

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-18

Rule Type: Amendment

Rule Title/Tagline: Nursing facilities (NFs): ventilator program.

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 Town St 4th floor Columbus OH 43218-2709

Contact: Tommi Potter **Phone:** 614-752-3877

Email: tommi.potter@medicaid.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 1/1/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5165.02, 5165.153
5. **What statute(s) does the rule implement or amplify?** 5165.157
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to enact certain flexibilities in the Medicaid nursing facility program that were adopted in emergency rules filed as a result of the public health emergency caused by COVID-19.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the provisions for the nursing facility ventilator program, including the provisions for ventilator weaning services.

The changes to the rule are:

1. In paragraph (E)(4), language is being added so that a respiratory care professional, in addition to a registered nurse, may fulfill the on-site 24 hours per day 7 days per week staffing requirement for nursing facilities that are approved to provide ventilator weaning services.

2. In paragraph (H), language is being added so that a provider participating in the NF ventilator program does not have to submit quarterly reports if the provider had no ventilator dependent residents during the reporting period.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to the Revised Code. This question is not applicable to any incorporation by reference to the Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

This rule incorporates one or more dated references to the U.S. Code. This question is not applicable to any dated incorporation by reference to the U.S. Code because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(A)(2)(a).

This rule incorporates one or more dated references to an ODM form. Each cited ODM form is dated and is generally available to persons affected by this rule via the "Resources" and "Publications" links on the ODM web site (<http://medicaid.ohio.gov/>) in accordance with RC 121.75(B)(4).

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

\$0.00

No impact on current budget.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

In accordance with paragraph (C)(1) of this rule, a nursing facility must be a licensed and Medicaid certified facility and meet the requirements for nursing facilities in accordance with 42 U.S.C. 1396r. The Department of Medicaid estimates it will take a nursing facility's attorney approximately 6 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$2,400.00) to review one licensure application. The Department further estimates it will take a nursing facility administrator approximately 4 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$288.00) to prepare and apply for one licensure application. The Department therefore estimates it will cost a total of approximately \$2,688.00 for a nursing facility provider to review, prepare, and apply for an application for licensure to operate. Additionally, the Department of Medicaid estimates it will take a nursing facility's attorney approximately 20 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$8,000.00) to review one application for Medicaid certification. The Department further estimates it will take a nursing facility administrator approximately 640 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$46,080.00) to prepare and apply for Medicaid certification. The Department therefore estimates it will cost nursing facility a grand total of approximately \$48,768.00 to comply with the provisions in this paragraph.

In accordance with paragraph (C)(3) of this rule, a nursing facility must 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. The Department of Medicaid estimates it will take a nursing facility's attorney approximately 2 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$800.00) and nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) for a total cost of \$944.00 to execute one new provider agreement. The Department further estimates it will take a nursing facility administrator approximately 1 hour at the rate of approximately \$72.00 per hour (total

estimated cost: \$72.00) to revalidate the provider agreement at least once every five years after the initial execution of the agreement.

In accordance with paragraph (C)(4) of this rule, a nursing facility must cooperate with ODM or its designee during all provider oversight and monitoring activities. The Department of Medicaid cannot estimate the cost of compliance of this because the Department does not know what oversight and monitoring activities any particular nursing facility will undergo, how long those activities will take, or how complicated those activities may become. However, the cost would be calculated by multiplying the number of staff hours required for each oversight or monitoring activity by the applicable hourly staff wage, then adding any additional costs that would be incurred to comply with this regulation.

In accordance with paragraph (C)(5) of this rule, a nursing facility must designate a discrete unit within the NF for the use of individuals in the 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 notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. The Department of Medicaid estimates it will take a nursing facility staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to comply with this requirement.

In accordance with paragraph (C)(6) of this rule, if a nursing facility needs to purchase a backup generator, the Department of Medicaid estimates it will cost a facility approximately \$300,000.00 for the purchase and installation.

In accordance with paragraph (C)(7)(a) of this rule, a nursing facility that becomes a Special Focus Facility (SFF) under the Centers for Medicare and Medicaid Services (CMS) SFF program must notify the Department of the SFF status within one business day of receipt of the CMS SFF letter via email at NFPolicy@medicaid.ohio.gov and attach a copy of the letter. The Department of Medicaid estimates it will take a nursing facility staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to notify the Department of the SFF status and attach a copy of the SFF letter.

