Common Sense Initiative

Mike DeWine, *Governor* Jim Tressel, *Lt. Governor*

Business Impact Analysis

Agency, Board, or Commission Name: Department of Medicaid

Rule Contact Name and Contact Information: Tommi Potter, 614-752-3877

Regulation/Package Title (a general description of the rules' substantive content):

NF Ventilator Program Redesign

Rule Number(s): 5160-3-18

Date of Submission for CSI Review: 4/6/2026

Public Comment Period End Date: 4/13/2026

Rule Type/Number of Rules:

New/ 1 rules

No Change/ ____ rules (FYR? ___)

Amended/ ____ rules (FYR? ___)

Rescinded/ 1 rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

DRAFT – NOT FOR FILING

Tier 35160-3-18 Nursing facilities (NFs): ventilator program.

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.

(A) Definitions.

For the purposes of this rule the following definitions apply:

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

(2) "CMS special focus facility (SFF) list" is a list of NFs with quality issues. NFs on table A of the SFF list are current SFFs and those on table D of the SFF list are facilities that are candidates for selection as an SFF.

(3) "Bilevel positive airway pressure (BPAP)" is a form of non-invasive ventilation that supports breathing by delivering one pressure during inhalation and a lower pressure for exhalation. This modality is generally used to provide mild respiratory support.

(4) "Continuous positive airway pressure (CPAP)" is a form of non-invasive ventilation that delivers a single, constant level of pressure. This modality is generally used to treat obstructive sleep apnea and provide mild respiratory support for other conditions.

(5) "Discrete unit" refers to a designated section within a NF reserved for centralized respiratory care which meets the requirements for national fire protection association (NFPA) category 1 medical facility and is specifically reserved for centralized respiratory care. This area may be located in a separate building, or a wing, floor, hallway, or may be a physically close group of rooms. The primary purpose of the discrete unit is to serve ventilator-dependent individuals. 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.

(6) "Invasive ventilation (IV)" refers to ventilation which delivers air via an endotracheal or tracheostomy tube and is used for individuals who cannot breathe independently. Cessation of IV would result in serious harm or death.

(7) "Non-invasive ventilation (NIV)" refers to ventilation using a nasal mask, or a combination mouth nose mask, mouthpiece, helmet, or similar interface.

(8) "Health Care Facilities Code category 1 facility requirements" apply to any area where life-sustaining equipment, including ventilators, is used and where equipment failure could result in serious injury or death. These requirements include but are not limited to emergency power systems with appropriate generators and transfer equipment, electrical receptacles served by the critical branch of the electrical

system, proper grounding and wiring, fire and life safety systems, and measures to ensure a safe and compliant physical environment. These health care facility requirements apply to both invasive and noninvasive ventilation when used in life-sustaining situations.

(9) "Ohio Department of Medicaid (ODM) Nursing Facility Ventilator Program" means a program in which qualifying NFs may be eligible to receive enhanced reimbursement for providing ventilator services in accordance with this rule.

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

(11) "Ventilator dependent" means an individual who is unable to maintain adequate ventilation without mechanical assistance and who requires invasive or complex non-invasive mechanical ventilation for a minimum of six hours within a twenty-four-hour period. The ventilator must provide mandatory, machine-generated breaths that serve as the primary source of respiratory support. Cessation of ventilator assistance would place the individual at risk of serious harm or death. Ventilator-dependence is distinct from the use of respiratory assist devices, which augment spontaneous breathing but do not deliver mandatory breaths or assume full ventilatory control.

(12) "Ventilator weaning services" means services provided to support an individual's active weaning from invasive ventilator support, with progressive reduction of support based on orders and RCP supervision

(B) Provider eligibility requirements:

(1) In order to qualify and be approved by ODM as a NF ventilator program provider and receive enhanced payments for services, a NF should meet all of the following criteria:

(a) Be a licensed and medicaid certified NF and meet the requirements for NFs in accordance with 42 U.S.C. 1396r (October 1, 2025).

(b) 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 5160-3-02.4 of the Administrative Code regarding execution and maintenance of provider agreements between ODM and the operator of a NF.

(c) Designate a discrete unit within the NF for the use of individuals in the ODM NF ventilator program. The beds in the discrete unit should meet the requirements of NFPA Health Care Facilities Code for a category one critical care space by the Ohio department of health (ODH) which includes having a functioning generator that can supply the needs of a category one support system. Ventilators should be connected to emergency critical branch outlets, which are connected to an onsite backup generator to meet the capacity of the beds identified for the discrete unit.

