

Rule Summary and Fiscal Analysis (Part A)**Ohio Department of Medicaid**

Agency Name

Division

Tommi Potter

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5160-3-18

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Nursing facilities (NFs): ventilator program.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **5165.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5165.157**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being proposed for adoption to implement provisions of Revised Code 5165.157 relating to the establishment of an alternate purchasing model for the provision of ventilator services to ventilator dependent individuals in nursing facilities.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule sets forth an alternate payment methodology designed to increase access to care for ventilator dependent Medicaid individuals. The rule includes:

- Definitions of terminology used throughout the rule.
- Criteria for eligible providers to receive an enhanced per Medicaid day rate to cover the high costs associated with caring for these individuals.
- Description of the nursing facility (NF) provider application and the Ohio Department of Medicaid (ODM) approval process to participate in the ODM ventilator program.
- Explanation of the payment methodology for reimbursement which includes a component based on improved health outcomes and description of payment for bed-hold days.
- Provision for either ODM terminating, or the NF provider voluntarily withdrawing as a provider for the program.
- Periodic reporting and review of the program.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

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 ORC 121.71 to 121.74 in accordance with ORC 121.75(A).

This rule incorporates one or more references to the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(3).

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

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not Applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase/decrease** either **revenues /expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will increase expenditures.

\$6.541 million

Participation in the NF ventilator program is optional. This rule impacts approximately 50 to 75 NFs depending on the number who submit a request to participate in this program and will provide ventilator services to approximately

160 ventilator dependent individuals.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

General Account Number 651525

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM is unable to estimate the cost of compliance with this provision because ODM does not know how many facilities will be audited, nor the extent of cooperation that will be necessary. It will vary by facility and issue.

In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF 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)(7)(a), a NF that becomes a Special Focus Facility (SFF) under the Centers for Medicare and Medicaid Services (CMS) SFF program must notify ODM 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. ODM estimates it will take a NF staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to notify ODM of the SFF status and attach a copy of the SFF letter.

In accordance with paragraph (C)(7)(b), when a NF has been 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. ODM estimates it will take a NF administrator approximately two hours of administrator time at a rate of approximately \$60.00 per hour (total of \$120.00) to submit a request to become a NF ventilator program provider and to submit sufficient information to demonstrate that the NF meets all of the requirements included in the rule.

In accordance with (C)(9) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs."

ODM estimates it will require approximately 15 minutes of administrator time at a rate of approximately \$60.00 per hour (total estimated cost: \$15.00) to sign and return the ODM 10198. In accordance with section (H)(3) of this rule, this cost is incurred once every five years during a provider's revalidation process and with a change of ownership (CHOP).

In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately 2 hours at the rate of approximately \$60.00 per hour (total estimated cost: \$120.00) to comply with this provision.

In accordance with (D)(3), (E)(4)(d)(ii), (H)(2)(b), and (H)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM cannot estimate the cost of compliance associated with submitting a reconsideration request due to the variability in the amount of NFs that may opt to request a reconsideration due to an ODM decision, and the detail they choose to submit in any reconsideration request.

In accordance with (E)(4), once ODM calculates a NF's ventilator-associated pneumonia (VAP) rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP rate exceeds the VAP threshold rate, the NF must submit a plan of action. ODM cannot estimate the time associated with submitting a plan of action due to variability in the amount of NFs that may need a plan of action and how many deficiencies must be addressed in any plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. ODM cannot estimate the time associated with submitting a revised plan of action due to variability in the amount of NFs that may need a revised plan of action and how many deficiencies must be addressed. If ODM approves a plan of action, 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. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM.

In accordance with paragraph (G)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take approximately thirty minutes per week of a NF admissions coordinator's time at a rate of approximately \$26 per hour (annual cost of \$676) to maintain the information required for quarterly reporting. ODM estimates it will take approximately two hours of administrator time at a rate of approximately \$60 per hour (total of \$120) to submit each quarterly report (annual cost of \$480).

