



Clearance Memo

TO: Chris Murray, Director, Academy of Senior Health Sciences
Peter Van Runkle, Executive Director, Ohio Health Care Association
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FROM: Julie Davis, NF Policy Section Chief, Bureau of Long-Term Services and Supports

SUBJECT: Proposed Amendment and Five-Year Rule Review of Administrative Code Rule 5160-3-18: Nursing Facilities (NF): Ventilator Program

DATE: December 28, 2023

The following rule changes are being made in accordance with section 119.03 of the Ohio Revised Code, which outlines the procedures for the adoption, amendment, and rescission of administrative rules.

Proposed for Amendment

Rule 5160-3-18 entitled "Nursing facilities (NFs): ventilator program" sets forth an alternative purchasing model for the provision of services to ventilator dependent individuals. The program is designed to increase access to care for ventilator dependent Medicaid individuals. This rule is being amended to include both program and payment criteria for NFs who participate in the NF Ventilator Program in accordance with changes to Section 5165.157 approved in Am. Sub. H. B. No. 33, as well as some revisions related to the 5-year rule review conducted by ODM.

- Paragraph B: definitions have been added that relate to the new Revised Code provisions.
- Paragraph B(5): language has been added to clarify that the NF ventilator program is

intended for individuals who receive ventilator services and have a tracheostomy. Non-invasive mechanical ventilation does not qualify for the enhanced rates of the NF ventilator program.

- Ventilator associated pneumonia (VAP) and related definitions have been removed due to the elimination of those terms from the rule.
- Paragraph C: Provider exclusionary language has been replaced with the new Revised Code requirements.
- Previous Paragraph D(4): Providers will no longer be required to submit a new application with their provider agreement revalidation, since a provider's eligibility will be monitored on an ongoing basis by ODM.
- New Paragraph D(4): Program participation does not automatically transition to a new entering provider involved in a CHOP. The new operator will need to apply and be approved in order to participate in the NF ventilator program.
- Paragraph F: VAP references are being removed since those related quality requirements are being replaced with the new Revised Code requirements.
- New Paragraph H: language is being added to implement the quality component in the Revised Code that adds provider restrictions for NFs who are listed on Tables A or D of the CMS Special Focus Facility (SFF) list and those NFs with a one-star rating on the CMS five-star rating system, unless ODM approves an access waiver for a provider. Language is being added regarding a provider's responsibility for billing appropriate codes for ventilator-dependent individuals.
- Previous Paragraph H: the VAP reporting requirements are being removed since that quality component is being replaced by the new quality requirements in the Revised Code.
- Throughout the rule, paragraphs have been re-lettered and renumbered as necessary.
- Throughout the rule, regulatory language has been removed.
- Throughout the rule, references and terminology have been updated as appropriate.

5160-3-18

Nursing facilities (NFs): ventilator program.

(A) Purpose.

In accordance with section 5165.157 of the Revised Code, this rule establishes an alternative purchasing model for the provision of nursing facility (NF) services to ventilator dependent individuals which may include ventilator weaning.

(B) Definitions.

For purposes of this rule the following definitions apply:

(1) "Centers for medicare & medicaid services (CMS) five-star rating system" is a program in which NFs are assigned a rating of one to five stars with five stars representing the highest score.

(2) "CMS Special focus facility (SFF) list" represents those NFs with quality issues. NFs on table A are current SFFs and those on table D are facilities that qualify to be selected as an SFF.

~~(1)~~(3) "Discrete unit" means an area in a NF that is set aside from the larger facility. A discrete unit may be a separate building, wing, floor, hallway, one side of a corridor, or a room or group of rooms. Beds in the unit may be utilized for individuals who are not ventilator dependent provided that the NF can accommodate all the ventilator dependent individuals covered under this rule and as required by this rule.