(d) Be compliant with the current adopted centers for medicare and medicaid services (CMS) regulations found in the Code of Federal Regulations (CFR) Title 42, Part 483.90 (October 1, 2025) and NFPA 101, 99, 70, and 110, for the installation and maintenance of a type one, essential electrical system (EES).

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

(f) Develop a written ventilator services coverage plan that includes the type of services provided, number and location of beds, and plans for meeting staffing requirements.

(g) Apply for and receive ODM approval to participate in the NF ventilator program. Providers will receive an approved ODM 10198, "Addendum To ODM Provider Agreement: Nursing Facility Ventilator Program".

(2) In order to bill for and be eligible for enhanced ventilator payments for tier two or tier three services, a NF is expected to meet the following minimum staffing requirements for their discrete unit:

(a) Ventilator-dependent services:

(i) A full-time RCP on site thirty-five hours to forty hours per week except as follows:

a. When that RCP is not on site, there must be an RCP available on-call. A combination of on-site and on-call RCP services must be available twenty-four hours per day, seven days a week;

b. An on-site RN trained in ventilator care may be used to cover for the on-site RCP when that RCP is not available to ventilator individuals any part of their thirty-five to forty hours per week. The RN may be used to substitute for RCP during breaks, lunches, and paid time off. Such RN coverage shall not be used to primarily satisfy the required full-time RCP coverage; and

(ii) Availability of a pulmonologist on-site or on-call twenty-four hours a day, seven days a week.

(b) Invasive ventilator weaning services:

(i) An on-site RCP eight hours per day, seven days per week, and available by phone during the remaining hours of the day while ventilator weaning services are being provided.

(ii) Twenty-four hours seven days a week on-site staffing can be met with a combination of hours provided by an RCP or RN trained in ventilator care during ventilator weaning.

(iii) Availability of a pulmonologist on-site or on-call twenty-four hours a day, seven days a week.

(3) To maintain eligibility for receiving any enhanced payments, approved NF ventilator providers are expected to meet all program requirements on an ongoing basis.

(a) Providers who do not meet the requirements addressed in this rule are not eligible to receive enhanced ventilator payments until compliance has been documented and eligibility has been verified by ODM.

(b) Providers who fail to meet NF ventilator program requirements may be terminated from the program.

(4) A NF that has not provided and billed for ventilator services for the entire previous calendar year will be suspended from the NF ventilator program and will not be eligible for the enhanced ventilator rates. Notification will be sent via electronic mail to the facility. Providers may reapply at any time.

(C) Application process:

(1) A NF interested in participating in the NF ventilator program should submit a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" to ODM. The request should demonstrate that the NF is capable of fulfilling the requirements specified in this rule. ODM may request additional information regarding a NF's qualifications to participate. The NF should provide the following information with its application:

(a) Floor plan of the entire facility with the rooms identified for the discrete unit.

(b) Ventilator services coverage plan that includes the type of ventilator services provided, number and location of beds, and plans for meeting staffing requirements in this rule, and

(c) Additional information as required by ODM.

(2) If the application is approved, ODM will provide the ODM 10198 for the NF to complete, sign, and submit to ODM. With the exception of a change of operator (CHOP), the effective date will not be prior to the ventilator application submission date.

(3) If the application 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 is final.

(4) In the case of a CHOP, the new provider may apply to the program by following the steps outlined in paragraph (C)(1) of this rule. On the ODM 10227, the provider may request an effective date for the program retroactive to the effective date of the CHOP as long as it self-attests compliance with the program as of that date. ODM

may approve the effective date retroactive to the effective date of the CHOP if the application is submitted within thirty calendar days of the CHOP approval.

(5) Requests to change services, beds, or location of a NF's discrete unit should be submitted to nfpolicy@medicaid.ohio.gov with documentation that any new beds meet the requirements of paragraph (C)(1)(c) of this rule.

(6) A NF approved for the NF ventilator program who no longer wishes to participate in the program should submit their request to withdraw to nfpolicy@medicaid.ohio.gov. The written notice will serve as official termination of the NF's approved ODM 10198.

(D) Reimbursement:

(1) Payment rates:

(a) For invasive ventilator-dependent services, an enhanced daily rate will be paid in place of the total per medicaid day payment rate as determined under section 5165.15 of the Revised Code. The rate methodology for invasive ventilator-dependent services is 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.

