

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: Nursing facilities (NFs): ventilator program

Rule Number(s): 5160-3-18

Date: September 20, 2018

**Rule Type:**

<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

1. Please briefly describe the draft regulation in plain language.  
*Please include the key provisions of the regulation as well as any proposed amendments.*

## **5160-3-18**

This rule sets forth an alternate purchasing model for the provision of services to ventilator dependent Medicaid individuals. The program is designed to increase access to care for ventilator dependent Medicaid individuals in a nursing facility (NF). The rule includes:

1. Program and staffing criteria for eligible providers to receive an enhanced per Medicaid day payment rate to cover the higher costs associated with caring for ventilator dependent individuals and individuals who receive ventilator weaning services.
2. Definitions of terminology used throughout the rule.
3. Description of the NF provider application process and the Ohio Department of Medicaid (ODM) approval process to participate in the ODM NF ventilator program.
4. Explanation of the reimbursement made to NFs for individuals receiving ventilator only services and ventilator weaning services, which include a component based on improved health outcomes, and a description of payment for bed-hold days.
5. Provision for ODM terminating, or the NF provider voluntarily withdrawing, as a provider for the program or from providing ventilator weaning services.
6. Program reporting requirements.
7. Program compliance review.

The proposed changes to this rule are:

1. Explanation of the process for NFs to request and be approved to provide ventilator weaning services.
2. Additional program and staffing criteria for eligible providers to receive an enhanced per Medicaid day payment rate to cover the higher costs associated with caring for individuals who receive ventilator weaning services.
3. Adjusting the reimbursement methodology to use payment data for individuals receiving ventilator services in a long-term acute care hospital (LTACH). The enhanced payment methodology uses a percentage of LTACH costs which more closely aligns with rates for Medicare services.
4. Adding an enhanced payment for ventilator weaning services.
5. Modifying the change of ownership (CHOP) process to permit the entering provider to receive the exiting provider's enhanced rate or rates effective with the date of the CHOP upon ODM confirmation that the provider meets the program requirements.

### **2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Ohio Revised Code section 5165.02.

### **3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

***If yes, please briefly explain the source and substance of the federal requirement.***

The Federal Government does not have NF ventilator requirements. The State of Ohio is implementing this program to improve access to care for ventilator dependent individuals. This rule does not exceed any federal requirement.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** To improve access to care for ventilator dependent individuals.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The intent of the regulation is to improve access to care for ventilator dependent individuals and to pay participating providers an enhanced payment rate for the higher cost of ventilator services.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

ODM will measure the success of this regulation by the number of NF ventilator program providers authorized by ODM to provide services under the rule, improved access to care, and improved health outcomes.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

The primary stakeholders are Ohio's three NF provider associations. The NF provider associations in Ohio are:

- Ohio Health Care Association (OHCA)
- The Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio

Ohio's NF provider associations represent and advocate for small and large nursing facilities with both individual and group ownership, publicly-traded and government-owned properties, and for-profit and non-profit facilities. In addition to representing and advocating for nursing facilities, the associations are informational and educational resources to Ohio's nursing facilities, its suppliers, consultants, and the public at large.

On April 6, 2018, an email was sent to the NF external and internal stakeholders which summarized the rule changes. The draft rule was also attached which included the proposed amendments.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The following comments were received by ODM which resulted in changes to the rule:

- To change the registered nurse (RN) requirement under paragraph (E)(4) to read "while weaning services are being provided" instead of "during the weaning period."
- To revise the NF ventilator program payment methodology to use payment data for those individuals receiving ventilator services in an LTACH.
- To adjust the payment methodology to provide a higher reimbursement for ventilator weaning services which have additional staffing requirements.

The following comments were received by ODM but did not result in changes to the rule:

- To limit the number of NFs that can participate in the ventilator weaning program to those who are currently providing ventilator weaning services. This change was not made because ODM wants to allow more facilities to participate in the program, giving consumers greater access to ventilator and ventilator weaning services.
- To pay NFs the enhanced weaning rate only if the individual is successfully weaned from a ventilator. This change was not made because ODM does not want to deter facilities from attempting to wean by only paying the higher rate if an individual is successfully weaned.
- To either increase, decrease, or eliminate the amount of required time delivered by a respiratory care professional (RCP) when residents are receiving ventilator weaning services. ODM believes that a successful weaning program should involve an RCP. A NF can continue to wean without having an RCP, but they will not be eligible for payment at the higher rate.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data were used to develop the rule.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Ohio Revised Code 5165.157 specifies that ODM can pay NFs an amount that includes improved health outcomes as a factor in determining the payment rate for an alternative purchasing model for NF services. The NF ventilator program meets the requirements for an alternative purchasing model. ODM determined that Administrative Code rules are the most appropriate type of regulation in specifying the program requirements and reimbursement that NFs will receive for these services.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