In accordance with section (I) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to

notify ODM if they choose to no longer participate in the program. ODM estimates it will take approximately two hours of nurse time at a rate of approximately \$26.00 per hour per resident for discharge planning in the event the NF chooses to no longer participate in the program and elects to discharge their ventilator dependent individuals. ODM is unable to estimate a total cost because it is dependent on the number of individuals participating in the program.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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 section (C) of this rule, a NF who wishes to participate in the ODM NF ventilator program shall be licensed and Medicaid certified and meet the requirements of 42 U.S.C. 1396r. A NF must also maintain a valid provider agreement with ODM. In accordance with section (D) of this rule, a NF who wishes to participate in the ODM NF ventilator program shall send a written request to ODM. The request must be approved by ODM before a NF may participate in the program.

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? **No**

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, if a NF changes the size or

location of the designated discrete unit, or the number of beds in the discrete unit, the facility shall notify ODM of the change via email within five business days of the change.

In accordance with paragraph (C)(7)(a) of this rule, a NF participating in the ventilator program that becomes part of the CMS SFF program must notify ODM of the SFF status within one business day of receipt of the CMS SFF letter and attach a copy of the letter.

In accordance with paragraph (C)(7)(b) of this rule, when a nursing facility has been graduated from the SFF program for a period of six consecutive months, the NF must submit a new request to participate in the ODM NF ventilator program in accordance with paragraph (D)(1) of this rule.

In accordance with paragraph (D)(1) of this rule, a NF who wishes to participate in the ODM NF ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. The request shall demonstrate that the NF is capable of fulfilling all of the requirements specified in this rule. A NF approved for participation in the program must sign and submit a provider agreement to ODM which must be revalidated every five years and with a change of ownership.

In accordance with paragraph (G) of this rule, to receive payment for ventilator services under the ODM ventilator program, a NF shall provide quarterly reports to ODM.

In accordance with paragraph (E)(4) of this rule, for any quarter in which a NF's VAP rate exceeds the VAP threshold rate, the NF shall provide a plan of action. If the submitted plan of action is deficient, the NF shall submit a revised plan of action. If ODM approves a plan of action, 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.

In accordance with paragraph (I) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program must send a notice of withdrawal to ODM.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	No	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Counties and municipal corporations that operate NFs could incur costs of compliance with the proposed rule. The costs of compliance are the following:

In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM is unable to estimate the cost of compliance with this provision because ODM does not know how many facilities will be audited, nor the extent of cooperation that will be necessary. It will vary by facility and issue.

In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF 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)(7)(a), a NF that becomes a Special Focus Facility (SFF) under the Centers for Medicare and Medicaid Services (CMS) SFF program must notify ODM 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. ODM estimates it will take a NF staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to notify ODM of the SFF status and attach a copy of the SFF letter.

In accordance with paragraph (C)(7)(b), when a NF has been 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. ODM estimates it will take a NF administrator approximately two hours of administrator

time at a rate of approximately \$60.00 per hour (total of \$120.00) to submit a request to become a NF ventilator program provider and to submit sufficient information to demonstrate that the NF meets all of the requirements included in the rule.

In accordance with (C)(9) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs." ODM estimates it will require approximately 15 minutes of administrator time at a rate of approximately \$60.00 per hour (total estimated cost: \$15.00) to sign and return the ODM 10198. In accordance with section (H)(3) of this rule, this cost is incurred once every five years during a provider's revalidation process and with a change of ownership (CHOP).

In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately 2 hours at the rate of approximately \$60.00 per hour (total estimated cost: \$120.00) to comply with this provision.

In accordance with (D)(3), (E)(4)(d)(ii), (H)(2)(b), and (H)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM cannot estimate the cost of compliance associated with submitting a reconsideration request due to the variability in the amount of NFs that may opt to request a reconsideration due to an ODM decision, and the detail they choose to submit in any reconsideration request.

In accordance with (E)(4), once ODM calculates a NF's ventilator-associated pneumonia (VAP) rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP rate exceeds the VAP threshold rate, the NF must submit a plan of action. ODM cannot estimate the time associated with submitting a plan of action due to variability in the amount of NFs that may need a plan of action and how many deficiencies must be addressed in any plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. ODM cannot estimate the time associated with submitting a revised plan of action due to variability in the amount of NFs that may need a revised plan of action and how many deficiencies must be addressed. If ODM approves a plan of action, 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. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM.

In accordance with paragraph (G)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take approximately thirty minutes per week of a NF admissions coordinator's time at a

rate of approximately \$26 per hour (annual cost of \$676) to maintain the information required for quarterly reporting. ODM estimates it will take approximately two hours of administrator time at a rate of approximately \$60 per hour (total of \$120) to submit each quarterly report (annual cost of \$480).