(b) For complex NIV services, an add-on payment of five hundred dollars per day will be reimbursed in addition to the total per medicaid day payment rate determined for the facility under section 5165.15 of the Revised Code.

(c) For invasive weaning services, an enhanced daily rate will be paid in place of the total per medicaid day payment rate as determined under section 5165.15 of the Revised Code. The rate methodology for weaning services is 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 calendar days.

(2) Other payment considerations for tier two and tier three services:

(a) The facility is responsible for using appropriate billing codes for tier two and tier three services and is not to bill for enhanced ventilator rates when they are not eligible to do so as specified in this rule.

(b) Bed-hold days for individuals receiving services under the ODM NF ventilator program will be paid at the NF's daily rate for reserving beds determined under section 5165.34 of the Revised Code.

(c) Days billed under the NF ventilator program are ineligible for any private room payment described in rule 5160-3-16.3 of the Administrative Code.

(d) Payment for individuals who meet the criteria in division (E) of section 5165.157 of the Revised Code will be at the NF's per diem rate. Facilities designated as having a one-star overall rating by CMS or placed on tables A or D of the SFF list will not be eligible to receive any enhanced ventilator rates for individuals admitted on or after the date they are placed on the list unless they have submitted and been approved for an access waiver by ODM.

(e) Approved NFs will submit claims with diagnosis code Z99.11 to indicate that those individuals meet the ventilator dependent or ventilator weaning criteria for the ventilator program services covered under this rule for the time period being billed. Additional diagnoses codes relevant to the individuals' respiratory condition should also be included.

(E) Coverage requirements:

(1) The following establishes coverage standards and eligibility criteria for ventilator support services based on the individual's clinical complexity and level of ventilator dependence:

(a) Tier one represents the least complex, basic non-invasive support, and is not considered ventilator dependency. This includes individuals who require basic non-invasive respiratory support such as CPAP and BPAP. Reimbursement for NF services for individuals in tier one is limited to the NF per diem rate and not eligible for an enhanced ventilator payment. An individual is considered tier one when all of the following apply:

(i) The individual does not require invasive mechanical ventilation.

(ii) The individual uses CPAP, BPAP, or similar low acuity non-invasive equipment for sleep apnea or mild respiratory support;

(iii) The individual does not require continuous clinical monitoring or frequent ventilator adjustments as their chronic conditions and vital signs are stable; and

(iv) The individual's respiratory support can be safely managed under routine NF care without enhanced staffing or specialized respiratory oversight.

(b) Tier two represents complex non-invasive ventilation and is considered ventilator dependency. This includes individuals who require complex non-invasive ventilation that exceeds basic CPAP or BPAP use. These individuals require increased clinical monitoring and oversight and may require frequent ventilator adjustments. Reimbursement for complex non-invasive ventilator services for individuals in tier two will be paid at an add-on ventilator rate in addition to the facility NF per diem rate. An individual is eligible for tier two when the individual requires all of the following:

(i) Advanced complex non-invasive ventilation modalities (e.g., volume targeted NIV, pressure-control NIV, or other specialized settings);

(ii) Ventilator support for six or more hours each twenty-four hour period, which may be continuous or intermittent, but without invasive ventilation;

(iii) Frequent clinical monitoring, setting adjustments, alarm management, and ongoing respiratory assessments;

(iv) Care provided by staff trained in ventilation and emergency response procedures; and

(v) NIV due to underlying conditions such as neuromuscular disease, chronic respiratory failure, severe COPD, or restrictive lung disease, that necessitates high complexity non-invasive support.

(c) Tier three represents the most complex, advanced invasive ventilation, and is considered ventilator dependency. This includes individuals who require invasive mechanical ventilation through a tracheostomy or endotracheal tube. Reimbursement for invasive vent services for individuals in tier three will be covered by an enhanced rate in lieu of the facility NF per diem rate. An individual is eligible for tier three when the individual requires all of the following:

(i) Ventilator support for six or more hours per twenty-four hour period delivered invasively;

(ii) Frequent clinical monitoring, setting adjustments, alarm management, and ongoing respiratory assessments;

(iii) Care provided by staff trained in invasive ventilation and emergency response procedures; and

(iv) Medical condition cannot be managed with non-invasive modalities.