This rule incorporates a performance-based methodology. A NF's rate may be decreased by ODM by up to five percent for providers with ventilator-associated pneumonia (VAP) rates greater than the statewide average.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

These rules have been reviewed by ODM's staff, including legal and legislative staff, to ensure there is no duplication within ODM's rules or any other rules in the OAC.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The final rule as adopted by ODM will be made available to all stakeholders and the public via ODM's website. The information will also be sent to the NF provider associations to disseminate to its members via newsletters.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

Ohio has approximately 960 NFs. This rule impacts 100 to 130 NFs depending on the number who submit a request to participate. Participation in this program is optional.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The adverse impact is included under Section C below. Compliance with the requirements of this Medicaid program is mandatory for providers who choose to participate in the program and may result in administrative costs as detailed below.

**c. Quantify the expected adverse impact from the regulation.**

***The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

To participate in the NF ventilator program only, ODM estimates it will require the following costs for a "representative NF" which is typically 100 beds in Ohio.

1. In accordance with paragraph (C)(1) of this rule, a NF must be licensed, and Medicaid certified and meet the requirements for NFs in accordance with 42 U.S.C 1396r. ODM estimates it will take a NF's attorney approximately six hours at the rate of \$400.00 per hour for an estimated cost of \$2,400.00 to review a licensure application. ODM estimates it will take a NF's administrator approximately four hours at the rate of approximately \$72.00 per hour for an estimated cost of \$288.00 to prepare a licensure application. A NF must pay an initial license fee at a cost of \$320.00 per 50 beds. Considering the average NF size in Ohio is 100 beds, the initial fee is \$640.00. The total estimated amount for a one hundred bed facility is approximately \$3,328.00 for a NF provider to review and prepare an application for licensure to operate as a nursing home under ORC Chapter 3721. The ongoing annual license fee is \$640.00 for a one hundred bed facility.
2. ODM estimates it will take a NF's attorney approximately twenty hours at the rate of approximately \$400.00 per hour for a total estimated cost of \$8,000.00 to review an application for Medicare certification. The NF is required to pay \$569.00 for an enrollment application. ODM estimates it will take a NF's administrator approximately 640 hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$46,080.00 to prepare and submit a Medicare certification application. ODM therefore estimates it will cost a NF a total of approximately \$54,649.00 to review, prepare, and apply for Medicare certification to participate as a skilled nursing facility (SNF) in the Medicare program pursuant to ORC section 5165.082 and OAC rule 5160-3-02.4. A NF is required to pay a revalidation fee of \$569.00 at least once every five years.
3. In accordance with paragraph (C)(3) of this rule, a NF 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. ODM estimates that it will take approximately two hours of attorney time at an average rate of \$400.00 per hour and two hours of administrator time at an average rate of \$72.00 per hour for a total cost of \$944.00 to execute a new provider agreement. ODM estimates that it will take approximately one hour of administrator time at an average rate of \$72.00 per hour for a total estimated cost of \$72.00 to revalidate the provider agreement at least once every five years after the initial execution of the provider agreement.
4. 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 cannot estimate the adverse impact since NFs may comply with this requirement with a variety of staff and processes. In addition, the extent of cooperation required will vary by facility and issue. The cost will be determined by identifying the tasks required for this process in its facility multiplied by the number of staff hours for each position multiplied by the average pay rate plus benefits for each position and adding these costs together.
5. 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](mailto:nfpolicy@medicaid.ohio.gov) within five business days of the change. ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of

approximately \$16.00 per hour for a total estimated cost of \$4.00 to comply with this requirement.