(4) "New admissions" are residents who are newly admitted to the discrete ventilator unit of a NF. A resident who is on a temporary leave from the unit for inpatient hospitalization, and is expected to return, will retain their initial admission date regardless of whether they exhaust their bed-hold days. There cannot be an intervening stay in the non-discrete unit of the NF, another NF, or at home.

~~(2)~~(5) "ODM NF ventilator program" means the ventilator services, which may include ventilator weaning services, provided ~~to~~ by a NF to ventilator dependent individuals with a tracheostomy. ~~by a NF in~~ In accordance with this rule, approved NFs ~~where the NF is~~ are eligible to receive an enhanced payment rate for providing those services.

~~(3)~~(6) "Respiratory care professional" (RCP) means the same as in division (B) of section 4761.01 of the Revised Code.

~~(4) "Ventilator-associated pneumonia (VAP)" means pneumonia in an individual intubated and ventilated at the time of, or within forty-eight hours before, the~~

~~onset of the pneumonia.~~

~~(5) "VAP baseline rate" means the average of a NF's VAP rate for a fiscal year calculated by ODM using the data from the submission of quarterly reports for the most recent full calendar year beginning January first and ending December thirty first.~~

~~(6) "VAP threshold rate" means a maximum number of VAP episodes determined by ODM based on the VAP baseline rates for all NFs statewide.~~

~~(7) "VAP rate" means the number of VAP episodes occurring in the NF per one thousand ventilator days.~~

~~(8)~~(7) "Ventilator dependent" means the use of ~~any type of~~ mechanical ventilation to sustain daily respiration via tracheostomy for any part of the day.

~~(9)~~(8) "Ventilator weaning" means the gradual withdrawal of ventilator support.

~~(10)~~(9) "Ventilator weaning services" means the services provided to support the individual resident's ventilator weaning and includes a post ventilator weaning evaluation period of up to fourteen days.

(C) Provider eligibility.

In order to qualify as an Ohio Department of Medicaid (ODM) NF ventilator program provider and receive an enhanced payment rate for providing ventilator services or ventilator weaning services, a NF shall meet all of the following criteria:

(1) Be a licensed and medicaid certified NF and meet the requirements for NFs in accordance with 42 U.S.C. 1396r (~~10/19/2018~~ need new date).

(2) Provide services to individuals who are ventilator dependent and have medicaid as their primary payer.

(3) Comply with the provisions in Chapters 5164. and 5165. of the Revised Code regarding provider agreements, and with the provisions in rules 5160-3-02 to 5160-3-02.2 of the Administrative Code regarding execution and maintenance of provider agreements between ODM and the operator of a NF.

(4) Not be excluded from participation in the program in accordance with section 5165.157 of the Revised Code, paragraphs (B)(1) and (E).

~~(4)~~(5) Cooperate with ODM or its designee during all provider oversight and

monitoring activities including but not limited to:

- (a) Being available to answer questions pertaining to the ODM NF ventilator program.
- (b) Providing necessary requested documentation.
- ~~(c) Providing required quarterly reports and as applicable, a requested plan of action.~~
- ~~(5)~~(6) Designate a discrete unit within the NF for the use of individuals in the ODM NF ventilator program. If there is a change in the size or location of the designated discrete unit or number of beds in the discrete unit, the NF ~~shall~~will notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change.
- ~~(6)~~(7) Have ventilators connected to emergency outlets, which are connected to an on site backup generator in an amount sufficient to meet the needs of the ventilator dependent individuals.
- ~~(7) Have not been in the centers for medicare and medicaid services (CMS) special focus facility (SFF) program for the previous six months.~~
 - ~~(a) A NF participating in the ODM NF ventilator program that becomes a SFF must notify ODM of the SFF status within one business day of receipt of the CMS SFF letter via email to nfpolicy@medicaid.ohio.gov and attach a copy of the letter.~~
 - ~~(b) Any individuals participating in the ODM NF ventilator program at the time a NF becomes an SFF shall remain as participants in the ODM NF ventilator program. The NF shall not admit new individuals to the ODM NF ventilator program until the NF has been graduated from the SFF program for a period of six consecutive months. At that time, the NF must submit a new request to participate in the ODM NF ventilator program in accordance with paragraph (D) of this rule. The NF may begin admitting new individuals to the ODM NF ventilator program after the NF receives notice of approval by ODM.~~
- (8) Provide all of the following services:
 - (a) For at least five hours per week, the services of an RCP or the services of a registered nurse (RN) who has worked for a minimum of one year with ventilator dependent individuals. The RCP or the RN as applicable, ~~shall~~ will provide direct care to the ventilator dependent