In accordance with paragraph (C)(7)(b) of this rule, when a nursing facility has graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule in order to begin admitting new individuals to the ventilator program again. The Department of Medicaid estimates it will take a nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour

(total estimated cost: \$144.00) to submit a new request in accordance with paragraph (D).

In accordance with paragraph (C)(8)(a) of this rule, for at least five hours per week, a nursing facility must provide the services of an respiratory care professional (RCP) or the services of a registered nurse (RN) who has worked for a minimum of one year with ventilator dependent individuals. The Department of Medicaid estimates that, at the rate of approximately \$40.00 per hour, it will cost a provider approximately \$200.00 to employ an RCP to comply with this requirement. The Department also estimates that, at the rate of approximately \$32.12 per hour, it will cost a provider approximately \$160.60 to employ a RN to comply with this requirement.

In accordance with paragraph (C)(8)(b) of this rule, if ordered by a physician, a nursing facility must provide initial assessments for physical therapy, occupational therapy, and speech therapy within forty-eight hours of receiving the order for a ventilator dependent individual. The Department of Medicaid estimates it will take a physical therapist approximately 0.75 hours at the rate of approximately \$42.00 per hour (total estimated cost: \$31.50) to assess one ventilator dependent individual. The Department also estimates it will take an occupational therapist approximately 1 hour at the rate of approximately \$42.00 per hour (total estimated cost: \$42.00) to assess the same individual. The Department further estimates it will take a speech pathologist approximately 0.5 hours at the rate of approximately \$36.00 per hour (total estimated cost: \$18.00) to assess the individual. The Department therefore estimates it will cost nursing facility a grand total of \$91.50 to comply with this requirement.

In accordance with paragraph (C)(8)(c) of this rule, if ordered by a physician, a nursing facility must provide up to two hours of therapies per day, six days per week for each ventilator dependent individual. The Department of Medicaid is unable to quantify the adverse impact of this requirement because the Department does not know which types of therapies a physician will order on any particular day, or how many hours per day will be ordered. However, the impact could be calculated by determining the number of hours of therapy provided to one individual in a single day, multiplying those hours by the applicable rate of pay of the therapist who provided the service, then adding the results.

In accordance with paragraph (C)(8)(d) of this rule, in emergency situations as determined by a physician, a nursing facility must provide access to laboratory services that are available 24 hours per day, 7 days per week with a turnaround time of 4 hours. The Department of Medicaid estimates it will cost a nursing facility approximately \$100.00 in special service fees to have a laboratory service provide testing results for one individual within a 4-hour turnaround time.

In accordance with paragraph (C)(8)(e) of this rule, for new admissions, a nursing facility must administer pain medications to a ventilator dependent individual within 2 hours from the receipt of the physician order. The Department of Medicaid cannot estimate the cost of compliance with this requirement because the Department does not know what particular pain medications will be ordered for any particular individuals. However, the impact is generally minimal and usually is not more than \$5.00 per dose.

In accordance with paragraph (D)(1) of this rule, a nursing facility that chooses to participate in the ventilator program must email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" to nfpolicy@medicaid.ohio.gov. The Department of Medicaid estimates it will take a nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) to comply with this provision.

In accordance with paragraphs (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, if a NF's request to participate in the ventilator program is not approved, the NF may request a reconsideration by the Medicaid director or designee. The Department of Medicaid estimates it will take a nursing facility administrator approximately 4 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$288.00) to prepare one reconsideration request and submit it to the Department.

In accordance with paragraphs (C)(9), (D)(4), and (D)(5) of this rule, a nursing facility that wants to participate in the ODM NF ventilator program must have an approved ODM 10198 form "Addendum to ODM Provider Agreement for Ventilator Services in NFs." The Department of Medicaid estimates it will take a nursing facility administrator approximately 15 minutes at the rate of approximately \$72.00 per hour (total estimated cost: \$18.00) to sign and return the ODM 10198. In accordance with paragraph (I)(3) of this rule, this cost is incurred at least once every five years during a provider's revalidation process and whenever there is a change of operator (CHOP).

