider operating a NF pursuant to a lease which changes its medicaid provider agreement and the change involves the relocation of residents shall provide written notice at least ninety days prior to the expiration of its lease if a new, extended or renewed lease is not in place at the time; and
 - (5) Notwithstanding paragraphs (C)(1) to (C)(4) of this rule, any provider operating a NF shall provide immediate notice by telephone or FAX and written notice within five days of notification of a government mandate which requires the relocation of residents.
- (D) ODJFS shall hold in escrow in a bank, trust company, or savings and loan association, the amount of the last two monthly vendor payments to a NF before a change in the medicaid provider agreement, closure or voluntary withdrawal from the medicaid program. If the provider fails to notify ODJFS within the time frames required in this rule before entering into a transaction that causes a change in the medicaid provider agreement, then ODJFS shall hold the next two monthly vendor payments after ODJFS learns of the transaction, regardless of whether the new provider is in possession of the facility. The only exception is that if the amount the NF will be required to refund under this rule is likely to be less than the amount of the last two monthly vendor payments, ODJFS shall take one of the following actions instead of withholding the amount of the last two monthly vendor payments:
- (1) In the case of a NF that owns other NFs or intermediate care facilities for the mentally retarded (ICFs-MR) that participate in the medical assistance program, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded; or
 - (2) In the case of all other NFs, withhold the amount of the last monthly vendor payment to the NF, or if the provider fails, to provide proper notice as required by this rule, then the amount of the first monthly payment made to the facility after ODJFS learns of the transaction, regardless of whether the new provider is in possession of the facility.

If there is no change in the medicaid provider agreement, closure or voluntary withdrawal from the medicaid program after notice is provided to ODJFS under this rule, ODJFS shall order any payments held in escrow released to **APR 25 2003**

IN #03-002 APPROVAL DATE _____
SUPERSEDES
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