individuals.

- (b) If ordered by a physician, initial assessments for physical therapy, occupational therapy, and speech therapy within forty-eight hours of receiving the order for a ventilator dependent individual.
 - (c) If ordered by a physician, up to two hours of therapies per day, six days per week for each ventilator dependent individual.
 - (d) In emergency situations as determined by a physician, access to laboratory services that are available twenty-four hours per day, seven days per week with a turnaround time of four hours.
 - (e) For new admissions, administer pain medications to a ventilator dependent individual within two hours from the receipt of the physician order.
- (9) Have an approved ODM 10198, "Addendum To ODM Provider Agreement: Nursing Facility Ventilator Program" (12/2018).
- (D) Request to participate in the ODM NF ventilator program.
- (1) A NF who wishes to participate in the ODM NF ventilator program ~~shall~~ should email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" (12/2018) to nfpolicy@medicaid.ohio.gov. The request ~~shall~~ should demonstrate that the NF is capable of fulfilling all of the requirements specified in this rule, including ventilator weaning services if requested. ODM may request additional information regarding a NF's qualifications to participate.
 - (2) ODM will respond to a request via return email within ~~ten~~ fifteen business days of receipt of the request. If the request is approved, ODM will provide the ODM 10198 for the NF to complete and submit to ODM.
 - (3) If the request to participate in the ODM NF ventilator program is not approved, the NF may request a reconsideration by the medicaid director or designee within thirty calendar days of receipt of the non-approval via email to nfpolicy@medicaid.ohio.gov. The decision of the director or designee regarding the reconsideration ~~shall be~~ is final.
 - ~~(4) The ODM 10227 shall be re-submitted to, and re-approved by ODM, as part of each subsequent provider agreement revalidation unless the provider chooses~~

~~to withdraw from the ODM NF ventilator program or is determined by ODM to no longer meet the eligibility requirements as set forth in paragraph (C) of this rule and, if applicable, paragraph (E) of this rule. ODM will respond to a request via return email within ten business days of receipt of the request. If the request is approved, ODM will provide the ODM 10198 for the NF to complete and submit to ODM. If the request to participate is not approved, the NF shall follow the information in paragraph (D)(3) of this rule.~~

~~(5)(4) In the case of a~~ In the case of a change of operator (CHOP), the new provider may apply to the program by following the steps outlined in paragraphs (D)(1), (D)(2) and (D)(3). On the ODM 10227, the provider may request an effective date for the program back to the effective date of the CHOP as long as they self-attest compliance with the program as of this date. ODM may approve the enhanced rates back to the effective date if submitted within sixty days of the CHOP. ~~if the exiting provider participated in the ODM NF ventilator program and the entering provider wishes to continue to participate in the program, the entering provider should submit the ODM 10227 to nfpolicy@medicaid.ohio.gov. Notwithstanding rule 5160-3-65.1 of the Administrative Code, if the ODM 10227 is submitted within sixty days of the effective date of the CHOP and ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates retroactive to the effective date of the CHOP or the date the requirements to participate in the NF ventilator program are met, whichever occurs later. If the ODM 10227 is not submitted within sixty days of the effective date of the CHOP but ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates effective on the date of ODM approval. If there is no approved ODM 10198, the entering provider's participation in the ODM NF ventilator program shall cease effective on the effective date of the CHOP.~~

(E) Ventilator weaning services.