(2) Ventilator weaning services are available for individuals receiving invasive ventilation and eligible for reimbursement at the enhanced weaning rate when provided in accordance with this rule. During the ventilator-weaning process, individuals remain eligible to receive the enhanced rate up to the limit of ninety days per calendar year which may include a postweaning period of up to fourteen days.

(F) Documentation requirements:

(1) The individual's medical record should include documentation supporting ventilator use, including all of the following:

(a) Assessment by a physician justifying the need for ventilator services and monthly physician orders and monitoring;

(b) Current ventilator order specifying mode, settings, alarm parameters and whether the ventilator is used invasively or non-invasively;

(c) Diagnoses related to the individual's ventilator dependency, contributing comorbidities, and disease severity;

(d) Respiratory and nursing care flow sheets documenting delivery of ventilator related services.

(2) Additional documentation for ventilator weaning:

(a) Physician order for weaning services;

(b) Documentation of the individual's progress with weaning; and

(c) Clinical records that indicate clear orders and management attempting to progressively reduce settings or modes for ventilator support.

(G) Improved health outcomes:

(1) Each facility should implement a program for monitoring the health outcomes of their ventilator dependent individuals.

(2) By March thirty-first of each year, the NF should submit to ODM an annual report summarizing the ventilator program's key objectives for the previous calendar year, the monitoring results for each measure, and progress toward the objectives, including any identified issues and adjustments to address.

(H) Prior authorization (PA) process:

(1) Effective October 1, 2026, prior authorization will be required for all tier two ventilator services for individuals covered under fee-for-service medicaid. NFs should submit a fee-for-service prior authorization request in accordance with Rule 5160-1-31 of the Administrative Code.

(2) Tier two ventilator services will be prior authorized based on clinical criteria developed or approved by ODM, to ensure appropriate coverage for complex, non-invasive services.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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 rescind

Rule 5160-3-18, entitled "Nursing facilities (NFs): ventilator program" sets forth the requirements regarding approved nursing facilities participating in the NF ventilator program for enhanced reimbursement. The rule is being proposed for rescission as more than fifty percent of the rule requires amendment. The content of this rule will be moved to a new proposed rule with the same number. This rule establishes an alternative purchasing and payment model for nursing facilities (NFs) that provide specialized services to ventilator-dependent Medicaid recipients, including optional ventilator-weaning services. The rule outlines eligibility requirements, service standards, payment methodologies, reporting expectations, and oversight processes for participating nursing facilities.

5160-3-18 proposed as new

This is a new proposed rule to replace the proposed rescinded rule with the same number, and to update policy for the NF ventilator program. The proposed rule establishes updated standards, participation requirements, and payment methodologies for the Ohio Department of Medicaid's Nursing Facility Ventilator Program. The rule defines key terms including invasive and non-invasive ventilation, ventilator dependency, discrete units, ventilator weaning services, and the tiered levels of respiratory support.

The rule sets comprehensive provider eligibility requirements for nursing facilities seeking enhanced reimbursement for ventilator-dependent or ventilator-weaning services. Facilities must operate a designated discrete unit meeting National Fire Protection Association (NFPA) category 1 standards, maintain compliance with CMS and NFPA electrical and safety requirements, develop a ventilator services plan, and obtain ODM approval through the ODM 10198 addendum. Minimum staffing expectations include full-time respiratory care professional(s), nursing staff trained in ventilator care, and 24/7 pulmonologist availability. Ventilator dependent services require one full time RCP whereas ventilator weaning services require increased RCP hours.

The rule outlines the application and approval process, including required documentation, timelines, reconsideration procedures, provisions for changes of operator, and the process for modifying or terminating participation. Payment methodologies are revised to include enhanced daily rates for invasive ventilator services, complex non-invasive ventilation, and ventilator-weaning services, along with limitations on bed-hold payments and restrictions for facilities with low CMS star ratings or Special Focus Facility status.

The rule establishes three coverage tiers based on clinical complexity, ranging from basic non-invasive support (Tier 1, not eligible for enhanced payment) to complex non-invasive ventilation (Tier 2) and invasive mechanical ventilation (Tier 3). Documentation requirements, annual outcome-monitoring and reporting expectations, and prior authorization requirements—mandatory for fee-for-service Tier 2 individuals beginning October 1, 2026—are also included.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code section 5165.02

4. **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 and to pay enhanced rates in order to reimburse NFs the higher costs associated with ventilator care. This rule does not exceed any federal requirement.