6. In accordance with paragraph (C)(6) of this rule, if a NF needs to purchase a backup generator, ODM estimates it will cost a NF approximately \$300,000 for the purchase and installation.
7. In accordance with paragraph (C)(7)(a) of this rule, if a NF becomes listed on the CMS Special Focus Facility (SFF) list, ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to notify ODM of the NF being added to the SFF list.
8. 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 to begin admitting new individuals to the ventilator program again. ODM estimates it will take a NF administrator approximately two hours at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit a request to become a NF ventilator program provider and to submit enough information to demonstrate that the NF meets all the requirements included in the rule.
9. 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 of its intent to participate in the program to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov). ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision.
10. In accordance with (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM estimates that it will take an administrator approximately four hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$288.00 to prepare a reconsideration and submit to ODM.
11. In accordance with (C)(9), (D)(4) and (D)(5) 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 fifteen minutes of administrator time at a 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 with a CHOP.
12. In accordance with paragraph (F)(4), once ODM calculates a NF's 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 ODM 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 revised plan of action, the NF shall submit to ODM a statement of completion of its plan of action within fifteen calendar days of the completion date via email. ODM cannot estimate the adverse impact since ODM cannot anticipate which of these steps a NF will be required to complete, the number and extent of deficiencies that must be addressed and a NF may comply with each of these requirements with a variety of staff and processes. The cost will be determined by identifying which of the steps a NF is required to complete, the tasks necessary

to complete for each step, the persons responsible for each task, and the number of hours required for this process, and multiplying the staff hours for each position by the average pay rate plus benefits for each position and adding these costs together.

If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, ODM may reduce the NF's ventilator program payment rates by a maximum of five percent for one full quarter. ODM cannot estimate the adverse impact because ODM cannot know in advance what percentage, if any, a NF's rate for ventilator only services or ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. The cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

13. In accordance with paragraph (H)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take approximately six hours per quarter of a NF admissions coordinator's time at a rate of approximately \$35.00 per hour for an estimated annual cost of \$840.00 to maintain the information required for quarterly reporting. ODM estimates it will take approximately two hours of administrator time at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit each quarterly report which is an estimated annual cost of \$576.00.
14. In accordance with paragraph (I)(2) of this rule, a NF that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. ODM cannot estimate the adverse impact to a NF terminated from any portion of the ventilator program because ODM cannot predict the number of individuals in the NF's ventilator program. If a NF continues to provide the services outside the ventilator program, the adverse impact will be the difference between the enhanced rate and the per diem rate multiplied by the number of individuals on ventilators at the NF.
15. In accordance with paragraph (J) 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 \$72.00 per hour for an estimated total cost of \$18.00 to notify ODM if they choose to no longer participate in the program.

To participate in the NF ventilator program with weaning services, ODM estimates it will require the following costs which are in addition to the costs of the basic ventilator program:

1. In accordance with paragraph (E)(1), a NF must have an approved ODM 10198 with approval to provide ventilator weaning services. A NF that chooses to participate in the ODM ventilator program shall send a written request to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov). ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision. A NF that has an approved ODM 10198, and wishes to provide weaning services, can send a written request to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov). ODM estimates that it will take a NF administrator approximately one-half hour at the rate of approximately \$72.00 per hour for a total estimated cost of \$36.00.



2. In accordance with paragraph (E)(2), a NF must have a weaning protocol in place established by a physician trained in pulmonary medicine. ODM cannot estimate the adverse impact of this provision since some NFs may already have this level of staffing in place. The NF can estimate the cost of establishing a weaning protocol by identifying the persons responsible for developing the protocol with the physician, the number of hours required, and multiplying the staff and physician hours by the average pay rate plus benefits for each position and adding these costs together.
3. In accordance with paragraph (E)(3), a NF must have an RCP with training in basic life support on-site eight hours per day, seven days per week and available by phone during the remaining hours of the day during the weaning period. ODM estimates the cost of providing an RCP for 8 hours a day, 7 days a week, at approximately \$40.00 per hour at approximately \$2,240.00 per week.
4. In accordance with (E)(4), a NF must have a registered nurse with training in basic life support on-site 24 hours per day, seven days per week during the weaning period. ODM cannot estimate the cost of a registered nurse on site 24 hours per day seven days per week during the time that an individual is being weaned because the cost is based on a NF's current RN staffing and the additional RN hours required for compliance. The daily cost can be calculated by multiplying the NF's average RN pay rate plus benefits multiplied by the additional hours a NF would need to meet this requirement.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The regulatory intent justifies the adverse impacts to the regulated business community because the rule is necessary for the efficient and effective administration of the ODM NF ventilator program. The program is necessary to improve access to care for NF ventilator dependent individuals and adequate payment to participating providers for the higher cost of NF ventilator related services.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. The provisions in this rule are the same for all nursing facilities.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ORC section 119.14 is not applicable to these regulations because these regulations do not impose any fines or penalties for paperwork violations as defined in ORC section 119.14.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Providers in need of assistance may contact ODM, Bureau of Long-Term Services and Supports via email at [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).

5160-3-18

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

(A) Purpose.

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

(B) Definitions.