In accordance with section (I) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM if they choose to no longer participate in the program. ODM estimates it will take approximately two hours of nurse time at a rate of approximately \$26.00 per hour per resident for discharge planning in the event the NF chooses to no longer participate in the program and elects to discharge their ventilator dependent individuals. ODM is unable to estimate a total cost because it is dependent on the number of individuals participating in the program.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**
4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM is unable to estimate the cost of compliance with this provision because ODM does not know how many facilities will be audited, nor the extent of cooperation that will be necessary. It will vary by facility and issue.

In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit,

the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF staff person approximately 15 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$4.00) to comply with this requirement.

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In accordance with paragraph (C)(7)(b), when a NF has been 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. ODM estimates it will take a NF administrator approximately two hours of administrator time at a rate of approximately \$60.00 per hour (total of \$120.00) to submit a request to become a NF ventilator program provider and to submit sufficient information to demonstrate that the NF meets all of the requirements included in the rule.

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In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately 2 hours at the rate of approximately \$60.00 per hour (total estimated cost: \$120.00) to comply with this provision.

In accordance with (D)(3), (E)(4)(d)(ii), (H)(2)(b), and (H)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM cannot estimate the cost of compliance associated with submitting a reconsideration request due to the variability in the amount of NFs that may opt to request a reconsideration due to an ODM decision, and the detail they choose to submit in any reconsideration request.

In accordance with (E)(4), once ODM calculates a NF's ventilator-associated pneumonia (VAP) rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP rate exceeds the VAP threshold rate, the NF must submit a plan of action. ODM cannot estimate the time associated with submitting a plan of action due to variability in the amount of NFs that may need a plan of action and how many deficiencies must be addressed in any plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. ODM cannot estimate the time associated with submitting a revised plan of action due to variability in the amount of NFs that may need a revised plan of action and how many deficiencies must be addressed. If ODM approves a plan of action, 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. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM.

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In accordance with section (I) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM if they choose to no longer participate in the program. ODM estimates it will take approximately two hours of nurse time at a rate of approximately \$26.00 per hour per resident for discharge planning in the event the NF chooses to no longer participate in the program and elects to discharge their ventilator dependent individuals. ODM is unable to estimate a total cost because it is dependent on the number of individuals participating in the program.

(a) Personnel Costs

In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM is unable to estimate the cost of compliance with this provision because ODM does not know how many facilities will be audited, nor the extent of cooperation that will be necessary. It will vary by facility and issue.

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In accordance with (C)(9) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs." ODM estimates it will require approximately 15 minutes of administrator time at a rate of approximately \$60.00 per hour (total estimated cost: \$15.00) to sign and return the ODM 10198. In accordance with section (H)(3) of this rule, this cost is incurred once every five years during a provider's revalidation process and with a change of ownership (CHOP).

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choose to submit in any reconsideration request.

In accordance with (E)(4), once ODM calculates a NF's ventilator-associated pneumonia (VAP) rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP rate exceeds the VAP threshold rate, the NF must submit a plan of action. ODM cannot estimate the time associated with submitting a plan of action due to variability in the amount of NFs that may need a plan of action and how many deficiencies must be addressed in any plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. ODM cannot estimate the time associated with submitting a revised plan of action due to variability in the amount of NFs that may need a revised plan of action and how many deficiencies must be addressed. If ODM approves a plan of action, 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. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM.

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In accordance with section (I) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$60.00 per hour (total cost \$15.00) to notify ODM if they choose to no longer participate in the program. ODM estimates it will take approximately two hours of nurse time at a rate of approximately \$26.00 per hour per resident for discharge planning in the event the NF chooses to no longer participate in the program and elects to discharge their ventilator dependent individuals. ODM is unable to estimate a total cost because it is dependent on the number of individuals participating in the program.

(b) New Equipment or Other Capital Costs

None

(c) Operating Costs

None

(d) Any Indirect Central Service Costs

ODM does not expect that the proposed rule will result in any indirect central service costs to Medicaid providers of nursing facility services.

(e) Other Costs

None

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

ODM is unable to provide an explanation of the ability of NFs operated by counties and municipal corporations to pay for the new requirements imposed by this proposed rule because the Department does not have this level of detailed information about the finances of these NFs.

7. Please provide a statement on the proposed rule's impact on economic development.

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