NFs that are approved to participate in the NF ventilator program may provide ventilator weaning services if they meet the following criteria:

- (1) Have an approved ODM 10198 with approval to provide ventilator weaning services.
- (2) Have a ventilator weaning protocol in place established by a physician trained in pulmonary medicine who is available by phone twenty-four hours per day seven days per week while ventilator weaning services are provided.
- (3) Have an RCP with training in basic life support on-site eight hours per day seven days per week and available by phone during the remaining hours of the day while ventilator weaning services are provided.

- (4) Have a registered nurse or RCP with training in basic life support on-site twenty-four hours per day seven days per week while ventilator weaning services are provided.

(F) ODM NF ventilator program payment rate.

- (1) The total per medicaid day payment rate determined under section 5165.15 of the Revised Code ~~shall~~ will not be paid for NF services provided under the ODM NF ventilator program. Instead, the total per medicaid day payment rate for services provided by a NF under the NF ventilator program for each state fiscal year ~~shall~~will be as follows:

- (a) For ventilator weaning services, sixty per cent of the statewide average of the total per medicaid day payment rate for those individuals receiving ventilator services in a long-term acute care hospital for the prior calendar year. Payment at the enhanced ventilator weaning rate is limited to ninety days per calendar year per individual, and includes a post ventilator weaning evaluation period of up to fourteen days.

- (b) For ventilator only services, fifty per cent of the statewide average of the total per medicaid day payment rate for those individuals receiving ventilator services in a long-term acute care hospital for the prior calendar year.

~~(2) Prior to the establishment of the VAP threshold rate, NFs participating in the ODM NF ventilator program will receive the rate described in paragraph (F)(1)(a) of this rule for ventilator weaning services and paragraph (F)(1)(b) of this rule for ventilator only services, of this rule.~~

~~(3) ODM shall notify NFs via the Ohio department of medicaid website no later than July first of each year of each NF's specific VAP baseline rate, the VAP threshold rate, and the ODM NF ventilator program payment rates that shall be effective for the state fiscal year.~~

~~(4) Once ODM has calculated a NF's VAP baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP rate exceeds the VAP threshold rate, ODM shall notify the NF via email that a plan of action is required and a deadline for its submission to ODM.~~

~~(a) If the NF elects not to timely submit a plan of action, ODM shall follow the termination process in paragraph (I)(2) of this rule.~~

~~(b) If the NF elects to submit a plan of action, the NF shall submit the plan to~~

~~ODM via email to nfpolicy@medicaid.ohio.gov within fifteen calendar days of the date on the ODM notification email regarding the required plan of action and shall include:~~

~~(i) A description of the NF's investigation of both avoidable and unavoidable factors contributing to their quarterly VAP rate being higher than the VAP threshold rate.~~

~~(ii) Specific interventions to reduce the NF's VAP rate.~~

~~(iii) A completion date for the plan of action which shall be within sixty days of sending the plan of action via email to ODM.~~

~~(c) Within ten business days of receipt of a plan of action, ODM will review the plan and make one of the following decisions:~~

~~(i) Approve the plan and notify the NF via return email of the approval. The NF shall submit to ODM a statement of completion of their plan of action within fifteen calendar days of their completion date via email to nfpolicy@medicaid.ohio.gov.~~

~~(ii) Disapprove the plan and notify the NF via return email of the disapproval and the deficiencies identified in their plan of action. If the NF elects not to submit a revised plan of action, ODM shall follow the termination process in paragraph (I)(2) of this rule.~~

~~(iii) If the NF elects to submit a revised plan of action, the NF shall submit the revised plan to ODM via email to nfpolicy@medicaid.ohio.gov within fifteen calendar days of the date on the ODM notification email regarding the disapproval.~~