For purposes of this rule the following definitions apply:

- (1) "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, which may include ventilator weaning services, provided to ventilator dependent individuals by a NF in accordance with this rule, where the NF is eligible to receive an enhanced payment rate for providing those services. ~~in accordance with this rule.~~
- (3) "Respiratory care professional" (RCP) means the same as in division (B) of section 4761.01 of the Revised Code.
- ~~(3)~~(4) "Ventilator-associated pneumonia (VAP)" means pneumonia in an individual intubated and ventilated at the time of, or within forty-eight hours before, the onset of the pneumonia.
- ~~(4)~~(5) "VAP baseline rate" means the average of a NF's VAP rate for a fiscal year calculated by ODM using the data from the submission of quarterly reports for the most recent full calendar year beginning January first and ending December thirty-first.
- ~~(5)~~(6) "VAP threshold rate" means a maximum number of VAP episodes determined by ODM based on the VAP baseline rates for all NFs statewide.
- ~~(6)~~(7) "VAP rate" means the number of VAP episodes occurring in the NF per one-thousand ventilator days.

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

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

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

(C) Provider eligibility.

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

- (1) Be a licensed and medicaid certified NF and meet the requirements for NFs in accordance with 42 U.S.C. 1396r (INSERT ORIGINAL FILE DATE HERE).~~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](mailto: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](mailto:nfpolicy@medicaid.ohio.gov) and attach a copy of the letter.
  - (b) Any individuals participating in the ODM NF ventilator program at the time a NF becomes an SFF shall remain as participants in the ODM NF ventilator program. The NF shall not admit new individuals to the ODM NF ventilator program until the NF has been graduated from the SFF program for a period of six consecutive months. At that time, the NF must submit a new request to participate in the ODM NF ventilator program in accordance with paragraph (D) of this rule. The NF may begin admitting new individuals to the ODM NF ventilator program after the NF receives notice of approval by ODM.
- (8) Provide all of the following services:
  - (a) For at least five hours per week, the services of an ~~an RCP licensed respiratory therapist~~ or the services of a registered nurse (~~RN~~) who has worked for a minimum of one year with ventilator dependent individuals. The ~~licensed-respiratory-therapist~~~~RCP~~ or the ~~registered nurse~~ ~~RN~~ 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~~ Nursing Facility Ventilator Program" (INSERT NEW FORM DATE 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 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 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 email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" ~~send a written request~~ to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov). The request shall demonstrate that the NF is capable of fulfilling all of the requirements specified in this rule, including ventilator weaning services if requested. ODM may request additional information regarding a NF's qualifications to participate.
  - (2) ODM will respond to a request via return email within ten 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](mailto:nfpolicy@medicaid.ohio.gov). The decision of the director or designee regarding the reconsideration shall be final.

(4) The ODM 10227 shall be re-submitted to, and re-approved by ODM, as part of each subsequent provider agreement revalidation unless the provider chooses to withdraw from the ODM NF ventilator program or is determined by ODM to no longer meet the eligibility requirements as set forth in paragraph (C) of this rule and, if applicable, paragraph (E) of this rule. ODM will respond to a request via return email within ten business days of receipt of the request. If the request is approved, ODM will provide the ODM 10198 for the NF to complete and submit to ODM. If the request to participate is not approved, the NF shall follow the information in paragraph (D)(3) of this rule.

(5) In the case of a change of operator (CHOP), if the exiting provider participated in the ODM NF ventilator program and the entering provider wishes to continue to participate in the program, the entering provider should submit the ODM 10227 to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov). Notwithstanding rule 5160-3-65.1 of the Administrative Code, if the ODM 10227 is submitted within sixty days of the effective date of the CHOP and ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates retroactive to the effective date of the CHOP or the date the requirements to participate in the NF ventilator program are met, whichever occurs later. If the ODM 10227 is not submitted within sixty days of the effective date of the CHOP but ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates effective on the date of ODM approval. If there is no approved ODM 10198, the entering provider's participation in the ODM NF ventilator program shall cease effective on the effective date of the CHOP.

(E) Ventilator weaning services.

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

(1) Have an approved ODM 10198 with approval to provide ventilator weaning services.

(2) Have a ventilator weaning protocol in place established by a physician trained in pulmonary medicine who is available by phone twenty-four hours per day seven days per week while ventilator weaning services are provided.

- (3) Have an RCP with training in basic life support on-site eight hours per day seven days per week and available by phone during the remaining hours of the day while ventilator weaning services are provided.
- (4) Have a registered nurse with training in basic life support on-site twenty-four hours per day seven days per week while ventilaor weaning services are provided.

