

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.

(B) Definitions.

For purposes of this rule the following definitions apply:

- (1) "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.
- (2) "ODM NF ventilator program" means the enhanced payment that a NF shall receive if the NF provides ventilator dependent individuals ventilator services in accordance with this rule.
- (3) "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.
- (4) "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.
- (5) "VAP threshold rate" means a maximum number of VAP episodes determined by ODM based on the VAP baseline rates for all NFs statewide.
- (6) "VAP rate" means the number of VAP episodes occurring in the NF per one-thousand ventilator days.
- (7) "Ventilator dependent" means the use of any type of mechanical ventilation to sustain daily respiration for any part of the day.

(C) Provider eligibility.

In order to qualify as an ODM NF ventilator program provider and receive enhanced payment for providing ventilator 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 (2/1/2017).

- (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) 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) 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 notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change.
- (6) 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 a licensed respiratory therapist or the services of a registered nurse who has worked for a minimum of one year with ventilator dependent individuals. The licensed respiratory therapist or the registered nurse as applicable, shall 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 For Ventilator Services In Nursing Facilities" (2/2017).

- (a) The ODM 10198 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.
- (b) In the case of a change of operator (CHOP), if the exiting provider participated in the ODM NF ventilator program, the entering provider must meet the requirements described in paragraphs (C) and (D) of this rule within one-hundred and eighty days of the CHOP in order to participate in the ODM NF ventilator program. During the one-hundred and eighty days, the entering operator may participate in the ODM NF ventilator program and, notwithstanding rule 5160-3-65.1 of the Administrative Code, receive the ODM NF ventilator payment that was assigned to the exiting provider until the entering provider has an approved ODM 10198. If there is no approved ODM 10198 within one-hundred and eighty days, the entering provider's participation in the ODM NF ventilator program shall cease.

(D) Request to participate in the ODM NF ventilator program.

- (1) 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. ODM may request additional information regarding a NF's qualifications to participate.
- (2) 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.
- (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 final.

(E) ODM NF ventilator program payment.

- (1) The total per medicaid day payment rate determined under section 5165.15 of the Revised Code shall not be paid for NF services provided under the ODM NF ventilator program. Instead, the total per medicaid day payment rate for services for the state fiscal year provided by a NF under the ODM NF ventilator program shall be sixty per cent of the statewide average of the total per medicaid day payment rate for long-term acute care hospital services 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 (E)(1) 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 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 (H)(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 (H)(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 (H)(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 by a maximum of five per cent. The reduced ODM NF ventilator program payment will become effective during the next quarter 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 and the applicable quarter.

(ii) Within thirty days of receiving receipt of the reduced payment, 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) If an individual is no longer ventilator dependent, the per medicaid day payment rate for that individual shall be the rate determined under section 5165.15 of the Revised Code beginning the first day the individual is no longer ventilator dependent.

(6) Except in the case of a CHOP as described in paragraph (C)(9)(b) 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.

(F) Bed-hold days.

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

(G) Quarterly reports.

(1) ODM NF ventilator program providers shall submit quarterly reports 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.

(2) Each quarterly report shall contain the following information for each individual who received services under this rule:

(a) First name, last name, and date of birth.

(b) Number of days on a ventilator during the quarter.

(c) If applicable, whether attempts were made to wean the individual off the

ventilator and if so, the date weaned.

(d) Respiratory diagnoses.

(e) Number of VAP episodes.

(f) Any other information as determined by ODM.

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

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

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

(2) ODM shall 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) ODM shall notify the provider of the termination via certified mail return receipt requested.

(b) Within thirty calendar days of receipt of 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.

(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.

(I) Withdrawing from the ODM NF ventilator program.

A NF that chooses to no longer participate in the ODM NF ventilator program under this rule shall do the following:

(1) At least ninety days before the last day of participation in the ODM NF ventilator program, send notice of the withdrawal to ODM via email to nfpolicy@medicaid.ohio.gov. The notice shall include the following information:

- (a) A statement that the NF wants to withdraw from the ODM NF ventilator program.
- (b) The last day that the NF will participate in the ODM NF ventilator program.
- (2) If the NF decides to discharge current ventilator dependent individuals, the NF shall 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 be the rate determined under section 5165.15 of the Revised Code beginning the last date of participation in the ODM NF ventilator program.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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