~~(a) Within ten business days of receipt of a revised plan of action, ODM will review the revised plan and make one of the following decisions:~~

~~(i) Approve the revised plan and notify the NF via return email of the approval. The NF shall submit to ODM a statement of completion of their revised plan of action within fifteen calendar days of their completion date via email to nfpolicy@medicaid.ohio.gov.~~

~~(ii) Disapprove the revised plan and notify the NF via return email of the disapproval. ODM may decide a NF is no longer eligible to participate in the ODM NF ventilator program. In such cases ODM shall follow the termination process in paragraph (I)(2) of this rule.~~

~~(d) If the VAP rate exceeds the VAP threshold rate for two consecutive quarters, ODM may reduce the ODM NF ventilator program payment rates for both ventilator only services and ventilator weaning services by a maximum of five per cent. The reduced ODM NF ventilator program payment rate or rates if ventilator weaning services are provided, will become effective during the next full quarter following report submission, and shall remain in effect for that entire quarter.~~

~~(i) ODM shall notify the NF via certified mail return receipt requested of the reduced payment rate and the applicable quarter.~~

~~(ii) Within thirty days of receiving receipt of the reduced payment rate or rates if ventilator weaning services are provided, the NF may request a reconsideration by the medicaid director or designee via email to nfpolicy@medicaid.ohio.gov. The decision of the director or designee regarding the reconsideration shall be final.~~

~~(5)~~(2) If an individual is no longer ventilator dependent, the per medicaid day payment rate for that individual ~~shall~~ will be the rate determined under section 5165.15 of the Revised Code beginning the first day the individual is no longer ventilator dependent or at the conclusion of the post ventilator weaning evaluation period, whichever is later.

~~(6) Except in the case of a CHOP as described in paragraph (D)(5) of this rule, NFs without a current approved ODM 10198 shall be paid the total per medicaid day payment rate determined under section 5165.15 of the Revised Code.~~

(G) Bed-hold days.

Bed-hold days for individuals receiving services under the ODM NF ventilator program ~~shall~~ will be paid at the NF's per medicaid day payment rate for reserving beds determined under section 5165.34 of the Revised Code.

(H) Quality component.

(1) NFs that meet any of the exclusion criteria in paragraph (B)(1) of Section 5165.157 of the Revised Code are ineligible to be approved for the NF Ventilator Program.

(2) Payment for residents who meet the criteria in paragraph (E) of section 5165.157 of the Revised Code will be at the NF's per diem rate during the timeframe designated in this section.

(a) Facilities designated as having a one-star overall rating by CMS or placed on Tables A or D of the SFF list may submit an access waiver to ODM

[at nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).

(b) Unless a facility applies for and is approved for a waiver in order to ensure access to ventilator services in the service area they will be subject to payment for new admissions at the NFs per diem rate.

(c) Facilities who improve their star rating to a two or above or are removed from Tables A or D of the SFF list are eligible to receive the enhanced rate(s).

(3) NFs are responsible for billing the correct revenue center codes in alignment with this rule.

~~(H) Quarterly reports:~~

~~(1) ODM NF ventilator program providers shall submit ODM 10228 "Nursing Facility Quarterly Ventilator Program Report" (12/2018) to ODM on a calendar quarter basis. The reporting period end date is the last day of each calendar quarter. The quarterly report is due to ODM by day twenty-five of the month after the reporting period end date. A provider does not have to submit quarterly reports if the provider had no ventilator dependent residents during the reporting period.~~

~~(2) Quarterly reports shall be submitted to ODM via secure email to nfpolicy@medicaid.ohio.gov.~~

(I) Ensuring providers meet ODM NF ventilator program eligibility requirements.

(1) ODM ~~shall~~ will periodically ~~biannually~~ select a random sample of the total of all ODM NF ventilator program providers, and ~~shall~~ will review their compliance with ~~all of the eligibility~~ requirements of this rule as specified in paragraph (C), and paragraph (E) of this rule if the NF provides ventilator weaning services.