5. **If the regulation implements a federal requirement, but 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.

6. **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.

7. **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.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. 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 involved in the development and initial review of the draft regulations include Ohio's nursing facility (NF) provider associations, managed care organizations (MCOs) serving Ohio Medicaid members, and the nursing facilities participating in the ventilator program.

Ohio's NF provider associations include:
- Ohio Health Care Association (OHCA)
- The Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio

These associations collectively represent Ohio's nursing facilities across a wide range of ownership types, including small and large facilities; individually and group-owned entities; publicly traded, government-owned, for-profit, and non-profit organizations. They also serve as key informational and educational resources for facilities, suppliers, consultants, and the broader public.

Managed care organizations constitute another major stakeholder group, as many Ohio Medicaid members receiving ventilator services reside in nursing facilities and are funded through the NF ventilator program.

Ohio has approximately 940 nursing facilities, making them the largest stakeholder group affected by the draft regulatory changes.

On January 23, 2026, NF provider associations and MCOs were invited via email to attend a webinar during which ODM presented data trends and proposed program updates. Stakeholders were encouraged to submit written comments and recommendations.

On February 19, 2026, nursing facilities currently approved for the program were invited to the same presentation. On February 27, an email with a survey link was sent to these facilities to request further input on the proposed changes. More than 100 facilities completed the survey, and several also provided individual email feedback.

From January 23 through March 19, 2026, ODM's NF policy area continued to accept, review, and incorporate stakeholder feedback and newly submitted information.

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

The following stakeholder comments were received by ODM and incorporated into the rule as follows:

In response to stakeholders' request to consider incorporating non-invasive ventilation into the NF ventilation program, ODM added coverage for this new service.

Stakeholders provided a variety of feedback regarding staffing requirements. In response, ODM developed staffing requirements that provide some flexibility.

Stakeholders also requested clear, detailed criteria for defining ventilator dependency. This information was included in the rule by defining Tier levels of respiratory care with ventilator dependence clearly defined as requiring a ventilator for 6 hours or more each day.

Reimbursement feedback did not result in any changes to the draft rule.

Additional feedback was received regarding medical records documentation requirements. ODM added a section specifying documentation expectations.

Providers had questions regarding outcome-based expectations. A new section was added to define the expectations.

Feedback was also received on billing for ventilator services. ODM expanded this section of the rule.

11. 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 was used to develop the rule.

12. 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? ***Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

No alternative regulations were considered as they would not provide the level of detail needed to comply with the requirements of this rule.

13. 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, the only duplication is to clarify which state and federal regulations apply to the redesigned rule.

14. 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 the Ohio Department of Medicaid will be posted on the Codes site at https://codes.ohio.gov.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

Ohio has approximately 940 NFs. This rule impacts approximately 214 NFs who participate in the NF ventilator program.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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 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 for, 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 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 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. 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.

5160-3-18 new

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. 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. 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 onsite 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 onsite 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.

5160-3-18 - new

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

1. In accordance with paragraph (B)(1)(a) of this rule, a nursing facility must be licensed, Medicaid-certified, and meet the requirements for nursing facilities under 42 U.S.C. 1396r. ODM estimates that an attorney will require approximately six hours at $400 per hour (totaling $2,400) to review a licensure application. An administrator will require approximately four hours at $72 per hour (totaling $288) to prepare the application.

   A facility must also pay an initial license fee of $320 per 50 beds. For a representative 100-bed facility, the fee is $640. The total estimated cost for a 100-bed facility to review and prepare a licensure application under R.C. Chapter 3721 is approximately $3,328. The ongoing annual licensure fee for a 100-bed facility is $640.

2. "ODM estimates that a nursing facility's attorney will require approximately twenty hours at a rate of $400 per hour, for an estimated cost of $8,000, to review an application for Medicare certification. The nursing facility must also pay a $730 enrollment application fee. ODM further estimates that the facility's administrator will require approximately 640 hours at a rate of $72 per hour, for an estimated cost of $46,080, to prepare and submit the Medicare certification.

   In total, ODM estimates that a nursing facility will incur approximately $54,810 to review, prepare, and apply for Medicare certification to participate as a skilled nursing facility (SNF) in the Medicare program pursuant to R.C. 5165.082 and rule 5160-3-02.4 of the Administrative Code. A nursing facility must also pay a revalidation fee of $750 at least once every five years.