In accordance with paragraph (E)(1) of this rule, nursing facilities that are approved to participate in the NF ventilator program may provide ventilator weaning services if they have an approved ODM 10198 form with approval to provide ventilator weaning services. A facility that has an approved ODM 10198 and wishes to provide weaning services may send a written request to nfpolicy@medicaid.ohio.gov. The Department of Medicaid estimates it will take a nursing facility administrator approximately 0.5 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$36.00) to send a written request to the Department to provide ventilator weaning services.

In accordance with paragraph (E)(2) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a weaning protocol in place that

is established by a physician trained in pulmonary medicine. The Department of Medicaid cannot estimate the cost of compliance of this provision because some nursing facilities may already have this level of staffing in place prior to becoming approved to provide ventilator weaning services under the ODM NF ventilator program. However, the cost might be estimated by identifying the individuals responsible for developing the protocol with the physician, determining the number of hours required to develop the protocol, then multiplying the hours worked by both the identified individuals and the physician by the applicable average pay rate plus benefits and adding these costs together.

In accordance with paragraph (E)(3) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a respiratory care professional (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 weaning services are provided. The Department of Medicaid estimates it will cost a nursing facility that provides ventilator weaning services approximately \$40.00 per hour to employ an RCP, which will cost approximately \$2,240.00 per week or \$8,960.00 per month.

In accordance with paragraph (E)(4) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a registered nurse, or respiratory care professional (RCP) with training in basic life support, on-site 24 hours per day, seven days per week while weaning services are provided. The Department of Medicaid estimates it will cost a facility approximately \$32.12 per hour (estimated cost per day: \$770.88) to employ a registered nurse. The Department also estimates it will cost a facility approximately \$40.00 per hour (estimated cost per day: \$960.00) to employ an RCP.

In accordance with paragraph (F)(4) of this rule, once the Department of Medicaid calculates a NF's ventilator acquired pneumonia (VAP) baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP baseline rate exceeds the VAP threshold rate, the NF must submit a plan of action. In addition, if the Department determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. If ODM approves a plan of action or a revised plan of action, the NF must submit a statement of completion of its plan of action within 15 calendar days of the completion date via email. The Department of Medicaid cannot estimate the cost of compliance because the Department cannot anticipate which of these steps a NF will be required to complete, and the number and extent of deficiencies that will need to be addressed. Additionally, the Department cannot anticipate the strategy a NF use may use to comply with each of these requirements or the various staff and processes they may decide to use. However, the cost could be calculated by identifying which of the steps a NF is required to complete, the tasks necessary to complete each step, the persons responsible for each task, and the number of hours required for the

process, then multiplying the staff hours needed by the average pay rate plus benefits for each staff person and adding these costs together. If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, the Department may reduce a NF's ventilator program payment rate by a maximum of five percent for one full quarter. The Department cannot quantify the adverse impact of this provision because the Department cannot know in advance what percentage, if any, a NF's rate for ventilator only services or for ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. However, the cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

In accordance with paragraph (H)(1) of this rule, each NF ventilator program provider must submit quarterly reports to the Department of Medicaid. The Department estimates that it will take a nursing facility's admissions director approximately 6 hours per quarter at the rate of approximately \$35.00 per hour (total estimated annual cost: \$840.00) to maintain the information required for quarterly reporting. The Department further estimates it will take the nursing facility administrator an additional 2 hours at the rate of approximately \$72.00 per hour (total estimated annual cost: \$576.00) to submit quarterly reports. Therefore, the Department estimates it will cost a nursing facility a grand total of \$1,416 per year to submit quarterly reports for the ventilator program.

In accordance with paragraph (I)(2) of this rule, a nursing facility that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. The Department of Medicaid cannot estimate the cost of compliance to a nursing facility that is terminated from either portion of the ventilator program because the Department cannot predict the number of individuals in any particular facility's ventilator program. However, if a nursing facility continues to provide ventilator services outside ODM's NF ventilator program, the cost could be calculated by determining the difference between the enhanced NF ventilator program per diem rate and the regular NF per diem rate and multiplying that difference by the number of individuals on a ventilator at that facility.