~~(E)~~(F) ODM NF ventilator program payment rate.

- (1) The total per medicaid day payment rate determined under section 5165.15 of the Revised Code shall 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.~~Instead, the total per medicaid day payment rate for services provided by a NF under the NF ventilator program for each state fiscal year shall be as follows:
  - (a) For ventilator weaning services, sixty per cent of the statewide average of the total per medicaid day payment rate for those individuals receiving ventilator services in a long-term acute care hospital for the prior calendar year. Payment at the enhanced ventilator weaning rate is limited to ninety days per calendar year per individual, and includes a post ventilator weaning evaluation period of up to fourteen days.
  - (b) For ventilator only services, fifty per cent of the statewide average of the total per medicaid day payment rate for those individuals receiving ventilator services in a long-term acute care hospital for the prior calendar year.
- (2) Prior to the establishment of the VAP threshold rate, NFs participating in the ODM NF ventilator program will receive the rate described in paragraph ~~(E)~~~~(1)~~(F)(1)(a) for ventilator weaning services and (F)(1)(b) for ventilator only services, of this rule.
- (3) ODM shall notify NFs via the Ohio department of medicaid website no later than July first of each year of each NF's specific VAP baseline rate, the VAP threshold rate, and the ODM NF ventilator program payment rates that shall be effective for the state fiscal year.
- (4) Once ODM has calculated a NF's VAP baseline rate and the VAP threshold



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

(a) If the NF elects not to timely submit a plan of action, ODM shall follow the termination process in paragraph (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](mailto: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](mailto: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](mailto: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](mailto: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 rates for both ventilator only services and ventilator weaning services by a maximum of five per cent. The reduced ODM NF ventilator program payment rate or rates if ventilator weaning services are provided, will become effective during the next full quarter following report submission, and shall remain in effect for that entire quarter.
  - (i) ODM shall notify the NF via certified mail return receipt requested of the reduced payment rate and the applicable quarter.
  - (ii) Within thirty days of receiving receipt of the reduced payment rate or rates if ventilator weaning services are provided, the NF may request a reconsideration by the medicaid director or designee via email to [nfpolicy@medicaid.ohio.gov](mailto: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 or at the conclusion of the post ventilator weaning evaluation period, whichever is later.
- (6) Except in the case of a CHOP as described in paragraph ~~(C)(9)(b)~~ (D)(5) of this rule, NFs without a current approved ODM 10198 shall be paid the total per medicaid day payment rate determined under section 5165.15 of the Revised Code.

~~(F)~~(G) 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)~~(H) Quarterly reports.

(1) ODM NF ventilator program providers shall submit [ODM 10228 "Nursing Facility Quarterly Ventilator Program Report"](#)~~quarterly reports~~ [\(INSERT FORM DATE HERE\)](#) 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)~~(2) Quarterly reports shall be submitted to ODM via secure email to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).

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

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

~~(b)~~(c) 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)(J) Withdrawing from the ODM NF ventilator program.~~Change in services.

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

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

(a) The NF shall send notice to ODM via email to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).

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

- (c) The written notice will serve as a modification to the NF's approved ODM 10198.
- (2) If the NF no longer chooses to provide ventilator weaning services under the NF ventilator program but chooses to continue to participate in the NF ventilator program:
- (a) The NF shall send notice to ODM via email to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).
- (b) The notice shall include a statement that the facility no longer chooses to provide ventilator weaning services but chooses to continue to participate in the NF ventilator program.
- (c) The notice shall include the last date the NF will provide ventilator weaning services.
- (d) The written notice will serve as a modification to the NF's approved ODM 10198.
- ~~(+)(3) If the NF is providing services, which may include ventilator weaning services, and chooses to withdraw from the NF ventilator program:~~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](mailto:nfpolicy@medicaid.ohio.gov). The notice shall include the following information:
- (a) At least sixty days before the last day of participation in the ODM NF ventilator program, the NF shall send notice of the withdrawal to ODM via email to [nfpolicy@medicaid.ohio.gov](mailto:nfpolicy@medicaid.ohio.gov).
- ~~(a)(b)~~(b) The notice shall include ~~A~~ a statement that the NF ~~wants~~ chooses to withdraw from the ODM NF ventilator program: and the last date the NF will participate in the program.
- (c) If the NF decides to discharge current ventilator dependent individuals, the NF shall 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 day after the last date of participation in the ODM NF ventilator program.
- (d) The written notice will serve as official termination of the NF's approved ODM 10198.

~~(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.~~