3. In accordance with paragraph (B)(1)(b) of this rule, a nursing facility must comply with the provisions in Chapters 5164. and 5165. of the Revised Code regarding provider agreements, as well as the provisions in rules 5160-3-02 through 5160-3-02.2 of the Administrative Code governing the execution and maintenance of provider agreements between ODM and the facility operator. ODM estimates that executing a new provider agreement will require approximately two hours of attorney time at an average rate of $400 per hour and two hours of administrator time at an average rate of $72 per hour, for a total estimated cost of $944. ODM further estimates that revalidating the provider agreement will require approximately one hour of administrator time at an average rate of $72 per hour at least once every five years.

4. In accordance with paragraph (C)(5) of this rule, if a NF wishes to change services, number of beds, or location of the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF staff person approximately fifteen

minutes at the rate of approximately $18 per hour for a total estimated cost of $5 to comply with this requirement.

5. In accordance with paragraph (B)(1)(c) of this rule, if a NF needs to purchase a backup generator, ODM estimates it will cost a NF approximately $380,000 for the purchase and installation.

6. In accordance with paragraph (C)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request to participate in the program to nfpolicy@medicaid.ohio.gov. with a floor plan and ventilator services coverage plan. ODM estimates it will take a NF administrator approximately four hours at the rate of approximately $72 per hour for a total estimated cost of $288 to comply with this provision.
7. If a NF is denied approval for the program, they may request reconsideration by the Medicaid director or designee. ODM estimates that it will take an administrator approximately four hours at the rate of approximately $72 per hour for a total estimated cost of $288 to prepare a reconsideration and submit to ODM.

8. In accordance with (C)(2) and (B)(1)(g) 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 per hour (total estimated cost: $18) to sign and return the ODM 10198.

9. Each ODM NF ventilator program provider shall submit an annual report to ODM. ODM estimates that it will take approximately six hours per month of a NF admissions coordinator's time at a rate of approximately $40 per hour for an estimated annual cost of $2,880 to maintain the information required for annual reporting. ODM estimates it will take approximately sixteen hours of administrator time at a rate of approximately $72 per hour for a total cost of $1,152 to submit an annual report. Total annual cost is approximately $4,032.

10. In accordance with paragraph (B)(3)(b) 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.

11. In accordance with paragraph (C)(6) 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 per hour for an estimated total cost of $18 to notify ODM if they choose not to participate in the program.

12. In accordance with paragraph (B)(2)(a)(i), a NF must have a full-time RCP and an RCP available during off hours. ODM estimates the cost of providing an RCP for 8 hours a day, 5 days a week, at approximately $50 per hour at approximately $2,000 per week.

13. In accordance with (B)(2)(a)(ii), a NF must have a registered nurse with training in ventilator services – the number of hours varies based on the staffing plan of the NF. Thus, ODM cannot estimate the cost of a registered nurse to the facility. 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.

14. In accordance with paragraph (B)(2)(a)(iii), a NF must have an arrangement with a pulmonologist for on-site and on-call availability totaling twenty-four hours a day, seven days a week. The estimated monthly costs will vary depending on facility location, number of ventilator residents, and availability but a NF can expect to pay anywhere from $2,000 to upwards of $20,00 depending on the contractual agreement between the NF and physician.

15. In accordance with (H), prior authorization will be required for Tier 2 individuals. ODM cannot estimate the cost because it will be dependent on the number of residents who might require prior authorization. A NF can calculate a cost by multiplying the expected number of possible Tier 2 admissions by the average daily rate of the worker who will submit the PA by the average length of time it takes to enter the information and receive the results.

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. 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. ODM estimates it will take a NF administrator approximately two hours at the rate of approximately $72 per hour for a total estimated cost of $144 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. ODM estimates that it will take a NF administrator approximately one-half hour at the rate of approximately $72 per hour for a total estimated cost of $36.

2. In accordance with paragraph (B)(2)(b)(i), a NF must have an RCP 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 $50 per hour at approximately $2,800 per week.

3. In accordance with (B)(2)(b)(ii), a NF must have a registered nurse with training in ventilator services – the number of hours varies based on the staffing plan of the NF. Thus, ODM cannot estimate the cost of a registered nurse to the facility. 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.

4. In accordance with paragraph (B)(2)(b)(iii), a NF must have an arrangement with a pulmonologist for on-site and on-call availability totaling twenty-four hours a day, seven days a week. The estimated monthly costs are included in #14 above since this requirement also applies to providing vent-dependent services.