In accordance with paragraph (J) of this rule, a NF that chooses to no longer provide ventilator weaning services or to no longer participate in the ODM NF ventilator program must send notice of withdrawal to the Department of Medicaid via email. The Department of Medicaid estimates it will take a nursing facility administrator approximately 15 minutes at the rate of approximately \$72.00 per hour (total estimated cost \$18.00) to comply with this requirement.

However, all costs of compliance are existing costs. There are no new costs of compliance with this rule filing.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** Yes
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

16. **Was this rule filed with the Common Sense Initiative Office?** Yes
17. **Does this rule have an adverse impact on business?** Yes

- A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** Yes

In accordance with paragraph (C)(1) of this rule, a nursing facility must be a licensed and Medicaid certified facility and meet the requirements for nursing facilities in accordance with 42 U.S.C. 1396r.

In accordance with paragraphs (C)(9), (D)(4), and (D)(5) of this rule, a nursing facility that that wants to participate in the ODM NF ventilator program must have an approved ODM 10198 form ""Addendum to ODM Provider Agreement for Ventilator Services in NFs."

In accordance with paragraph (E)(1) of this rule, nursing facilities that are approved to participate in the NF ventilator program may provide ventilator weaning services if they have an approved ODM 10198 form with approval to provide ventilator weaning services.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, the Department may reduce a NF's ventilator program payment rate by a maximum of five percent for one full quarter.

In accordance with paragraph (I)(2) of this rule, a nursing facility that fails to continue to meet the requirements of the rule will be terminated from the ventilator program.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

In accordance with paragraph (C)(5) of this rule, a nursing facility must designate a discrete unit within the NF for the use of individuals in the 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 notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change.

In accordance with paragraph (C)(6) of this rule, nursing facilities that participate in the ventilator program must have an on site backup generator that is sufficient to meet the needs of the ventilator dependent individuals.

In accordance with paragraph (C)(7)(a) of this rule, a nursing facility that becomes a Special Focus Facility (SFF) under the Centers for Medicare and Medicaid Services (CMS) SFF program must notify the Department of the SFF status within one business day of receipt of the CMS SFF letter via email at NFPolicy@medicaid.ohio.gov and attach a copy of the letter.

In accordance with paragraph (C)(7)(b) of this rule, when a nursing facility has graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule in order to begin admitting new individuals to the ventilator program again.

In accordance with paragraph (C)(8) of this rule, in order to qualify as an ODM NF ventilator program provider and receive an enhanced payment rate for providing ventilator services or ventilator weaning services, a nursing facility must provide all the services specified in this paragraph.

In accordance with paragraph (D)(1) of this rule, a nursing facility that chooses to participate in the ventilator program must email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" to nfpolicy@medicaid.ohio.gov.

In accordance with paragraph (E)(1) of this rule, nursing facilities that are approved to participate in the NF ventilator program may provide ventilator

weaning services if they have an approved ODM 10198 form with approval to provide ventilator weaning services. A facility that has an approved ODM 10198 and wishes to provide weaning services may send a written request to nfpolicy@medicaid.ohio.gov.

In accordance with paragraph (E)(2) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a weaning protocol in place that is established by a physician trained in pulmonary medicine.

In accordance with paragraph (E)(3) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a respiratory care professional (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 weaning services are provided.

In accordance with paragraph (E)(4) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a registered nurse, or respiratory care professional (RCP) with training in basic life support, on-site 24 hours per day, seven days per week while weaning services are provided.

In accordance with paragraph (H)(1) of this rule, each NF ventilator program provider must submit quarterly reports to the Department of Medicaid.

In accordance with paragraph (J) of this rule, a NF that chooses to no longer provide ventilator weaning services or to no longer participate in the ODM NF ventilator program must send notice of withdrawal to the Department of Medicaid via email.