(2) ODM ~~shall~~ will terminate a NF from the ODM NF ventilator program if ODM determines that the NF has failed to meet the requirements of this rule.

(a) If a NF fails to continue to meet the requirements in paragraph (E) of this rule but meets the requirements in paragraph (C) of this rule, ODM will terminate the NF's ability to provide ventilator weaning services and to receive the enhanced rate for ventilator weaning in accordance with paragraph (F)(1)(a) of this rule. The NF may continue to provide ventilator only services and to receive the enhanced rate for ventilator only services in accordance with paragraph (F)(1)(b) of this rule, as long as the eligibility requirements in paragraph (C) of this rule are met.

(b) ODM ~~shall~~ will notify the provider of the termination via ~~certified mail return receipt requested~~ electronic mail.

(c) Within thirty calendar days of receipt of termination, the NF may request a reconsideration by the medicaid director or designee by submitting an email to nfpolicy@medicaid.ohio.gov. The decision of the director or designee regarding the reconsideration ~~shall be~~ is final.

~~(3) If, at the time of revalidation of the medicaid provider agreement, a request to sign a new provider agreement addendum is not approved, ODM shall terminate the NF from the program.~~

~~(a) ODM shall notify the NF via certified mail return receipt requested.~~

~~(b) Within thirty calendar days of receipt of the termination, the NF may request a reconsideration by the medicaid director or designee. The decision of the director or designee regarding the reconsideration shall be final.~~

(J) Change in services.

A NF that chooses to no longer provide ventilator weaning services or to no longer participate in the ODM NF ventilator program under this rule ~~shall~~ should do one of the following:

(1) If the NF is not providing services to any individual under the NF ventilator program and chooses to no longer participate in the NF ventilator program:

(a) The NF ~~shall~~ should send notice to ODM via email to nfpolicy@medicaid.ohio.gov.

(b) The notice ~~shall~~ should include a statement that the facility no longer chooses to participate in the NF ventilator program and the desired date of withdrawal.

(c) The written notice will serve as a modification to the NF's approved ODM 10198.

(2) If the NF no longer chooses to provide ventilator weaning services under the NF ventilator program but chooses to continue to participate in the NF ventilator program:

- (a) The NF ~~shall~~ should send notice to ODM via email to nfpolicy@medicaid.ohio.gov.
 - (b) The notice ~~shall~~ should include a statement that the facility no longer chooses to provide ventilator weaning services but chooses to continue to participate in the NF ventilator program.
 - (c) The notice ~~shall~~ should include the last date the NF will provide ventilator weaning services.
 - (d) The written notice will serve as a modification to the NF's approved ODM 10198.
- (3) If the NF is providing services, which may include ventilator weaning services, and chooses to withdraw from the NF ventilator program:
- (a) At least sixty days before the last day of participation in the ODM NF ventilator program, the NF ~~shall~~ should send notice of the withdrawal to ODM via email to nfpolicy@medicaid.ohio.gov.
 - (b) The notice ~~shall~~ must include a statement that the NF chooses to withdraw from the ODM NF ventilator program and the last date the NF will participate in the program.
 - (c) If the NF decides to discharge current ventilator dependent individuals, the NF ~~shall~~ must discharge in accordance with rule 3701-61-03 of the Administrative Code. If the NF decides to retain current ventilator dependent individuals, the per medicaid day payment rate ~~shall~~ will be the rate determined under section 5165.15 of the Revised Code beginning the day after the last date of participation in the ODM NF ventilator program.
 - (d) The written notice will serve as official termination of the NF's approved ODM 10198.
- (4) A NF who does not provide vent dependent or weaning services for any calendar year will be inactivated from the program. Notification will be sent via electronic mail to the facility administrator. Providers may reapply at any time.