5. In accordance with (B)(2)(b)(ii), a NF must have a registered nurse with training in ventilator services – the number of hours varies based on the staffing plan of the NF. Thus, ODM cannot estimate the cost of a registered nurse to the facility. 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.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

The requirement for a NF to track and report incidents of ventilator-associated pneumonia has been eliminated.

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

The adverse impacts in this rule are justified because they ensure that the needed comprehensive provider eligibility requirements for nursing facilities seeking enhanced reimbursement for ventilator dependent or ventilator weaning services are codified for the ODM nursing facilities ventilator program.

Regulatory Flexibility

18. 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.

19. 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.

20. 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

TO BE RESCINDED

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 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.

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

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

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

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

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

(8) "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 (10/19/2018).

(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 an RCP or the services of a registered nurse (RN) who has worked for a minimum of one year with ventilator dependent individuals. The RCP or the RN as applicable, s hall provide direct care to the ventilator dependent individuals.

(b) If ordered by a physician, initial assessments for physical therapy , occupational therapy, and speech therapy within forty-eight hours of receiving the order for a ventilator dependent individual.

(c) If ordered by a physician, up to two hours of therapies per day, six days per week for each ventilator dependent individual.

(d) In emergency situations as determined by a physician, access to laboratory services that are available twenty-four hours per day, seven days per week with a turnaround time of four hours.

(e) For new admissions, administer pain medications to a ventilator dependent individual within two hours from the receipt of the physician order.

(9) Have an approved ODM 10198, "Addendum To ODM Provider Agreement: Nursing Facility Ventilator Program" ()(12/2018).

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

(1) A NF who wishes to participate in the ODM NF ventilator program shall email a completed ODM 10227 "Request to Participate in the ODM Nursing Facility Ventilator Program" (12/2018) to nfpolicy@medicaid.ohio.gov. The request shall 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. 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. Notwithstanding rule 5160-3-65.1 of the Administrative Code, if the ODM 10227 is submitted within sixty days of the effective date of the CHOP and ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates retroactive

to the effective date of the CHOP or the date the requirements to participate in the NF ventilator program are met, whichever occurs later. If the ODM 10227 is not submitted within sixty days of the effective date of the CHOP but ODM approves the ODM 10198, the entering provider is eligible to receive the enhanced rate or rates effective on the date of ODM approval. If there is no approved ODM 10198, the entering provider's participation in the ODM NF ventilator program shall cease effective on the effective date of the CHOP.

(E) Ventilator weaning services.

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

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

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

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

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

(F) ODM NF ventilator program payment rate.

(1) The total per medicaid day payment rate determined under section 5165.15 of the Revised Code shall not be paid for NF services provided under the ODM NF ventilator program. Instead, the total per medicaid day payment rate for services provided by a NF under the NF ventilator program for each state fiscal year shall 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 recei ving ventilator services in a long-term acute care hospital for the prior calendar year.

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

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

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

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

(b) If the NF elects to submit a plan of action, the NF shall submit the plan to ODM via email to nfpolicy@medicaid.ohio.gov within fifteen calendar days of the date on the ODM notification email regarding the required plan of action and shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) 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 (D)(5) of this rule, NFs without a current approved ODM 10198 shall be paid the total per medicaid day payment rate determined under section 5165.15 of the Revised Code.

(G) Bed-hold days.

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

(H) Quarterly reports.

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

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

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

(1) ODM shall 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) of this rule if the NF provides ventilator weaning services.

(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) of this rule, ODM will terminate the NF's ability to provide ventilator weaning services and to receive the enhanced rate for ventilator weaning in accordance with paragraph (F)(1)(a) of this rule. The NF may continue to provide ven

tilator only services and to receive the enhanced rate for ventilator only services in accordance with paragraph (F)(1)(b) of this rule, as long as the eligibility requirements in paragraph (C) of this rule are met.

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

(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.

(J) Change in services.

A NF that chooses to no longer provide ventilator weaning services or to no longer participate in the ODM NF ventilator program under this rule shall 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.

(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.

(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:

(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.

(b) The notice shall include a statement that the NF chooses to withdraw from the ODM NF ventilator program and the last date the NF will participate in the program.

(c) If the NF decides to discharge current ventilator dependent individuals, the NF shall 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.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	null
Rule Amplifies:	null