- D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies?** No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. **Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**
- A. **How many new regulatory restrictions do you propose adding?**

Not Applicable

B. How many existing regulatory restrictions do you propose removing?

Not Applicable

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	No
B. County Government	Yes
C. Township Government	No
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

County and city/village governments that operate nursing facilities could incur costs of compliance with the proposed rule. The costs of compliance are the following:

In accordance with paragraph (C)(1) of this rule, a nursing facility must be a licensed and Medicaid certified facility and meet the requirements for nursing facilities in accordance with 42 U.S.C. 1396r. The Department of Medicaid estimates it will take a nursing facility's attorney approximately 6 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$2,400.00) to review one licensure application. The Department further estimates it will take a nursing facility administrator approximately 4 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$288.00) to prepare and apply for one licensure application. The Department therefore estimates it will cost a total of approximately \$2,688.00 for a nursing facility provider to review, prepare, and apply for an application for licensure to operate. Additionally, the Department of Medicaid estimates it will take a nursing facility's attorney approximately 20 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$8,000.00) to review one application for Medicaid certification. The Department further estimates it will take a nursing facility administrator approximately 640 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$46,080.00) to prepare and apply for Medicaid certification. The Department therefore estimates it will cost nursing facility a grand total of approximately \$48,768.00 to comply with the provisions in this paragraph.

In accordance with paragraph (C)(3) of this rule, a nursing facility must 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. The Department of Medicaid estimates it will take a nursing facility's attorney approximately 2 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$800.00) and nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) for a total cost of \$944.00 to execute one new provider agreement. The Department further estimates it will take a nursing facility administrator approximately 1 hour at the rate of approximately \$72.00 per hour (total estimated cost: \$72.00) to revalidate the provider agreement at least once every five years after the initial execution of the agreement.

In accordance with paragraph (C)(4) of this rule, a nursing facility must cooperate with ODM or its designee during all provider oversight and monitoring activities. The Department of Medicaid cannot estimate the cost of compliance of this because the Department does not know what oversight and monitoring activities any particular nursing facility will undergo, how long those activities will take, or how complicated those activities may become. However, the cost would be calculated by multiplying the number of staff hours required for each oversight or monitoring activity by the applicable hourly staff wage, then adding any additional costs that would be incurred to comply with this regulation.

In accordance with paragraph (C)(5) of this rule, a nursing facility must designate a discrete unit within the NF for the use of individuals in the 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 notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. The Department of Medicaid estimates it will take a nursing facility staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to comply with this requirement.

In accordance with paragraph (C)(6) of this rule, if a nursing facility needs to purchase a backup generator, the Department of Medicaid estimates it will cost a facility approximately \$300,000.00 for the purchase and installation.

In accordance with paragraph (C)(7)(a) of this rule, a nursing facility that becomes a Special Focus Facility (SFF) under the Centers for Medicare and Medicaid Services (CMS) SFF program must notify the Department of the SFF status within one business day of receipt of the CMS SFF letter via email at Nfpolicy@medicaid.ohio.gov and attach a copy of the letter. The Department of Medicaid estimates it will take a nursing facility staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to notify the Department of the SFF status and attach a copy of the SFF letter.

In accordance with paragraph (C)(7)(b) of this rule, when a nursing facility has graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule in order to begin admitting new individuals to the ventilator program again. The Department of Medicaid estimates it will take a nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) to submit a new request in accordance with paragraph (D).

In accordance with paragraph (C)(8)(a) of this rule, for at least five hours per week, a nursing facility must provide the services of an respiratory care professional (RCP) or the services of a registered nurse (RN) who has worked for a minimum of one year with ventilator dependent individuals. The Department of Medicaid estimates that, at the rate of approximately \$40.00 per hour, it will cost a provider approximately \$200.00 to employ an RCP to comply with this requirement. The Department also estimates that, at the rate of approximately \$32.12 per hour, it will cost a provider approximately \$160.60 to employ a RN to comply with this requirement.

In accordance with paragraph (C)(8)(b) of this rule, if ordered by a physician, a nursing facility must provide initial assessments for physical therapy, occupational therapy, and speech therapy within forty-eight hours of receiving the order for a ventilator dependent individual. The Department of Medicaid estimates it will take a physical therapist approximately 0.75 hours at the rate of approximately \$42.00 per hour (total estimated cost: \$31.50) to assess one ventilator dependent individual. The Department also estimates it will take an occupational therapist approximately 1 hour at the rate of approximately \$42.00 per hour (total estimated cost: \$42.00) to assess the same individual. The Department further estimates it will take a speech pathologist approximately 0.5 hours at the rate of approximately \$36.00 per hour (total estimated cost: \$18.00) to assess the individual. The Department therefore estimates it will cost nursing facility a grand total of \$91.50 to comply with this requirement.

In accordance with paragraph (C)(8)(c) of this rule, if ordered by a physician, a nursing facility must provide up to two hours of therapies per day, six days per week for each ventilator dependent individual. The Department of Medicaid is unable to quantify the adverse impact of this requirement because the Department does not know which types of therapies a physician will order on any particular day, or how many hours per day will be ordered. However, the impact could be calculated by determining the number of hours of therapy provided to one individual in a single day, multiplying those hours by the applicable rate of pay of the therapist who provided the service, then adding the results.

In accordance with paragraph (C)(8)(d) of this rule, in emergency situations as determined by a physician, a nursing facility must provide access to laboratory services that are available 24 hours per day, 7 days per week with a turnaround time of 4 hours. The Department of Medicaid estimates it will cost a nursing facility approximately \$100.00 in special service fees to have a laboratory service provide testing results for one individual within a 4-hour turnaround time.

In accordance with paragraph (C)(8)(e) of this rule, for new admissions, a nursing facility must administer pain medications to a ventilator dependent individual within 2 hours from the receipt of the physician order. The Department of Medicaid cannot estimate the cost of compliance with this requirement because the Department does not know what particular pain medications will be ordered for any particular individuals. However, the impact is generally minimal and usually is not more than \$5.00 per dose.

In accordance with paragraph (D)(1) of this rule, a nursing facility that chooses to participate in the ventilator program must email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" to nfpolicy@medicaid.ohio.gov. The Department of Medicaid estimates it will take a nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) to comply with this provision.

In accordance with paragraphs (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, if a NF's request to participate in the ventilator program is not approved, the NF may request a reconsideration by the Medicaid director or designee. The Department of Medicaid estimates it will take a nursing facility administrator approximately 4 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$288.00) to prepare one reconsideration request and submit it to the Department.

In accordance with paragraphs (C)(9), (D)(4), and (D)(5) of this rule, a nursing facility that wants to participate in the ODM NF ventilator program must have an approved ODM 10198 form "Addendum to ODM Provider Agreement for Ventilator Services in NFs." The Department of Medicaid estimates it will take a nursing facility administrator approximately 15 minutes at the rate of approximately \$72.00 per hour (total estimated cost: \$18.00) to sign and return the ODM 10198. In accordance with paragraph (I)(3) of this rule, this cost is incurred at least once every five years during a provider's revalidation process and whenever there is a change of operator (CHOP).

In accordance with paragraph (E)(1) of this rule, nursing facilities that are approved to participate in the NF ventilator program may provide ventilator weaning services if they have an approved ODM 10198 form with approval to provide ventilator weaning services. A facility that has an approved ODM 10198 and wishes to provide weaning

services may send a written request to nfpolicy@medicaid.ohio.gov. The Department of Medicaid estimates it will take a nursing facility administrator approximately 0.5 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$36.00) to send a written request to the Department to provide ventilator weaning services.

In accordance with paragraph (E)(2) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a weaning protocol in place that is established by a physician trained in pulmonary medicine. The Department of Medicaid cannot estimate the cost of compliance of this provision because some nursing facilities may already have this level of staffing in place prior to becoming approved to provide ventilator weaning services under the ODM NF ventilator program. However, the cost might be estimated by identifying the individuals responsible for developing the protocol with the physician, determining the number of hours required to develop the protocol, then multiplying the hours worked by both the identified individuals and the physician by the applicable average pay rate plus benefits and adding these costs together.

In accordance with paragraph (E)(3) of this rule, a nursing facility that is approved to provide ventilator weaning services must have an respiratory care professional (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 weaning services are provided. The Department of Medicaid estimates it will cost a nursing facility that provides ventilator weaning services approximately \$40.00 per hour to employ an RCP, which will cost approximately \$2,240.00 per week or \$8,960.00 per month.

In accordance with paragraph (E)(4) of this rule, a nursing facility that is approved to provide ventilator weaning services must have a registered nurse, or respiratory care professional (RCP) with training in basic life support, on-site 24 hours per day, seven days per week while weaning services are provided. The Department of Medicaid estimates it will cost a facility approximately \$32.12 per hour (estimated cost per day: \$770.88) to employ a registered nurse. The Department also estimates it will cost a facility approximately \$40.00 per hour (estimated cost per day: \$960.00) to employ an RCP.

In accordance with paragraph (F)(4) of this rule, once the Department of Medicaid calculates a NF's ventilator acquired pneumonia (VAP) baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP baseline rate exceeds the VAP threshold rate, the NF must submit a plan of action. In addition, if the Department determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. If ODM approves a plan of action or a revised plan of action, the NF must submit a statement of completion of its plan of action within 15 calendar days of the completion date via email. The Department of Medicaid cannot estimate the

cost of compliance because the Department cannot anticipate which of these steps a NF will be required to complete, and the number and extent of deficiencies that will need to be addressed. Additionally, the Department cannot anticipate the strategy a NF use may use to comply with each of these requirements or the various staff and processes they may decide to use. However, the cost could be calculated by identifying which of the steps a NF is required to complete, the tasks necessary to complete each step, the persons responsible for each task, and the number of hours required for the process, then multiplying the staff hours needed by the average pay rate plus benefits for each staff person and adding these costs together. If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, the Department may reduce a NF's ventilator program payment rate by a maximum of five percent for one full quarter. The Department cannot quantify the adverse impact of this provision because the Department cannot know in advance what percentage, if any, a NF's rate for ventilator only services or for ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. However, the cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

In accordance with paragraph (H)(1) of this rule, each NF ventilator program provider must submit quarterly reports to the Department of Medicaid. The Department estimates that it will take a nursing facility's admissions director approximately 6 hours per quarter at the rate of approximately \$35.00 per hour (total estimated annual cost: \$840.00) to maintain the information required for quarterly reporting. The Department further estimates it will take the nursing facility administrator an additional 2 hours at the rate of approximately \$72.00 per hour (total estimated annual cost: \$576.00) to submit quarterly reports. Therefore, the Department estimates it will cost a nursing facility a grand total of \$1,416 per year to submit quarterly reports for the ventilator program.

In accordance with paragraph (I)(2) of this rule, a nursing facility that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. The Department of Medicaid cannot estimate the cost of compliance to a nursing facility that is terminated from either portion of the ventilator program because the Department cannot predict the number of individuals in any particular facility's ventilator program. However, if a nursing facility continues to provide ventilator services outside ODM's NF ventilator program, the cost could be calculated by determining the difference between the enhanced NF ventilator program per diem rate and the regular NF per diem rate and multiplying that difference by the number of individuals on a ventilator at that facility.

In accordance with paragraph (J) of this rule, a NF that chooses to no longer provide ventilator weaning services or to no longer participate in the ODM NF ventilator

program must send notice of withdrawal to the Department of Medicaid via email. The Department of Medicaid estimates it will take a nursing facility administrator approximately 15 minutes at the rate of approximately \$72.00 per hour (total estimated cost \$18.00) to comply with this requirement.

However, all costs of compliance are existing costs. There are no new costs of compliance with this rule filing.

- 3. Is this rule the result of a federal government requirement? No**
- A. If yes, does this rule do more than the federal government requires? *Not Applicable***
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**
- Not Applicable*
- 4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**
- A. Personnel Costs**
- \$61,992.50
- B. New Equipment or Other Capital Costs**
- \$300,000.00
- C. Operating Costs**
- \$0.00
- D. Any Indirect Central Service Costs**
- \$0.00
- E. Other Costs**
- \$0.00
- 5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**

There are no increased costs to providers associated with this rule filing. All costs of

compliance are existing costs.

6. What will be the impact on economic development, if any, as the result of this rule?

There is no discernible impact on economic development as a result of this proposed rule.